

THE POLITICS OF
DEMOCRATISATION:
CREATING AN
INDEPENDENT COMMUNICATIONS
REGULATOR IN TRANSITIONAL TAIWAN

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by
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DECLARATION

I hereby declare that the work presented in this thesis is my own

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Abstract

This thesis examines the creation of the National Communications Commission (NCC), an independent media regulatory agency in Taiwan, in order to shed light on the relationship between media, state, and democracy in post-transition countries. This study positions the NCC as the key transformation of media reform during the political transition to democracy. On the one hand, it addresses the role of media in transitional societies and how political and industry power elites try to maintain control. On the other hand, it traces the rise of the ‘regulatory state’, a global trend towards regulatory reform, and investigates how the political environment in transitional countries may influence its development. This research is based on the analysis of case studies spanning issues of institutional legitimacy, media ownership, and convergence legislation, with the support of data collected by document analysis and interviews with actors in the policymaking process.

The findings point to how Taiwan’s post-authoritarian political background has outweighed economic and technological factors as described in mainstream literature in giving rise to the creation of the agency. The analysis demonstrates that state intervention and politicised concepts of democratisation and independence of the agency both impair media regulatory capacities in transitional societies. More importantly, it is indicated that the threat to democracy has been shifting from authoritarian states to unfettered markets where concentration of media ownership and impediments to media reform through entrenched politico-economic networks have taken place. I question the popular discourse that democratisation is equal to the withdrawal of the state in media regulation, calling instead for active civic engagement to hold the agency accountable, scrutinise its performance, and make the media better serve the public.

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Chapter 1

Introduction

On the first day of August 2010, four people were sworn in as new members of the seven-person National Communications Commission (NCC) in Taiwan, an independent regulatory agency recently established to oversee the development of the communications industry and take responsibility for media policymaking. A widespread rumour had it that the chief commissioner had been pre-selected from amongst the four newcomers by the executive branch of the government before the first meeting had even taken place, despite denials from both the government and the prospective appointee. The result of the vote to decide the new chief commissioner was an extremely close four-to-three. All four votes in favour of the eventual appointee came from the new members, with the other three going to a senior commissioner who had previously served as the vice chairperson. Although in her inaugural speech the new chief commissioner described (Chen, 2010), the agency as a ‘vital warship’ and its members as an ‘energetic crew’, within weeks another split had occurred, and the warship seemed to be on the brink of war with itself.

This time the split concerned a change proposed that would allow the executive branch of the Taiwanese government, the Executive Yuan both to nominate the chairperson and vice chairperson and make the final decision regarding both appointments, which was ‘drastically different from the current regulations, which stipulate that commissioners are entitled to choose the chief and deputy commissioners by themselves’ (Shan, 2010). This once again, according to a leading commentator, raised doubts about the autonomy of the agency since the two splits were eerily consistent (Peng, 2010). The commission once again found itself mired in a stalemate between the new four and the already-serving three. In contrast to the new commissioners, who agreed to hand power back to the incumbent administration, these three commissioners jointly filed a dissenting opinion, responding to the proposal with strong disapproval (Chen et al., 2010). They argued that it would strangle the Commission’s independence and again hand regulatory power over to political power (Liu, 2010).

I would suggest that the discordant views between the old and new commissioners were not an arbitrary squabble but reflected a much longer and deeper conflict between various power elites in transitional Taiwan. The creation of an independent regulatory agency (IRA) was a measure taken in the name of democracy. Since martial law was lifted in 1987, Taiwan has been striving for democracy. The 2010 dispute stood in stark contrast to the legislative process leading to the NCC Organisation Act in 2005 with regard to the independence of the regulatory agency. During the process dozens of legislators determined to protect the independence of the agency at all costs and the Organisation Act was finally passed with severe physical violence (Lai, 2005a). The NCC came into being in 2006, and in less than five years the agency had already handed back the power to decide the chief commissioner that lawmakers had previously fought for. The difference in voting between the commissioners, claims this study, revealed not only how the nomination of new commissioners has been utilised by the ruling government to support its preferred candidates, but also how the long-debated issues of regulatory independence and distrust of political power could so quickly rise to the surface.

Research Questions and Case Studies

This thesis aims to provide a comprehensive analysis of an independent regulatory agency (IRA) in a new democracy, focusing on the context of political transition. I argue that the NCC marks a crucial watershed in at least two respects in the Taiwanese context: on the one hand, it means a democratic emblem for old and new political elites in the post-authoritarian regime during political democratisation. On the other hand, the IRA represents a significant transformation of the national media regulatory framework whereby regulatory power has passed from the state, which for decades has dominated regulation, to an independent body. The first point relates to a critical stage in Taiwanese political transition when the then opposition Democratic Progressive Party (DPP), in order to win the presidential election, made promises regarding the creation of an IRA for the media. The 2000 election saw a change of government and an opportunity for media reform, when the Nationalist Party (or Kuomintang, KMT), the authoritarian single-party during the Martial Law era, was voted out of office. The second point has to do with the key reform of the regulatory framework, calling attention to the interaction between the independent

regulatory agency, and the state, and the impact of transitional politics on the formation of the new regulatory system.

The analysis will be organised according to the following four sets of guiding questions:

- (1) What gave rise to the regulatory reform of communications in Taiwan, and who were the key actors in the creation of the NCC?
- (2) How did the transitional political background influence the formation and efficacy of the new regulatory agency?
- (3) How has transitional politics impacted on the relationship between the independent regulatory agency and the state?
- (4) How has the introduction of the new regulatory agency changed the regulatory landscape in Taiwan? To what extent has it contributed to democratisation?

This study argues that, although the IRA format enjoys global popularity precisely because it is seen as a professional and de-politicising regulatory tool, its implementation and operation in transition societies is, ironically, highly politicised. Analysis will also demonstrate that the challenges facing new independent communications regulatory agencies are indicative of more general problems facing the democratisation of political culture, especially in post transition countries.

This study focuses on aspects of the NCC case that best illustrate the changing relationship between the new independent regulatory agency, the state and the regulated industry in a situation characterised by political transition and regulatory reform. I will first of all consider the formation of the NCC and the subsequent judicial review concerning the new regulator, which represented a step towards democratisation in comparison to previous authoritarian rulings. Since the new regulator was to be responsible for re-allocating communications resources, various powers, including the political, economic and social elites, had an interest in shaping it, and the different proposals put forward during the inception of the agency regarding its form and function can be understood as so many competing claims on media privileges. Second, I will offer an account of the NCC's embroilment in the issue of media ownership, focusing on the transfer of media assets once controlled

by the authoritarian party-state to private companies through entrenched politico-economic networks. This account indicates some of the ways that political power can inform economic development in transitional societies, and demonstrates the significant impact that the background and political affiliation of agency personnel can have on regulatory judgements. Thirdly, the study examines the draft Bill of Communications Management Act, a proposed piece of convergence legislation designed to incorporate existing communications laws into a single code. It is argued that this legislation would have significantly transformed the regulatory framework, consolidating the NCC's regulatory power and going some way towards securing the future of the agency. With these three case studies, bearing on judicial interpretation, media ownership, and media legislation, I hope to offer a comprehensive picture of the different actors involved in the formation of the NCC, and of the struggles that continue to shape it.

Three dynamic and interrelated concepts will be central to the study: democratisation, independence, and politicisation. Firstly, drawing on Huntington (1991), democratisation here refers to the transition from a non-democratic regime to a democratic one, and can be extended to include actual changes taken to encourage the transition. Democratisation is key to this study since the extent to which media resources and content are controlled by political power is closely related to the degree of democratisation a country enjoys. Discussion of democratisation in this study bears on aspects of institutional change and political discourse, and focuses on how different policy actors frame the independent regulator and on the delegation of regulatory power. Secondly, independence here describes the degree to which the IRA is autonomous and able to rebuff the influence of other actors. Independence is the founding principle of the agency, but it has been at the centre of a great deal of conflict, at least partly because the concept is underspecified in relation to IRAs. This study will argue that the insistence on an absolutely independent regulatory agency is unrealistic, politically and economically.

Independence is a highly *politicised* concept, as this study will demonstrate. Politicisation, here, is understood in a sense that goes beyond reference to partisan power bargaining to include all activity related to the gain and use of power for the purposes of becoming influential in policymaking and society. It has also been used in the study in a narrower sense while discussing the discourse of *de*-politicisation

that has promoted independent regulatory agencies as a means of curbing the influence of political power on media regulation. Close examination of the policymaking process, however, reveals the persistence of a complex network in which politicisation takes place between various policy actors and at various levels, leading to the overarching argument of the study which is that politicisation plays the most significant role in shaping IRAs, particularly in transitional countries like Taiwan.

One focal point of the analysis will be the different emphases placed on these three concepts – democratisation, independence and politicisation – by different actors in various contexts throughout the policymaking process.

To sum up, this study focuses on the actors involved in the policymaking process leading to the creation of an IRA in a transitional political context. It also offers an account of the regulatory agency's dealings with the state, the regulated industries and other power elites, and identifies the most significant policy discourse informing these encounters. Sympathetic to the many scholars who critically consider policymaking a purposeful and political process actively shaped by different stakeholders (Horwitz, 1989; Streeter, 1996; Freedman, 2008; Chakravarty and Sarikakis, 2005), the project highlights how different actors, discourses and the interaction between them have shaped the regulatory landscape in Taiwan. More importantly, I argue that the concern with communications regulatory reform is particularly relevant to post transitional countries faced with political *and* economic transformations at the same time. These societies are often confronted with a stark choice regarding their communications systems: hand it to the market or grasp the chance to revolutionise it and make it better serve the public. The answer seems obvious, but the entanglement of political and economic power makes it hard to make the right decision.

A Taiwanese Media Regulatory Agency

The subject of this study is the creation of an independent communications regulatory agency in Taiwan. The inquiry is undeniably limited as it addresses a single institution in a small country, but it has broader implications regarding questions of democracy and political progress. On the one hand, Taiwan serves as a good example by which a global trend in regulatory reform can be clearly depicted

and traced. From a global regulatory perspective, the introduction of the NCC can be interpreted positively as Taiwan's manifesto for constructing a more accountable regulatory system – or somewhat less positively, as a reaction to pressure from supranational institutions (World Trade Organization, 1996; OECD, cited in Gilardi, 2006).

While I argue that Taiwan's experience of media reform has a certain representative or illustrative value, this study also insists on the singularity of that experience within the broader context of geopolitical and transitional politics. Taiwan is categorised as one of the 'Third Wave' democratisation countries (Huntington, 1991) and shares some political characteristics with other Asian countries such as Korea and the Philippines. Comparative studies of Taiwan and Korea in relation to the evolution of media systems suggest that the media in both countries share the same experience of developing under authoritarian regimes and moving towards media liberalisation (Lin, 2005). It is thus not a coincidence that the Korean communications regulator was created in 2007, immediately following the inception of the NCC in 2006.

Another globally significant characteristic of Taiwan lies in its influence on China, since Taiwan made the first move among Chinese societies towards democracy and has long been regarded as a pioneer in this respect. Many scholars are keen to determine whether democracy in Taiwan poses any threat to China, and to what extent Taiwan can serve as a model for China (Rawnsley, 2007). It would of course be premature and dogmatic to make conclusive pronouncements at this stage, since democracy in Taiwan is far from stable, and the staggering rate of economic development in China may at the same blunt demands for democracy. Zhao (2005) describes how commercialisation has further decayed the limited professionalism of the media and rendered them profit-driven while exploring the political economy of the changing media system in China. Nonetheless, democratic Taiwan might still pose a threat to China as its Internet filtering mechanism, dubbed the 'Great Fire Wall', still effectively blocks the websites of most Taiwanese news agencies and government institutions.

Restricting the flow of information is one of the most primitive methods of political media intervention, in contrast to regulation by a professional and de-

politicised IRA, and this comparison relates to another focus of the thesis. Concepts of regulation, although spanning political, economic, legal, social and moral dimensions of daily life, can broadly be said to bear on the protection of something 'socially valued' (Selznick, 1985: 363). Bearing this notion in mind helps to explain, for example, why monopolies in telecommunications and other public utilities were promoted and protected in the early twentieth century, and a target for reform half a century later. From 'nationalisation' during World War I, 'social regulation' in the 1960s, to 'deregulation' from the 1980s onward, regulatory reform offers a window onto the policy goals of different regimes (Baldwin et al., 1998). This thesis focuses on the trend of regulatory reform in Taiwan from the end of 1980s and the early 1990s and closely examines the interplay between national political and economic contexts and the global trend of delegating regulatory power from the state to the IRAs.

Over the last several decades regulatory reform has become a global trend across many sectors including utilities, banking and telecommunications, and this study particularly concentrates on the communications sector because of the relationship between communications and changes in political systems. The liberation of the media from state control represents a popular narrative that has a powerful appeal in almost every transitional society (Sparks, 2005; Voltmer, 2006a). However, all media systems should be understood, according to Freedman (2008:1), as being actively shaped by competing political interests in order to better serve their goals, rather than possessing some inevitable final form. The same caution, argues Curran (2002), should be applied to emerging transnational media conglomerates, as more and more examples demonstrate that media performance has gradually been ceded to capitalistic control. Taiwan, as a (post) authoritarian neo-liberal state (Lee, 2000a), lies exactly at a crucial juncture between the political and the economic. This thesis presents a many-faceted picture, in which political power can be seen to collude with corporate businesses during political transition, and where democracy is utilised as a sacred cow by media conglomerates to guard against any form of government intervention. Such developments could pose an even greater threat to democracy than direct government control.

Even without considering its implications for other countries, developments in the Taiwanese media following liberalisation have truly constituted something of

a spectacle. While there are only two 24-hour news channels in the extremely competitive US and British news environments, there are at least six on this island of a little more than 23 million people. The media performance, did not automatically become impartial and objective once set free from political control; instead, they seemed to consider freedom of the press a ‘democratic license to sensationalise’, and exploited it to achieve profit (Rawnsley, 2007: 74). The tabloidisation of the media has come to be regarded as a hazard to society, as the State of the Nation Survey conducted by a leading magazine has revealed for four consecutive years (2001-2004) (CommonWealth, 2002, 2003; Yu, 2002, 2003).

Acting both as a self-styled watchdog of government and a source of social upheaval, the media have often been critiqued as ‘schizophrenic’ by media scholars and commentators (Wei, 2005). Attempts to regulate the media soon become the centre of controversy: regulation can be difficult to distinguish from political intervention, but without it sensational and invasive programming can easily become the norm. In light of this dilemma, it is not at all surprising that the NCC is the first, and only, independent regulatory agency in Taiwan. It not only corresponds with the global trend of regulatory reform but also helps the government assert its political control.

The accelerated development of the media since democratisation, and the rapidly changing political and social environment in which it has occurred, make this a timely project, on both a scholarly and personal level. I belong to a generation for whom the tabloidisation of the media is a lived reality, but censorship is not, and which therefore experiences discussion of media freedom and regulation very differently from those who lived through political repression.

Political power struggles after the first change of government in 2000 brought the issue of media reform into the limelight as the new government attempted to overturn the entrenched politico-economic network, and the NCC is part of the claimed reform. Between 2003 and 2006, the creation of the NCC occasionally appeared in the media and I thus had the opportunity to observe the process whereby this novel and allegedly more democratic and advanced media institution became derailed. Its ‘advanced’ design did not give the NCC credibility and authority: on the contrary, it was declared unconstitutional and received a great

deal of criticism. The political conflicts subsequent to its creation have to be partly responsible for the fact that, up to now, the NCC is still the only independent regulatory agency in the Taiwanese administrative system. Moreover, the latest legislative amendment in 2010 indicated that the idea of independent agencies was further reprieved since the Central Bank and Financial Supervisory Commission now fell under the Cabinet rather than being independent agencies as proposed earlier (Shih, 2010). The NCC seemed to teach the government some hard lessons. Rather than treating the agency simply in terms of party-political power struggles, as most of the media coverage did, my experience of working with politicians and journalists has provided me with a different perspective from which to interpret regulatory reform. I would like to offer a more analytical and wide-ranging account, addressing the global as well as the local political context. Above all, I would like this thesis to help deflect discussion of IRAs from denunciations of partisan ideology and refocus it on fundamental regulatory rationales, by tracing the politicisation of different actors at various levels, and the impact of this process on the performance of the agency.

In spite of the numerous studies that have contributed to the understanding of regulatory reform and the relationship between media and democracy, there has been little in the way of genuine analysis of power relations in IRAs in transitional societies. This absence seems to me to represent a missing piece of the transition puzzle, as regulatory reform of the media has to be carried out in the course of political and economic transformation and conform to the general expectation of democratisation. If the state can no longer control the media by authoritarian rule and has instead to give way to more ‘democratic’ regulatory agencies, how do political elites go about trying to retain their privileges? By examining cases from before, during, and after the creation of the NCC, I aim with this research to bridge the gap between the theory of democratic transition and the actual practice of media regulatory reform in transitional societies.

De-Westernising Media Studies

It is also at this crucial juncture that most Western media theory falls short of offering an effective explanatory framework for understanding media regulatory reform in Asian and other non-Western contexts. Developments in Asian media

systems, like those in Asian economies more generally, have to be understood in relation to the political authoritarianism that has characterised the region in the recent past. Many Asian countries remain in the shadow of their previous authoritarian regimes, and the global ascendancy of neo-liberalism is not in itself enough to explain recent political tendencies and developments.

The Asian nations in fact represent a broad spectrum of state solutions to the question of political freedom, from Japan, Taiwan and Singapore, to Indonesia, China and Cambodia, and the region is now notable for its transitional political cultures as much as for its authoritarian political regimes. Asian political evolution is however rather opaque to most Western political scientists unfamiliar with local political ecology, which partly explains why relevant studies of Asian democratisation have been much less forthcoming than those devoted to comparable developments in Eastern Europe. While there is a widespread belief in Western countries that democracy can be ‘exported’ to Asia by bundling political democratisation with economic liberalisation, Lent (1998: 148) has demonstrated that in fact the democratised countries are those that have not been subjected to economic pressure from the West, and those that have been targeted, such as China, North Korea and Myanmar, seem not to have been politically influenced. Relevant here is the famous claim by Singaporean leader Lee Kuan Yew that state development relies more on discipline than democracy, implying that ‘Asian democracy’, relatively restricted though it may be, follows its own singular trajectory, and cannot be easily categorised by Western democratic theory. Explication of the relationship between media and democracy in Asia requires that this inseparability of politics and economy be taken into account: economic liberalisation does not guarantee the advent of political democratisation, and the reallocation of resources following a democratic political transition may remain subject to political forms of control.

Asia is largely absent from the analytical picture of global regulatory frameworks. This neglect may be due to the political unfamiliarity discussed above, as well as to the relatively slow pace that Asian governments have adopted as regards regulatory reform. Compared to Asia, Latin American countries are characterised by the speed with which rampant capitalistic expansion has followed political liberalisation, which has understandably rendered regulatory reform in the

region a rather urgent and timely issue (Jordana and Levi-Faur, 2004, 2005; Murillo and Gallardo, 2007). That the discussion of regulatory change in Latin America has tended to fall into line with the dominant neo-liberal international narrative is unsurprising, since the privatisation of state-owned utilities prevailed in the region to such a degree that it might even be considered more ‘advanced’ than Europe, according to that dominant narrative framework. Privatisation in Asia, on the other hand, has developed along lines laid down by existing channels and connections within entrenched politico-economic power blocs. In other words, regulatory reform in Asia has been shaped by the particular authoritarian legacy borne by each nation, even where the intention has been that it be depoliticised.

The relationship between media and democracy in Asia represents a path rarely explored by mainstream academia, a path along which I intend to take a few more steps with this thesis. To approach the matter from a de-Westernising perspective does not necessarily require the development of a whole new paradigm inapplicable to the rest of the world. This project makes use of a good many theories and concepts of Western origin: it is ‘de-Westernised’ in the sense that it attempts to unveil the politics of the policymaking process at levels that are often ignored by the Western literature, and from the perspectives of players that might even be alien to that corpus. This approach will allow me to identify the powerful actors involved in the actual establishment of the NCC and examine the implications of their discourses for policymaking, providing a distinct account of the regulatory reform process during political transition in which the state may be seen to retain a substantial role in allocating regulatory power, and where freedom of speech appears sometimes to result in a parody of democratic debate.

Perhaps the most important reason for applying a de-Westernised approach when discussing political transition and democratisation is that it represents the only means by which the new democracies can acquire their own subjectivities rather than becoming defective copies of more ‘advanced’ models. My analysis of the formation of the NCC in this project offers evidence for this assertion, since it demonstrates that many conflicts between the regulatory agency and political power can be understood as a consequence of a rather uncritical policy transfer from Western countries. Any evaluation of the NCC that proceeds by uncritically applying Western frameworks runs the risk of repeating the same blunder. As Colin Sparks (2005: 52)

comments pithily with regard to the problem facing media transformation in transitional societies, the ‘task of constructing a “Western” broadcaster’ would be a lot easier if ‘there was no pre-existing organisation to take over and modify. The international experts started from scratch and did not have to make any compromises with existing staff’. The reform of media systems and regulatory frameworks in newly formed democracies should be understood in relation to the political, economic, and social contexts in which they are located and neither implemented or analysed as if it involved the pure imitation of an ideal type.

Structure of the Thesis

This thesis is divided into eight chapters. Following this first introductory chapter, it is organised as follows. Chapter 2 sets out to explore the dynamics between media, state, and democracy through two traditions of thought, liberal pluralism and neo-liberalism. By elaborating on the unique economic characteristics of media products, it argues that it is necessary for a democracy to regulate rather than deregulate the media industry, since the media are influential in the formation of society, and cannot be regarded simply as so many commodities. In addition, it theorises the media’s role in transitional societies and addresses the complex nature of new democracies, where political challenges are often faced at the same time as economic ones. I argue that it is this dual transition that complicates media regulatory reform in transitional societies, as well as making it an important issue, since transition represents a crucial period in which to lay down the foundation of future regulatory policy. This chapter also examines the rise of the regulatory state, delineating the key concepts underpinning the phenomenon, such as autonomy and accountability, with a particular emphasis on newly democratised countries. This chapter aims to develop these notions as useful analytical tools to evaluate the extent to which western regulatory models can be applied to non-western contexts.

Chapter 3 outlines the methodological framework. This study proceeds on the basis that policymaking is inextricable from its political, economic and social contexts, and that policy itself can thus be seen as the latent imprint of power struggles can be read using the right concepts. I have employed a combination of different methods, including document analysis, case studies, and interviews, to

map out a picture of how the independent regulatory agency was imagined, articulated, and put into practice. In particular, the research attempts to follow the traces of politicisation in the democratisation process by critically examining the discrepancies between data collected from different sources. By addressing cases that deal with political confrontation, media ownership, and convergence legislation, I aim to evaluate to what extent the emergence of the NCC might benefit democracy in the long run.

Chapter 4 contextualises the creation of the NCC by approaching it from three different perspectives: technological advancement, economic development, and political transformation. It traces different sets of discourses relevant to each aspect and evaluates their impact on mobilising regulatory reform. While offering a detailed account of the formation of the NCC, this chapter also argues that the agency cannot be understood in isolation from either its local context or the global regulatory trend towards the creation of IRAs. The analysis indicates that technological progress has paved the way for potential reform by integrating communications systems, and increased international trade has empowered supranational economic frameworks that have catalysed the introduction of IRAs. This chapter also emphasises the significance of political influence, identifying clear connections between political conflicts and developments within the agency. By examining the trajectory of the policymaking process, this chapter illustrates that political confrontation fuelled by politicisation was the real force driving the creation of the NCC. Its creation can therefore be seen as a way of resolving political disputes than a solution to the problem of formulating a new regulatory framework.

Chapter 5 highlights the power struggle between the state and the independent regulatory agency subsequent to its establishment, a battle fought using legal mechanisms. It firstly addresses the different flows of power contributing to the formation of the new regulatory framework and explores how judicial power (specifically, a constitutional ruling) was used by the state to de-legitimise the regulator. Secondly, it analyses the heated debates concerning the constitutional ruling inspired by conflicting interpretations. Thirdly, this chapter calls attention to the incompatibility between the regulatory frameworks borrowed from more developed western models and Taiwan's domestic legal, regulatory and social

systems. The over-emphasis on the independence of the NCC is discussed because it not only bears on the way that IRAs are conceived and imagined, but also foreshadows later conflicts, where the state made use of legal tools to intervene in policy and consolidate its administrative legitimacy. Analysis of this case indicates that the state remains a significant actor as it is capable of actively influencing the efficacy of the regulatory agency, and its impact is particularly prominent in transitional societies where political elites are still reluctant to hand over the reins of power.

Chapter 6 deals with the political transition and the changing locus of regulatory power. It investigates how the regulator reacted to situations in which abundant media resources were being transferred from the traditional political power bloc into the hands of corporate business through entrenched politico-economic networks. The two cases examined in this chapter both speak to the issue of media concentration and, and both bear the imprint of past authoritarian regimes, as they used to be owned by the long ruling Nationalist Party (KMT). This chapter portrays a highly politicised policymaking process in which political climate, the background of personnel, and economic factors all substantially impacted on decision-making. It calls into question the popular argument that democratisation is equivalent to the withdrawal of the state, and hence to privatisation, and that regulation is harmful to media freedom and democracy. Instead, it argues that leaving the media to an unregulated market is likely to lead to an immensely concentrated media environment, which is neither diverse nor democratic. Moreover, the delineation of this case also suggests that, despite being an independent regulator, the NCC is still significantly constrained by political factors both formally and informally.

Chapter 7 discusses convergence legislation that attempts to integrate existing communications laws into a single code. An analytical exploration of this process considers how a legislative proposal was presented, interpreted, and received by different stakeholders. This process is illustrative in many aspects: its objectives indicate the trend that the regulator was attempting to lead, and the amendments made after public hearings reveal the relative strength of the different actors involved. Above all, the failure of the attempt made explicit undercurrents of dissatisfaction towards the new proposal on the part of business interest groups, the

bureaucratic system, and the executive branch of the administration, as well as the influence of these groups on legislation. This case again indicates the politicised nature of policymaking as the legislation is shown to have been decided upon not through rational deliberation but according to competing political pressures. I argue that a truly independent regulatory agency should be alert to these cases if legislation genuinely beneficial to developing a sound regulatory framework and democratic system is to emerge.

Chapter 8 brings the studies of the independent regulatory agency together and discusses their significance in the context of media regulatory reform in the democratisation process. This chapter reviews different factors relevant to the transformation of regulatory frameworks and suggests that transitional politics plays a central role, over and above the need to keep up with technological convergence and economic marketisation. Three case studies are used to illustrate the changing relationship between the regulatory agency, the state and the regulated industry, and issues of judicial power, ownership, and convergence legislation are discussed. My analysis demonstrates that, as the reform of media and regulatory structure inevitably involves political powers, political transition is not complete without a reconfiguration of the media regulatory framework. This chapter also calls attention to the under-representation of the opinions of civic groups in both the creation of the IRA and in the policymaking process. This chapter argues that, for a regulatory framework to benefit democracy in the long run, the regulatory agency should be independent and be held accountable, both of which will not be achieved without strong civic engagement.

Chapter 2

Literature Review

This thesis examines the creation of an independent media regulatory agency, the National Communications Commission (NCC), in the context of Taiwan's transition to democracy. It demonstrates the process by which the NCC has come to be seen not only as a progressive regulatory institution but as a democratic emblem of a global trend towards regulatory reform and post-authoritarian politics. This chapter puts into perspective the changing media and regulatory landscape to which many new democracies have been exposed and evaluates its implications for democracy.

The first part addresses transitional societies where democratisation is under way. It begins by focusing on the development of media from a political perspective that foregrounds the role of independent media in building a democratic society. The emphasis later shifted to the role of the market, since political liberalisation in new democracies is often accompanied by economic privatisation, and also because marketisation is understood by many to be particularly significant for media development. By taking the two significant actors of the state and the market into account, the chapter interrogates the extent to which the media is implicated in the progress of democracy. Additionally, in order to better understand the entanglement of media and democracy, and because it informs many of the rationales for media regulation, the analysis addresses the economic dimension of media products.

The second part of the current chapter outlines the changes that regulatory frameworks have gone through in the past two decades, tracing the rise of the regulatory state accompanying the dominance of deregulation and neo-liberalism. The emergence of independent regulatory agencies (IRAs) characterises this trend and is now familiar in many countries with diverse political, economic and social characteristics. The chapter looks into how the political environment in new democracies may influence the development of the IRAs through institutional design and in their actual regulatory practice. Finally, the chapter argues that instead of being a shortcut to efficient regulation and genuine democratisation, the IRAs

created as a result of partisan power struggles can be problematic, as the experiences of many fledgling democracies have demonstrated.

Media, Democracy and the State

This project highlights the dynamic interaction between media and democracy in transitional societies. The current literature on media and democracy still fails to address the complexity and challenges facing these societies, dominated as it is by frameworks derived from Western media theory and the experiences that inform it, despite calls for ‘de-westernised’ studies (Zhao and Hackett, 2005; Curran and Park, 2000). The terms ‘transitional countries’ and ‘new democracies’, used interchangeably in this chapter, loosely refer to nations undergoing the ‘Third Wave’ of democratisation from the 1970s onwards (Huntington, 1991: 15). These countries span most of the world’s regions, from Latin America to Eastern Europe, from USSR to South Korea.

Transition is a concept rooted in political science, but the tasks facing transitional societies actually go far beyond the political dimension. These countries have, to a varying degree, not only undergone political transition but also economic and social transformation. Simply put, many new democracies have experienced a ‘dual transition’: in political terms, authoritarian or communist regimes have been displaced by democracies, while state-owned or *dirigiste* economies have given way to largely privatised industries and competitive market economies (Barlett, 1997). This dual transition complicates the picture of democratisation and the role played by the media in the process, which occurs in a force-field shaped by the political search for votes and the economic search for profit. In order to disentangle that relationship, this section first explores the impact of changing media systems on political democratisation, before extending the discussion to the long-debated relationship between media, state and market. It pays particular attention to how the transitional conjuncture in which the new democracies are located may influence the consolidation of democracy in the long run.

Democratisation and the media

Democratisation takes place when ‘governments, states and societies attempt to move away from some form of authoritarianism towards some form of democracy’ (Grugel, 2002: 12). Central to this picture of political transition is the

role of the mass media, since democratisation often involves relaxation of media control by the state. Although it is now a widely accepted argument in the field of political communications that the development of communication technology has empowered the media and advanced the spread of democratisation, mainstream research has failed to pay due attention to the role of the media in transition and associated social change until fairly recently (O'Neil, 1998: 6; Voltmer, 2006a: 2). There is no agreed framework for analysing the role of the media during transition (Jakubowicz, 2002), thanks largely to the wide variety of political situations to which the term is applied, as well as their shared volatility; but academic interest has nonetheless started to focus on the impact of media frameworks on political transition.

In general, the media have impact on political transition in two ways: firstly, the media can convey information to a mass audience and even mobilise them, and secondly, they can facilitate democracy by providing a platform for growing criticism of government, and for pluralistic content (Gunther and Mughan, 2000: 415-6). Even if the media do not trigger the transition, once it begins media systems are among the first institutions to encounter fundamental reorganisation such as adjustment of management and transfer of ownership.

The role of the media is politically significant in new democracies, as freedom of the media from government intervention is regarded as synonymous with democracy; thus, most new democracies have created seemingly democratised and diversified media systems. A democratic media system includes two broad aspects: citizens have the right to access information, and the media can operate without political intervention (Mughan and Gunther, 2000). Democratisation as a process involving the fulfilment of this goal therefore requires the retreat of state power from media control so that media can communicate political information autonomously.

It would be tempting at this juncture to jump to the conclusion that media systems are free and independent so long as they are kept away from the state. This may explain the reason why new media institutions are always a popular choice in new democracies not only thanks to the high visibility of change in institutional design, but also because these countries are keen to gain quick approval from voters. In addition, the term 'transitional societies' is mostly used to refer to relatively

young and nascent ‘student’ Third Wave democracies, which usually turn to their more ‘advanced’ counterparts for ideas as to how democracy might be realised, and are likely to borrow institutional forms regardless of their incompatibility with existing systems (O’Neil, 1998). However, just as the institutional transformation of political organisations does not necessarily lead to genuine democratisation (Grugel, 2002), so that of media frameworks is not the same thing as media freedom.

Even where institutional transformation is implemented effectively, there are still obstacles in the path of democratisation, of both a political and economic nature. On the one hand, Gunther and Mughan (2000) and Hallin (2000) hold a sceptical view of the state’s intention to implement democracy. They suggest that although most nation states have gradually loosened media control, they have been motivated by contextual contingencies such as political confrontation or advances in technology, rather than any commitment to democracy. Democratisation by no means marks the unconditional retreat of political power from the media environment; rather, state power, during political transition, attempts to control the media relentlessly, with ‘democratisation’ serving to mask those efforts. For instance, the Suharto administration in the 1960s in Indonesia advocated a ‘free but responsible’ press to help guard the country against ‘internal and external threats’, which led to the banning of dozens of publications in the following years (Sen, 2002: 72). South Korean President Kim Dae-Jung, meanwhile, attempted to reign in media criticism by imposing tax audits (Kwak, 2005: 125).

The fundamental conflicts between the state and the media do not emerge in political transition but derive from liberal ideas that posit the state as the major enemy of media freedom and the consolidation of democracy. John Keane (1991: 11) argues that this association can be traced as far back as the eighteenth century when state censorship of printed materials prevailed among European nation-states. The concept of the freedom of the press came to enjoy widespread currency, and it particularly flourished on the other side of the Atlantic. The US Supreme Court epitomises this version of liberal democratic theory, recognising that the premise of the First Amendment of the American Constitution is that ‘government power, rather than private power... is the main threat to free expression’ (O’Connor, cited in Baker, 2002:134).

In the liberal account (Baker, 2002), a democratic media system is one that enjoys the independence to provide an environment in which different viewpoints are allowed to interact without interference, allowing citizens to benefit from the free flow of ideas in an intellectual marketplace. In light of this, liberal theory foregrounds the existence of a free press in a sound democracy, arguing that the most significant function of the media is to monitor the behaviour of the government (Curran, 2002; Lichtenberg, 1990). In other words, the democratic role of the media is clearly presented as that of watchdog of the state, and is regarded as the most important function of the media in modern society (Curran, 2005; Keane, 1991). From this perspective, the history of gaining and maintaining media freedom is one of constant struggle against state power, in both its coercive and ideological dimensions (Jessop, 2006). While the coercive mechanisms of the military, police and legal system explicitly constrains freedom, it is the less obvious exercise of power through ideological apparatuses like education, media and discourse that needs to be emphasised (Chen, 1998). The media and the state have always been intertwined.

It is still widely acknowledged today that the degree of freedom enjoyed by the media is a major indicator of the performance of a national democracy. Therefore, according to the hypothesis of interdependency between media and political systems, studies can reveal how political systems work in various regimes by analysing the characteristics of the associated media frameworks (Hallin and Mancini, 2004; Mughan and Gunther, 2000). Indeed, media systems are political institutions themselves and they often actively participate in the process of advocating political change, or else in that of manipulating and repressing public opinion (Curran, 2002; Cook, 2001; Jakubowicz, 1995). Thus, surveys presented by Reporters without Borders or Freedom House, in which the degree of media freedom is used to indicate political freedom, are extensively cited and referenced (Mughan and Gunther, 2000; Rozumilowicz, 2002). Underlying these surveys is the assumption that the liberal model of North America and Western Europe, in which the media system endures minimal state control, should be viewed as a benchmark for evaluating other media systems, as well as a model for democracy.

The other key factor influencing the interaction between democratisation and the media is economic liberalisation, which often occurs alongside political

democratisation in the form of privatisation and deregulation, which challenge the state monopoly of the media. The liberal account of transition holds that the state is always passive as regards democratisation of the media and that only the market can set the media free from state control (Hallin, 2000). As a result of democratisation, many transition societies have transferred control of the media from the hand of the state to that of corporate business.

Belief in the market is based on Adam Smith's notion of the 'invisible hand', which means the demand and supply of the free market that can lead to optimising function of the market, usually through the pricing mechanism. Market advocates believe that in a natural market, as long as a firm produces products at a price that is lower than what a consumer is willing to pay, the firm will be profitable and consumers will get what they want. Market theory supporters are generally hostile to regulation as they believe that the bureaucracy and protectionism with which they associate it impedes economic progress (Horwitz, 1989).

Market theory gained more significance as it appropriated the rhetoric of liberal theory in relation to democracy in the 1970s. Market liberals highlight the concept of 'freedom' while positioning it in an economic context, arguing that consumers should be free to choose whatever programmes they really enjoy, without imposed guidance or intervention. Market theorists have publicly and continually linked state censorship with regulation, and individual freedom with deregulation. In the realm of broadcasting, they argue that the public service broadcasting system is not only patriarchal and elitist, but also harmful to the very freedom the media should uphold in order to remain independent of state control (Keane, 1991; Horwitz, 1989). In this vein, attacks on state-subsidised industries in the name of freedom have prevailed on both sides of the Atlantic and were fuelled particularly in the early 1970s by the emergence of neo-liberalism as a response to the stagnation of capitalism (Harvey, 2005:12). In the US, the former FCC Chair Mark Fowler spoke of the need to 'free the businessman, and to let the consumers be sovereign' (Fowler, cited in Horwitz, 1989:260). In Britain, the powerful media tycoon Rupert Murdoch brought the conflict to the forefront by blasting the state funding of public service broadcasting for damaging its independence in the late 1980s, and his son James Murdoch followed suit some twenty years later, asserting that 'state-sponsored

journalism is a threat to the plurality and independence of news provision' (quoted in Robinson, 2009).

Two of neo-liberalism's fundamental doctrines are deregulation and privatisation. The former is aimed at the shrinking of government as well as the rolling back of state power, the latter to the monopolies of state enterprises (Horwitz, 1989; Chakravartty and Sarikakis, 2005). Neo-liberalism has a wide appeal: not only has the New Right promoted deregulation as a way to create an efficient economy, the New Left have also forsworn their protectionist tendencies to endorse competition (Collins and Murrioni, 1996). Even countries where social democracy has traditionally predominated have embraced the neo-liberal idea of marketisation and gradually abandoned the Keynesian consensus (Müller, 1994). An array of free market supporters, from media moguls to regulators, advocates deregulation and privatisation as panaceas for the inefficiency and stagnation of bureaucracy.

However, the idea that deregulation leads to freedom, a vigorous market of different ideas and a stronger democracy is questionable, to say the least. Neo-liberalism is alleged to promote social, economic, political, and policy reforms through a set of economic principles such as deregulation, privatisation, and the withdrawal of state intervention (Harvey, 2005:3), but it all too often fails to deliver. On the contrary, where media industries are governed by the market, circulation of information and diversity of the media might be sacrificed due to pursuit of profit, thus leading to the regression of democracy. Media systems under neo-liberalism become 'anti-democratic' in at least three ways: market corruption, market suppression and content homogenisation (Curran, 2002:220-2; Curran, 1996; Lent, 1998; McChesney, 1999). Media corruption refers to the subordination of editorial to managerial decision-making with a view to gaining profit or avoiding its loss. Media suppression, according to Curran (2002), involves the collusion of privately owned media with the government in order to survive financial competition. Content homogenisation tends to result from increased concentration of media ownership, largely facilitated by privatisation.

Another striking feature of neo-liberalism is the emergence of global regulatory frameworks and their increasing impact on individual countries. The burgeoning of new international regulatory institutions, such as the World Trade

Organisation (WTO) and the World Bank, has significantly impacted on the regulatory role of the state. According to Shin (2004), of all the member states of the WTO, over 97 per cent have formed Regional Trade Agreements (RTA) at different levels with other countries in order to lower tariff barriers and mutually benefit one another in trade. Moreover, supra-national regulatory agencies like the World Bank and the International Monetary Fund (IMF) have not only acted as international financial regulators, but also promoted neo-liberal economic reform by imposing structural adjustment, for example during the 1997 Asian financial crisis.

To sum up, the supporters of both liberal and neo-liberal theory seem to agree that regulation of the media hinders democracy. However, while political intervention might be unwelcome, economic oppression resulting from deregulation can also plague the development of media systems and represent a threat to democracy. The next section refutes the popular fallacy that deregulation equals democracy and examines the consequences of leaving the media to an unregulated market by unfolding the economic characteristics of media products. It argues that, while liberal theory may reject state control, handing the media to unfettered markets certainly will not lead to desirable consequences. It is therefore essential to take certain measures to regulate media so as to nurture a better and stronger democracy.

Regulating media for democracy

In light of the inseparability of media systems and democracy, many have proposed ‘ideal type’ relationship between the media, state and regulatory framework. Political communications scholars have theorised that a well-functioning media system should inform citizens of public debates, serve as a platform for the meeting of different viewpoints, and act as the watchdog of the government (McNair, 2007: 19). However, it is important not to confuse a free and independent media system with an unregulated one, since the above discussion has demonstrated that market power can damage democracy to an even greater extent than state interference. Keane (1991: xii) identifies the aim of media systems rather succinctly, as the protection of citizens from both ‘undemocratic states’ and ‘undemocratic market forces’. Keane’s formulation acknowledges that both political and economic power can be ‘undemocratic’ and that delivering the media from the hands of the state and into those of the market is not a viable solution to the problem of media freedom. Referring to the experience of transition in South Africa, Bennett (1998:

205) explicitly affirms that although transition is a process of trial and error without a predetermined pattern, ‘unregulated media systems is a sure formula for chaos and public disillusionment, with the likely results of weakened institutions and unstable citizen participation’. Consequently, despite the call to consider the media ‘a market like any other’ (Horn, 2007), many prefer to focus on the unique nature of media products and their impact on everyday life (Baker, 2002; Doyle, 2002b). These qualities distinguish media products from other goods and make regulation a democratic necessity.

Although often underestimated, the influence of mass media on daily life can hardly be denied. More than 95 percent of European families and 98 percent of Americans have a television and households have an average of 2.2 sets (cited in Croteau and Hoynes, 2006: 56). The amount of time people spend using media is also astonishing. Studies show that the time people invest in media, in the course of pursuing both leisure and non-leisure activities, has increased considerably, from 6.5 hours per day in the mid-1990s to ten hours per day in 2000 (Schorr, 2003:16-7). Studies show that the degree to which children and young people consume the media, particularly the Internet, is even more predominant as the media accompanies many of them since early childhood. Nearly 80% of 7-16 year olds have Internet access at home and 55% among the 5-16 year olds have their own PC or laptops, 37% of them are able to go online from their own room (Livingstone, 2009).

For the media to play their democratic role and benefit the public, Baker (2007) argues that the most crucial task is to deal with the systematic failure of the media market brought about by the economic characteristics of media products. Public goods, merit goods and externalities constitute the main economic properties of media markets and distinguish media products from other commodities. I would argue that they render the concept of the free market inapplicable, and lend weight to claims that regulation of media is necessary for democracy (McQuail, 2005; Baker, 2002, 2007). Any analysis of the media market that does not take these qualities into account may be considered incomplete because they are key factors in understanding why the market fails to serve the interest of the public if left totally unregulated (Baker, 2002). The next paragraphs highlight some of the unique economic characteristics of media products, namely public goods, externalities, and merit goods, and draw attention to the regulatory challenges that attend them.

First, media products are different from ordinary goods because they are ‘public goods’, which makes their consumption ‘non-excludable and non-rivalrous’ (Lipsey and Chrystal, 1999: 293-4). By saying that media products are public goods we mean that every individual, without exclusion or deprivation, can equally share media content once it is created. The fact that they are public goods makes market failure a significant risk and challenges the concept of economic efficiency in the media market, since media content is non-excludable and open to ‘free riders’. It is evident that, in a free market economy, public goods provide little incentive for private companies to deliver services or produce goods if they cannot effectively find some way to either charge those who consume the goods or exclude those who do not pay (Hitchens, 2006). Thus, certain products will be under-provided by private companies since they will not run the risk of producing something unprofitable. Due to the free rider problem, media economist Gillian Doyle (2002b) suggests that it is unlikely that public goods can be efficiently allocated in free markets in the same way as private goods. It is therefore necessary for government to provide and support public goods, for example well-resourced news and current affairs programmes that serve a democratic purpose, since people surely benefit from the useful information provided by media products such as health reports, or even simply the weather forecast.

Secondly - and this is perhaps more pertinent to the current study - media products are special because they can generate externalities, that is, costs that are not directly related to the transaction between producers and consumers. Napoli (2001: 12-6) observes that the communication industry is different from other industries in the sense that ‘communication policy decisions often have a potential for social, cultural, and political influence’ and the creation (or elimination) of certain externalities is often the rationale underpinning the adoption of policy. The media market generates externalities because of the size of the audiences involved: once media products are released, they can be received by hundreds and thousands of people immediately, and can be saved, shared, and disseminated to reach even more.

Furthermore, the external effects triggered by media products can be so immense that a great many can benefit from them. Media products may make positive contributions to widening democratic participation by offering quality

content or impartial discussions on controversial issues. For instance, the programming of educational and social content provides valuable materials for viewers to enrich their knowledge and in turn gradually enhance the overall quality of the society. Herman (1995: 174) asserts the importance of externalities to the mass media by pointing to the fact that broadcasting laws have turned on the criterion of 'public interest' since the 1930s. The practice of quality investigative journalism, insofar as it exposes corruption and encourages better government, provides democratic benefits for people who pay to watch news coverage as well as those who do not. Indeed, this example also provides the rationale underlying the public subsidy of media content (Baker, 2002, 2007).

On the other hand, few are exempt from the consequences of the negative externalities entailed by sensational journalism or undemocratic, partisan political attack. If the competition caused by deregulation leads to decline in the quality of programming, this may cause significant negative externalities, harmful to the society as a whole. Violent media content is an illuminating example as it is highly profitable, but widely supposed to exacerbate youth violence and lead to a more unstable society (Doyle, 2002b: 65; McChesney, 2004: 204). In this case, a more violent society is one of the negative externalities that even people who do not consume violent content have to bear. Likewise, poor administrative decisions influenced by one-sided polls or biased news coverage, such as declaring war or implementing inadequate policies, can cause incalculable harm to an entire society.

In spite of criticism, sensation-seeking content has been regarded as a cash cow by media companies, and is far more often the subject of discussion regarding externalities than reputation-winning programming. Although educational or investigative media products are widely praised, their return may be far less than what is needed to cover their financial costs, especially when compared with that investment in violent or erotic content might bring. The marketplace cannot provide enough incentive for profit-oriented media companies to produce more positive content, where negative content is cheap to obtain and profitable. Based on the above arguments, Baker (2007) and McChesney (2004) pessimistically believe that the future of media content, if run according to the precepts of free market competition, will see further deterioration.

Typical merit goods include public service broadcasting, education, and cultural activities, goods deemed essential and imposed on individuals by the government, rather than chosen by the people (Doyle, 2002b: 66). Merit goods are believed to generate positive effects for society as a whole, rather than for individuals, as quality cultural products are beneficial to the overall aesthetic literacy and taste of a society. Investment in merit goods, it should be noted, draws criticism from market supporters, who regard it as paternalistic and undemocratic (Lipsey and Chrystal, 1999).

Public service broadcasting (PSB) serves to exemplify both the case for merit goods and its critique. For its supporters, PSB is desirable since it produces quality media content and promotes citizenship, and is unlikely to receive adequate investment were it not supplied by the government, because 'it is only in retrospect that the benefits of such investment become apparent' (Graham and Davies, cited in Freedman, 2008: 9). However, PSB all over the world has been attacked for ignoring what people really want, and even threatening liberty of expression (Keane, 1991). Among the various systems, the BBC has undoubtedly developed the most famous model for merit goods and has received a lot of criticism for being too elitist: Lord Reith, its first Director-General, justified the model on the basis that 'few know what they want, and very few what they need' (quoted in Curran and Seaton, 2003:112).

Still another essential aspect that should be made clear is the two-fold structure of the media market, which distinguishes it from that for most consumption goods. On the one hand, media companies sell products to an audience, and on the other, they 'sell' the audience to advertisers, who actually fund the products (Smythe, 1977 cited in Jhally, 1990). As Altschull has rightly concluded that since 'the contents of the media always reflect the interests of those who finance them'(1984, quoted in McQuail, 2005: 226), it is not surprising that media firms are inclined to respond to advertisers' needs before those of audiences, so as to maximise profits (Croteau and Hoynes, 2006). This tendency to respond to profit-oriented private providers and in the context of increased market competition inevitably leads to 'copycat programming' (Doyle, 2002a), which results in a decrease in programming for minority audiences and gradually diminishes the diversity of media content (Hitchens, 2006).

These economic properties of the media make regulation necessary in order to achieve economic efficiency as well as political and social vitality. Firstly, that media products are public goods is likely to give rise to inadequate distribution, underproduction and, worse still, non-production of media content if producers find that the price consumers are willing to pay is less than the costs involved (Baker, 2002: 20-2). Put in today's media context, it is not surprising to learn that while information beneficial to public debate may be good for society, few are willing to pay for it if they are not directly involved or passionately invested in the debate. The quantitative decline of investigative journalism and informative programming can be largely viewed as a result of the market's handling of public goods. Secondly, the cost of media content is not at all adequately represented if potential externalities are not taken into account, as 'good' content tends to be priced higher than what people might be willing to pay while 'bad' content way below the actual cost (Baker, 2002: 42). The production and provision of violent or pornographic content may well be 'giving the people what they want', according to market advocates, but it is the whole of society that has to suffer from the collective negative externalities that such content might entail.

Thirdly and more influentially, the two-fold structure of the media market can impact on media content and public opinion when it leads to the active promotion of sponsors or the passive suppression of information damaging to them. This situation resembles the previous political control of media content through either authoritarian suppression or the pursuit of strategic patron-client relationships. It is now advertising sponsors that exercise censorship.

Quite apart from their economic dimension, the media have the far more important function of shaping and impacting on political systems: under government control, they might serve as mechanisms for propaganda; freed, they might consolidate democracy. No country can successfully undergo political transition without the consent of the media. This section argues that media products should not be left to an unregulated market, not only because the media industry is a 'uniquely sensitive industry prone to market failure', but also because media products play a vital role in maintaining a sense of identity and improving the quality of democracy (Marden, 1997).

It will be helpful at this point to put into perspective the role of the state and of the market in relation to the media during political transition. Liberalism considers independent media frameworks to be democratic emblems that should be protected from explicit political intervention. For market supporters, democratisation refers to a free and competitive media market in which ‘the true public interest should be defined as what interests the public, just like other commodities’ (Croteau and Hoynes, 2006:67). As a new world largely dominated by the liberals and free marketeers, transitional societies have presented a rather chaotic picture in which media are influenced not only by old and new political powers but also by entrenched interests formed by capital unleashed by the wave of privatisation and deregulation (Curran, 2002:231; Jakubowicz, 1995). The next section explores the nature of the relationship between the media system and the political system in transitional societies.

Media in transition societies

The recent swell of studies on transition societies has enriched and broadened the scholarship of democratisation by complementing and challenging existing theories. At the macro level, three major viewpoints on democratisation have been considered and reviewed. Modernisation theory regards democratisation as a definite outcome subsequent to linear capitalist progress; historical sociology considers historical trajectories influential to the formation of political systems, while transition theory, or ‘transitology’, suggests that democratisation is a negotiated process between political elites rather than one that is predetermined by any economic or historical developments (Grugel, 2002; Sparks, 2008). There is no panacea for every transitional society because democratisation is not uniform or consistent across different countries. Understanding of democratisation has evolved, and instead of being treated in terms of linear causality, it is now approached as a complicated interaction between historical, social, political and economic factors. The experience of China challenges modernisation theory by presenting a capitalist market economy without democracy, while democratisation in East and Central Europe cannot be fully explained by historical sociology as there was no explicit class or power struggle for democracy (Grugel, 2002: 49-55).

A common yardstick by which to evaluate the democratisation of a media system is a framework proposed by Hallin and Mancini (2004), which includes three

models characterising media systems in the Mediterranean, Northern/Central Europe, and the North Atlantic nations. Hallin and Mancini (2004: 22-41) apply four sets of concepts to the interpretation of the development of media systems in different countries, namely the structure of the media market, political parallelism, professionalisation, and the role of the state. Crudely put, the Liberal Model prevailing in the US, Britain, Canada and Ireland, with their mass circulation press, journalistic professionalism and relatively low levels of political parallelism and state intervention, is considered more democratised and thus a potential role model for new democracies. Hallin and Mancini also attempt to contextualise media systems politically, examining how different types of democratic politics, political systems, and legitimisation impact on the media and their performance (2004: 46-61).

Among these indicators deployed by Hallin and Mancini, political clientelism, as a part of wider definition of political parallelism, is especially significant for making sense of media environments in many transition societies. Clientelism in media refers to a media-state relationship in which social resources are controlled by the government (patrons) and granted to the media (clients) in exchange for their support and approval. Clientelism has played an important role in Asia, Latin America, and Southern Europe and is still a detectable presence in the media of these regions (Curran, 2002; Hallin and Mancini, 2004). It has not only shaped the media scenario during non-democratic times but also impacted on the trajectory of subsequent regulation and privatisation processes during democratisation. The patron-client relationship was a predominant feature in authoritarian Taiwan, as most of the press proprietors and media executives were loyal party members and party officials (Lee, 2000a: 127). The transfer of media ownership in post-Communist Hungary took place in the shadow of clientelism, with the government stepping aside for private companies sympathetic to their position (Johnson, 1998).

The prevalence of clientelism also implies a lower level of professionalisation and higher level of political parallelism (Hallin and Mancini, 2004), a common scenario in many new democracies. In these countries, journalists utilise media as tools to form political connections that might benefit their career; similarly, media ownership tends to be more politically profitable than financially rewarding. Jakubowicz (1995) observes this tendency in post-Communist Poland,

where media partisanship is widespread due to constant political upheavals and financial deficit. Clientelism in transitional Russia, by contrast, has a different face, as the ruling government has demanded political support from the media in exchange for a greater degree of press freedom. Democratisation, according to de Smaele (2006), has paradoxically involved the restriction of media freedom rather than its enhancement. In addition, the historically high degree of party-press parallelism in authoritarian, one-party rule Taiwan continues to shape the media environment following political democratisation.

However, although Hallin and Mancini point out different indicators that might influence media performance, they developed the four models on a loose categorisation while leaving out individual indicators, which sets certain limits on their explanatory power. Studies of transitional politics suggest that the actual transition process is more complicated than Hallin and Mancini's Liberal Model and theory of 'transitology' allow for (Sparks, 2008). Instead of regarding democratisation as a transition towards a universal western model, Sparks convincingly demonstrates that transition is a contingent process the result of which is significantly influenced by previous power elites and their attempts to control the media through private capital (2008). On the basis of his analysis of media systems in three post-communist regimes, Sparks argues that continuity of institutions and elites is a significant factor in transition and that institutional change alone should not be equated with democracy. Teer-Tomaselli (2011) echoes Sparks' view in the course of demonstrating that media reform in South Africa has been a highly partisan, politicised and undemocratic process manipulated by political elites.

Voltmer (2006b) attempts to explain why media systems in new democracies have failed to meet expectations by calling attention to their respective outgoing regimes and modes of political communication. She suggests that transitional societies share certain similarities because of the pressure of limited time, and media contexts unique to emerging democracies. On the one hand, similarities are a result of the rapid political transition, which left the new democratic governments little time to devise appropriate systems and led them instead to adopt the existing frameworks of Western countries. More significantly, Voltmer argues that the new democracies emerged from a 'media-saturated' environment, a crucial factor that differentiates them from previous democracies in that politicians are more media-

savvy from the outset and understand the importance of controlling or ‘spinning’ the media in order to project favourable images (2006b: 247). This partially explains the fact that the media in many new democracies remain in the hands of either the government or the politically powerful.

On the other hand, unique contexts have contributed to differences between all of the new democracies as the type of outgoing regime may impact on the formation of media systems. In their seminal book on democratic transition and consolidation, Linz and Stephen (1996: 6-7) highlight the implications of prior regime type for democratisation, using criteria such as a free civil society, an autonomous political society, the rule of law, and a state bureaucracy accountable to and in the service of democratic government. Voltmer (2006b) further extends the discussion to include media systems, suggesting that media frameworks in new democracies owe much to the previous regime type and related structural and cultural conditions. In his analysis of the rather distinct development of media systems in post-Soviet countries, Price (2009) further points out the political, historical and social factors impacting on democratisation, and raises doubts about the applicability of the western model of democracy to transitional societies. This is to say, the distinct contexts of each transitional country will lead to different media landscapes after democratisation. Therefore, in post-Communist countries the entire media system has to be re-structured to utterly separate it from its politicised past, while under a military dictatorship the media are likely to be transferred to the hand of private companies. Additionally, one-party rule regimes that bear the legacy of a centralised and strong government have justified undemocratic rulings in the name of economic development and are still prominent in some parts of Asia today (Voltmer, 2006b; Lent, 1998). With the help of a ‘rear-view mirror’, Price (2009) concludes that local contexts outweigh the pressures and interventions imposed by western experts in relation to media transition in new democracies. This is best illustrated by the mass disappointment at the state of public service broadcasting in many Eastern European countries after political liberalisation without taking the precarious political balance and politicised social conflicts into account, which indicates a naïve and unrealistic expectation of institutional change (Price, 2009). This returns us to a point made by Sparks (2008: 9), that while almost all transitional

countries wanted to create media outlets like the *New York Times* or the BBC, what actually came into being were highly partisan and fairly elite-centric media systems.

At a micro level, Rozumilowicz (2002) outlines four 'stages of transition' in the process of creating independent media and achieving democracy: pre-transition, primary, secondary, and late or mature. The hypothesis suggests that there are different actors and problems specific to each stage which are influential in shaping the course of media reform in subsequent stages. During the pre-transition stage, the incumbent regime's acceptance or rejection of calls for reform leads to different subsequent scenarios. Even if the regime has shown a certain degree of acceptance towards transition, the primary stage can take various forms as a result of internal and external factors distinct to each country. The secondary stage involves a focus on the 'fine-tuning' of legislative, institutional or structural frameworks for the media (Rozumilowicz, 2002: 21), while at the late or mature stage a new system is likely to emerge and become established. In general, the more mature the transition is, the more power the ruling regime is likely to have delegated, and the more coherent the regulatory system is likely to be, despite the fact that the shadow of an authoritarian backlash can last for a long period. The theory of stages clearly suggests that democratisation is a process deeply inscribed in its domestic political, economic and social contexts.

At both the micro and macro levels, a prominent trend characterising media in transition is marketisation or market liberalisation, which has gradually erased differences between countries, and posed a bigger threat to democracy than is commonly acknowledged. Debunking the link between free market and democracy, most scholars argue that not only is there no correlation between marketisation and democratisation, commercialisation actually seems to undermine professionalism and the independence of the media (Sparks, 2008; Hallin and Mancini, 2004: 295). Marketisation is not equal to democratisation, since the forces of privatisation and deregulation are frequently found to collude with corrupt political powers during the process of transition in ways that can prove devastating to democracy. Critical studies concerning the relationship between media and democratisation in Asia show that de-monopolisation of media ownership does not necessarily lead to a diversity of viewpoints and concerns (Lent, 1998). Instead of performing as the watchdogs of government, media systems in transitional Asian societies represent closely-knit

networks of media tycoons, politicians, business people, and military figures. Shelley (2005) and Sparks (2008) both distinguish the concept of democratisation from that of liberalisation or marketisation and argue that the removal of market constraints can lead to yet another form of oppression. Media systems in Latin America epitomise the collusion between corporate power and political rule in which the media itself surrenders the freedom of the press by supporting authoritarian governments in order to maintain profitability (Curran, 2002).

I have so far painted a rather pessimistic picture in which media systems in transitional societies seem to swing between two extremes: either they embrace market competition so as to avoid state control, or they succumb to political power in order to survive. Both strategies lead to a media environment dominated by competition, be it commercial or political, and both prevent citizens from fully participating in the democratic process.

A glimmer of hope is represented by the idea that it might be possible to learn from the experiences of particular transitions, and from the movements on which democracy is based. Bennett (1998: 206) focuses on the social basis of political transition, suggesting that the quality of communications systems is inseparable from that of other political, economic and social institutions. Jakubowicz (1998) adopts a different approach. He calls for an examination into the essence of democracy and its implication for restructuring media systems. His conclusion is that the concept of citizenship, shared by many media and social science scholars, can provide the basis on which a media system can advance democracy, rather than undermining it (Dahlgren, 1995; Murdock, 1992).

Citizens versus consumers

The relationship between media and citizenship resembles that between media, state and market: it can be one of alliance or antagonism depending on whether people are viewed as citizens or consumers. On the one hand, the media can benefit democracy by providing people with the ability to access a wide range of information, receive fair representation, act as informed citizens and actively participate in democracy (Murdock, 1992:21). On the other hand, media can, in a largely profit-oriented media system, promote a form of consumerism that treats people like commodities and is aimed at attracting audiences for advertisers.

Citizens and consumers are often seen as naming fundamentally different sets of ideas, each associated with a particular identity. Citizenship is a political concept, while consumerism is an economic one; citizens pursue certain values such as equality through collective action, while consumers express their preference through personal consumption (Clarke et al., 2007; Lewis et al., 2005; Needham, 2003). The competition between citizenship and consumerism has been exacerbated as political, social, economic and cultural circumstances have changed over the past two decades. The trend towards greater marketisation has taken place almost everywhere, not just in traditionally privatised and commercial environments, but also in government and policymaking (Leys, 2001). Market discourses have saturated the media, which has become, in Habermas's terms (1989:162), a 'pseudo-public sphere' wherein critique has 'transmogrified into a sphere of culture consumption'. The notion of the consumer has outweighed that of the citizen.

It is not simply as a lens through which consumerism discourse is represented that the media has undergone a process of commodification and become 'market-driven' (Leys, 2001). In an analysis of media discourses in both the UK and the US, Lewis *et al* (2005) have identified a strong tendency to present people as 'passive observers' who are incapable of holding insightful opinions regarding public policy. Their study demonstrates that the news presents people as consumers rather than citizens, interested only in sharing private experiences unable to contribute to public debate. It is not only privatised and commercial discourse that deals in such representations: the government too has been identified as treating the public increasingly as consumers rather than citizens. Sonia Livingstone and Peter Lunt (2007a) have analysed the emergence of the 'citizen-consumer' as a key term in the mission statements of the Office of Communications (Ofcom), a super-regulator of communication industries in the UK. They argue that this use of 'double elision' not only combines the figures of citizen and consumer, but also 'foregrounds competition as the primary instrument to further both consumer and citizen interests' (Livingstone et al., 2007b: 65).

Interpreting the relationship between media and the development of democracy through an emphasis on citizenship, Murdock encapsulates the real implications of viewing people as either citizens or consumers. It is a choice, he argues,

between policies designed to reinvigorate public communications systems which are relatively independent of both the state and the market, and policies which aim to marginalise or eradicate them (1992: 18).

The competition between citizenship and consumerism, although not confined to transition societies as the above examples have illustrated, has a particular significance for new democracies. Hallin (2008) explores the relationship between citizens and consumers and claims that the dichotomy was not fixed, as consumerism was once regarded as freedom from state control or industry hailed by many citizens. The disparate development of these two concepts began from the later half of the twentieth century when old political order was challenged and at the time neoliberal economic ideas were emergent – the situation that transitional societies may find relevant. Hallin suggests that there are possibilities accompanying changing political order and the awareness of citizenship can make a difference in the course of transition. The media may find itself drowning under a wave of neo-liberal market competition immediately following political liberalisation, as some Eastern European cases have shown (Jakubowicz, 1995). In such a situation, the notion of citizenship, vague as it may be, can transform the media system into a more accountable one that takes into account the rights of citizens and encourages ‘civil society as the fifth estate’, as Kwak (2003) claims, rather optimistically.

The above discussion has focused on the rapidly changing media landscape typical of political transition and explored its implications for democracy. I have highlighted the significance of the media from political and economic perspectives, identifying the characteristics that render media regulation essential for achieving a strong democracy. In addition, the dual impact of the state and the market on the formation of media systems in new democracies has been particularly accentuated in order to demonstrate how new institutions are influenced by transition politics. As the new democracies underwent a wave of democratisation, their ‘advanced models’ - the Western nations - were about to experience the high tide of another political transformation: the rise of the regulatory state. The second part of the chapter will follow this transformation, from the call to overhaul the regulatory framework in response to the problem of stagnation in the 1970s, to the creation of independent regulatory agencies (IRAs) as the solution. It again calls attention to the way in

which specific social, economic and political contexts in new democracies impact on the adoption and function of the IRAs.

The Rise of the Regulatory State

Before turning to a discussion of the regulatory state, it will be useful to get an overview of the nature and operation of regulation. Regulation is a multifaceted process, involving political, economic, legal, social and moral aspects of daily life. As the perceived problems that it is designed to address are various, so too are the solutions that it offers. Regulation is political from the outset as it is always implemented by political agencies, mostly the state, whether it involves the public or the private sector. A broad definition would see regulation include various attempts exercised by the government to affect citizens, corporations, or sub-governments (Meier, 1985:1). Regulation is generally considered necessary when ‘market failure’ takes place and is thus usually related economic instruments, such as quotas, subsidies, or anti-trust rules. Ogus (1994) maintains that although regulation can be ‘any form of behavioural control’, it is ‘fundamentally a politico-economic concept,’ emphasising that regulation involves interaction between political and economic power structures. Furthermore, Baldwin et al (1998: 3) expand the definition of regulation to ‘[encompass] all mechanisms of social control’ and suggest that behind it lie complex power relations. As researchers attempt to understand regulation in a more holistic way, different actors, effects and perspectives have been taken into account to form a more complete interpretation of the process. Selznick has offered a widely accepted definition, wherein regulation is understood as ‘sustained and focused control exercised by a public agency over activities that are socially valued’ (1985:363).

Selznick’s definition implies that just as values differ significantly in different contexts, so too do the corresponding rationales underpinning regulation and regulatory mechanisms. Tracing the changing rationales can thus be meaningful and significant since they indicate the trajectory of regulatory ideologies intrinsic to specific historical and state contexts, and indicating changing attitudes towards governance. Historically, ‘public ownership’ was a key term developed during the First World War, reflecting government desire to control essential resources in the wartime, which later led to the nationalisation of railway and other weapon-related

manufacturing industries in the 1930s and 1940s (Baldwin et al., 1998). Some decades later, after the Second World War, Keynesian economic policy was predominant and welfarism, which charged the state with responsibility for its citizens from the cradle to the grave, was a mainstream regulatory philosophy. In the 1970s, soaring inflation and unemployment came to be blamed on Keynesian policies and the vast public expenditure that they entailed, giving rise to a series of regulatory reforms.

As opposed to the ‘supply state’ or ‘positive state’, in which the state provides people with the services they need, the regulatory state has to do with regulatory oversight, placing regulation and deregulation at the centre of public policymaking (Majone, 1994b; Thatcher, 2002a; Baldwin et al., 1998). The factors underpinning the rise of the regulatory state are manifold. Moran (2003) interprets the rise of the British regulatory state as a reaction to regulatory crisis in the 1970s following Britain’s accession into the European Union (EU), and also attributes it to the New Labour government’s establishment of liberalisation, privatisation, and the re-structuring of public sector as the three major pillars of regulatory reform. Other than domestic factors, Christensen and Lægreid (2006a:31) suggest that there are three influential forces underlying the trans-national acceptance of the regulatory state in the 1980s, namely the neo-liberal New Public Management (NPM) movement, the European Union, and the support of the OECD countries. As a result, many consider the emergence of the regulatory state to be the most significant factor in the regulatory reform of capitalist economies since the 1980s (Jordana and Levi-Faur, 2004: 9).

Although the contemporary regulatory state is widely supposed to stem from the United States, the idea is not a recent invention at all. The regulatory state originated in Sweden as long ago as the early 1700s (Christensen and Lægreid, 2006a), long before the introduction of the Interstate Commerce Commission (ICC) in 1887 in the US, and Moran (2003) points out that there existed a Victorian regulatory state in nineteenth century Britain. It was during three historical periods of institutional innovation - the Progressive Era, the New Deal and the 1960s - that the US witnessed a flourishing of regulatory institutions designed respectively to bring about the neutrality of regulation, render competition more efficient, and

address a wider concern of human health and environment impacted by economic development (Moran, 2003; Horwitz, 1989).

The idea of the regulatory state means slightly different things when considered in relation to European, American and British contexts, but certain core characteristics can be identified. It includes a shift from direct intervention to indirect rule-making to rectify market failure, and more strikingly, the establishment of specific regulatory bodies, to which government delegates responsibility (Majone, 1994b; Christensen and Lægreid, 2006a; Gilardi, 2008; Thatcher, 2002a). Privatisation and deregulation, two of the most significant features of neo-liberalism, have already been discussed in the context of the relationship between media and the market. Here I will be concerned chiefly with the creation of IRAs and two of their most important characteristics: independence and accountability.

The emergence of IRAs

The creation of independent regulatory agencies is by far the most significant feature defining the regulatory state and has enjoyed popularity across the globe (Christensen and Lægreid, 2006a; Pollitt and Talbot, 2004; Gilardi, 2008). Studies suggest that the number of agencies in six policy areas in 36 countries saw a rapid growth towards the end of the 20th century, from 28 in 1986 to 164 in 2002 (Jordana and Levi-Faur, 2005). Furthermore, analysis also demonstrates that the model of independent regulatory agency has had a phenomenal growth in almost all European countries. While the percentage of IRAs in all sectors and all European countries accounted for 10 per cent in 1980, it has soared to almost 80 per cent in 2000 (Gilardi, 2008). Talbot (2004) distinguishes the regulatory agency from other ministerial departments or non-governmental organisations. He identifies some of the criteria that an IRA must meet, including: arm's-length distance from the departments of state, the carrying out of public tasks at a national level, staffing by public servants, financing mainly from the state, and subjection to public legal procedures (Talbot, 2004).

The most frequently asked question with regard to IRAs is why politicians decide to delegate regulatory power to agencies which they cannot directly control (Gilardi, 2008; Correa et al., 2006). The possible benefits of delegation for politicians include the reduction of regulatory costs and avoidance of blame, but

neither of these can explain why regulatory agencies suddenly became popular in Europe after the 1970s (Majone, 1999). Majone (1999: 5) and Gilardi (2008) point out that delegation is a tool for politicians to increase political credibility and survive the challenge of short-termism. Correa et al. (2006: 5) consider delegation the result of pressure from corporate power, suggesting that IRAs can reduce regulatory uncertainties and guard against the political capture of regulatory power, making media corporations a less risky investment prospect.

Both the political and the economic perspectives involve an assumption that once the state is distanced from policymaking, independent agencies will be capable of making decisions based on professional, hence superior judgement. That is to say, political power can be fenced off and policymaking can be depoliticised by the creation of IRAs. This misunderstanding, if not illusion, is at least two-fold. On the one hand, researchers call for the separation of *de facto* and *de jure* independence, as even though independence is made the basis of the new agencies and legally granted by government, they are not necessarily immune from political influence (Christensen and Læg Reid, 2006b: 30). De-politicisation, argue Flinders and Buller (2006: 54), although a popular goal for both domestic and international regulatory agencies, is something of a ‘misnomer’ that inaccurately describes the actual scenario. While regulatory power is ostensibly delegated to the IRAs from the state, the state does not quit the realm of regulation, since the IRAs are largely controlled by political actors, through the nomination of regulators, budgetary planning and oversight of performance. The creation of IRAs under neo-liberalism no more mean the retreat of the state than do privatisation and deregulation, but implies rather the redefinition of functions, or ‘re-regulation’ (Majone, 1994b; Bardoeel, 2007). Osborne and Gaebler (1992) famously capture the essence of the regulatory state in describing its role as one of ‘steering’ rather than ‘rowing’. In other words, the regulatory state may include many non-state actors at various levels, but the state still holds a central position. Moreover, there has to be a capable state in order to oversee the regulatory system and to rectify situations when there is regulatory failure or crisis, as when Britain’s railway infrastructure was nationalised following unsuccessful privatisation (Thatcher, 2002a : 863). As a counter-example, state weakness exacerbated the financial crisis in Korea in the late 1990s when the

government was unable to oversee the process of economic liberalisation (Lee, 2000b).

Four contextual factors are said to influence the efficacy of agencies in different countries, namely state tradition, policy learning or agency isomorphism, political leadership, and state reform (Thatcher, 2003). Firstly and probably most pertinent to this research project, state tradition serves as an essential indicator for determining the form and efficacy of regulatory agencies. The process of regulatory development varies from country to country with the contextual factors facing each nation (Thatcher, 2003; Humphreys and Simpson, 2005). For instance, the US is known traditionally to favour the right of private property and question the intervention of government, while the UK has a tradition, dating back to the nineteenth century, of responding to crisis with the creation of autonomous institutions (Moran, 2003; Majone, 1994b). Accordingly, the US tends to emphasise fair competition when applying regulatory mechanisms, whereas the UK tends to use IRAs to keep an eye on public utility regulation. State tradition also explains the why the number of UK IRAs has grown twice the rate of that in France where people have long doubted the autonomy of such bodies.

Secondly, it is no coincidence that independent agencies have enjoyed a surprising popularity in almost every region in the past two decades. This is due to policy learning between countries rather than the gathering of evidence from successful cases. Effective regulatory reform in one country clearly invites others seeking similar regulatory solutions to follow suit, since countries do not exercise regulation in a vacuum. Because state governments tend to seek successful policy choices from other countries, there has arisen an ‘agency fever’ across the world, dominant of contemporary regulatory reform arena since the 1980s (Christensen and Lægreid, 2006a; Gilardi, 2008).

Thirdly, Thatcher (2003) finds that strength of political leadership plays a role in the creation of independent regulatory agencies in the course of a comparison between the UK and Italy. Political leadership is much stronger in the UK and makes it easier for the government to introduce new agencies: Italian politics is dominated by multi-party government and more obstacles stand in the way of reaching consensus in the coalition government. Fourthly, the introduction of independent

regulatory agencies can be regarded as an example of state reform, and of the global managerial tendencies of neo-liberalism.

Transitional countries are among those most prone to create the IRAs with regard to these four contextual factors: they are keen to evolve from the authoritarian political tradition, to copy policy design from other democratised Western countries, and the least capable to reject neo-liberal prescription. However, it is also these factors that make implementation of the IRAs more than likely to fail the expectation in transitional countries if the policy is copied without deliberation, and neo-liberal reform taken as the only way without alternative. The way to assess and observe the policy learning is through the two criteria, which are also the very fundamental founding principles of the IRAs, and to which we now turn: independence and accountability.

Independence, or autonomy, is the most noticeable characteristic of independent regulatory agencies, and the subject around which critique and discussions of institutional design have tended to turn. Two intertwined aspects of the independence of regulatory agencies are worth paying attention to, namely independence from political control and from the regulated industry (Humphreys and Simpson, 2005; Correa et al., 2006)

On the one hand, independence from state intervention is widely considered to be the foremost quality of new regulatory agencies, since in most countries their establishment is ostensibly designed to counteract political control and manipulation. The understanding of autonomy as the paramount feature of independent regulatory agencies demonstrates the assumption of the possibility of depoliticisation that drives regulatory reform. Regulatory policy can, in this view, be protected from political intervention by devolving regulatory power from elected politicians in the administrative framework to independent agencies (Christensen and Lægreid, 2006a). However, whether or not independent regulatory agencies can improve regulatory autonomy is the subject of heated debates and needs to be further addressed, as political powers can exert influence by means of informal networks or channels more implicitly. Shapiro (1996) compares IRAs in the US with those in the EU and concludes that, while the IRAs in the former cannot possibly be independent from the influence of the president, Congress or the courts, agencies in the EU,

although enjoying relatively more freedom from the state, are subject to ‘intergovernmental politics’ in the European Commission. He thus argues that independence is an unrealistic concept as the IRAs in both cases demonstrate that regulatory agencies cannot run away from politics. In this vein, Flinders and Buller (2006) suggest that the process of creating and delegating regulatory power to the IRAs, the ‘agencification’, is actually a kind of ‘arena-shifting’ rather than ‘de-politicisation’ as it is commonly understood.

On the other hand, independent regulatory agencies are also supposed to be independent from the regulated industry, which is even more difficult to achieve. Many scholars are sceptical about the autonomy of the regulatory agencies from corporate power, because regulators are not politically accountable to constituencies like elected politicians and can be easily ‘captured’ (Majone, 1994b:92-3). Empirical studies suggest that industries enjoy an advantageous position in relation to the regulatory process, as they own data, understand operational costs and know consumers well (Gormley Jr., 1983). Regulatory agencies also have to respond to appeals or complaints posed by corporate companies, and they are not usually as well equipped with auditing or financial expertise.

Still another factor is identified by the ‘revolving door’ hypothesis, which presumes that the staff of regulatory agencies will be inhibited by the desire to find positions for themselves in industry after leaving the agencies. Although empirical research suggests that the revolving door hypothesis remains underdeveloped, especially in light of variation across different industries, some studies do demonstrate a very interesting tendency. According to a study conducted by Makkai and Braithwaite (1998) in relation to the regulatory agency responsible for nursing home standards in Australia, nearly half of the personnel in the agency previously worked in a related industry and about one quarter of them wanted to return to industry in the future. The crucial linkage between the staff members in the agency and their potential jobs passing the revolving door is the lobbying firms, which help keep a friendly and close tie between the industry and the regulatory agency. It is hardly news that many lobbying firms are among the most powerful and influential groups because of the friendly relationship they have built with their comrades in the political arena (McChesney, 2004). The Centre for Public Integrity in 2003 released an astonishing report, stating that the Federal Communications Commission (FCC)

was largely dependent on lobbying groups for its business trip budget, so that the regulated industry had actually paid for 2,500 trips taken by FCC officials (cited in Croteau and Hoynes, 2006:209-11). The revolving door, which invites career opportunities to be traded for favours, is a powerful mechanism that can lead to regulatory capture and impact on autonomy.

To discuss this from a structural perspective, the autonomy of agencies is a multidimensional concept, which includes notions of formal autonomy, legal autonomy and de facto autonomy (Christensen and Lægreid, 2006a). Formal autonomy, according to Tenbücken and Schneider (2004: 255), refers to nominal claims in relation to the state of independence that the agencies are supposed to enjoy. It is a quality popularly granted to the IRAs, but it cannot nonetheless guarantee, nor does it necessarily translate into the autonomy of agencies. Autonomy granted by legal acts, which Tenbücken and Schneider call ‘material autonomy’ (2004: 255), similarly, can hardly constitute total independence from other branches of the state. Their study of the national regulatory agencies (Conrad and McIntuch, 2003) in all 26 OECD countries has indicated that even though agencies are legally independent, their regulatory decision can still be subject to the legislative and executive powers. This is to say, neither the granting of formal or legal autonomy necessarily leads to the presence of de facto autonomy, which can involve various dimensions at a more practical level, such as policy, financial, personnel, legal, political independence and so on, depending on the focus of study. Carpenter argues that agency autonomy has more to do with the capacity or influence of regulatory institutions than formal or legal autonomy (cited in Lægreid et al., 2006; Gilardi, 2008). Autonomy is regarded as the most important factor in determining an IRA’s competence, and it is potentially in conflict with the criterion of accountability, another important basis of public administration and political systems.

Although Flinders and Buller (2006:74) suggest that accountability is a distinctive criterion of the British administrative model in which ministers are held responsible to parliament, the term ‘accountability’ or the concept ‘to hold the government accountable’ has become a political cliché. Behn (2001: 6) explores the concept of accountability and considers it in three aspects with regard to finances, fairness, and performance. He claims that accountability for finances and fairness involves more specific rules and regulations to check and balance the wrongdoings

of public agencies. But it is accountability for performance that citizens should emphasise and demand, because it is about whether or not the consequence of the government policy benefits the society as perviously promised or planned. Accountability for performance cannot be guaranteed by following rules and procedures but has to be scrutinised by the public carefully, and it ought to ‘cover the expectations of the citizens’, to ‘mean accountability to the entire citizenry’ (Behn, 2001: 10).

Taking these two criteria into account, the independent regulatory agency poses a dilemma for those who concern holding the regulator accountable a priority and are wary of the abuse of regulatory power by the agency. The relationship between autonomy and accountability can sometimes be contradictory as the protection of autonomy can at the same time be interpreted as the violation of accountability. Those who are concerned about autonomy believe that regulatory agencies are vulnerable to corporate interests because commissioners are not held politically accountable. Likewise the independence of IRAs has been regarded as a threat to democracy as agency commissioners are not accountable to the public as elected politicians are (Majone, 1999:9).

Delegation of regulatory powers to unelected personnel may undermine the legitimacy of the regulatory agency since it lacks the fundamental element of legitimacy: enough votes that show public approval through election and which can result in the public’s political apathy (Flinders and Buller, 2006:75). This problem also constitutes what political theorist Chantal Mouffe (2000) terms the ‘democratic paradox’ whereby politicians delegate regulatory and executive power to IRAs and avoid the blame for any regulatory failure. The most effective way to balance agency autonomy and public accountability, according to Majoine (1999), is a combination of oversight from legislative and executive departments, enforcement of legal procedures, and *ex post* judicial reviews. Majone considers six variables from agency theory useful in evaluating the efficacy of an independent regulatory agency, as well as in striking a balance between autonomy and political accountability. These include the degree of delegation to the IRAs; the organisational form as well as ways of appointing personnel; the fixation of agency decision-making procedures; the procedures to overrule agency decisions; the allocation of personnel and budgetary resources, and the extent of *ex post* monitoring (Majone, 1999:13-4).

The IRAs are unelected agencies not directly politically accountable to the public, a significant factor in the potential conflict of autonomy and accountability. A dilemma emerges when IRAs try to strike a balance between political power and the regulated industry. For instance, if a regulatory agency develops an excessively friendly relationship with its industry, political power might intervene to help rectify the behaviour and keep the regulator accountable. However, it is very likely that political figures would limit the autonomy of the regulator and thus impose the risk of politicisation on the regulatory process (Christensen and Lægreid, 2006a; Majone, 1994b). The conflict can be sharper in post-transition countries, as delegation of regulatory power is nascent and political accountability is not yet fully developed.

While the above discussion has touched on how contextual factors help to explain the design and efficacy of the IRAs in different countries, it has also revealed a significant limitation of existing research, which is that most studies are positioned in the Western European context, where democracy has long been consolidated. As a result, the impact of previous political regimes on regulatory reform has been ignored. Scholarship pays more attention to ideal regulatory types than to regulatory practices in real life. Thus there remains a lack of systematic research into the impact of political transition on the autonomy of independent regulatory agencies. The impact of supranational organisations as well as the pressure that individual states encounter in an international context is marginalised in current academic discussion.

IRAs and new democracies

The rise of the regulatory state and the creation of IRAs constitute a global trend, but they have been especially predominant in Western Europe in the past two decades. Most literature focuses on the structural shift that many European countries have undergone and the consequence of that shift for regulatory frameworks. However, this relatively 'Euro-centric' viewpoint has left a gap in understanding IRAs in new democracies. This project holds that the development of IRAs is linked to domestic political and social contexts, and the adoption of new regulatory frameworks without recognising this fact is likely to lead to unsuccessful reform. The following discussion explores IRAs in transition societies where political cultures are significantly different from their western counterparts in order to contribute a different perspective to the global picture of regulatory reform.

First of all, political culture influences the form of regulatory frameworks and marks a distinction between established and new democracies. Western European countries constitute one of the few areas to have enjoyed the privilege of consolidated democracy for many decades, and they have established a tradition wherein new policies are discussed publicly. In contrast, most new democracies have transformed from authoritarian or Communist political regimes where the state was in charge of most policymaking processes and people generally were unable to imagine a political regime that would facilitate independent regulatory agencies (Bennett, 1998). The difference in political culture is clearly inscribed in both the institutional design and the overall performance of the IRAs. The discrepancy in political power is evident even within Europe, let alone between new and established democracies. Thatcher (2002b) has investigated the regulatory scenario in four European countries and relates the intense political conflicts in Italy to the high levels of politicisation involved in the nomination of IRA commissioners in that country. In post-Communist countries, even though IRAs are introduced at some point during political transition as democratic emblems, overly powerful states overshadow their independence. When there is conflict between the executive branch and regulatory agencies in countries such as Poland and Russia, the dismissal of commissioners is not unfamiliar (Jakubowicz, 1995; de Smaele, 2006).

Empirical studies in Western European countries, on the other hand, suggest that elected politicians do not try to seize control of IRAs after their creation, and the dismissal of commissioners is extremely rare (Gilardi, 2008; Thatcher, 2002b). Likewise, Majone's discussion of the regulatory state in Europe places far more emphasis on technocratic decision-making than the political impact of policies. In other words, IRAs in Western European countries are better insulated from political intervention thanks to a more mature political culture and democratic tradition. In new democracies, both old and new political elites want to control the media so as to win re-election, which inevitably leads to conflicts between the incumbent government and the IRAs. The situation is exacerbated where there is political instability, as in case of the Indonesian Broadcasting Commission (KPI), which fell prey to a power struggle between different political camps, finding its independence and regulatory capability significantly compromised by politicised judicial rulings (Kitley, 2008). Similarly, in spite of the adoption of more or less westernised and

modernised media models, when confronted antagonistically by IRAs Polish and South African governments have cried that they were overly independent, and stripped them of power (Barnett, 1999; Jakubowicz, 1995). Sparks (2008: 16) also points out the media environments in transitional countries ‘remain intensely politicised and partisan’ with ‘little presence of public service’, and that the media are largely dependent on political elite and business power.

This is to say that even where an IRA has been created, its independence is not assured, as commissioners can be substituted or dismissed by political leaders, which seriously undermines the independence and the capability of the regulator. Domestic political power still plays a significant role in shaping the formation and efficacy of IRAs and political intervention is more likely to play a part in new democracies than established ones.

The other concern in relation to new democracies is the close-knit relationship between IRAs and industry. The impact of corporate business on regulatory performance has two aspects: politico-economic collusion and regulatory capture. As regards politico-economic collusion, where countries undergo political and economic transition at around the same time, privatisation and transfer of state-owned enterprises can be mobilised by political powers in such a way as to favour groups with similar ideologies (Barlett, 1997). Corporate businesses enjoying both economic and political power can soon gain control of the market and exert considerable influence on the new IRAs, as the relationship between the South African agency ICASA and the dominant telecommunications company Telkom may illustrate (Moyo and Hlongwane, 2009). Likewise, in Indonesia the Habibie administration, in the name of democratic media reform, significantly de-regulated the media market, taking advantage of privatisation to redistribute media resources to its alliance in order to strengthen political support. (Kitley, 2008).

Regulatory capture takes place when the creation of agencies largely serves the interests of the industry rather than those of the public (Basilio, 2006). It has long been criticised as a side-effect of regulation as it benefits industries by restricting the entry of other potential competitors. Many researchers argue that regulatory capture of IRAs in new democracies should be of concern because a lack of expertise on the part of the staff of agencies in these countries leaves them unable to properly assess

misleading information offered by the industry (Minogue and Cariño, 2006; Moyo and Hlongwane, 2009). In some developing countries where there is a shortage of technocratic and financial expertise, an ironic situation has emerged whereby industry serves almost as a human resource sector for regulatory agencies (Minogue and Cariño, 2006).

Conclusion

This chapter has built up a framework for understanding the relationship between media, democracy and the state with a particular focus on the creation of independent regulatory agencies in transition societies. While demands for democracy often accompany demands for media freedom, this chapter argues that the pursuit of democracy cannot be achieved by leaving the media to a 'free' market, but must involve the creation of a functioning media system capable of informing citizens and overseeing the actions of the government. In order to establish an effective system for democracy to cope with changing political and regulatory environments, this chapter has drawn attention to the impact of domestic social and political contexts on the formation of new political cultures as well as new regulatory frameworks. On the one hand, it has maintained that the media in transition societies tend to thwart democracy rather than enhance it thanks to an uncritical adoption of a liberal democratic model that does not take domestic contexts into account. On the other, I have pointed to the fact that while regulatory reform is an international trend and the creation of new IRAs has become the norm, the existing scholarship has failed to attend to the differences between established and new democracies. I have insisted in this chapter on the importance of social and political context. Subsequent chapters will address the impact of Taiwanese social, economic and political contexts on the borrowed policy model, and the challenges to the new regulatory agency that they pose.

Chapter 3

Methodological considerations

This thesis situates the creation of the Taiwanese National Communications Commission (NCC) in the context of the burgeoning global popularity of independent regulatory agencies (IRAs), while arguing that the most significant factor shaping the NCC has been Taiwan's unique post-transition political situation. The project aims to delineate the impact of politics on the emergence and design of the regulatory framework. Only by putting the political, economic and social contexts in perspective, I argue, can the apparent absurdity of the policymaking process in the case of the NCC become comprehensible. This project sets out to explore issues raised by the new independent regulatory agency, such as the rationales of the actors driving its establishment, the relationship between the agency, the state and the regulated industries, and the potential impact of the agency on the regulatory landscape. By tracing the politicisation of the nascent agency I hope to come to some conclusions regarding the potential of the NCC to contribute to the long-term project of democratisation.

This project concerns both policy studies and political communications. The creation of the NCC is part of the wider international trend of regulatory reform (Gilardi, 2008), and the cornerstone of Taiwan's communications policy. The conflicts between the different actors involved speak to fundamental questions underpinning political communications. These conflicts took place at various levels including that of negotiation between the political parties concerning the nomination of commissioners, and turf wars between government departments in relation to institutional design. Other factors such as change of political atmosphere or personnel may also impact the intensity and visibility of conflicts between the state, regulatory agency and regulated industries.

Different from mainstream policy and political science studies, which have, since the mid-twentieth century, focused inquiry on the relation between policy impact, prescriptive measures and behavioural science (Nagel and Rosenblum, 2006), this project is more concerned with the politics involved in the policymaking process and how it impacted on the regulatory framework of a transitional country.

This thesis offers a critique of government discourses that explain the need for a body such as the NCC with reference to technology convergence and economic development. It argues that power struggles between different institutions in both public and private sectors better explain the emergence of the NCC, and this has seldom been the theme of policy analysis.

Critical Policy Analysis

In this respect the present project sides with critical policy studies, which emphasises the discursive construction and interpretation of policymaking process by different groups (Fischer, 2003). Critical policy studies questions the claim to value-free judgement that underwrites the positivist tradition of policy studies and may be understood as an orientation to policy analysis that aims to ‘speak truth to power’ (Fischer, 1980: 1; Orsini and Smith, 2007). For critical policy analysts, a value-free viewpoint, or ‘value-noncognitivism’ of policy analysis is an unrealistic claim, since it is bound to focus on the limited choices involved in a limited set of issues, and they are unlikely to take every alternative into consideration. Based on this perspective, many policy analysts have embraced an ‘interpretive turn’, whereby they not only concern themselves with ‘what’ a policy is, but also ‘how’ it is framed to bear such meanings (Fischer, 2003: 142-3; Yanow, 1996).

Put crudely, the kind of policy analysis applied in the present research differs from that of earlier policy studies with regard to the weight attached to the political and other contexts of the policy in question. Critical policy analysis puts emphasis on contexts in which certain policy has been instigated and how they have influenced the process of policymaking. The unique contexts of political transition and social transformation serve as the starting points of this research, as I wanted to know how and to what extent regulatory reform in Taiwan has been influenced by the political and social factors. More relevant to this research is that critical policy study calls into attention the operation of power through policy discourses (Fischer, 2003). In this vein, data can have different meanings when interpreted from different perspectives. For instance, although technology convergence has repeatedly been cited as the main rationale of the new regulatory agency, closer examination of documentation demonstrates that it is not the immediate driving force behind the reform. Economic development, meanwhile, has played an important role in the

formation of new policies, but it does not decide every aspect of it. In addition, through the examination of various discourses underpinning the introduction of the regulatory agency, for example, I explored how various actors have used 'democracy' in sometimes extremely different contexts to serve their interests. These preliminary observations were consonant with my assumptions and supported my further attempts to inquire into areas largely ignored by mainstream policy studies.

In recognition of the need to obtain relevant information about contexts, the ethnographic technique of thick description has been popular in the arena of interpretive policy analysis and considered as a useful policy methodology (Thompson, 2001: 70). Thick description was developed by anthropologist Clifford Geertz in the 1970s and famously put to use in his analysis of the cultural meaning of cock fighting. In relation to policy studies, suggests Fischer (2003: 150), thick description can be a way of 'exploring and discovering the meanings embedded in the language and actions of social actors'. Thompson (2001: 70) has suggested that, if used appropriately, thick description can 'reveal the underlying structures' and 'deep meanings' that are often 'glossed over by positivistic methods' of policy analysis

The connection between thick description, the ethnographic approach, interpretive policy analysis and discourse analysis is deeply rooted, and any attempt to make use of one while dropping the other has to be considered somewhat suspect. Although ethnographic approaches might have benefited the project enormously had I had the opportunity to conduct the research at the forefront of the policymaking process, the limited timeframe made it unfeasible. Policymaking not only involves considerable politicking but also takes place in fairly closed, usually exclusively high-ranking policy circles, and especially so in controversial cases like the ones dealt with here, and this makes participant observation an unlikely method. On the other hand, discourse analysis aims at unveiling underlying ideologies through the investigation of discursive practices and their impact on social change (Fairclough, 1995). Despite the fact that many critical policy analysts have demonstrated how discourse analysis can be beneficial to policy studies (Fischer, 2003), I did not think that it would be particularly helpful in this case, since state discourses markedly dominate the official documentation, while voices relating to the departmental turf wars and politico-economic collusion went relatively unrecorded. In spite of my

decision not to employ ethnographic methods or discourse analysis as major approaches, I have nonetheless acknowledged the significance of the contexts and discourses surrounding the emergence of the new regulatory framework. In the following section, the fundamental significance to the research of qualitative approaches and the use of a case study method as the overarching approach will be discussed.

First of all, this project has tended to be qualitative from the outset because my aim has been to figure out the reasons why policy adopted from western democratic countries do not necessarily benefit democracy as anticipated in transitional countries such as Taiwan. Only qualitative approaches can reveal the power struggles involved in regulatory reform between different institutions and at various levels. The project focuses on various aspects of one single country and tries to demonstrate the significance of the NCC from the perspective of the different actors involved. This is very different from the quantitative approach to social phenomenon that places more emphasis on uncovering rules and creating generalisations (Deacon et al., 1999). The qualitative approach I have adopted underlines the peculiarities of the Taiwanese political environment and identifies them as the decisive factors influencing the performance of the NCC. It shares commonalities with the interpretive methods that some researchers have adopted to make sense of the naturalistic settings in which social phenomena take place (Denzin and Lincoln, 1994:2). Ragin, a sociologist and political scientist who has spent considerable time studying comparative methods, offers a crude distinction between the two approaches that Creswell considers succinct and credible: ‘quantitative researchers work with a few variables and many cases, whereas qualitative researchers rely on a few cases and many variables’ (1998:15-6).

However, my adoption of a qualitative approach does not mean that I consider the generalisation of specific case studies to be implausible or useless, quite the opposite: it is hoped that this project will shed light on the struggles taking place in the regulatory reform and policymaking processes of other post-transition countries. Indeed, the ultimate goal of this research is to find some common ground to which countries with similar political backgrounds can make reference. So far as this project is concerned, the nascent Taiwanese independent regulator has shared some challenges and setbacks with its counterparts in countries such as South Africa

and Poland, as well as certain Asian and Latin American countries (Barnett, 1999; Jakubowicz, 2002; Sparks, 2008). These commonalities, in spite of the unique circumstances of each country, serve as a powerful example in support of the ‘natural generalisation’ on which the efficacy of qualitative inquiry can be validated (Stake, 2000; Hammersley and Gomm, 2000). In this regard, what this study aims to discover is the extent to which ‘theoretical generalisation’ is pertinent to countries at different stages of political transition (Seale, 2004b).

Having decided on a qualitative approach to policy analysis, the case study method quickly emerged as the most suitable method, since it can be employed to describe in detail the dynamics within specific institutions or processes.

Case Study

A case study is appropriate for answering ‘how’ and ‘why’ questions: it is an ‘empirical inquiry that investigates a contemporary phenomenon in depth and within its real-life context’, but where the ‘relevant behaviours cannot be manipulated’ (Yin, 2009: 11-18). The aim of the case study is to extract the ‘uniqueness’ of each case within its specific context and circumstances, which is different from other kinds of social research that use collected data to form wider generalisations or to develop theoretical inferences (Hammersley and Gomm, 2000:3). This research is exactly an attempt to record the development of an independent regulatory agency in a post-transition country and through which to shed light on wider transitional political culture. This is to say, by exploring the particular, this study aims to make reference to other cases in similar political environments and facing similar challenges. In order to achieve this, the case study pays attention to what Stake (2000:21) terms ‘tacit’ forms of knowledge, as opposed to ‘propositional’ ones. According to Stake, the case study is not ideal when the aim of the research is to provide ‘propositional’ knowledge – such as an explanation for certain events or courses of action. However, the case study can be particularly helpful when tacit knowledge is the aim of the research, that is, when understanding of complex phenomena is the subject of inquiry.

Pal (2005: 229) claims that in the field of policy analysis, the significance of the case study method has at least two aspects. First, cases are thought be ‘instances of more general phenomena’; and second, the case study can inform theory as

‘analytical generalisation’, as opposed to statistical generalisation. Take this study for example: the contribution of this thesis does not lie in the NCC’s being a typical model of an independent regulatory agency, as it is not in any sense a statistically representative institution. Rather, it helps complement the existing scholarship in relation to the predominance of the regulatory state and its delegation of regulatory power to IRAs in different political contexts. Therefore, by applying a case study approach, the aim is not to ‘prove’ discussed point raised by other studies, nor is it to create a new model to explain the development of policy. Rather, this thesis attempts to ‘give voice’ to different actors instead of using them as respondents, and to understand their interpretations of and perspectives on the situation.

The selection of cases is a difficult yet crucial step and it should to some extent reflect and correspond with the theory and objective of the inquiry (Yin, 1993). The key to meaningful case study lies in theory, suggests Pal (2005: 233), as the case is informed by thought-through theory, which further entails relevant research questions and propositions. The selection of cases in this project has been informed by the literature discussed in Chapter 2, with a particular focus on the power relations involved in the creation IRAs in new democracies, the role of the state, the relationship between relevant actors, and the actual policymaking practice performed by the agency. The number of cases involved is closely related to the amount of detailed information that can be gathered and presented, with the range determining the project’s breadth of vision. While depth and breadth are often contradictory qualities in a case study, this project endeavours to strike a balance between significance of case, availability of data, and limit on time and resources. Consequently, this project deals with the newly created NCC and focuses on three prisms of the agency, including:

- The judicial power utilised by the state to claim the agency as unconstitutional. Here the focus is on the politics of power delegation, and on how the independence of the agency was tainted as a result of political power struggles.
- Cross-media ownership disputes, which speak to the agency’s attitude towards cross-media ownership and suggest that the change of government and political climate has to some extent influenced the regulatory judgment of the agency.

- The failed attempt at convergence legislation, which demonstrates how legislation can be a politicised process in which various stakeholders try to have their interests inscribed in law, and that changes in policy are due to strategic political interests rather than rational debates over policy goals.

Case studies are widely used to read patterns from the detailed examination of particular subjects (Williams et al., 1988). In order to obtain the most useful data appropriate for each study, six sources of data, or ‘evidence’, to use Robert Yin’s term (2009: 101), may be used, including: documentation, archival records, interviews, direct observations, participant-observation, and physical artefacts. Yin (2009: 114-7), an experienced researcher with respect to the application of the case study method, emphasises that no single source is superior to the others, and a good case study would aim to acquire ‘multiple sources of evidence’, exploiting the strengths of each.

Among them, two types of data are crucial to this study, for their capacity to clearly reveal the struggle of different interests involved in the policy-making process. On the one hand, documentation ranging from media coverage, parliamentary records, the minutes from government departmental meetings in relation to the development and operation of the NCC are central to the analysis, as they often embody tangible conflicts between different interest groups. On the other, interviews help to bridge the gaps caused by a lack of information that is typical of the analysis of public policy and highlight the voices of key actors in the process of media regulation. Interviewees from various groups – commissioners, government officials, legislators, industry leaders, civil servants, civil society, political parties, journalists and academics – significantly enhance the validity and depth of the project.

Document analysis

I have drawn upon various forms of documentation, most of them collected with the help of the Internet. Media coverage was retrieved from integrated news databases, parliamentary records and meeting minutes from the National Central Library Gazette Online, an official online database for gazettes published by government at different levels. Meeting minutes of the NCC were obtained from its own website, while the others were acquired through online searches.

Media coverage, mainly drawn from the printed press, serves as a major object of analysis. Data was obtained from the Knowledge Management System, an online database of the Parliamentary Library Legislative Yuan. This database was chosen for several reasons as, apart from access made possible by personal connections, it is arguably the most comprehensive collection of media coverage, and more significantly, it is also the major source of information for lawmakers. The database has greatly benefited this research in relation to collecting news coverage. For example, news from the Central News Agency (CNA), the national news agency, covers a wider range of topics and thus plays a crucial role in setting the agenda, but it is not shown on the online databases of individual news companies due to copyright issues. Additionally, though hard to believe, the *Liberty Times*, the paper with the highest readership in Taiwan, has not yet had a comprehensive online database. Without the help of the Knowledge Management System, it would have been much more difficult for me to attain a complete collection of news coverage relevant to the issues covered in this research.

Taking prominence and impact on the general public into consideration, this project mainly quotes news from the CNA and the four national newspaper groups in Taiwan, out of the more than 30 titles contained in the database. The four newspaper groups and the individual titles selected are the United News Group (*United Daily* and *Economic Daily*), the China Times Group (*China Times* and *Commercial Times*), the Liberty Times Group (*Liberty Times*), and the Next Media Group (*Apple Daily*). The only consulted title not to be drawn from this database is the *Taipei Times*, part of the Liberty Times Group and the only English language newspaper selected. The *Taipei Times* was consulted because it gets six million hits per month and not only provides English readers with up-to-date news but also represents Taiwan's development and democratisation to the world.

Keyword search was applied to filter the relevant information from the database. The generation of keywords was based on specific historical contexts discussed in Chapter 4. As we will see in Chapter 4, the creation of the NCC is frequently attributed to two main goals, namely, the separation of the media from both political power and corporate business. The former was embodied in the Government Information Office (GIO), the official department responsible for government propaganda as well as media regulation, which had drawn a lot of

criticism for its interference with freedom of speech during the political democratisation process. The latter is embodied in the Directorate General of Telecommunications (DGT), a telecommunication regulatory body subordinate to the Ministry of Transportation and Communication (MOTC), which is also the most prominent shareholder of ChungHwa Telecom (CHT), the previously state-owned telecommunications service provider which is now, following privatisation, in a dominant position. Taking into account the impact of political democratisation on the emergence of a new regulatory system in Taiwan, this project looks into data going back to 1987, the year that Martial Law was lifted and democratisation began to flourish.

Data was initially gathered by using a keyword search of the Knowledge Management System. At first both 'GIO' and 'DGT' were used; 'DGT' was later eliminated because the preliminary examination found there was little relevant coverage and that most of that coverage was technology oriented. For instance, from 1987 to 1992, the DGT attracted only a minimal amount of relevant news coverage every year, and the very first piece of news in relation to the introduction of a single regulatory agency did not emerge until 1999; whereas, by then, there had already been plenty of discussion featuring the GIO (Chang, 1994; Chiang, 1994; Wang, 1998). This discrepancy speaks to the contention of the current research project, which is that the creation of the independent regulatory agency, although ostensibly a response to digital convergence, was in fact a political issue during the process of democratisation.

In addition to media coverage, this research also refers to official documentation such as parliamentary debates, reports commissioned by the executive branch, and meeting minutes of government organisations at departmental and cabinet level. Parliamentary debates were beneficial to the research in their detailing of the process of interrogation between government officials and lawmakers; but since even the U.S. Congress hearings, which are alleged to be 'verbatim', have been edited before they are printed or released (Yin, 2009: 103), researchers should always maintain a critical attitude. In addition, parliamentary debates do not reveal the whole picture as the multi-party negotiations between party caucuses through which substantial agreements were often reached were off-the-record and never made public. Commissioned reports, meanwhile, often either

ignored the political confrontation between different actors or touched on it rather lightly. Similarly, most of the meeting minutes simply outlined the conclusions reached in the meetings without further disclosing the discussion or debating process, which left even more questions unanswered.

In reviewing the decision-making process of the NCC, one thing that differentiates it from most that of other government departments is the recognition of dissenting and concurring opinions derived from legal tradition. Dissenting opinions are filed and presented when one or more judges ‘disagree with the majority of judges deciding the case’, while concurring opinions agree with the conclusion reached by the majority, but disagree ‘with the reasoning offered to support that conclusion’ (George, 2006). The introduction of this system is partially due to the background of the founding NCC Commissioners, and the dissenting and concurring opinions have provided me with invaluable information regarding the dynamics of likely debates during commission meetings, beyond the sketchy meeting minutes that showed only the results in bullet points.

Elite interviews

Apparent inconsistencies in the data derived from the highly fractured media coverage, parliamentary records, technology-oriented reports, and rough minutes in relation to the independent agency led me to adopt interviews as the main research method. Interviews have been particularly useful in this project because they allow different perspectives to be recognised and allow interviewees to express their interpretation of events and to elucidate the rationales underpinning the decision-making process involved in specific incidents (Warren, 2002). The format of semi-structured interviews was chosen for its flexibility, which allowed more open-ended conversations, as well as for the capacity to retain control of the discussion that it afforded me (Deacon et al., 1999:65).

The analysis of the data collected from such interviews requires some consideration. One of the issues that arise most frequently for the researcher is how to verify the information provided by the interviewees. Previous studies indicate that interviewees, consciously or unconsciously, tend to give accounts favourable to them, leave out unflattering information, or even try to ‘spin’ the researcher through the interview (Gomm, 2004:188; Davis, 2000). To minimise the impact of biased

information and to further validate the data, the use of multiple sources of evidence (usually termed ‘triangulation’) is highly recommended (Yin, 2009). Triangulation is not limited to interview but goes beyond to all methods; it may refer to the use of methods mixing qualitative and quantitative approaches, or the application of different approaches, theories, and even different methodologies within a general qualitative field (Seale, 2004b). Yin (2009: 116-7) also distinguishes two levels of triangulation, one of which has to do with factual data, where the researcher is capable of verifying the data, while the other concerns situations where the researcher can compare data with other sources without being able to truly triangulate it. The data can acquire more credibility if the researcher can double-check it against other available data, or include more data and sources, or review the data after some time has passed and a clearer picture has taken shape. Studies such as the present one are advised to take heed of facts and biases contained in bureaucratic data and researchers are encouraged to seek alternative sources in order to increase the validity of the study (Gomm, 2004).

This thesis relies to a great extent on data collected from interviews, other than checking facts in relation to verifiable factual data after the interview, accounts were valued for their own sake as the interpretations of actions from different actors’ point of view. The variety of perspectives from which different people perceived the same issues and phenomena, for example, the driving force leading to the creation of the NCC, itself becomes a meaningful object of inquiry, as the gap between interpretations may indicate a wider discrepancy between the different ideas attached to the new regulatory framework. Therefore, apart from validating factual data, most of the triangulation was applied not simply to testify to the correctness of the accounts, but to establish the consistency of interpretations of interviewees belonging to different groups, and to compare them with other academic research findings bearing on similar issues.

The aim of data collection in social science research is no different from that in the natural sciences, as both forms of knowledge seek to advance understanding of certain phenomena, although often by different means. Qualitative interviewing has been adopted in this research in recognition of the closed nature of policymaking networks, in which only a relatively limited number of people are heavily involved. The pool of potential interviewees is restricted to a small policymaking circle and it

is itself a skewed representation of the wider population from the outset, inevitably restricting the sampling of interviewees. Consequently, a total of 27 subjects were interviewed for this project and 28 interviews were conducted (one interviewee contributed to a pilot study and gave a subsequent interview). Three interviewees were approached for fundamental information in pilot studies during the summer of 2008, and this was followed by interviews with 25 interviewees in the policy arena, of which 14 took place in February/March 2009 and the remaining 11 in January/February 2010.

Before moving on to more detailed discussion of the interviewees, it will be necessary to provide a brief explanation of the frequent references to academics in the analysis. This should not be attributed any bias on my part in selecting and representing the opinions of interviewees; rather it reflects the close-knit relationship between academia and many other elements of Taiwanese society, partly a cultural inheritance from Confucian tradition, which upholds that ‘Those Who Excel in Study Can Follow Official Careers’: people with a doctoral degree who obtain a position in Higher Education are widely considered suitable for various positions such as civic group leader and even government official.

A pilot study for this project was conducted in the summer of 2008 in order to develop an initial understanding of the situation and to generate pertinent questions for future interviews. Three interviewees were included in the pilot study, including two from academia, one of whom was involved in drafting the communications policy white paper for the presidential candidate in 2000, which is generally understood to represent the beginning of substantial discussion of the NCC, while the other now serves as the convenor of a civic group focusing on media reform. The third interviewee for the pilot study is a senior civil servant in the NCC, who had previously worked in the GIO for more than ten years and has a good knowledge of the development of the regulatory framework in Taiwan. The interviewees were chosen for the pilot study for the background information they could offer to the project, and through them I was able to familiarise myself with the historical, social and political contexts in which the regulatory framework took shape. In addition, pilot interviews also helped me produce a comprehensive list of subjects, helping me to include as many key perspectives as possible.

Among these interviewees, 17 belonged to political power elites (including five NCC commissioners, government officials and lawmakers, and two NCC civil servants, both former and incumbent), four were from academia and civic groups, three from corporate business, and three from journalism. Some interviewees were initially selected on the basis of information gathered from press coverage and some were later recommended and included as potential interviewees by those interviewed. The range of interviewees and the phrasing of the questions were refined by theoretical sampling as I gradually built up a picture of the subjects' political background and level of politicisation, modifying the selection of potential interviewees accordingly (Seale, 2004a:240-1). As a result, some high-ranking government officials involved in drafting the organisational framework of the agency were dropped: they could have told me a lot about regulatory institutional design, but not much about expanding the range of politicisation of the institution over the course of its development.

As I have already suggested, 'elite interviews' is probably the term that best describes the interviewing method central to this study, since most of the interviewees, be they high-ranking government officials, lawmakers, academics, or industry leaders, move in rather closed circles. Most of them belong to political and economic elites, whose power was recognised by C. Wright Mills (1956) and Moyser and Wagstaffe (1987) in their books on power elites. According to Odendahl and Shaw (2002), elite interviewing poses specific challenges to the researcher with regard to access, dynamics, and personal networks. First, elite classes are generally difficult to access and sometimes even hard to identify since they are rarely exposed to the public. Thanks to the flow of information made possible by technologies such as the Internet, it is now much less difficult to know what these elites look like than in the past, and some politicians are now household names in Taiwan. However, access still posed a challenge during my research: former politicians and retired government officials can be difficult to reach when they are no longer under the spotlight or affiliated with certain departments, while corporate business executives tended to decline requests for an interview when they *were* the focus of news events. The challenge was further aggravated by my relatively inflexible fieldwork schedule. During my stay in Taiwan, I found that some interviewees had changed careers and lost contact, while others had their personal assistants forward the message that they

were either ‘extremely busy’ or had ‘gone abroad for investigation’, despite the fact that we might have previously negotiated and agreed on a specific time to meet.

Secondly, the dynamics of interviewing elites is fluid and contingent on many factors. These factors range from the initial conversation with the secretary of the interviewee to one’s professional appearance while conducting the interviews, in tandem with the strategic demonstration of one’s knowledge of the studied field. One of the lessons I learned from the pilot study, echoing other methodological discussions (Odendahl and Shaw, 2002:311), was that a certain degree of expertise is critical for successful elite interviews. When conducting in-depth interviews for my previous research projects, which involved talking to press editors and for their knowledge about copy-editing, all I had to do was pose a naïve question and I would receive hours of conversation in return. However, the situation was completely different when I put seemingly innocent questions to a senior civil servant in relation to communications regulation in Taiwan. He immediately replied with a rather harsh criticism: ‘are you sure you really want to do this research if you don’t even know the history?’ Subsequent interviews also proved that even if the interviewees were uncertain at the outset of the interview, demonstration of familiarity with certain current cases in the field or with professional figures could help make the conversation proceed much more fluently.

Lastly and perhaps most importantly, personal connections and networks can be a major factor when conducting elite interviews. Many examples show that key interviewees sometimes appear by chance through connections and networks largely beyond the expectation and plan of researchers (Odendahl and Shaw, 2002). The present research supports this statement since my very first interview was made possible through a dinner meeting with some journalist friends, one of whom happened to have met the potential interviewee recently and thus had his personal mobile number. That interview was arranged by the journalist friend calling the interviewee that same night and insisting on an affirmative answer as well as a specific time and venue for my interview. Titles such as ‘a friend or colleague of so-and-so’ help to overcome the distance between the interviewer and the interviewees.

Keeping the respondents anonymous is a standard approach in qualitative interviewing and allows the researcher to ‘actively protect the identity of research

participants' when the data revealed might affect the interviewees (King and Horrocks, 2010:117; Byrne, 2004). Anonymity is said to enhance the validity of participants' accounts while at the same time limiting the credibility of the data collected (Ong, 2003:94). In terms of journalistic reporting, for example, while people might be more willing to talk to journalists when they are promised anonymity, most editors probably would not feel comfortable using articles reliant on a number of anonymous sources. This consideration is, sometimes, of great significance when interviewing high-profile participants as they might be easily identified and thus require quite skilful description (Odendahl and Shaw, 2002:313). The dilemma regarding anonymity also occurred in this project. Some interviews were conducted on the basis that respondents would remain anonymous because their accounts might jeopardise their career development or, to a certain degree, damage their personal relationships. Although others did agree to be named, I decided that revealing the identity of some while maintaining the anonymity of others might well be a counterproductive means of protecting confidentiality, given the closed nature of policymaking process. With the NCC, for example, there were seven commissioners in the second term, of which two came from the profession of communications studies. In this context, naming one and keeping the other anonymous simply does not make sense. In order to maintain meaningful anonymity, then, all participants remain unnamed, but background information relevant to their responses has been given in as detailed a fashion as possible.

Between the development of methods, the collection of data and the final presentation, the process of concept formation intervenes, and deserves some attention. What are the conceptual threads that help string the seemingly scattered beads collected in the course of research, and how do they come into being? Concepts such as democratisation, politicisation, and independence are key terms that have gradually taken shape during the analysis process as the result of constant re-interpretation, contemplation and rearrangement. Despite the fact that this thesis deals with a single country, its concerns are wide-ranging and take the wider geopolitical circumstances into consideration. Conceptual reflection on the empirical material of the thesis is, it is hoped, beneficial to future research in the field. The formation of concepts benefits from the use of different methods; as each indicates a different dimension and all contribute to the completion of the thesis as a whole.

Independence of the new regulatory agency was undoubtedly the most emphasised feature as it was reiterated in most of relevant discussion and news coverage, clearly indicating the expectation towards the agency. The concept of politicisation emerges from the analysis of interview transcripts in which different actors described their interpretation and evaluation of the creation of the new regulatory agency. In the course of these interviews, the NCC emerges as the consequence of turf wars between governmental departments, of pressure resulting from Taiwan's induction into the World Trade Organisation, and of political conflicts between old and new political power elites. The divergent interpretations imply that there is probably no such thing as a true essence of policymaking: what exists is instead the balance struck by the politicisation of different actors.

Bearing the politicised nature of policymaking in mind, the description and analysis of the chosen cases reveals certain flows of power, and in particular the state's use of judicial power to oppress the new regulatory agency and regain its authority. Evidently, regulatory agencies have posed challenges to the state, since their exercise of regulatory power in some respects displaces the power of the state. The state's rendering of the regulatory agency unconstitutional through the use of judicial power epitomises the process whereby the state, traditionally the superior power in a country, struggles to retain its power and influence on other parts of the nation.

The power struggles between the state and the agency marks a stark contrast between Taiwan and the western countries and thus reiterates the impact of political transition has on influencing the state's attitudes towards the IRA. In most western countries, IRAs were introduced as a way to replace political judgement with professional expertise when implementing public policy, and to offset potential risks faced by elected politicians when confronted with unsatisfactory policy output (Majone, 1999; Maggetti, 2009). What is striking here is the difference in the degree of democratisation, since the state in western countries attempts to shift regulatory responsibility, while the Taiwanese state still tries to hold onto every possible power. This is especially significant in the case of media regulation, as the freedom of the media reflects the political freedom of the country, and media representation influences the continuity of incumbent political powers during the process of political transition.

Focused on the relationship between democratisation and media regulatory reform, the study extends its purview to the role of IRAs in new democracies. The emergence of IRAs has been a prominent trend across the globe, but examples from many post-authoritarian countries demonstrate that they are bound to fail if they do not take into account relevant contextual factors. Therefore, systematic discussion of the existing literature and the development of the IRA in Taiwanese transitional context in this study will help expand the ‘analytic generalisation’ of regulatory reform theory we have now.

Discussed above is the formation process underpinning the key concepts and attempts to incorporate them into the more empirical portions of the thesis, where these concepts were seen to be developed using different data, based on different criteria, and at different degrees of theoretical abstraction. The aim of this review of the process has been to offer an account of my perspective on the research and the field of scholarship in which it intervenes, and to indicate how certain concepts developed here might be extracted and applied more broadly. In particular, it is hoped that reflection on regulation in newly democratised countries might inform the overall picture of regulatory reform, compensating for the occidental bias of much of the existing policy scholarship.

Conclusion

This chapter has outlined the case study, document analysis, and interviews as the methods informing this research project. I have tried to reflect on the key challenges encountered and on other considerations impacting on the research. In sum, this thesis adopts the format of an extended case study to present data collected from documents and interviews. However, this is not to say that these methods will help us to ‘discover’ what the independent regulatory agency really is, or the ‘real’ meaning of the data collected with their help, as any selection of research methods has to a certain degree influenced the possible conclusions (Law, 2004:5). My emphasis on seeking the traces of politicisation in the democratisation process has presumably affected the research process, from keyword searches of documents to the selection of interviewees and the ways in which I framed interview questions. In reflecting on the methods selected, I have not sought to make any claims regarding the truthfulness of the research, more rather to emphasise the way that each case has

been built from mixed data derived from documents and interviews, my goal being to understand the cases from the viewpoints of different actors and, more particularly, the significance of discrepancies between the written records and the interview data. By delineating the process in the following chapters with respect to various issues such as political confrontation, media ownership and convergence legislation, I hope with this project to understand the extent to which the post-transition political background explains the political undercurrents shaping the formation of the NCC in Taiwan and its impact on a nascent democracy.

Chapter 4

The emergence of the NCC

In 2006, Taiwan's first independent regulatory agency came into being, representing, in the words of its creators, 'a milestone which is indicative of the advent of digital convergence' (National Communications Commission, 2006c). Why did it take an agency designed to respond to rapid technological change more than a decade to become operational? Even more bewilderingly, why, if the creation of such an agency was a simple necessity, demanded by technological developments, did the legislation that established it lead to brawls in parliament itself? In order to answer these questions, this chapter sets out to explore why Taiwan has joined many other countries across the world in creating IRAs in spite of contrasting political, economic and social conditions. As Goodwin (1998: 11) insightfully points out, '[g]overnment policies are not made by governments alone': policies have to be interpreted not only as the will of the government but also as that of various other actors involved in the process. This chapter follows the trajectory of the formation of an independent media regulatory agency in Taiwan and examines how the relevant actors and regulatory rationales influenced and shaped it. Three dimensions will be mapped out to show their impact on mobilising the regulatory discourses in play, namely technological advancement, economic development and political transformation. In each dimension, major actors, arguments and influences are reviewed in order to demonstrate how the discourse underwriting the creation of the independent regulatory agency was generated, shaped and transformed through the interaction between actors. By examining the media policymaking process in Taiwan, the chapter aims to speak to and expand on the framework developed in Chapter 2 with the help of a non-western, newly democratised case.

Technological Advancement

The proliferation of IRAs runs largely parallel to the development of media technologies, and technological convergence is a universal and explicit motive driving most newly created communications regulators worldwide. Examples are abundant and span the European countries, where regulatory frameworks have been

established for a long time, and transitional societies that have only recently abandoned authoritarian regimes and regulated economies. Examples include the Office of Communications (Ofcom) in the UK, the Communications and Multimedia Commission (SKMM) in Malaysia, and the Independent Communications Authority of South Africa (ICASA), to name a few. Traditionally, the regulation of media has differed according to the form of the media product and the resources that the particular medium takes to function. Thus, regulation of a broadcast system is different from that of telecommunications, in respect of the extent to which they are regulated. Terrestrial broadcast systems are under the most severe scrutiny, as the airwaves have traditionally been regarded as a scarce public resource. By contrast, the press enjoy the most freedom, while radio, cable television, and satellite fall somewhere between the two extremes. The communications industries in Taiwan have been subject to different authorities corresponding to the various technologies involved. For instance, terrestrial broadcasting and telecommunication were overseen by the General Information Office (GIO) and Directorate-General of Telecommunication (DGT) respectively.

However, technological advancement has blurred the boundaries among entrenched communications industries and made the integration of different communications industries possible. Technological convergence, mostly represented by digitalisation, makes it possible for different forms of media service to be transmitted through the same infrastructure. The Internet can transmit a variety of information that used to be classified as radio, telephony, or cable programming, which represents a clear challenge to the existing media regulation framework, placing a question mark over its legitimacy. According to a large-scale study of regulatory change in 1994, 92 out of the 109 legislators and 97 out of 144 communication scholars surveyed in Taiwan suggested that there was an urgent need for an integrated regulatory environment, as the then framework was ‘inappropriate’ to a situation characterised by the convergence of technologies (Liu, 1994).

Government officials and industry leaders have envisaged a coming information society in which every aspect of life is virtually wired. Exciting prospects of opportunities for better governance, new types of learning, and a more efficient form of commerce permeated the discussion in relation to the progress of

information and communication technologies (ICTs) (Credé and Mansell, 1998). In the United States, former President Bill Clinton emphasised that the future lay in developing a new infrastructure, an ‘information highway’, when he signed the Telecommunications Act of 1996 (Turner, 2009). As a newly industrialised country and one of the four ‘Asian Tigers’, Taiwan has embraced the notions of progress and technological advancement without hesitation or question. Officials, including the premier, declared that a tiny country like Taiwan could be as powerful as much larger and better off nations if the technology was right (Lin, 2000b). Meanwhile, several legislators formed the Digital Convergence Legislative Alliance (DCLA) in order to ‘expedite the related legal process, promote the development of relevant industry, and obviate the difficulties that might hinder the process of convergence’ (Digital Convergence Legislative Alliance, 2002). A major organiser of the DCLA explains why the establishment of a single regulatory agency was such an irresistible trend and one of the goals of the DCLA:

Digital convergence has been a hot topic in professional publications since the early 1990s and we can foresee technology development will blur the traditional boundaries between different media. Convergence functions as the major structural factor that will definitely lead to the creation of a regulatory agency like the NCC. (Interviewee 9)

Consequently, technological convergence, by making the old modes of regulation seem obsolete, has led to the necessity of reviewing existing regulatory systems and called into existence new ones. Several integrated communications regulators around the world have been established, lending weight to Nicholas Garnham’s claim (2000:66-7) that technological determinism is the major underlying assumption about changing society driving the transformation of media regulation. As a result, ‘digital development’, ‘technology convergence’, and ‘mergers’ have become buzzwords that permeate most areas of discussion regarding the establishment and design of regulatory frameworks.

It was amid such technological optimism that the idea of a single regulatory agency was introduced into discussions about the new regulatory framework. Discourses of technology were so powerful that the call to create a single regulator in accordance with the convergence of technology was seldom questioned and soon became the refrain of legislators and officials. Actors including government officials,

industry leaders, academics, think tanks and legislators have reiterated claims regarding the trend towards technological convergence and the need to comply with it since the late 1990s. Common sense had it that the country might lose its competitiveness if it failed to follow the international trend towards the creation of single institutions. For example, an industry leader, who was also a legislator at the time, advocated that the Taiwanese government learn from the US and Singapore, where 'single regulators are responsible for regulation in relation to technological convergence with minimum government intervention' (Wang, 1998). The Ministry of Transportation and Communication (MOTC) swiftly made an announcement that a single body for integrating relevant regulation would be created (Chang, 2000; Wang, 1998; Lee, 1999). In addition, academic reports suggested that the existing system would lead to confusion and regulatory arbitrage, resulting in technology stagnation and consequently disadvantaging future development (Directorate General of Telecommunications, 2001). In an interview with the author, a high-ranking civil servant attributed the introduction of the independent regulator to technology convergence, which 'made the existing regulatory framework obsolete and regulatory reform necessary' (Interviewee 18).

Although convergence seems to be an explicit reason underpinning the creation of new regulatory agencies, it should not be regarded as the only decisive factor in regulatory reform, nor disguised as a neutral concept, free from the profit motive or political conflict. This is well illustrated by the provision of multimedia on-demand (MoD) services in Taiwan. Thanks to technology convergence, MoD could offer television over Internet protocol (TVoIP), which had the potential represent an alternative to terrestrial broadcasting and cable television in the early 2000s. Progress was greatly undermined by resistance from the cable and satellite industries. This partly explains why MoD was categorised as a cable television system and subjected to the regulation of Cable Broadcasting Law (Commercial Times, 2003). This meant that a company offering MoD had to obtain individual licenses in 51 'operation areas' designated for cable television in order to attract a nationwide audience, which effectively impeded expansion and resulted in the stagnation of the TVoIP service. Technological innovation can easily be trumped by conflicts between profit-minded corporate businesses.

Additionally, my thesis shares the argument of Paul Smith (2006) that the formation of regulatory agencies involves the pursuit of self-interest and private interest sugar-coated with the concept of technological advancement. Smith demonstrates that many more actors actually participated in and influenced the formation of the UK's super-regulator, Ofcom, such as interest groups, lobbyists, political parties and governmental departments. By lobbying or offering different proposals, actors directly or indirectly shape the scope of the organisation, as well as the outlook of media regulation and policy in the future. For instance, when New Labour came to power in 1997, a new regulatory framework began to take shape that accorded with their market orientation through a set of media policies that included the emergence of Ofcom and the relaxation of rules concerning media ownership (Collins and Murrone, 1996). Smith (2006: 930) also demonstrates how major UK newspaper groups achieved a relaxation of cross-media ownership regulation under the aegis of convergence. All of which is to say that technological convergence is a concept that is often appropriated by different camps in order to serve their own ends, thus deserves close scrutiny.

Similarly, the policymaking process should be examined as it reveals the struggles between the different powers involved and indicates a shift in overall regulatory ideology. As in Smith's analysis, there has been a shift in the focus of media policy whereby concepts of market competition and deregulation have gradually acquired greater importance. Smith argues that the emphasis and the outlook of media policy has in the last decade been diverted away from the question of the performance of a public broadcasting system towards one of effective competition. Robert McChesney (1993), meanwhile, outlines how the process of policymaking can involve more significant power struggles among various actors than has often appeared to be the case. Analysis of the broadcast reform movements from 1928 to 1935 shows that the radio system in the US was not born with capitalism, or without reaction and complaints. People from many walks of life joined together to fight against the commercialisation of the broadcast system and the consolidation of the big radio networks. McChesney's study refutes the commercial nature that the US communications system seemed to be born with, but demonstrates the process in which people's advocacy of a democratic broadcast system 'accountable to elected representatives, not shareholders beholden to private

profit' was overcome by the corporations' determination to pursue profit (1993:119-120).

This section has pointed out how technology convergence forms an important part of the backdrop of regulatory reform. It recognises the impact of technology on facilitating new regulatory systems, while siding with Monroe Price's (2002) argument that technology is never the single decisive factor in shaping a national regulatory system. More significantly, just as Mansell (Mansell, 1993) emphasises the political and economic factors that shape the development of intelligent networks and subsequent public telecommunication systems, this study also argues technology should not be considered as the only or major factor in the formation of telecommunications regulatory agencies: the IRA would have been established a lot earlier if it were. Policymaking should be considered in the context of other economic, social and political developments so as to gain a better understanding of the overall regulatory transformation. It is to this context that we now turn.

Parallel to the timeline of technological development is the rapid expansion of the global economy fuelled by the growth of communications technology and influenced by the emergence of neo-liberal approaches to international trade. Technological progress and economic growth are often two sides of a coin, complementing each other. If convergence casts light for actors in the policy arena on future direction, global economic marketisation facilitates the progress at both national and international levels. In this regard, the following paragraphs offer an account of how the global trend towards economic marketisation, and especially the power of international economic organisations, has impacted on the policymaking surrounding the creation of an independent regulator in Taiwan.

Global Economic Marketisation

Old modes of media regulation have been challenged not only by the evolution of technology, but also by the rise of the neo-liberal ideologies that have characterised the development of the global economy. In both national and international policy arenas, economic factors have been the predominant force guiding policymaking as politics has become increasingly market-driven

(Chakravartty and Sarikakis, 2005:55; Leys, 2001). Harvey argues that neo-liberalism has added momentum to the structural transformation of policymaking since the 1980s and ‘become hegemonic as a mode of discourse’ (2005:3).

This hegemony has expressed itself in two key ways: it has given rise to the privatisation of what were traditionally public-owned utilities, such as electricity, water, and telecommunications industry, and over the last two decades it has informed the global proliferation of new independent, autonomous regulatory institutions of national and international scope (Christensen and Læg Reid, 2006a). In the telecommunications industry for example, national regulatory authorities (NRAs) have been promoted by the Organisation for Economic Co-operation and Development (OECD) as part of a regulatory reform scheme designed to end state-monopolies and to oversee open markets, and the World Trade Organisation (WTO) has followed suit with its subsequent Reference Paper (Tenbücken and Schneider, 2004).

Foreign powers and supranational agreements have contributed immensely to Taiwan’s move towards neo-liberalism. Taiwan has been increasingly involved with and dependent on international trade since the Second World War, which has left it susceptible to the sweeping ideology of privatisation and, more significantly, mounting pressure from trans-national companies to level the playing field and enter the market. Among many different factors, Taiwan’s bilateral trade agreements with the United States and accession to the WTO have had a considerable impact on the formation of media policy. For instance, the threat of Special 301 trade retaliation posed by the US was the driving force behind the ratification of the Cable Television Law, designed to crack down on pirated films on cable channels and protect US intellectual property. The Cable Television Law was finally enacted at 8:56 p.m. on July 16, 1993, which was the very last day of the Legislative Yuan session, barely meeting the end of July deadline set by the US Representative Office following the failure to meet a previous deadline of January 31, which saw Taiwan put on the 301 ‘priority watch list’ (Chiang, 1997: 170-2). In addition, following accession to the WTO, Taiwan’s media policies underwent considerable deregulatory change, including, in the Cable Television Law, the reduction of the limit on direct and

indirect foreign ownership to 50 per cent, and the complete removal from the Satellite Broadcasting Law of any restriction on indirect foreign ownership.

Other than the fact that foreign trade constitutes its lifeblood, the impact of global power on Taiwan has to be further contextualised by considering its dire political situation. Due to political conflicts with Mainland China after 1949, Taiwan, officially known as the Republic of China, was expelled from the United Nations in 1971 and has since been isolated from the international community (Feinerman, 1992). Diplomatic isolation has forced Taiwan to cling to the US and to seek alliances and official recognition through participation in economic organisations, which leaves it in a disadvantageous negotiating position.

The United States is the foremost foreign influence on Taiwan, both politically and economically. Politically, the Taiwan Relations Act issued by the US government in 1979 represents one of Taiwan's few official diplomatic relationships. As for foreign trade, the US has long been Taiwan's largest foreign market. Taking international status and economic power into consideration, it is not surprising that there exists a significant asymmetry in bargaining power between the two countries (Baldwin et al., 1995). Multilateral agreements with the US have always proved challenging because of the gap between the two countries. The US has used its advantage to aggressively seek every opportunity to enter industries such as banking and telecommunications. During the trade negotiations, the repeated demands by the US for the creation of an independent regulator and a level playing field were so forceful that Taiwan had to agree to them.

The WTO, which epitomises the ethos of neo-liberalism, is by far the most significant economic organisation in the global economic environment. Its chief aim is to enhance international trade by actively intervening in the global economy, to which end it is equipped with powers of global economic regulation and governance (Wilkinson, 2000). The WTO was established in 1995 and is a successor organisation to the General Agreement on Tariffs and Trade (GATT). The GATT was created in 1947 to remove tariffs and promote trade, mostly of agricultural and manufacturing products at the outset. The GATT was a treaty without jurisdiction over its members, and this structural defect led to dissatisfaction among many member state, accusing those who benefitted from key agreements without signing

up to them of 'free riding'. Conflicts grew, especially after the Tokyo Round ended in 1979 when increasing non-tariff measures were undertaken on tackling unfair trade and other potential trade barriers, and gave rise to proposal for reform of international economic regulatory body (Baldwin et al., 1995:78). The Uruguay Round in 1993, which was the most extensive and influential yet in terms of scale and scope, culminated in a Final Act that not only expanded the remit of the GATT to include services and intellectual property rights, but also established that the WTO would replace GATT in 1995. The WTO, then, is based on new and previously existing trading rules and agreements, such as the General Agreement on Trade in Services (GATS), which was ratified in Uruguay, and is a regulatory body with the legal power to sanction member nations and the jurisdiction to enforce its rulings (Chakravartty and Sarikakis, 2005:34-5).

Decades of diplomatic isolation and economic concerns made Taiwan very eager to join GATT, and later the WTO, with high-ranking government officials announcing repeatedly in the 1990s that 'the government would spare no effort in joining the WTO as soon as possible' (Cheng, 1994; Lee, 1995b). Taiwan's dependence on international trade put it in a weak bargaining position when it did attempt to join. From the beginning of its application to join GATT in the early 1990s, it had been strongly advised to privatise state-owned monopoly enterprises, among them the lucrative Tobacco and Wine Monopoly Bureau (T&WM) and the Directorate General of Telecommunications (DGT), which were considered to be two major 'obstacles' (Chiang, 1997:63).

Taiwan eventually acceded to the WTO on 1 January 2002, after twelve years of complex negotiations and compromises with the member states. In order to gain membership, political support was given to proposals for regulatory reform, which is considered a critical move towards telecommunications liberalisation in Taiwan (Shang et al., 2006). Taiwan decided to open its telecommunications market and re-structure its regulatory framework, through what was known as 'reform of the three telecommunications acts'. The Telecommunications Act of 1958 had given the DGT both regulatory and operational responsibility for telecommunications services, and it had held monopoly power for decades. The new acts significantly amended the Telecommunications Act, by establishing state-owned Chunghwa Telecom

Company (CHT) as a telecommunication operator, released the DGT from operational responsibility and represented the most crucial step in the deregulation of the telecommunications industry (Chen, 2000: 334). The three telecommunications reform acts passed in 1996 were designed to comply with GATT rules.

The related acts instituted three key changes. First, the Telecommunications Act went some way towards creating market competition in the telecommunications industry by creating a binary definition of telecommunication services and imposing different regulatory principles on each of them. Services related to the ‘installation of telecommunications machinery, line facilities and services provided through owned circuits and facilities’ (Chen, 2000:333) were classified as Type I services. These are under strict regulation: approval and a licence issued by the MOTC are required to run a business. Other services not directly relevant to infrastructure, such as value-added service and Internet Service Provider (ISP), are categorised as Type II, and are subject to much lighter regulation: here, service carriers only require approval from the DGT. Second, the Organisational Statute of the DGT separated the body’s operational function from its regulatory function, so that it was released from its operational responsibility and defined as simply a regulatory institution. Third, the Statute of Chunghwa Telecom Co. Ltd. established the corporatisation of the state-owned Chunghwa Telecom Company (CHT), and promised to achieve the privatisation of the CHT in five years.

The creation of an independent telecommunications regulator can also be understood as a result of pressure from the global economic order. Kuang (2002) points out that liberalisation of the media and related legislative amendments were framed as necessary steps towards conforming to a globally competitive economic market. Similarly, the NCC can be regarded as a response to international regulatory reform, since the WTO Reference Paper (1996) identifies the existence of ‘independent regulators’ as one of six regulatory principles in relation to telecommunications. Whether or not the principles outlined in the Reference Paper constitute enforceable obligations is debatable (Fink, 2002), but it nonetheless served as a powerful reference in the regulatory development process in Taiwan, and was one of the most important factors in the realisation of a single regulator, as discussed earlier. Since Taiwan became an official member of the WTO in 2002, there have

been appeals to speed up the creation of an independent regulatory institution from within the DGT and National Information and Communications Initiative Committee (NICI), and a task force was set up at the end of 2001 to develop plans for a national information and telecommunications infrastructure. When Taiwan acceded to the WTO, it was obliged, like other members, to commit to the establishment of an independent regulator, reiterated by both the MOTC and newspaper editorial. (Yang, 2001; United Daily, 2003b).

Interviews conducted for this research project confirm the impact of the supranational regulatory agency, lending weight to the notion, discussed earlier, that while the government is still a major actor in the policy-making process, its domination is not unshakeable. A scholar familiar with the political economy of the media and a veteran civil servant both suggested that the most significant impetus for establishing a single regulatory agency for the telecommunications industry was Taiwan's accession to the WTO (Interviewee 2 and 18). This is not to say that the government wants to share power with others, but to demonstrate that in a globalised trade environment policy-making, even media policy, is no longer a domestic question to be resolved purely within the bounds of national sovereignty (Chakravartty and Sarikakis, 2005:38-9).

While supranational institutional obligations were important, the time discrepancy between the proposals for the agency and its actual establishment suggests the involvement of other factors. First, the stark contrast between the lengthy legislation process relating to the regulatory agency and the hasty passage of the Communications Basic Act, the parent law on which the NCC is based, implies that there was intervention from other influential actors. The NCC was officially founded in 2006, a decade after the publication of the Reference Paper. During this interim, officials unhurriedly began to discuss the feasibility of the agency in 2001 and later incorporated the proposal into the agenda in 2003. By contrast, the legislation process for the Communications Basic Act took around three months between September and December in 2003. This timeline indicates that legislation process for the regulatory agency was characterised more by fracture than continuity. These fractures, and their eventual impact on the shape of the NCC, I argue, lie in

the highly politicised political environment and will be chronicled in the following paragraphs.

Secondly, and no less importantly, it is worth noting here that the composition of the single independent regulator actually underwent significant changes between the preliminary and final stages. In the beginning, when regulatory reform was advocated by supporters of the technological convergence hypothesis, the main focus was simply on creating a new regulator that integrated different forms of media products and created a level playing field on which corporate industries could compete. Even the Reference Paper of the WTO simply calls for ‘independent regulators’ without clarifying the nature of that independence. The vague wording created a space for interpretation and negotiation, wherein different actors could propose different ideal versions of the agency – and pursue their own interests.

While technological and economic development paved the way for the creation of a new regulatory framework, the actual realisation process took an immense amount of political negotiation amongst various interests. As Voltmer observes (2006a), political culture is essential to regulatory reform in countries where democracy has not yet been established, because regulatory change in the media system can run the risk of being captured by corporate or state power, and of the retreat to authoritarian power. The year 2000 witnessed the first change of government in the political history of Taiwan, an event that has been said to represent the ‘consolidation phase of democratisation’ (Rawnsley, 2006). The shift in power and the political transition that followed played a significant role in the emergence of the regulatory agency, and shed light on the role of politics in policy-making. In what follows, I have drawn upon interviews with key actors, parliamentary records and media coverage in order to develop a detailed analysis of the political factors shaping the dynamics of the policymaking process.

Political Transformation

This thesis argues that, even more than technological convergence and economic liberalisation, Taiwan’s political background is the most important factor in the distorted and complex process of the country’s media policymaking. In this section, the political developments relating to media regulation are considered under

three headings: democratisation, modernisation and politicisation. Within each division, incidents are chronicled to illustrate how political conflicts have created tension, which has been accumulated and mobilised to catalyse the final realisation of the NCC.

Political democratisation

In authoritarian countries, political rivals often put the media under tight control in order to consolidate the ruling power (Hallin and Mancini, 2004:119-121). The media in Taiwan are no exception, having been heavily regulated by state power since the Nationalist Party, also known as Kuomintang (KMT), retreated to Taiwan after being defeated by the Communists in China's civil war in 1949. In the same year, the KMT implemented Martial Law, declared a state of emergency, and suspended rights of assembly, association, and the right to form political parties. In the thirty-eight years of Martial Law that followed – allegedly the longest of its kind in the world – political rights and freedom of the media were limited (Lee, 2000a:125; Jhou, 2007).

The government employed multiple strategies to control the media, as regards both structure and content. On the one hand, the configuration of the media environment was subjected to legal and administrative control, which constrained the expansion of the media structurally. The Press-Ban policy of 1951 froze the total number of newspapers at thirty-one, and restricted the number of pages of newspapers and the location of print houses. The Enforcement Rules of Publication Act of 1952 further strengthened control by granting government the administrative power to limit the pages of newspapers and magazines, and to revoke press licences without judicial judgment. In addition, the government controlled broadcast media through the allocation of radio frequencies. In the name of national security, radio frequency was heavily controlled by the state. As a result, it is not surprising that the only three terrestrial television channels, Taiwan Television (TTV), Chinese Television (CTV), and Chinese Television System (CTS), were mainly owned by the government, the KMT, and the military, respectively (Cheng, 1993).

On the other hand, the government had also developed political carrot and stick strategies to guide media performance. The party-state incorporated the 'patron-client relationship' (or 'clientelism') into media control by rewarding certain

media proprietors with high-ranking positions in the KMT or other economic benefits to ensure that media coverage presented the government in a favourable light (Lee, 2000a; Lin, 2000a). By contrast, anti-government speech would be suppressed and banned by state censorship agencies. The agencies were authoritarian apparatuses comprised of state, military and party, in the form of the Government Information Office (GIO) in the Executive Yuan, the Taiwan Garrison Command (TGC) from the Ministry of National Defence, and the KMT's Cultural Committee. During the Martial Law era, the government shut down dozens of political magazines and arrested the editors, accusing them of being political dissidents (Lin, 2004).

Taiwan's disordered media environment owes a great deal to this historical pattern of political intervention whereby state-owned or state-friendly media outlets would be favoured and dissidents suppressed. During the martial law period, the political opposition was the major constitutive power in forming alternative media to make their voice heard (Chen, 1998). Political magazines, underground radio and cable television, at different times, all played a crucial part in the consolidation of democracy. The political magazines had never been eradicated, and the underground radio stations and cable television channels all enjoyed an astonishing boom in the 1980s. As a result of authoritarian ruling for more than three decades, the established media conglomerates tended to stand on the same side with the government, while the alternative, oppositional media, although often short-lived because of government interference, rapidly and continuously grew in number and impact. The proliferation of alternative media not only reflected people's dissatisfaction with the highly homogeneous, politically one-sided content of the mainstream media, but also intensified the pressure brought to bear by the political *Dangwai* (literally, 'outside the [KMT] Party') movement (Lin, 2004) in the 1980s, which led to the KMT's final lifting of martial law in 1987.

In addition to constraining political dissidence, the KMT put little emphasis on devising a new order of media environment. Media liberalisation, according to Lin (2008b:183-4), was a passive response to increasing doubts concerning its legitimacy rather than an active step towards democracy. Moreover, in the absence of a prior impact analysis or liberalisation schedule of a post-transition society, the

end of Martial Law in 1987 and the subsequent lifting of the Press Ban policy in 1988 opened an already distorted media environment to frenetic development. Therefore, it was not surprising that the next two decades witnessed the rapid development of the media, and a malfunctioning of the media market for which the KMT were held to be responsible. The number of registered press titles rose from thirty-one in 1987 to 344 in 1998 (Government Information Office, 1998), and there emerged hundreds of radio stations and over one hundred television channels. The uncontrolled development of media outlets reflected social needs for information and entertainment long ignored by the government.

The development of cable television (CATV) is illustrative of the state of the media environment at that time, and of many of the problems under discussion. Cable television, which grew out of community antenna television, began as early as 1969 and was originally designed to bolster the reception quality in remote areas. CATV captured the quintessence of the political atmosphere and of social need, as it provided people with an alternative to officially sanctioned information, earning it the sobriquet of 'the Fourth Channel', or 'Channel Four' (Lee, 2000a:132). Since the first operator started to send video programmes instead of regular programming in 1976, the Fourth Channels spread rapidly all over Taiwan, and it was estimated that by 1984 there were over two hundred 'Fourth Channels' (Weng, 1993), and over six hundred by 1993.

The rapid proliferation of the Fourth Channel posed two problems to the KMT government that could not be ignored: legitimacy of rule and international trade with the US. Generally speaking, the Fourth Channels were supportive of, and some were directly run by, members of the opposition party. Because the Fourth Channel often sent political movement programmes and served as alternative news sources against the virtual monopoly of the state broadcasting media, they were also known as the 'Democratic Channel' (Chiang, 1997). They played a key role in rallying people and forming public opinion in a way that later gave rise to media and political reform. As well as providing an outlet for political dissidence, the Fourth Channels also attracted the attention of the US government because they tended to violate copyright policy by broadcasting pirated films, and the KMT administration was forced to take action on this issue. The government's legal campaign against the

Fourth Channels was infamously slow and unrealistic in the social context. A law promulgated in 1979 outlawed all transmission of additional programming did not work and the cable television market thus remained uncontrolled. The GIO never seriously tried to clamp down on the illegal Fourth Channels until the US government put pressure on the Taiwanese government in order to balance a trade deficit that it blamed on piracy.

The story is similar with the unlicensed ‘underground’ guerrilla radio stations that flourished all over the island in the early 1990s. These stations led to complaints about radio jamming and interference, as well as concern for aviation safety. Like the Fourth Channels, they formed a network, generated strong oppositional power, and effectively became vehicles for mobilising the audience during election time. Furthermore, due to the fact that radio stations that require few resources can resume transmission easily if they are shut down, the GIO never did eliminate the chaos caused by unregulated radio stations. Even to this day, underground radio stations can still quickly trigger conflicts among different political camps when the political atmosphere is tense.

Political democratisation paved the way for a radical overhaul of the media system: the rapid development of the media highlighted the disorder of media markets, while the failure to effectively crack down on the illegal channels reflected the inherent weakness of the regulatory regime. Regulatory failure was attributed to two main causes: first and foremost, the dual role of the GIO as both media regulator and mouthpiece of the KMT government, conveying government policy to the public. This fact, a consequence of authoritarian rule, has been recognised as the major factor in Taiwan’s inability to develop a coherent media policy (Lai, 2005b; Wei, 2006).

As an institution employing both carrots and sticks, even though the GIO repeatedly claimed to, the GIO’s very existence was criticised as harmful to unbiased media coverage (United Daily, 1994), in spite of its claim to respect the freedom of the press and to apply policy equally to all media without taking politics into consideration. All the participants of a 1993 poll of media workers in terrestrial television believed that there was a political ‘invisible hand’ behind media coverage (Lin, 1993). Almost a decade after political liberalisation, explicitly biased and often

pro-KMT media coverage, especially on television, still existed. For example, another poll showed that almost half (46%) of the survey respondents identified the media coverage of the 1996 presidential election as largely favourable to the incumbent candidates, and the coverage given to the incumbent president was five to seven times more than that of the other four candidates (Su, 1996).

Political power makes so much use of the media, and the two are so tightly interwoven, that democratisation of politics and society without the democratisation of the media is unimaginable. The proposal to create an independent regulatory agency, which issued from academia and the government departments, was thus regarded as a necessary step toward political democratisation (Liu, 1994; Chiang, 1994). In media and legislative discourses in general it was even presented as a panacea for many of the problems and complaints that had been facing the media since the mid-1990s in (Ker, cited in Lee, 1995a; Chen, 1997; Chang, 1994). Following political liberation, advocacy of media reform, focused on ensuring that the government maintain a ‘hands-off’ approach to regulation of the media, constituted the most significant social movement in Taiwan. Having complained for many years about biased and unbalanced media coverage, many academics and politicians, especially from the opposition DPP, insisted that the media should be free from the influence of party, government and military. According to one DPP legislator:

The establishment of the NCC has long been on the menu of political democratisation in Taiwan, along with the repeal of party, state and military power in the media. Both are concerned with the inappropriate dual role of the GIO as media regulator and propaganda agency of the government and are priorities in the media reform project. (Interviewee 7)

A legislator from the long ruling KMT also admits that there exists a general consensus that the role of the GIO ‘has been inappropriate since we are now a democratic country and that needs to be adjusted’. (Interviewee 9)

A new regulatory agency was considered necessary and fit for democracy, first of all and, as I have already suggested, because political democratisation has made the old authoritarian regulatory framework outdated. Secondly, the allocation of resources caused turf wars within government departments in relation to the regulation of underground radio stations and resulted in bureaucracy rather than

efficiency. The inefficiency and incompetence was criticised regularly and placed on the agenda of administrative reform. The next section focuses on the Government Reengineering Project and explores how the media regulatory agency emerged and was framed as part of a wider reform project.

Administrative modernisation: the Government Re-Engineering Project

‘Government Reengineering’ was a buzzword at the end of the twentieth century in many regions and has enjoyed popularity in Taiwan thanks to both local and international factors. As regards the international context, it echoed the global trend towards the modernisation of administrative management, which involved the application of neo-liberal ideas and technological innovations to the public sector in the name of efficiency and competition. The aim was to strengthen the competence and efficiency of the public sector by restructuring government organisations along the lines of the New Public Management (NPM) initiatives implemented in North America and certain European countries (Heady et al., 2007). In Taiwan, the government formulated a long-term scheme aimed at creating a more flexible administrative environment and promoting national competitiveness and government efficiency (Research Development and Evaluation Commission, 2003). However, although the proposal of government reform was launched as early as 1987, it was not put into practice until the change of government in 2001. The new DPP administration put a great deal of emphasis on administrative and regulatory reform. Cutting red tape and simplifying administrative structures were top priorities for the Government Reengineering Project, with the major concern being to improve the competitiveness of government by integrating a plethora of institutions, downsizing central government, and improving policy consistency (Government Reengineering Committee, 2002).

The most significant change brought about by the Project has been the introduction of independent regulatory agencies to carry out depoliticised judgements. IRAs were regarded as one of the key features of administrative reform, and their importance was enshrined in the official document presented by the Government Reengineering Committee. According to the committee, independent agencies were especially necessary for certain institutions dealing with public affairs that need to be ‘professional, depoliticised, and concerning a diversity of political

and social values' (Government Reengineering Committee, 2002). Among these institutions, the independence of the media system was repeatedly referred to by the new DPP administration, indicating the intention to cut the links between government and media maintained by the KMT.

The institutional design underwent a substantial change between the first proposal for an independent regulator in the mid-1990s and the final passage of the NCC Organisation Act in 2005. The definitions of 'an independent regulator' differed between one proposal and another, along with the responsibilities it was supposed to undertake. For example, in the 1990s the DPP put forward the idea of 'a neutral committee mainly responsible for allocating frequency resources'. In later proposals, as lack of market competition became the focus and came to be attributed to the weak media system, the mandate was extended to include the making and enforcement of communication policy (Lee, 1999). An insider in the Government Re-Engineering Committee involved in formulating potential independent agencies suggested to me that the design of the agencies became 'messed up' after modifications entailed by party and institutional conflicts:

The earlier design presented by the committee simply indicates that independent agencies are independent in terms of professional practice, not responsible for political accountability and still part of the wider executive institutions. But it was messed up due to conflicts between the DPP government and the Legislative Yuan, and later between the NCC and the government, which made it very different from the initial design. (Interviewee 8)

It is to the modifications made by the administrative and legislative power that I now turn. How did they come about, and what was their effect on the formation of the independent agencies?

While political conflicts were a significant factor in the policymaking process, a senior politician who used to be city councillor and legislator suggested that it is the negotiations within government that deserve the closest attention, as it is 'the government departments, the civil servants behind them, that play the most decisive role in forming policy'. If it is the administration that serves as the dominant actor in forming policies, the turf wars between departments are crucial, especially in the creation of new agencies. By proposing the institutional design of a new agency, old departments compete against each other to win the power to form the new

institution. In this case, the debate was all the more interesting since there was no consensus as to the role of the new regulatory agency or, perhaps more fundamentally, about its very existence. In the case of the Taiwanese media and telecommunications industry, at least two levels of turf war need to be considered. The first is between the DGT and the ministry overseeing it, the Ministry of Transportation and Communications (MOTC). The second is between the GIO and the DGT, and represents the separation between technology and content, or hardware and software, as the 'two-tier regulation' was generally understood (Chen, 2000).

The DGT's resentment towards the MOTC stemmed from telecommunications liberalisation which saw its operational responsibility of the state-owned telecommunications company CHT taken away, and its status devalued significantly with respect to the scope and scale of its power. The DGT sought to transform itself into the single regulator partly in order to consolidate its own power and to separate itself from the MOTC. One scholar who is familiar with the history considers the DGT's proposal understandable:

This can be attributed to unspoken issues between the DGT and its higher authorities, the MOTC, because it seems that the DGT has always been neglected since the major focus of MOTC is transportation rather than telecommunications. It is understandable that the DGT attempted to elevate itself to a position equal to the MOTC. (Interviewee 8)

Furthermore, the Science and Technology Advisory Group (STAG), an influential sub-division within the administration, also supported the creation of a new regulator. Most members of the STAG are from Information Technology and Telecommunications, and they play a decisive role in forming telecommunications policy. STAG successfully proposed that the independent agency 'echo with the global trend of technological convergence' (Legislative Yuan Gazette, 2003) in a Strategy Review Board meeting (SRB) regarding technology and economic development conducted by the Executive Yuan in 1998. A task force for building a Telecommunications, Information and Broadcasting Commission (TIBC) was soon set up as a precursor to the creation of the independent agency. According to an academic regularly invited to attend consultative meetings with respect to government regulatory reform:

STAG is very influential as the previous directors are all key persons in forming government policy. STAG is clearly more sympathetic to the DGT since they come from a similar background regarding technology, and thus may share a similar ideology concerning regulatory reform. Therefore, the general atmosphere [in the Executive Yuan] was favourable to the DGT proposal. (Interviewee 8)

With backing from STAG, the Task Force for TIBC paid several visits to regulatory authorities in different countries in 2001, and proposed a model for the potential regulatory agency. The investigative trip was aimed at developing a better understanding of regulation in countries that shared certain political, social and cultural characteristics with Taiwan and that serve as role models. The development of the communications industry, the processes of integrating or creating independent regulators, the principles according to which they would operate and how they might cope with technological convergence were also topics that were closely examined. Organisations visited included the National Telecommunications and Information Agency (Buckley et al.) and FCC in the US, the Department of Trade and Industry (DTI), Department of Culture, Media and Sports (DCMS), Office of Telecommunications (OfTel), Internet Watch Foundation (IWF), and the British Broadcasting Corporation (BBC) in the UK, the Information Society Directorate General in the EU, and the Malaysian Communications and Multimedia Commission (MCMC). The report that followed reiterated that the establishment of a single regulator in response to technological convergence was an overwhelming trend in many countries, and presented this move as a meaningful one for Taiwan in its efforts to realise regulatory reform (Tsai, 2001). The task force concluded with fourteen suggestions, which included emphasising the independence of a new regulator, renaming the committee as the 'National Communications Commission' and accelerating the legislative process.

The other department constitutive of the 'two-tier regulation' was the GIO, whose attitude towards a new regulatory agency underwent a dramatic change in response to mounting pressure. The GIO was responsible for issuing licenses for newly established radio stations and for overseeing content. It seemed more ambivalent than the DGT with respect to regulatory reform, for while proposals of creating IRAs were first raised in the 1990s, a specific plan was never developed by the GIO. A former commissioner of the NCC suggested in an interview that self-

interest may have been behind the passivity of the GIO, since the creation of a new agency would mean a weakening of its power. He recalled a conversation with a former high-rank official in the GIO:

The staff members in the GIO did have some ideas, but all of them would be cut off before they could be formed into policy. Not a single Director General will be glad to propose the abolition of their institution. Who is willing to hand over power? (Interviewee 6)

Not until STAG came out in support of the DGT did the GIO rouse itself and present to the Executive Yuan a proposal to rival that of the DGT, which included the broadcasting system in addition to the telecommunication industry. GIO's proposal, according to a former NCC commissioner, was rather reckless because it was born of self-defence rather than deliberation:

The GIO probably never thought that the DGT's proposal would pass. When they saw that the Executive Yuan were taking the proposal into consideration, they knew that they had to do something so as to secure their power in relation to media regulation, otherwise they would get marginalised. (Interviewee 8)

One former administrator in the GIO argues that they had been working on the models, and the apparent delay to the proposals was due to the analysis of different regulatory systems:

The major role model in Taiwan had always been the FCC, which only loosely focused on the separation between operator and regulator, and regulation of media content was neglected in that regard. Not until 2002 and 2003 when Ofcom in the UK was being formulated was there a new model in which content regulation was also included. Ofcom was very inspiring to us. (Interviewee 18)

However, even when the proposal was taken seriously and institutional reform was under way, the focus of negotiation between government departments was something other than the responsibility of an independent agency. A senior civil servant in the GIO suggested:

Job displacement and the possibility for promotion is the top priority. When they think of institutional design in a new agency, they care more about how many potential high-ranking positions they may acquire, and how many competitors from the GIO and the DGT they may have: that kind of politics. (Interviewee 4)

One former administrator from the DGT shared a similar observation:

In the negotiation process between the GIO and DGT, I was a bit disappointed to see turf wars at different levels become the main rationales underlying the proposals, so that departmentalism dominated the institutional design of the new regulatory agency. (Interviewee 25)

It is also worth paying attention to the opinions of certain actors, as they are likely to have influenced the ideas of government officials through various ways. Actors such as legislators, scholars, industry leaders, and media editors often participate actively in the process of discussion. In the context of the creation of an independent media regulator, a diverse range of ideas was proposed. Scholars strongly lobbied for an independent regulator in order to remove state power from the media (Chiang, 1994), while business people and some legislators were exhilarated by the thought of a 'freer market for competition' (Wang, 1998). Press editorials and articles as well as some readers' letters were rather pessimistic, fearful that the lengthy and highly political process of legislation might jeopardise the independence of the regulator.

Changes in the institutional design of the agencies, then, reflected the negotiations and non-stop power struggles between various departments within government. Although the necessity of the independent agency was enshrined in the Government Reengineering Project, the various proposals were somewhat different in their focus and perspective as regards its functions and responsibilities. This is to say that 'an independent regulator like the FCC', which commentators often referred to, actually contained different interpretations from the viewpoints of many different actors. Political calculation designed to maintain power, or acquire more, was the top priority for the various departments faced with administrative reform, and this is what 'messed up' the design of the independent agencies.

The proposal temporarily settled upon by government next faced the Legislative Yuan, Taiwan's parliament, the battlefield where a range of interests are represented. The following section focuses on the party political conflicts that took place in the Legislative Yuan. Since the DPP came to power in 2000, despite the political transition being hailed as an historic 'political miracle' (Rubinstein, 2006), there had been an increasing confrontation between different political coalitions, which considerably hindered legislative development and had a decisive impact on the formation of the NCC.

Change of government: fuel to politicisation

The change of government in 2000 marked a watershed in the democratisation of Taiwan and represented a power shift in many aspects of the political, social, and economic life of the country. The election, dubbed an ‘electoral earthquake’ by observers (Diamond, 2001), came surprisingly early, in the sense that the DPP came to power just thirteen years after its inception in 1987. Despite a narrow victory in the presidential election (less than 3%), the DPP never controlled the majority of the Legislative Yuan. Thus the early days of the ‘New Administration’, a term coined by the DPP, was characterised by confrontation between the minority government and a strong opposition in the legislature.

Less remarked upon, but no less vital to Taiwanese society, was the emphasis on communications policy during and after the presidential election in 2000. During the election, media studies scholars drafted a *White Paper on Communication Policy* in relation to media and education policy for the DPP candidate, Chen Shui-bian (Yang, 2005). Different interpretations of the term ‘white paper’ need to be clarified here. In general, a white paper is ‘a statement of government policy, and it may indicate the broad lines of a particular future legislation’ (Lee and Day, 1996). But the ‘White Paper’ discussed here is simply a political proposal on media policy presented by candidates during the election campaign. By publishing a prospective media-related policy concerning the development of the communications industry and regulation, the DPP again demonstrated that media reform was on its agenda. Two key focal points were a proposal to integrate the existing terrestrial television channels and the Public Television Service into a public service broadcasting group for citizens, and the formation of an independent institution to take charge of regulatory issues. Although the White Paper itself was not a legal document, the new DPP government initiated several actions related to media reform, and both proponents and opponents used the issue to hold up the government’s actual behaviour against its earlier promises.

The 2000 election also deepened the conflicts between the rival parties and gave rise to aggravating conflict and partisan confrontation. Since the early years of the oppositional political movement, the major political parties could generally be divided into two coalitions based on their fundamental political standpoint in relation

to Mainland China. The two coalitions, known as the Pan-Blue and the Pan-Green, are named according to the colour of the emblem of their dominant party, the KMT and the DPP respectively. The Pan-Green coalition favours Taiwanese independence, puts more emphasis on Taiwanese rather than Chinese identity, and is made up of the DPP, the Taiwan Solidarity Union (TSU) and other groups supportive of independence. The Pan-Blue camp, comprised of the KMT, the People First Party (PFP) and the (Chinese) New Party (CNP), tends to focus on inherited Chinese culture and identity and holds a positive attitude towards China (Rampal, 2007).

The positions of the opposing coalitions with regard to the establishment of an independent regulator were more fluid and contingent than usual. Critical incidents are chronicled below to illustrate how the IRA was appropriated as a democratic emblem in response to various factors, and how politicisation actually determined the coalitions' attitude towards the new agency. These incidents speak to a wide range of issues in the media industry, including media reform in a new democracy, the influence of corporate power, and the level of political interference with the freedom of the press. The discussion and debates over these issues are extremely complicated as they can be interpreted differently within various political, economic and social contexts. In addition, by closely examining arguments posed by different actors, the following section outlines the rationales underlying the regulatory discourses and the dominant force in the media policymaking process that eventually lead to the creation of the NCC.

The failure to democratise the two terrestrial channels sparked the first dispute soon after the DPP assumed the reins of government, and demonstrated that policymaking is fundamentally political in nature. The democratisation of two of the three terrestrial televisions previously controlled by the state power, Taiwan Television (TTV) and the Chinese Television System (CTS), was the *White Paper* idea that attracted the most support from media reform groups. However, after the DPP came to power its attitude towards media reform seemed to become more reserved. Firstly, the DPP seemed to go down the same path of political bribery, or patron-clientelism, as its predecessor in dealing with the nomination of high-ranking personnel to run the two terrestrial channels. High-ranking positions in state-owned

or controlled media have long been rewards from the ruling party to those helping it to win elections or maintain power, which apart from anything else has ensured that control of the media remains within the inner circle of power elites. The nomination from the DPP administration was controversial, with the Pan-Blue camp regarding it as a political reward for the nominees' patronage rather than for their professional ability. Secondly, according to the *White Paper*, the government was supposed to purchase the private share of these two channels and create an integrated public service broadcasting system by combining them with the existing Public Broadcasting System (PBS). The DPP administration afterwards claimed that the project 'cannot be put into practice right away and needs further deliberation', because it would cost much more than the government could afford (Lin, 2001).

It is interesting to consider how the attitude of the parties towards media reform changed in accordance with the political situation. The out-of-the-office KMT agreed, for the first time, that the media could not be impartial when they are under the influence of the government, and advocated the withdrawal of political power over the terrestrial channels as soon as possible. Moreover, after another election loss in 2001, this time of the Legislative Yuan, it appeared to be much keener on the idea of an independent regulatory agency for the media. The KMT argued that the commission should emulate the FCC in the US by adopting the spirit of the Fairness Doctrine, so that 'different voices and viewpoints can be presented' (Chou, 2001), and more specifically its own voice, since it was now a minority party. More significantly, the KMT proposed that the new regulator should be formed in accordance with the seats that each party had in the parliament. Although the KMT lost its dominant status as the single biggest party after the 2001 legislative election, the Pan-Blue coalition still had 115 out of 225 seats in total, which counted for 51% of all seats compared with the Pan-Green's 44%. Media policy proposals relating to the creation of the regulatory agency, and especially its composition, became very political in order to meet partisan interests.

For the new DPP government, the modification of the Cable Television Law (CTL) in 2001 was not only a reminder of the long entrenched relationship between corporate and political powers but also brought the creation of the IRA back onto the agenda. The cable television industry in Taiwan consists of two parts: system

providers are responsible for the infrastructure while the channel providers are agents for imported and domestic programming. After years of fierce competition, companies have integrated vertically and horizontally through mergers at the level of both infrastructure and channels, and the industry has been a de facto oligopoly. With a penetration rate of more than 85% as of 2000, the cable television industry has become powerful both economically and politically. Three companies have controlled the cable television market on the island and increased their profitability by bundling channels so as to bargain with other companies and keep costs down. As a result, large companies became more powerful as they were in better positions when negotiating and obtaining the exclusive rights of certain popular channels and, after successfully acquiring channels, raised the price for other competitors if they also wanted these channels on their menu. The practice of bundling not only threatened the survival of small independent companies, since they were unable to afford the prices, but also led to the controlling companies blocking each other's cable reception. From 1997 to early 2000, irresponsible and vicious competition in the cable industry led many members of academia, government and the public to argue that it was time for a change.

The amendment of the Cable Television Law in 2001 demonstrated the deep-rooted, entangled relationship between corporate and political power as well as the vulnerability of the public interest. On the 4th of January 2001, the last day of that legislative session, the revision of the CTL was passed abruptly, with restrictions on cross-media and foreign ownership reduced. Moreover, the authority to decide the subscription fee of cable television was withdrawn from local government bodies to the GIO in central government. One interviewee familiar with the industry echoed widely held views about collusion between political and corporate powers when he claimed that 'virtually every single elected politician in Taiwan has to some extent benefited from the local cable television power network' (Interviewee 11). According to news coverage (Gao, 2001; Lin and Chang, 2001; Dong, 2001a), representatives from corporate business made every effort to assist certain legislators with the drafting and the actual passage of the amendment to the CTL. Corporate powers were eager to deregulate the limits of ownership and pave the way for a much more lucrative communications system incorporating the existing cable industry with the envisaged Fixed Net business to provide integrated services such as

the Internet and phone calls. The legislation de-clawed local government and weakened the obligation on cable companies to serve the public (Dong, 2001b; Chen, 2001). Specific legislators closely tied to cable industry interests and enjoying friendly relationships with officials in the GIO were implicated in pushing through the modification legislation as a package rather than as a series of clear individual amendments (Lin and Chang, 2001). This surreptitious mode of legislation was of a piece with one of the notorious traditions of the Legislative Yuan whereby legislators rush through many bills in the last minutes of the session under the guise of efficiency (United Daily, 2001). Heated rows followed the passing of the legislation since it violated due process in bypassing between parties and within various sub-commissions and among different parties.

The DPP legislators' failure to veto the passage of the CTL led them to reconsider the urgency of establishing an independent regulator. For the DPP, the modification legislation of the CTL embodied the 'black-gold' politics of which they had accused the KMT, wherein organised crime, business and political power are entangled (Chin, 2003). As a minority government, the DPP legislators argued that an independent regulatory agency, free of political intervention, was necessary because it could make the legislative process transparent and protect the public interest from collusion between politicians and business powers (Gao, 2001).

Although both the Pan-Blue and the Pan-Green camps endorsed the creation of a new regulatory agency at different times, they constantly opposed each other, resulting in delay. The above account suggests that the establishment of the independent regulator tended to be adopted as a goal by whatever party happened to find itself at a disadvantage. The following paragraphs will outline two more incidents that produced considerable debate and were significant to the creation of the agency: the Integrated Political Product Placement project for government propaganda, and the evaluation of the six major national newspapers.

Efforts to use product placement to promote the government's image are not new, having acquired the name of propaganda during World War I. Propaganda, as described by Lasswell (1927, cited in Glander, 2000:12), 'is concerned with the management of opinions and attitudes by the direct manipulation of social suggestion rather than by altering other conditions in the environment or in the

organism'. This definition reminds us that propaganda is usually achieved by the provision and framing of information, which remain the key functions of the media today. In his seminal work *1984*, George Orwell demonstrated how propaganda might influence people through daily brainwashing, and recognised how necessary propaganda is to the consolidation of state control (Wollaeger, 2007:225-6). Even in the twenty-first century, the Bush administration in the US tried to exercise 'covert propaganda' by paying journalists and columnists to offer favourable opinions (Edelsky, 2006). The reason the political marketing project drew so much criticism is that it affects the handling of media content and it can mislead the audience. In a similar logic, the Communications Act 2003 in the UK prohibits political advertising in television and radio services for the purposes of influencing election outcomes or legislation or policy decisions.

The DPP government introduced the unprecedented integrated political product placement project in the early 2000s and attempted to apply methods of business marketing in the political arena. Product placement, as Croteau and Hoynes (2006:202) argue, is a much more subtle way of integrating the product within media content than traditional sponsorship. The policymaking of the DPP administration had suffered setbacks not only because they were a minority in the Legislative Yuan, but also thanks to negative media coverage. For the previous four decades, the KMT had benefited from favourable media coverage owing to its domination of political, economic and cultural resources (Rigger, 2002). Aiming to reverse the negative media representation, the DPP government introduced the integrated political product placement in order to 'promote the government policy in a more creative way and to make the most of the budget effectively', according to Director General of the GIO (Yao, cited in Legislative Yuan Gazette, 2005a).

The political product placement project had a great influence given the declining average revenues of most traditional media outlets. Due to an upsurge of new channels and platforms, the average advertising income for each channel or newspaper had been falling in the last decade according to surveys (Rainmaker XKM International Corp., 2003). The Taiwanese government has been the most dominant single advertiser in the country since 2003, when the DPP government introduced the integrated marketing project. It integrated the annual budget from

different departments into packages worth around 1.1 billion New Taiwan Dollars (£ twenty-three million) in total. The government asked the media companies bidding for these projects to present proposals and required that product placement be used as the preferred strategy. The political marketing project led to the government being accused of changing the relationship between government and media from one of supply and demand, buyer and seller of political advertising to an unequal one between patron and client (United Daily, 2003a). It is also contradictory to the media's role as watchdog in democratic societies as, if they accept the advertising, they may be encouraged to produce programmes favouring the government without revealing the fact that it is the government that actually pays for them. In order to win or keep the advertising income, the media would presumably be reluctant to criticise government, or might even cover up wrong-doing. As a result, the media may lose its independence as well as its role as watchdog.

Not long after the integrated marketing project, another incident concerning press freedom further exacerbated antagonism between the government and the media. This time it was the evaluation of the first four pages of the nation's six major newspapers. The Evaluation Project, claimed the GIO, had 'routinely been carried out for four years since the repeal of the Publication Act in 1999' (Kuo, 2003). Designed to bolster the long term performance of the press by placing it under public scrutiny, the project was farmed out by the GIO to non-governmental organisations in order to avoid accusations of political intervention (Liu, 2003). However, it was angrily denounced because the criteria of the evaluation had been changed from 'sensationalism' to 'accuracy, justice, objectivity, and appropriateness' (Tsai, 2003). Since the first four pages of newspapers mostly cover political affairs, to evaluate the 'justice' and 'appropriateness' of political news coverage is inevitably accused of intervening press freedom.

If the integrated marketing project was the carrot to tame the media, the evaluation of print media was undoubtedly the stick, aimed at shaping coverage by intimidation, and both have discouraged the development of a media appropriate to a democratic society. Although the DPP argued that the first initiative was introduced to promote government policy and the second to improve the poor performance of the media, the DPP administration was criticised for following in the footsteps of its

authoritarian predecessor and was labelled a 'new dictatorship' (Huang et al., 2005). In general, the print media enjoyed a much greater freedom than broadcast media; besides which, the first four pages of newspapers are usually political or serious news. Therefore the evaluation of the print media was regarded as a blatant form of political intervention and a precursor to the deterioration of democracy. Whether or not the evaluation of the print media was driven by political considerations, the antagonism of the public towards the Pan-Blue coalition was aggravated by the comprehensive, week-long media coverage.

Under enormous pressure, the DPP government offered a series of political declarations and actions designed to demonstrate their desire to guard the freedom of the press, and the establishment of an independent media regulator was again proposed and considered along with more deliberations. During the heated row over the evaluation project, president Chen Shui-bian explicitly declared in public that freedom of the press was the top priority of his administration and his abiding belief (Chen and Chou, 2003). Furthermore, he again claimed that the first thing he would have done had the DPP won a majority in the Legislative Yuan was to abolish the GIO and replace it with the NCC, reaffirming the will to protect press freedom (Lo et al., 2003). The DPP government soon echoed the president's statements, rushing to establish the Preparatory Office of the NCC in October 2003, although the Communications Basic Law, on which the legitimacy of the NCC was based, was not enacted until January 2004. The action was interpreted by the Pan-Blue camp as an attempt on the part of the DPP government to shift the focus away from a series of political blunders rather than an expression of its genuine commitment to a new regulatory institution. However, it nonetheless put the establishment of the NCC to the fore. The NCC, for the first time, appeared at the top of the agenda as a government priority in the course of democratisation.

The relationship between the DPP government and the media became even more strained after Chen Shui-bian won a second term as president amidst considerable controversy. The two main political coalitions had mobilised their resources for a confrontation that eventually led to political deadlock. On the one hand, the DPP administration took advantage of its incumbency and launched a series of legal modifications and policy initiatives. One of them was the withdrawal

of political power over media outlets by the end of 2004, which undoubtedly affected the KMT more than the DPP since the KMT-owned media enjoyed great privileges with regard to property acquisition and frequency allocation thanks to its ability to deploy state mechanisms. For instance, among the 69 radio stations of the KMT-owned Broadcasting Corporation of China (BCC), 31 were awarded to them on a temporary basis but never asked to return under the auspices of the KMT government. During the licence renewal review, the Pan-Green camp carefully examined whether the national property and party properties were clearly separated so that the KMT could not acquire improper profits from the sale of all its media properties as a package. The aforementioned 31 channels became a target when the GIO claimed that they should be returned to the government and re-allocated so as to provide the audience with programmes with more diversity. The GIO decided to demand 14 channels back, while the other 17 channels could be renewed for another two years under the condition that the GIO had the right to re-allocate the frequencies if it became necessary at anytime during those two years. In addition, the media companies were asked to promise that, were there any degree of foreign ownership involved in the trade of the KMT-owned broadcasting media outlets, especially from Mainland China, the GIO would have the right to abolish the licence.

These policy initiatives were regarded as a conspiracy to purge Pan-Blue media outlets from the DPP government and exacerbated the confrontation, with the Pan-Blue coalition sensing a threat to its media advantage and fighting back. Taking advantage of its majority in the Legislative Yuan, the Pan-Blue coalition attempted to intervene in the institutional design. As one former legislator from the Pan-Blue coalition told me:

The controversial 2004 presidential election made the Pan-Blue camp alert and sensing crisis, since we witnessed how the DPP would do everything in order to maintain power. We realised that we had to control the NCC for political reasons, for it has a lot to do with the order of the media and telecommunications industry, or we would otherwise be suffering a severe disadvantage politically. (Interviewee 9)

The Pan-Blue camp proposed a new version of the National Communications Commission Organisation Act as a counterbalance to the DPP version and to secure its powerbase by shaping the agency and future media policy. The Pan-Blue coalition proposed certain major amendments such as the number of commissioners,

the length of their tenure, and the way they would be nominated. The most significant difference between the proposals of the DPP administration and the Pan-Blue camp, and the issue that generated most of the arguments and debates, had to do with the controlling power of commissioners. In the government version, the commissioners were to be given their mandate after being nominated by the prime minister and accepted by the president (later modified to acceptance by the legislature). By contrast, the Pan-Blue version, understandably emphasising legislative power, proposed a proportional representation system: a pool of candidate commissioners would be put forward, reflecting the proportion of seats held by each party in the Legislative Yuan, out of which the Executive Yuan would select nominees, who would then be authorised by the legislature. There was a considerable gulf between the two versions and neither of the two camps was willing to concede. Political loyalties seemed to determine the attitude of the various actors towards the proportional representation system. As one KMT legislator pointed out bluntly, there truly was a political consideration in nominating the commissioner candidates; but if the commissioners were simply appointed by the DPP government alone ‘there would be only one party dominating the nomination, which would be even worse and more distorted’ (Legislative Yuan Gazette, 2004). One former commissioner nominated by the Pan-Blue camp also suggested that:

It is an ideal type that an independent agency should be free of any political intervention, however, an ideal type does not exist in reality. The [Pan-Blue] proposal was not satisfactory yet was acceptable given the political reality at that time. (Interviewee 6)

The politicians of the Pan-Green camp on the other hand all responded with disdain. One of them criticised the politicisation of the Pan-Blue:

It is totally nonsense to say that their proposal is to conform to political reality: the truth is that the Pan-Blue camp simply wants to retain the power that they have held for decades. They have never thought about real reform, and they are clearly the origin of the distorted media environment. (Interviewee 16)

Whether it was presented as a matter of political accountability or of preventing the DPP government from abusing its administrative power, the difference between the two positions was actually related to the distribution and competition of administrative power in the legislature. It is obvious that the Pan-Blue

version greatly favoured the legislature, where they had a clear majority, and their proposed modification caused any number of debates and disagreements between the two camps and the media outlets. Those who supported the Pan-Blue coalition argued that it was ‘relatively a better solution, to end the legal deadlock, to form the NCC according to the proportion of party seats, even though it is not the best way’ (Legislative Yuan Gazette, 2004).

There was no mutual agreement between the two political camps and both insisted upon their own versions, so there was no progress with the legislation for more than a year, after which several incidents jumpstarted the process. Among these, the final impetus was the license renewal of satellite TV channels in July 2005, which again highlighted the inappropriate role of the GIO as part of both the Cabinet and the regulatory organisation. It was the first opportunity to review performance and to renew the licences of the satellite channels since the Satellite Broadcasting Law became effective in 1999. The preliminary review was held in early July 2005. 21 out of the 69 channels passed the review and the only news channel that passed was Formosa TV, a channel apparently friendly to the Pan-Green camp. The review again prompted heated rows over whether or not this was a form of political intervention designed to curb the freedom of the press.

The review also caused antagonism among different actors such as civil society groups, corporate bodies, the media, and politicians from different political camps. While the review was underway, civil society groups such as the Campaign for Media Reform and the Media Monitoring Alliance argued that the government should try to create a sound environment for the media to develop rather than maintaining a *laissez-faire* approach towards policy-making and media regulation. They urged government to set up a mechanism for disqualifying poorly performing channels as a response to the growing tabloidisation of media outlets. One of their appeals was that the number of news channels be reduced by half as vicious competition among media channels had resulted in increased sensationalism and the trivialisation of news content. In the review, four out of the twelve members of the License Renewal Review Committee were members of Campaign for Media Reform, which was interpreted by some as indicating the likely repeal of licences. Certain civil society organisations bent on media reform have been labelled as a

form of political power in disguise, and review from these organisations of the satellite television channels was seen as another example of political interference with the freedom of the press (United Daily, 2005).

As a result of the review, seven channels were not allowed to renew their licenses, one of which was a news channel, which initiated the debate on government interference with press freedom. Civil society organisations had long been disappointed by the media's performance and interpreted the results of the review in a more positive light. They believed that the review might represent the first step in rectifying the tendency towards the over-tabloidisation of the media. On the other hand, the Pan-Blue camp speculated that the review process was again a means for the DPP government to control the media, or at least to threaten the news channels to 'behave' and not to confront the ruling power. Lien Chan, the former vice-president and chairman of the KMT at that time, denounced the DPP government's refusal to renew the licences as 'a black spot for Taiwan's democracy' (Shang et al., 2005). Opponents also predicted that the failure to renew the licenses would generate a 'chilling effect' on the media, and force them to act either as the mouthpieces of the government or be silenced (Huang, 2005).

Amid these political upheavals, the GIO published an advertisement in five national newspapers that made concessions from the Pan-Blue coalition almost impossible. In the advertisement, the GIO described the Pan-Blue version of the NCC Organisation Act as a 'blatant form of political bribery', which would eventually destroy the independence of the NCC. The Pan-Blue coalition was irritated by this unprecedented action by the executive branch and blamed the GIO for mishandling taxpayers' money to serve its party political interests. As a consequence of both the licence renewal and the advertisement dispute, the Pan-Blue legislators vowed that they would disarm the GIO and pass their version of the NCC Organisation Act by any means available to them (Ho, 2005).

On 11th October 2005, in spite of every effort from the DPP to boycott the legislative process, the Pan-Blue version of the NCC Organisation Act was passed in a second reading accompanied by violence: dozens of legislators took part in physical confrontations on the floor of the legislature and two were hospitalised (Lai, 2005a). Two weeks later in the third reading, the Pan-Blue again took advantage of

its majority, defeating the Pan-Green coalition with a vote of 112 to 98 to pass the NCC Organisation Act having won almost every amendment (Legislative Yuan Gazette, 2005b:1-19).

Following the passage of the Organisation Act, the nomination process took place within a month and ironically witnessed precisely the political intervention that an independent institution is designed to avoid. According to the law, a committee of eleven members was to be appointed that reflected the distribution of seats in the Legislative Yuan in order to review the qualifications of the eighteen nominees for commissioner of the NCC. Six out of the eleven members of the Nomination Review Committee (NRC) were recommended by the Pan-Blue coalition, a marginal yet critical majority. The Pan-Blue coalition made some further modifications concerning the voting threshold so as to take the utmost advantage of their majority. The law stated that nominees who win over three-fifths of the votes were to be considered as commissioners, and according to the amendments, if the voting were to come to a second round, those who won more than half of the votes were to be appointed. Again, the amendment was tailored to allow the Pan-Blue camp to control the committee.

The voting process proved to be testimony to the success of politicisation. On the day of voting, the NRC formed according to the distribution of seats was supposed to choose thirteen out of the eighteen nominees, and politicisation was clearly demonstrated in the process. While the members drawn from the Pan-Green camp cast their votes for thirteen of the nominees, those put forward by the Pan-Blue camp seemed to have reached a certain agreement in advance, because all of them deliberately chose only nine out of the eighteen nominees. By doing so, the Pan-Blue could on the one hand ensure that most of the Pan-Blue nominees would be voted in if they won votes from the Pan-Green, and on the other hand prevent any nominees put forward by the Pan-Green from passing the three-fifths threshold. After the first round of voting, nine passed the threshold, among them seven were nominated by the Pan-Blue, including all six nominated by the KMT. Pan-Blue committee members played the same trick a second time, voting for only two to three nominees when they were supposed to decide another four commissioners. As a result, eight nominated by the Pan-Blue were voted in, while the Pan-Green won only five seats

in the NCC. The Pan-Blue camp was undoubtedly the absolute winner, while the fledgling DPP government seemed not to realise their total defeat until the voting had ended. A former Director General at first sarcastically made a remark that the voting process showed that the ‘members [of the NRC] recommended by the DPP are more stupid’. Later he argued that the voting clearly differentiated the Pan-Blue and Pan-Green coalitions because:

Both the DPP and our NRC members have regarded the voting of NCC commissioners a step towards media reform. We respect those members because they are all professionals, not rubber stamps, and we certainly would not ask them to vote for who we wanted like they [the KMT] did. (Interviewee 16)

Although the Pan-Blue camp won the nominations, it tainted the independence of the regulatory agency by politicising the voting process. The strategic political voting provoked criticisms and prompted four of the nominated commissioners to decline the nomination and the position in the NCC, one of them arguing that he felt ‘cheated and ashamed of political manipulation’ (Tsai et al., 2005). Thus political intervention had already impacted on the independence and the credibility of the NCC. There ended being nine commissioners in the first term of the NCC, seven of whom were nominated by the Pan-Blue. This extreme power imbalance led to many criticisms concerning political manipulation. Even the president, Chen Shui-bian, remarked publicly that the NCC had virtually become the ‘BCC’—that is, the ‘[Pan-] Blue Communications Commission’ (Lo, 2006). Although the NCC was finally established, it had sacrificed its founding ethos: freedom from political intervention.

Conclusion

This chapter has offered an account of the technological, economic, social and political contexts that informed the establishment of the NCC. Firstly, advances in technology challenged the feasibility of the conventional regulatory framework for the media. Recognising this development, many actors in Taiwan called for the framework to be rethought and restructured. Secondly, economic marketisation, heavily influenced by neo-liberalism, had made supranational organisations like the WTO the most dominant power shaping international trade. My analysis showed that Taiwan had little choice but to abide by the codes agreed by supranational regulatory

organisations both economically and politically. Thirdly, this chapter has emphasised Taiwan's unique political environment as a significant factor in the founding and shaping of the NCC. Three related sub-topics – democratisation, modernisation and politicisation – were drawn upon to explore the significance of Taiwan's transitional political status in the establishment of the NCC. Democratisation was highlighted since it paved the way for removing the inappropriate role of the GIO as an agent of censorship and advocating an independent regulatory institution. In addition, an account was offered of the Government Reengineering Project in Taiwan, which derived from neo-liberal ideology and was designed to achieve modernisation and a more efficient government through the restructuring of its administrative framework. Most significantly, this chapter has argued that it is the highly unstable power structure in transitional societies that antagonised the minority government and strong opposition power and led to politicised regulatory framework and personnel designation. The unique transitional politics of Taiwan, it was argued, had the greatest impact on how the NCC was imagined, framed, and put into practice. As the above discussion has demonstrated, politicisation at different levels, in the form of turf wars between different government institutions and voting strategies in the legislative, constituted the key factor in the formation of the NCC.

This chapter has also demonstrated the changing scope of the NCC, from regulation of technological convergence and the implementation of global regulatory reform, to responsibility for political transition itself. The analysis has demonstrated that it was politicisation and power struggles at various levels that eventually made the creation of the NCC possible. However, ironically enough, it was this very politicisation that destroyed the basis of the agency's independence. The following chapters will investigate how this defect in both institutional design and procedure has given rise to further confrontation. By putting into perspective the actions and strategies of relevant actors, this project will also go on to explore the impact of politicisation on the legitimacy and regulatory performance of the NCC, and the shadow that it has cast over Taiwanese democracy as such.

Chapter 5

The constitutional ruling

The emergence out of partisan power struggles of the National Communications Commission (NCC) in December 2005 did not mark the end of conflict between the state and the nascent independent regulatory agency, but the beginning. This chapter focuses on how the state reacted to its loss of control over the regulatory agency as a result of the nomination process. It offers an account of the use made by the Democratic Progressive Party (DPP) government of a judicial mechanism, the ‘Constitutional Interpretation’, which invalidated the logic of party proportionality on which the nomination process was based, and thereby challenged the legitimacy of the NCC commissioners. This attempt by the state to delegitimise a government agency was unprecedented in Taiwanese political history, and all the more significant for the fact that the agency involved was totemic of the transition to democracy. This chapter addresses three areas of concern in relation to the legal disputes, namely the different powers involved, their impact, and their implications. Firstly it explores flows of power with respect to the state, the regulator and the judiciary. Secondly it examines how the constitutional judgement affected the legitimacy and autonomy of the regulator. Thirdly, it provides some insights towards an evaluation of the efficacy and feasibility of transplanting an institutional form originating in the West into contrasting domestic contexts.

Case Summary

As a nascent administration and minority government, the DPP lost the parliamentary vote regarding the control of the NCC commissioners to the Pan-Blue coalition, leading it to seek different ways of regaining control of the regulatory agency. The government first of all deployed a series of administrative means to delay the setting up of the regulatory agency, but each was effectively countered. After losing out in the legislative process relating to the NCC Organisation Act, the Executive Yuan made a somewhat feeble strategic effort to slow down the subsequent administrative procedure required to create the agency. It delayed passing the list of the NCC nominees to the Legislative Yuan for almost two months after the commissioners were voted in following the review process in December

2005, despite being statutorily required to do this within seven days. It also postponed the designation process after the legislative agreement despite the law stating that the process must be completed immediately. As there would be a Cabinet reshuffle at the end of January 2006, the Executive Yuan proposed postponing the appointment of the NCC nominees on the basis that this involved one of the 'significant policies' that should be left to the discretion of the new premier (Lee, 2006). The delay drew considerable criticism, and was interpreted by the Pan-Blue coalition as a political tactic. The Pan-Blue camp later responded with a threat to boycott the budgetary session of the whole administration in order to 'check and balance the disrespect of the Executive Yuan for rule of law' (Shang et al., 2006). The new premier gave in.

Secondly, and more strikingly, the Executive Yuan turned to the Council of Grand Justice to launch a petition for constitutional interpretation, proposing that Article Four of the Organisation Act, with respect to the nomination process of commissioners, was unconstitutional. The Executive Yuan claimed that, as the highest administrative organ of the state, it should have the power to appoint the members of the NCC. The Executive Yuan asserted that the law, which stated that members of the NCC would be appointed by representation in the Legislative Yuan, infringed the executive power of the state. They also argued that the legislative branch had deprived the premier of the power to decide on membership of the NCC and had violated principles regarding the division of powers and political accountability enshrined in the constitution (Executive Yuan, 2006b). In sum, the process leading up to the formation of the NCC demonstrates how the independence of the agency was eroded by political intervention, with damaging consequences for the constitutional system.

After more than four months of deliberation, the Council of Grand Justices released *Constitutional Interpretation No. 613* in July 2006, stating that Article Four of the NCC Organisation Act, referring to the nomination process, was unconstitutional. However, the ruling did not totally negate the existence of the NCC but maintained its institutional legality and administrative discretion until 31 December 2008.

Flows of Power

The analysis in Chapter 4 considered the multiple rationales underpinning the introduction of the IRA and concluded that political power outweighed technological and economic power. This chapter explores the political arena further and traces some of the competing flows of power involved in the application of judicial power. The analysis is largely informed by the idea of power developed by John Thompson, who defines it as the ability to achieve goals through resources available at the individual or institutional levels. Thompson (1995:13) distinguishes four main forms of power – economic, political, coercive and symbolic – and identifies the ‘paradigmatic institutions’ that favour and support the exercise of each. In the realm of economic activity, the paradigmatic institutions are commercial enterprises, while states are typical political institutions, the military is an exemplary coercive institution, and the media industry is at the heart of symbolic power (1995:17). According to this categorisation, the independent regulator in Taiwan has, since it was first floated as a concept, been affected by struggles unfolding in the domains of economic, political and symbolic power. Many powers have shaped the NCC including the influence of supranational institutions, intra-governmental negotiation, as well as partisan politics during legislation. Since this chapter touches upon the relations between executive, legislative and judicial branches of government, it maintains a specific focus on political power, and the symbolic power deriving from it, offering an account of how these powers have been generated and mobilised to impact on the IRA.

State power

Whether or not the state still plays an important role in policymaking is a question that has sparked much debate in recent literature regarding the emergence of global regulatory frameworks. The state has traditionally been treated as the paradigmatic institution of political power, predominantly equipped with the resources of legal authority and characterised by the monopolisation of legitimate power (Chen, 1998; Habermas, 1996; Held, 1989:40-1; Thompson, 1995). This is to say, state power has two features: it does not share power with other agents, and it secures legitimacy through the exercise of authority (Chen, 1998; Hall, 1984). Both these features are related to the supreme power that the state owns to utilise its administrative, policing, and military apparatuses, and sometimes to exert violence so as to fulfil the intentions of governments and state personnel (Held, 1989).

Nonetheless, such domination does not translate directly into research significance and the state has largely been ignored in policy studies and other political science disciplines where it has tended to be regarded as ‘a venue, a justification for particular positions, or one institutional player among many’ (Braman, 1995: 4). This makes the state a seemingly contradictory concept in need of further clarification.

The question of the significance of the state seems naturally to arise in the context of ‘re-regulation’ in the field of global regulatory reform (Chakravartty and Sarikakis, 2005: 36). This trend has been made visible by the emergence of global regulatory networks, which has weakened the role of the state in areas such as finance, the environment and communications policy. In the realm of communication and media policy it has seen the ‘dilution and eroding of state authority’ on communications policy, where states lose regulatory power and national autonomy to supranational governing bodies (Volkmer, 1999, cited in Sparks, 2007: 285). The World Trade Organisation (WTO), for instance, has dominated the development of the telecommunications industry by forcing privatisation on its member states, compromising the sovereignty of nation-states (Ó Siochrú, 2005; Winseck, 2002).

Nonetheless, many scholars argue that the state still plays a central role in media policymaking and that its significance has been underestimated in recent years (Curran and Park, 2000). Braman (1995: 4) emphasises that conceptions of the state ‘underlie all information and communication policy’ and that policy can be regarded as one of the state’s ‘tools of power’. Drawing on the British experience, Sparks (1995: 152-4) also considers the state to be a long way from ‘withering away’ since it still effectively influences the public broadcast system in various ways and at various levels, determining the structure of governing bodies, making allegations of political bias, and instigating legal changes.

Despite the fact that the state no longer maintains a monopoly of power in shaping the regulatory environment, the current chapter treats the state as a crucial factor in media policymaking as analysis shows that the state effectively influences the formation of new regulatory frameworks through many informal or implicit mechanisms. Studies also support the idea that the state, by exercising its power of

creating legitimacy, allocating budgets, and nominating personnel, holds significant power in creating independent regulatory agencies (Majone, 1999:7). In addition, Thatcher (2003) suggests that legislators and politicians prefer to control and influence the IRAs through informal mechanisms. In this case, for example, such instruments and mechanisms are involved in the KMT's attempt to dominate the nomination process of the NCC and in the DPP's decision to invoke the constitutional interpretation in order to undermine the legitimacy of the agency.

Before turning to a discussion of how political power intervened in the formation of the regulatory agency, it will be useful to sketch out the way that transitional politics has complicated the meaning of the state and the exercise of state power in Taiwan. The year 2000 marked a watershed in the history of democracy in Taiwan as the long-serving opposition DPP came to power by a tight margin. Since then, the state itself has been divided into a minority government and a relatively strong opposition, which has made the DPP government unable to implement any significant policies without the consent of the Pan-Blue coalition. The DPP administration was a minority in the legislature, and despite holding the reins of government was incapable of dominating the policymaking process. In other words, the Pan-Blue camp played a decisive role in the legislative process and therefore in the forming of policy. This represents a complex scenario at odds with the usual academic accounts, which tend to regard policy as the embodiment of a cohesive state power (Braithwaite, 2006).

The change of government certainly brought about a power shift, but the media environment did not simply change overnight. As the ruling party for more than half a century, the KMT had formed a close-knit relationship with media proprietors. In contrast, the activities of the DPP had always been underreported, and the party was in general hostile towards the media. In an interview, former Director General of the GIO from the Pan-Green coalition argued that the relationship between the media and the KMT was formed and strengthened through political clientelism in the martial law era, and democratisation did not break this link. Therefore, the relationship is so close that 'it is inaccurate to say that the media favour the KMT: actually the media are part of the KMT political apparatus' – even when the KMT was out of office (Interviewee 12). It was in an effort to correct this

imbalance and break the connection between the previous regime and the media that the DPP government sought to replace the existing regulatory agency with the new IRA. This also explains why the KMT used every means at its disposal to control the NCC, and why both the KMT and the Pan-Blue coalition sought to intervene in the design of the NCC.

When the Pan-Blue coalition lost the presidential election for the second time in 2004, a real sense of crisis developed amongst its politicians, leading them to intervene in the NCC nominations in an attempt to cling on to control of the media. Attributing the election loss to the DPP's 'gimmicks', the Pan-Blue coalition determined to maintain a role in the oversight of the media regulatory agency. One former legislator contended in an interview that the party ratio proposal was introduced to counteract the seemingly unlimited nature of state power.

The DPP government used every possible means to win elections and control agencies that are supposed to be independent, such as the Central Election Commission. The NCC will be responsible for formulating communications policy, and it is such an important agency that we would rather keep it under our oversight than hand its control to the DPP administration (Interviewee 9).

One major figure in the creation of the independent agency and supporter of the party ratio proposal argued that it deflected state power in a rather sensible way to hold politics responsible:

I don't see anything wrong with the [party ratio] proposal, and it actually holds party politics more accountable. If we place more emphasis on the selection process presented by parties, it creates a stronger mandate and pressure on this agency and the commissioners so that they will have to listen to everybody and be more humble (Interviewee 17).

In comparison, the DPP missed the chance to control the structure of the NCC during the legislative process, and their effort to hold up the designation and other administrative procedures was in vain. One former government official recalled that pressure from the Legislative Yuan made the new premier bend to the Pan-Blue camp to avoid more political confrontation.

As the new premier had just stepped into office, the last thing he wanted to see was a boycott of the budgetary session because it would be a crucial indicator in the evaluation of his administration. After weeks of

consideration, he eventually agreed to designate the commissioners of the NCC (Interviewee 13).

The petition for constitutional interpretation represented another political gambit, designed to work in tandem with the administrative delay. This exercise of executive power was not an immediate or reckless reaction to the DPP's defeat in the creation of the NCC, but a deliberate and strategic manoeuvre. There was a tug of war within the DPP as to whether they should take the fight to the Pan-Blue camp or avoid intense political confrontation. The government official I spoke to deemed the cabinet rather reluctant to exacerbate tensions between different political factions since the premier was 'about to leave office soon', and meant to 'accept defeat without aggressive reaction' (Interviewee 13). But one member of the cabinet at that time disagreed with this observation and insisted that the petition was a 'unanimous consensus' and that they had done it without any hesitation (Interviewee 16).

According to an official who played a crucial role in the gambit, the DPP government filed the petition for a constitutional interpretation not to control the regulatory agency, but rather to maintain jurisprudence.

It is a matter of administrative power, which belongs to the party in office and holds the party accountable for the overall performance to the people. But the nomination of the NCC violates this concept of the division of powers and is a product of blatant political bargaining and obviously unconstitutional (Interviewee 13).

With the support of the constitutional ruling, the Executive Yuan seized the chance to restore and further expand the power of the state by amending official documents regulating the relationship between the state and the agency. The Executive Yuan issued two official documents bearing on the creation of IRAs: *Founding Principles of IRAs (Founding Principles)* and *The Relationship Statement between IRAs and the Executive Yuan (Relationship Statement)*. *Founding Principles* was released before the establishment of the NCC in January 2005. Many of the concepts shaping IRAs were enshrined in this document, including the *de jure* and *de facto* independence of IRAs: the agencies 'should independently perform their duty according to law and be under no command of any other institutions' (Executive Yuan, 2005b). In addition, the *Founding Principles* also asserted that the employment of members of IRAs was not to be influenced by political power. It stated that the head of the IRA was not to be considered a member of the cabinet and

therefore would not have to attend weekly council meetings, in which ministers report to and sometimes take administrative guidance from the premier on certain significant issues. More importantly, the decisions made by IRAs were not to be subject to oversight from the Executive Yuan or from other administrative institutions. In sum, IRAs were to enjoy considerable autonomy, as they were not to be subordinate to the Executive Yuan when making regulatory decisions, and were not to be held accountable politically.

Although they kept the *Founding Principles* intact, the Executive Yuan significantly reduced the power of the regulator by amending the other document, the *Relationship Statement*. Issued in March 2006, after the NCC was established, the *Relationship Statement* was ostensibly designed to clarify and regulate in greater detail the relationship between the Executive Yuan and IRAs laid out in the *Founding Principles*. The amendments prioritised the principle of ‘administrative unity’, from which IRAs were not to be exempt. According to the amendments, IRAs mainly take charge of regulatory and investigative practices and do not have the power to intervene in the arena of policy-making. If there were more than two institutions involved in the same case, IRAs were to negotiate with the other institutions and were to be subject to a final decision made by the Executive Yuan, to maintain the administrative unity.

The *Relationship Statement* also elevated the status of executive power, contravening the ethos enshrined in the *Founding Principles* and reducing IRAs to a nominal existence. The heads of IRAs, although still not part of the cabinet, were now to participate in council and task-force group meetings, if this were deemed necessary by the premier. Furthermore, while the decisions made by IRAs were still to remain officially independent of the executive power, they were to be made subject to executive oversight if they were ‘involved with industry policy’. Finally, the IRAs’ power to propose new legislation was further constrained. The amendments suggested that IRAs were only to be able to propose draft bills to the Executive Yuan, who would decide whether to accept or reject the proposal.

The amendments, which were described as ‘distorted and freakish’ by a former NCC Commissioner (Interviewee 8), marked a significant U-turn as regards the state’s attitude towards IRAs. A former minister without portfolio who drafted

the amendments admitted that ignorance of the political context led to a dire situation that soon rendered IRA blueprints inapplicable and unfeasible:

At first we put a lot of emphasis on the independence of the agency, but did not expect to come across such a blatant attempt to seize the power of personnel [from the state] as the party ratio proposal posed by the Pan-Blue coalition...As soon as the Grand Justices announced that the NCC was unconstitutional, we decided that the NCC had to be under more intensive scrutiny since the independence might be well exploited by political power (Interviewee 13).

The DPP administration, a minority government, applied legal mechanisms and politicised amendments to shore up its power along with that of the state. It won back for the executive branch the political power to determine administrative personnel, previously 'seized' by the oppositional Pan-Blue coalition through legislative power. However, there were more struggles ahead because the constitutional interpretation was rather vague, and could itself be interpreted in different ways and harnessed to different political agendas. The next section emphasises the role of judicial power in the case, examines the most debated aspects of the constitutional interpretation, and traces the objections raised by different grand justices, in order to illuminate the dynamics of judicial judgement in the political context of a transition of power.

Judicial power

Judicial power, although seldom the main element in the policy-making process, includes a crucial power of veto over administrative and legislative actions. The influence of judicial power is represented in the power of 'statutory interpretation', through which the court has gradually taken up an activist role in policymaking, as US examples have shown (Krasnow, 1982:52-3). Judicial power is supposed to be relatively immune to pressure so that it is capable of making judgements based on evidence and jurisprudence. However, pressure from public opinion and political parties can still influence the leanings of the judgements. Gaziano (1978) suggests a positive relationship between public opinion and supreme court decisions with respect to the issue of freedom of speech. The study demonstrates the impact of public opinion polls and interest groups lobbying Congress on Supreme Court decisions between the 1930s and the 1970s. Krasnow argues that political powers might have indirect control over court decisions since

the commissioners are put forward by the president and agreed by Congress (1982). These studies imply that judicial power may accommodate a wide array of interests if examined closely.

Moreover, the interpretation of law is often held to involve the play of language: as one judge famously put it, ‘we are under a Constitution, a Constitution is what the judge says it is’ (Hughes, cited in Barber and Fleming, 2007). Legal language is often condensed and obscure, which sometimes creates loopholes that allow politicians to exercise their power to an excessive extent. Judges’ interpretation of legal codes will largely express the interests of judicial power and its interaction with political powers. Judicial power plays a more significant role in post-transition countries where judicial power is frequently utilised to settle conflicts between government and newly established democratic agencies. Through the interpretation of law, courts can protect the autonomy of the agency from state intervention, as when the Brazilian court declared state interference in the workings of an IRA unconstitutional (Correa et al., 2006). On the other hand, the court might fall prey to, or even become part of the state apparatus, and restrict the regulatory agencies, as when the Polish court, working with loose legal codes to justify the president’s replacement of the chairman of the independent media regulator, proved itself incapable of counterbalancing state power; or when the Indonesian court handed regulatory power back to the state (Hurard, 1998; Kitley, 2008). The interpretation of law is thus rather a political process by its very nature, and can be influenced by different factors and interests.

The interpretation in this case was widely understood by the media to be a consequence of the ‘politicisation of judicial power’, designed to ‘save the face of the Pan-Green camp while maintaining the substance of the Pan-Blue’ (United Daily, 2006). On the one hand, the constitutional interpretation agreed with the opinions of the Executive Yuan by deeming the NCC unconstitutional, since the nomination process was dominated by partisan power. It stated that the process, although approved by the Legislative Yuan, ‘transgresses the limits on the checks and balances exercisable by the legislature on the Executive Yuan’s power to decide on personnel affairs, thus violating the political principles of accountability and separation of powers’ (Judicial Yuan, 2006). On the other hand, the ruling provided

the NCC with a 30-month grace period, the longest among all similar cases, and maintained the legality of both the institution and its decisions during this time.

This constitutional interpretation attempted to tackle the problem diplomatically, largely siding with the Executive Yuan in declaring the agency unconstitutional, while granting the Legislative Yuan plenty of time to fix matters. One former Cabinet member with a legal background even claimed that the politicised interpretation was not surprising at all and matched his prediction:

I told a friend that the agency is undoubtedly unconstitutional, but the Grand Justices would grant it a grace period...I know them [the Grand Justices] so well that I know that they tend not to displease every camp. (Interviewee 13)

The ruling as a result pleased no single group and received considerable criticism, mostly regarding its politicised nature. The Pan-Green coalition hailed the interpretation but was unsatisfied with the contradictory logic of a sunset clause. One DPP legislator, also the caucus whip, Chen Chin-jun, claimed that the constitutional ruling was not good enough and that the agency should be dismissed immediately (Shih, 2006). Another DPP legislator argued in an interview with me that the system of constitutional review had been eroded by political interference:

This constitutional interpretation is rather disappointing as the Council of the Grand Justices created a self-contradictory ruling which considers the NCC unconstitutional while allowing it to exist for more than two years. Clearly, they did not conduct the constitutional review in an independent way, they are not trustworthy to the citizens, and they are politicised already. (Interviewee 7)

By contrast, the Pan-Blue coalition considered the interpretation politicised and corrupt, arguing that the grace period only demonstrated that the Grand Justices had used judicial power to ‘pander to the government’ (Shih, 2006). One Pan-Blue legislator argued that it was ‘the darkest day in the judicial history of Taiwan’ and claimed that the Grand Justices had been ‘contaminated by administrative power’ (Chen, 2006). Tseng Yung-chuan, the convener of the KMT policy committee, also expressed his disappointment at the ruling and argued that the grand justices ‘have turned themselves into the hired thugs of the government’ (Shih, 2006).

In addition to its politicised nature, the constitutional interpretation was also considered politically impractical, as illustrated by the comment of a former Pan-Blue legislator who had a relatively neutral attitude towards the ruling:

I agree with the interpretation that legislative power has intervened in administrative power. However, the key point is about weighing the pros and cons. I would say that given the political environment at the time, the actual political reality would outweigh the jurisprudence. (Interviewee 9)

A similar opinion was expressed by one former NCC commissioner, who ‘reserved judgement’ on the unconstitutional ruling:

It is a rather inadequate institutional design, but is not necessarily unconstitutional. It seems that constitutional interpretations are full of subtle nuances of meaning, but it is actually about judgements on the factual reality. I think they [Grand Justices] are totally ignorant of the political reality. (Interviewee 8)

Constitutional interpretations are decided under majority consensus, but individual Grand Justices can file dissenting opinions and concurrences to express their counter thoughts. In dealing with cases with such a high degree of political sensitivity, it is worth examining the different powers intertwined within the decision-making process. Three different issues can be identified from the *Reasoning* of the main ruling of the constitutional interpretation, and through the analysis of *Reasoning*, *Concurrences* and *Dissents*, different viewpoints will be extracted to illustrate the politics of judicial power. The first and most fundamental argument was about whether the party ratio proposal should be considered unconstitutional. The ruling in general highlighted the superiority of the Executive Yuan in the hierarchy of the administrative system. It emphasised that it was beyond the check-and-balance power of the Legislative Yuan to intervene in the nomination of the regulatory agency as it would:

practically deprive the Executive Yuan of substantially all of its power to decide on personnel affairs, which transgresses the limits on the checks and balances exercisable by the legislature on the Executive Yuan’s power to decide on personnel affairs, thus violating the political principles of accountability and separation of powers... [T]here should be no violation of an unambiguous constitutional provision, nor should there be any substantial deprivation of the power to decide on personnel affairs or direct takeover of such power [by the Legislative Yuan] (Judicial Yuan, 2006).

It also stated that, by applying the party ratio proposal, the power to decide on personnel affairs had in fact been transferred from the executive branch to partisan politics, which violated the general expectation that the regulatory agency should be politically neutral.

[It] affect[s] the impartiality and reliability of the NCC in the eyes of the people who believe that it shall function above politics. As such, the purpose of establishing the NCC as an independent agency is defeated, and the constitutional intent of safeguarding the freedom of communications is not complied with (Judicial Yuan, 2006).

However, the interpretation did not go unquestioned, since two grand justices, Wang Ho-hsiung and Hsieh Tsay-chuan, argued in the dissenting opinion that none of the rationales necessarily justified a position of unconstitutionality. First of all, they pointed out that the proposal is a result of political negotiation agreed by major political parties in the Legislative Yuan, rather than the one-sided deprivation of Executive Yuan power. They maintained that, by signing the political negotiation agreement, the DPP government accepted the proposal and acceded to the way the nomination system was arranged. Besides, they held that political accountability should not be limited simply to the right to decide on personnel affairs, but could be achieved through other mechanisms such as administrative, financial or legislative oversight of policymaking procedure (Wang and Hsieh, 2006). Moreover, they argued that the concept of ‘administrative unity’ applies best to countries with a presidential system, which Taiwan does not have, making the application of the ideal contentious. The political system in Taiwan is unique because the executive power is held by at least three actors including the president, the Executive Yuan and the Examination Yuan, and it cannot easily be classified using existing categories. In light of the vagueness of political system, the two grand justices argued that the use of administrative unity as a rationale in the constitutional interpretation was problematic (Wang and Hsieh, 2006).

Secondly, the majority ruling held that the proposal not only violated the principle of separation of powers, but was also the antithesis of the rationale underpinning the independent regulatory agency. The holding considered the proposal unacceptable because it ‘invite[s] active intervention from political parties’ and therefore ‘affect[s] the impartiality and reliability of the NCC’ (Judicial Yuan,

2006). The same two Grand Justices again disagreed with the majority opinion on the judgement. They questioned the separation of powers concept, arguing that there is no fixed model and that power should have included confrontation and negotiations in relation to the real political culture.

Political parties have undoubtedly constituted an essential part of the modern state and have shaped the overall political environment. The separation of powers, nowadays, can be interpreted as the confrontation of the ruling party and the parties out of office (Wang and Hsieh, 2006).

They also argued that the nomination of commissioners should not be considered solely political since the law foregrounds the professional knowledge of the candidates rather than political interference. They referred to the NCC Organisation Act, stating that ‘candidates from the media, information, telecommunications, law, finance etc. professions are recommended by the public and put forward by the political parties’. The dissenting opinion held that the focus should be on whether the commissioners could exercise their expertise but not on which party they are put forward by, as the purpose of the independent agency was to:

preclude the direction and supervision of the superior agency over the decisions made in respect of particular cases...thus maintaining the independent agency’s freedom from political interference and giving it more autonomy to make independent decisions based on its expertise (Judicial Yuan, 2006; Wang and Hsieh, 2006).

Thirdly, the dissenting opinion dealt with the justification and length of the grace period, which is the longest of its kind in the judicial history in Taiwan. The constitutional interpretation held that:

in light of the fact that amending the law will take some time and... the exercise of the NCC’s authorities will inevitably come to a halt and thus this circumstance may not necessarily be conducive to the people’s exercise of the freedom of communications as guaranteed by the Constitution, it is only appropriate that a reasonable period of adaptation and adjustment should be provided (Judicial Yuan, 2006).

After reviewing the possible reasons why the majority of the council of Grand Justices agreed on the 30-month grace period, Grand Justice Hsu Yu-hsiu implied that political conflict was the only possible reason for such a provision. Taking the complexity of political reality in Taiwan into account, including factors

such as the political situation, law-making procedure, and the telecommunications profession, she argued that a solid reason was lacking. However, she concluded that

I cannot agree with the other grand justices except for the fact that we have given up the expectation that the legislators who created the Organisation Act could fix it. Given that we do not expect they can be capable of and accountable for fixing it because of their predominant political tendency, the deadline to rectify the law is therefore set on the 31 December 2008, one year after new legislators would be elected (Hsu, 2006b).

To sum up, the constitutional interpretation can be understood simply as a politicised ruling designed to please both political coalitions. The interpretation, according to Su (2008), represented a lost opportunity on the part of judicial power to take the lead in shaping a more democratic society in Taiwan's post-transition political environment, as it had previously done since the lifting of Martial Law. The constitutional interpretation could have played a more active and positive role, but the Grand Justices disappointingly chose to play safe and seek only to avoid blame (Su, 2008: 37). It met the expectation of the DPP administration that the regulatory agency should still be subject to the Executive Yuan and its formation unconstitutional. However, the majority ruling to set the grace period at the end of 2008 implied that the Grand Justices anticipated that the row would probably be resolved by the subsequent executive power and legislature. This is to say, they predicted a more harmonious relationship between the two branches after the coming legislative election in January 2008 and the presidential election in March 2008, when another change of government was already envisaged. The judicial power in this case, despite having the capacity to play a decisive part in the policymaking arena, largely yielded to political considerations.

Regulatory power

As the recipient of the constitutional ruling, the NCC was perhaps the most affected actor, since not only was it deemed to be unconstitutional, it also had to bear the paradoxical situation for another two-and-half years. The next section looks at the mechanisms that the regulator made use of in order to regain its legitimacy and secure its regulatory power in the face of the executive power, the ruling and subsequent pressure from other elite groups. The regulatory agency was in a subservient position from the outset, as its power was delegated from the Executive

Yuan and decided by the Legislative Yuan. The imbalance of power could also be detected at an early stage when some NCC members (almost all of them requesting anonymity) complained in press interviews about the government's delay over designation (Chiang, 2006). As the establishment and development of the agency proceeded, the limits on the NCC's exercise of power gradually became more and more visible.

Before the commissioners had even taken their posts, the shadow of partisan power and unconstitutionality was already a worry for some nominees, to the degree that some declined the offer. The number of NCC commissioners had long been regarded as an indicator of the distribution of political power. Out of the thirteen commissioners voted in by the Review Committee, twelve received legislative approval and were appointed, regardless of the fact that three of them had vowed not to take the position. Consequently, by the time the NCC held its first meeting, there were only nine commissioners, seven of them put forward by the Pan-Blue coalition and two by the Pan-Greens. The association of the commissioners with partisan power tainted the independent image of the regulatory agency from the outset and informed the decision made by some commissioners not to take their posts. One former government official recalled a conversation with a nominee concerned about the legality problem before the inception of the NCC:

An approved commissioner worried about the constitutionality of the agency and asked for my opinion. I responded clearly that it was absolutely unconstitutional. Since the commissioners are well-respected professionals, for them it would be an insult to work in an unconstitutional institution. (Interviewee 13)

In response to the constitutional interpretation, the commissioners started to make use of media power and address political issues, since politicisation seemed to be unavoidable. The chairperson of the NCC Su Yeong-ching, who is a law professor, argued that Grand Justices were influenced by political intervention and thus 'had the answer come first then try to find excuses' (Wang, 2006). Although criticising it as a flawed ruling, Su referred to the constitutional ruling which assured the legitimacy and regulatory power of the NCC to defend the agency:

The ruling firmly states that the NCC is a legal and constitutional independent institution and members are granted legal power to exert their authority, without deployment of personnel and related job benefits

being affected. No other agencies are eligible to replace the function of the NCC (Hsu, 2006a).

Su condemned as logically ‘erroneous and intolerable’ the assumption underlying the constitutional interpretation that the members of the NCC could be influenced by the party that nominated them (Chuang and Shan, 2006). He further argued that it was the legitimacy and independence of the Council of Grand Justices that was in doubt.

It is national policy to create the NCC and president Chen Shui-bian even participated in the inauguration ceremony of the Preparatory Office of the NCC in 2003...the commissioners were appointed by the Executive Yuan. The NCC was legal in every single respect until the DPP government came to be unsatisfied with the result and our progress was impeded (Chuang and Shan, 2006).

Liu Kung-Chung, then also a commissioner of the NCC, expressed his dismay publicly by attacking the legitimacy of the Council of Grand Justices itself:

The constitutional interpretation is full of fallacious arguments and contains no arguments at all. We have witnessed today the destruction of what could have marked the shift of regulatory paradigm to a more democratised model by an agency that in the absence of oversight has become infamous for its scandals. The ruling completely vitiates our respect for the Grand Justices (Liu, 2006).

The commissioners were faced with an immediate dilemma as to whether to stay or resign. One of the NCC members explained to me that their decision was largely motivated by public opinion, which was influenced by the Executive Yuan, the Pan-Green legislators, underground radio stations, and media outlets allied to the Pan-Green camp. However, he also recognised that the stigmatisation could have the ‘boomerang effect’ since it held the commissioners back as well as kept them going on. As the discussion went on, the case for staying in the position started to become clearer:

At first many of my colleagues thought about resigning from the post, as most of us are academics and we can go back to college and continue to enjoy our lives as professors...But it is like taking part in a ‘jihad’ in which you want to preserve the honour and value of the agency. (Interviewee 8)

Other than the sense of honour, there were at least two other forces informing their decision:

Besides, many colleagues accepted the post because they hold certain ambitions regarding the development of the communications industry or media policy-making. While the government and the Pan-Green camp attempted to destroy our legitimacy, we wanted to prove our integrity and innocence. Still another reason was that we were concerned about the civil servants who had been working with us since the NCC was established. It would be unfair and hurtful for them if we simply left without taking their feelings and efforts into account; we had to be responsible for them since they had devoted so much to the work. (Interviewee 8)

As a result, the nine members of the NCC came to a unanimous decision that, given that the nation had come to a critical moment, they would undertake the ‘unbearable heaviness of being’ and endure the humiliation of the constitutional interpretation (Shan, 2006). They would stay on legally to exercise their authority and endeavour to separate the regulatory agency from political and corporate influence until the end of January 2008, when the terms of the legislators who approved their appointments were due to end. The NCC released a written statement, announcing that the commission ‘is a constitutional and independent organisation’ and no other agencies could take over its legal authority (Chuang and Shan, 2006).

The power struggles relating to the constitutional interpretation clearly demonstrate the challenges involved in promoting an independent media regulator in a newly democratised country. Due to the lack of mutual trust, the old and new political elites tend to grasp every opportunity to consolidate their power, by appointing like-minded commissioners in the regulatory agency and subsuming the agency to the power of the executive branch. The constitutional interpretation was likewise highly politicised since it was used by the state power as a tool for retaining executive power, and by the council of Grand Justices to avoid antagonising political powers. As a result, the constitutional interpretation assured the significance of state power in the arena of domestic policymaking, as the ruling apparatus was still to control considerable administrative resources with regard to IRAs, giving it some leverage over regulatory decisions. The ruling also demonstrated the ineffectuality of the newly established regulatory agency in the face of political power. The next section examines the impact of the constitutional ruling on the legitimacy and autonomy of the regulator.

Impact of the Constitutional Interpretation

De-legitimisation of the regulator

The legitimacy of IRAs is one of the inherent problems of the regulatory state because it is granted by elected politicians rather than coming directly from the citizens through democratic procedures. In addition, the executive members of IRAs are not politically accountable like the elected politicians. Legitimacy has thus been one of the weaknesses of IRAs and the highest ‘agency cost’ (Majone, 1999:7; Thatcher and Stone Sweet, 2002). Needless to say, the legitimacy of IRAs will be more vulnerable when affirmed by the political parties that take part in creating them, a problem faced by the NCC in the Taiwanese context.

There was little in-depth discussion of the legitimacy of the independent regulatory agency in Taiwan: it was barely identified as a distinct concern, as it is in western literature. Before the inception of the NCC, the legitimacy of the proposed independent media regulator was more or less taken for granted, since it seemed to be a body that would bring to an end fifty years of authoritarian rule and media control. But the legitimacy of the NCC was damaged by the passage of the party ratio proposal and the ensuing constitutional interpretation.

The ruling impacted on the agency’s legitimacy in two ways: on the one hand, the nomination process of the NCC was explicitly ruled unconstitutional, which debased the validity of the founding process of the agency, and provided the Executive Yuan with the excuse to impose the amendments contained in the *Relationship Statement*. On the other hand, the uncertain status with which the grace period endowed the body inevitably raised doubts about legitimacy and rendered it incapable of implementing new policies, making it a ‘lame duck’ agency (Han and Chen, 2006). The amendments of the *Relationship Statement* significantly restricted the capacities of the NCC. One former NCC commissioner bluntly denounced the *Relationship Statement* as ‘anomalous and freakish’ (Interviewee 8). He argued that the amendment demonstrated that regulatory power in Taiwan was still dominated by political will, rather than any philosophy of regulatory reform.

Because we [the NCC] did not serve as the mouthpiece of Executive Yuan and obey their political will, they amended the principle in order to reduce our power. Although it was supposed to be a general framework regulating the relationship between the government and IRAs, the amendment was made solely in response to the NCC. It was a shame and

demonstrated that the delegation of regulatory power to the IRAs is still immature in Taiwan. (Interviewee 8)

In addition to the amending legal documents, another power mechanism harmful to the legitimacy of the NCC was the discourse developed by the Pan-Green coalition in an effort to force the commissioners to quit their posts. Then minister without portfolio Hsu Chih-hsiung publicly suggested that ‘[i]n addition to urging the legislature to amend the Organisation Act immediately, we also hope that our respected members resign, out of respect for the Constitution’ (Chuang and Shan, 2006). The Pan-Green legislators also expressed their opinions and demanded that the agency be dismissed immediately, without further budget allocation (Shih, 2006). The Pan-Green coalition further generated a set of somewhat political, derogatory discourses in which the unconstitutionality of the nomination process was highlighted and used to vilify the legitimacy of the agency as such. The DPP whip Ker Chien-ming publicly claimed that it would be shameful to the country if the NCC functioned as a ‘black agency’ (Peng et al., 2006), which is a term frequently used in the context of Taiwanese politics to refer to a government agency established without the necessary legal resources that should thus be considered unlawful. One commissioner considered the ‘black agency’ discourse malicious, misleading and harmful to the public image of the NCC, an example of the distorted and one-sided information deliberately peddled by the DPP government (Interviewee 6). The discourse spread around the island with the media coverage given to the political confrontation by the underground radio stations in particular, tainting the agency with the stigma of partisan bias, undermining any status it might have enjoyed as a legitimate institution, and placing it under a great deal of pressure.

Although the Council of Grand Justices released the ruling on the regulatory agency, it failed to settle the dispute between the DPP government and the legislature. Disagreement continued to prevail as to whether the ruling represented a way of acknowledging the authority of the state on the part of the Pan-Green coalition or a way of pandering to the state by the Pan-Blue camp. Moreover, the independent agency had acquired the taint of partisan bias and an illegitimate institutional status. The political disputes again replaced potential rational debates over the reasoning and principles underlying an independent agency. In addition, the concept of ‘administrative unity’ that provided the constitutional interpretation with

its overarching rationale not only impacted on the legitimacy of the NCC but also served as a basis on which the Executive Yuan attempted to weaken its autonomy. The following section examines how different groups conceived of the meaning of autonomy in relation to the NCC and how it was affected by the constitutional interpretation.

Impact on the autonomy of the NCC

The rise of the regulatory state has been characterised by a burgeoning of independent regulatory agencies enjoying more autonomy than government ministries in terms of personnel, finance, and regulatory affairs (Christensen and Læg Reid, 2006a). Broadly speaking, the autonomy of IRAs may be thought of as having two dimensions: independence from political intervention and from the regulated industries (Humphreys and Simpson, 2005). This section mainly focuses on the extent to which IRAs can preserve their autonomy in the face of political intervention.

Although IRAs may enjoy a relatively high degree of autonomy, studies demonstrate that political intervention is common and takes many different forms, ranging from the power of appointment to informal socialisation between politicians and members of the agency (Minogue, 2006; Christensen and Læg Reid, 2006a). As a result, IRAs are not entirely independent from the administration and thus cannot be seen as completely 'free'. Even without taking blatant intervention into account, regulatory agencies are never truly independent because they may still be considered part of the overall government administration. Freedman (2008:14) argues that regulatory bodies are equipped with certain discretionary powers but that they nonetheless operate under and are subject to the parameters, goals and related regulations set out by the government. Likewise, in reviewing the role of regulatory agencies in developed and developing economies, Minogue (2006:74-5) argues that despite different constitutional designs, political intervention is influential in virtually every country, and the word 'independent' is rather misleading since that state is never fully realised. That is to say, although the regulatory agency does have some autonomy, it is largely subsumed under the unity of administration instead of being considered independent of government.

The concept of autonomy, linked to ‘separation from ownership and operation’, seems to be understood differently by the various groups that have a stake in it. During the legislation process that founded the NCC, the Pan-Blue coalition claimed that nomination on the basis of party ratios must be applied so as to secure the relative autonomy of the regulator, which would otherwise be destroyed by the DPP government, while the Pan-Green coalition supporters insisted that the party ratio system would definitely erode the autonomy of independent agencies and needed to be invalidated by the constitutional interpretation. Both these positions arguably represent politicised strategies: the ratio system pursued by the Pan-Blue coalition was an attempt to control the media system, as was the request for constitutional interpretation by the state.

In order to identify the impact of the constitutional interpretation on the autonomy of the NCC, it is useful to take into account different actors’ viewpoints concerning the relationship between government and the autonomy of IRAs. Participants from the government have argued that the concept of independence has been given excessive emphasis, becoming politically as well as legally unrealistic. A former official in the Executive Yuan argued that the DPP government supports the autonomy of IRAs in Taiwan as part of the Government Re-engineering Project agenda, especially in the case of agencies that are politically sensitive and require pluralist representation, such as the NCC, the Fair Trade Commission and the Central Election Commission. However the NCC failed to live up to expectations:

Because the DPP government was the legislative minority, the Pan-Blue coalition actually seized the power of personnel and ironically created the most partisan agency ever. It turns out that the NCC claims its independence as if it were totally independent from the whole government system, without limits, which is ridiculous. A regulatory agency is of course part of the administration, be it independent or not, and nowhere in the world is this not the case. For example, even the FCC in the US or Ofcom in the UK don’t function otherwise. (Interviewee 13)

In light of this ‘misunderstanding’, the Executive Yuan had to ‘rectify’ matters by means of the amendments of the *Relationship Statement*, which was designed to regulate the relationship of mutual dependency. The amendments downplayed considerably the general autonomy of IRAs, emphasising their status as

parts of the administrative authority and stressing that the power of policymaking clearly belongs to the Executive Yuan rather than IRAs.

By contrast, one NCC commissioner who was involved in the Government Re-engineering Project in the 1990s argued that the government was not too keen on giving away independence, maintaining that the creation at that time of national regulatory agencies was partly a matter of Taiwan conforming to a larger global trend:

With the passage of the 1996 Communications Act in the US and many new deregulatory directives in Europe, privatisation and fair competition became the parameters underpinning regulatory frameworks around the world. In particular, the OECD promoted the idea of the independence of the national regulatory agencies (NRAs), which means a separation between ownership and operation. (Interviewee 8)

The idea of autonomy had been flagged up as a central rationale and become a politicised issue, pointed out one former NCC commissioner, when political power struggles began to take place in the formation of the agency (Shyr, 2008b). Shyr argues that, because of political distrust, protecting its independence has been the top priority of the NCC, overriding other issues such as facilitating digital convergence and promoting efficiency. However, when discussion enters the legislative stage, political calculation inevitably increases and the meaning of autonomy is likely to change accordingly. Another former NCC commissioner agreed with the observation and argued that the use of legal mechanisms shows that the state still wanted to control regulatory power:

It suggests that the DPP government did not truly want to delegate the regulatory power but was just making a political gesture. Once they found out they could not exert control over the agency, they tried to negate its autonomy and legitimacy as an independent regulator. (Interviewee 6)

The *Relationship Statement* restricted the autonomy of the NCC in relation to its mandate and discretionary power and intensified the confrontation between the DPP government and the agency. However, it also reinforced the resistance of the regulator to political intervention, and resulted in the protection of its independence. A former NCC commissioner offered the TVBS Asphalt Duck Incident as an example. This arose from a series of unconfirmed reports by a popular satellite news

channel, TVBS, at the end of 2006, accusing duck farmers of using asphalt to pluck feathers. The commissioner was proud of the independence demonstrated by the NCC in resisting the political will of the Executive Yuan:

The [TVBS Asphalt Duck] Incident best illustrates our independence: when almost the whole cabinet mobilised a witch-hunt to force the NCC to inflict punishment upon TVBS, we refused to do so because the evidence just did not justify the punishment. (Interviewee 8)

Another former commissioner suggested that the political counterattack from the Executive Yuan revealed its disrespect for NCC autonomy, which in turn illuminated exactly the value of the independence of the agency:

It was the DPP's policy to propose a new independent media regulator, but they then became very hostile to the NCC when they were unable to control us. This shows that the DPP does not really respect independence and it deepened the confrontation between the government and the NCC. However, it also kept us independent since all commissioners were like hedgehogs ready for defending against the government, which is rather different than the current situation when the premier can just phone the chief commissioner to 'communicate'. (Interviewee 6)

The above remarks suggested that the confrontation between the state and the regulator resulted in a higher degree of autonomy. This implies that the subsequent change of government in 2008 weakened the autonomy of the regulator and that this influenced the impartiality of policymaking. The KMT won a landslide victory in both legislative and presidential elections in 2008, and so had the power to control the personnel of the NCC, which generated different regulatory scenarios. A more detailed discussion about how the regulator interacted with different administrations in a situation of political flux is presented in Chapter 6.

Members of the media industry represent another stakeholder as regards regulation, and as subjects of regulatory judgements they have their own take on the concept of autonomy – and their own set of complaints. A telecommunications lawyer, also an experienced lobbyist, argued that policymakers have wrongly interpreted and over-emphasised the meaning of independence, rendering the concept almost limitless. He claimed that the NCC was, of course, a part of the administration and relevant to industry development, and so the regulator could not separate itself from these two spheres:

The NCC misunderstood the meaning of autonomy from the outset. Independence from political intervention does not mean that it is not part of the government; similarly, autonomy from industry interest should not be equivalent to being totally indifferent to industry development. Rather, the mandate of the NCC should focus on telecommunications liberalisation and technological convergence, in relation to which political pressure is irrelevant. In addition, independence spells isolation for the NCC commissioners because they want to be ‘independent from the industry’. (Interviewee 11)

Industry lobbyists stress that the independence of the regulatory agency should mean ‘professionalism’: a professional regulator should be capable of ‘taking into equal account the diverse opinions of the industry and making unbiased judgment’. (Interviewee 11 and 19)

The change of regulatory framework not only posed challenges for political elites used to enjoying control over the media, it also meant a different battlefield for industry groups. Although the industry members I spoke to were explicit in their support for the constitutional interpretation, since if the regulator were still subject to the oversight and command of the Executive Yuan they could continue to make use of their friendly relationships with government officials and legislators. But at the same time, they have already tried to adapt to a new regulatory framework in which the rules of game were quite different from the old ones, since the regulatory judgements were now made by the consensus of the Commission instead of any single commissioner. In addition, the NCC also implemented a strict self-regulatory code of conduct in order to make the lobbying process more transparent and less secret. In spite of the complaints from industry groups, a journalist, whose beat covers the regulatory agency and the telecommunications industry, remained sceptical about the function of the code of conduct:

Maybe the lobbyists do not get to visit the commissioners as frequently as they want, but only insofar as the public situation is concerned, while in private, I believe, the lobbyists will have full access to the commissioners. They are capable of it, and very good at doing it. (Interviewee 15)

Although their voices went unheard in the discussion over the constitutional interpretation, their influence should never be underestimated as they had maintained strong ties with political power and were vocal in expressing their dissatisfaction with the regulator. As we will see in Chapter 6, their efforts did not go unrewarded.

In many accounts of the relationship between the media and democratic development, an independent communications agency is considered an ideal way to facilitate a fair allocation of media resources and enhance diversity of voices and viewpoints (Bennett, 1998). In Taiwan, due to previous authoritarian rule and political conflicts following democratisation, regulation of the media has been an extremely controversial idea and independence has become a dominant principle in the legislative process. Actors ranging from politicians to the public endeavour to ensure the autonomy of the media regulator, and view the establishment of an independent regulatory agency as a step towards a more unbiased media regulatory system and as a sign of democratisation. Similarly, the emphasis on the autonomy of the NCC from state control stems partly from the specifically Taiwanese political context, but it is also one of the characteristics that newly democratised countries have in common (Jakubowicz, 1995; Barnett, 1999; Kwak, 2003). In countries where political stability still depends more on the exercise of political patronage than a democratised voting process, it is more difficult for independent regulatory agencies to survive.

The ‘ideal type’ of democracy that possesses the most currency in Taiwan derives from the West, along with the IRAs themselves and many other systems besides. However, the formation process of the NCC saw that the independent regulatory agency be not able to curb the political power and the constitutional interpretation demonstrated that it did not keep the government at arm’s length either. The final part of the current chapter records the reflections of different actors on how they developed and evaluated the concept of the NCC, an institutional concept, developed in the context of the regulatory state in the US and Western Europe, might be made compatible with the local political context.

(In)Compatibility in Policy Transfer

The borrowing between nations of policies and models is a common phenomenon, operating through channels as varied as war, colonisation, education, and communication. States, like consumers, ‘shop’ for policies in the ‘supermarket of legislative alternatives’ (Price, 2002). Such ‘model shopping’, or ‘policy transfer’ as it is called in academic discussion, is very likely to take place in developing countries as they tend to seek solutions from their counterparts in the developed

nations, regardless of the differences that obtain in almost every aspect of their respective situations (Minogue and Cariño, 2006). In order to develop a model that best serves the needs of the country, the process of policy transfer should be multi-directional, as was the case with the NCC. As I mentioned in the previous chapter, the TIBC, the task force of the independent agency, made several trips abroad to look into the strengths and weaknesses of the major regulatory frameworks of the EU, US, UK and Malaysia (Tsai, 2001).

However, as the first official independent regulatory agency in Taiwan, this ‘dream model’ of the NCC was not only fiercely contested during the legislation process but also rendered unconstitutional not long after its inception. In light of such political upheaval, this section explores the possible factors involved in incompatibility in policy transfer and considers the feasibility of IRAs in Taiwan in relation to the development of democracy.

The ‘shopping’ process is designed to be professional and scientific, but it is nonetheless also political, as different actors will inevitably select and present certain cases favourable to themselves but not necessarily beneficial to the developed of industry or the country. Examples drawn from abroad, according to Robertson (cited in Dolowitz and Marsh, 1996:346), are usually presented as ‘politically neutral truths’, but are actually ‘political weapons’. Howard Shyr (2003a), a legal scholar, member of the Government Re-engineering Committee and later NCC commissioner, points out that the NCC underwent a significant change, from an American-centric model to a more eclectic model informed by the existing policy pool, due to the politics of actors involved. He observes that in early proposals, the US FCC, with its independence from political influence, was the only role model entertained. However, when the process entered its later stages, and departmental interests had become a significant factor, the structure of the agency changed with respect to both its form and its responsibility. One former NCC commissioner, familiar with the NCC since its preparatory stages, observed a similar trajectory:

According to the first institutional design, the FCC in the US was the agency’s dominant model: the NCC was supposed to involve only the Directorate General of Telecommunications (DGT) and be responsible for regulating the telecommunications industry. But then the Government Information Office was worried about being marginalised, so they

suggested that the NCC include the broadcasting industry. (Interviewee 8)

Political manoeuvring took place not only between the relevant departments with respect to the composition of the NCC, but also in the finer details. A former government officer who played a key role in drafting the new regulatory framework suggested that even the number of commissioners carried political implications because it informed the balance between different interests and powers:

We proposed a framework of seven commissioners with staggered terms, mainly five years, in order to be differentiated from the presidential term. But I was told that there weren't enough positions to accommodate the interests involved, so the number was later amended to 13, which, in my view, was very immoderate. (Interviewee 25)

As the discussion has shown, the autonomy of the regulatory agency was largely taken for granted, regarded as if a self-evident consequence of institutional change. As a result, the institutional design was very different from that proposed at the outset; for instance, the administrative level of the NCC had been elevated to cabinet level. Additionally, content regulation had become part of its mandate, as it is for Ofcom in the UK, in response to the proposal to abolish the GIO (Shyr, 2003a).

Other actors considered the implementation of the NCC to be yet another example of impetuous policy-making. For them, the change of government did not seem to bring substantial change, and the Pan-Green coalition blaming their Pan-Blue counterparts for intervening the design of the NCC was like the pot calling the kettle black. A journalist told me that the mentality of the government in fact had hardly changed:

In Taiwan, too many policies have been just a collection of fragmented pieces, assembled without insight or consideration of possible repercussions. The government does not think about what Taiwan really needs, and is very ignorant of reality. (Interviewee 15)

A director of a leading lobbying group used nutritional metaphors to highlight the incompatibility between systems:

With independent regulators, you can tell from various reports that every one has different ideal types, be they the FCC in the US or Ofcom in the UK. But how do we know what Taiwan really needs? People always

believe that foreign food is more nutritious despite the fact that they have a rather 'local stomach', and will only end up with indigestion. (Interviewee 11)

Rightly as he stated, but I suggest that whether or not the concept of IRAs is compatible with Taiwanese contexts is probably not the question, rather, it lies in figuring out the lingering disease before taking another new medication.

Delegation of media regulatory power in Taiwan

Perhaps the most significant difference between Taiwan and the role models from which it attempts to learn is the degree of democratisation that it enjoys, and therefore the extent to which regulatory power is delegated. The political situation in Taiwan is very different, since political transition took place within the last three decades and power struggles between the elite groups still dominates politics. A lobbyist who works for a leading cable TV corporation highlighted the importance to political elites of controlling the media, and claimed that 'virtually all elected legislators have at a certain time exerted their influence on national or local media outlets and benefited from them. They certainly will not give it away' (Interviewee 19).

Although the policy of creating an independent media regulator is hailed by almost every group as a step towards democratisation, the extent to which the democracy has already matured plays a crucial role in determining its success. The rise of the regulatory state has its origins in Western Europe and the US, where democracy has been consolidated, and the creation of IRAs has been attributed to politicians' desire to avoid blame, encourage political commitment and control political uncertainty (Majone, 1999; Gilardi, 2008), while it seemed not the case in Taiwan. A former Director General of the GIO criticised the Pan-Blue coalition while maintaining that the political travails of the NCC are 'a necessary evil', arguing that this is something a democracy cannot avoid:

You just have to accept the reality that our democracy is not mature enough...That is why even though we have a democratic political framework, the power system generated from it is still an authoritarian one. (Interviewee 16)

Similarly, a veteran journalist suggested that the challenges facing the NCC are actually rooted in an immature democracy:

The [party ratio] proposal is a result of collective paranoia, where all the political powers are worried about being betrayed or sacrificed and try to secure their own interests in the most blatant way. Unless the division of Pan-Blue and Pan-Green is destroyed and democracy matures, the political struggles will still dominate the creation of every agency relevant to political interests. It is a shame for Taiwan. (Interviewee 15)

As the NCC has evolved and encountered its many challenges, different actors in the policymaking process of the NCC have started to question the design of the independent agency, echoing reflections on the feasibility of policy transfer (Phillips, 2006). Two former high-ranking government officials in the DPP administration attributed the incompatibility to power struggles during political transition:

We had always believed that an independent and respectable media regulator was possible and worth fighting for, but the impact of political struggle was overwhelming and the autonomy of the regulator was highly contested. (Interviewee 16)

It was the political struggles that damaged the institutional design of a model independent agency. We had looked to many countries for institutional design, such as the US, UK and Japan, but never expected that the Pan-Blue would so unabashedly seize power regardless of the rule of law. (Interviewee 13)

It may be too early to make judgements about the compatibility of the IRAs with the Taiwanese situation. However, the challenges facing the NCC have an illustrative value as they imply similar problems for the democratisation process in other countries. One former government official, also a law scholar, doubted the suitability of the independent regulator model for Taiwan, using Japan as an example:

After this attempt, I would say that probably the IRAs are not suitable for Taiwanese contexts as the political culture and degree of democratisation here are very different from Western countries. Japan has experienced a similar development: there was a proliferation of independent agencies in the mid-twentieth century under the influence of US, but the trend later withered away and many agencies were abolished. (Interviewee 13)

He is definitely not alone in this view, since the sceptical voices multiply when a controversial case emerges. Industry leaders, legislators and even some NCC commissioners express similar doubts.

Others hold different opinions and focus on improving this existing agency. As we have seen, one interviewee described the struggles during the delegation process as the inevitable consequence of the democratisation process. Another former KMT legislator also suggested that the priority is to improve the capability of the regulator:

It is unwise to denounce the efficacy of the NCC because of the political struggles. It is like throwing out the baby with the bathwater. We should think about adjustments and shift the focus of the NCC from political struggles to more significant issues. (Interviewee 17)

As Rawnsley rightly points out, the highly politicised Taiwanese media might have a negative impact on the development of democracy in the long run. And it is only when the people and media institutions of Taiwan accept that ‘regulation is not the equivalent of control, and that supervision does not have to be a threat to democracy’ (2007:78) that the democratisation of Taiwan can progress.

Conclusion

This chapter has delineated the challenges of the state intervention in the new independent regulatory agency in Taiwan, focusing on how the transitional state tends to maintain the control of the media by filing a constitutional interpretation against agency and claiming it unconstitutional. It has demonstrated how judicial power has been utilised as a political tool to de-legitimise the independent regulator and the extent to which the legitimacy and efficacy has been impacted. It is argued that transitional politics is central to interpret the relationship between the state and the new IRA, as the analysis demonstrates that the state is reluctant to delegate regulatory power to the agency in particular in countries with intense political confrontation.

Although plans for an independent media regulator seemed to emerge from a consensus, the analysis demonstrates that the delegation of regulatory power over the media from political elites to independent bodies is particularly difficult in countries where political confrontation is intense. It also suggests that the legitimacy and autonomy of the IRAs is vulnerable and can easily be sacrificed in the course of power struggles. Furthermore, the unprecedented legal dispute illuminates the difficulty of policy transfer from established to new democracies. This chapter has

painted a rather pessimistic picture of the development of the NCC, arguing that the transplantation of policy without taking political, social and economic contexts into consideration can only lead to another policy failure and to further setbacks for Taiwanese democracy.

Chapter 6

The NCC and media ownership

This chapter examines how the independent regulator in Taiwan has responded to the issue of media concentration, and how politicisation has impacted on its regulatory decisions. Concentration of media ownership has been a conspicuous phenomenon in the past decade alongside the advance of technology and the deregulation of the media industries. More importantly, the possible consequences of media concentration have generated intense debates between political economists and free marketeers over whether they contribute or are detrimental to democracy. This issue is especially acute in post-transition countries, where significant media resources are transferred from the traditional political power bloc to the hands of corporate business through an entrenched politico-economic network, bypassing demands for a democratic media system. This chapter addresses this issue by investigating two cases relating to cross-media acquisition in the context of different administrations, different NCC commissioners and different regulatory decisions. In sum, it sets out to explore how the regulator has reacted to political change, and through what mechanisms politicisation has been brought to bear on the regulator.

Both cases concern organisations that had been party-owned under the authoritarian regime prior to 1987, and thus left with a political imprint after democratisation. The first case is the acquisition of the Broadcasting Corporation of China (BCC), the largest radio broadcasting corporation in Taiwan, by a media mogul who has long enjoyed a friendly relationship with the KMT. The other is a multi-media acquisition by a food company, involving a terrestrial TV channel, the China Television Company (CTV), a cable channel, CtiTV, and a national newspaper, the China Times. Both the BCC and the CTV used to be owned by the KMT in the martial law era as part of the party-state propaganda apparatus. These two cases reflect regulatory developments in several respects: firstly, they focus attention on the issue of ownership, which is at the centre of recurring debates over the tension between the desire to promote a competitive environment for industries and the necessity of maintaining a sound democracy in the age of globalisation. The principles underlying the regulator's judgements will help reveal the regulatory

philosophy of the IRA in this regard. Secondly, the two cases also speak to the way that ownership policy can be politicised by interference at various levels, leaving the judgement, credibility and autonomy of the regulator open to question. Thirdly, this chapter explores how Taiwan's authoritarian political history has cast a shadow over the implementation of media regulation, not least in contributing to the association of market freedom with political freedom, and regulation with political repression.

Why Ownership Matters?

The global media landscape has been greatly influenced by privatisation and deregulation, with the relaxation of media ownership rules becoming the norm across the world, giving rise to mergers and acquisitions. This chapter focuses on how the independent regulator has dealt with the issue of media ownership, not least because privatisation has become such a rampant phenomenon but because it is influential in shaping the development of democracy. Many 'liberal' countries such as the US, UK, Canada, and many European countries have seen the general tendency conform to the neo-liberal creed and cross-media ownership emerged increasingly (Sterling, 2000; Hardy, 2008:145-151; Doyle and Vick, 2005). In post-transition countries, media ownership has involved dramatic changes, shifting rapidly from government hands to those of business, most of time through existing politico-economic networks (Lent, 1998; Tomaselli and Dunn, 2001).

Criticism of concentrated media ownership centres on the idea that it is harmful to democracy. On the basis of extensive inquiries into the relationship between the media, state and market, Baker (2007) argues that the dispersal of media ownership is a key contributor to the robustness of a democracy. He bases his argument on three key points, bearing on normative democratic principles, real political scenarios, and economic analysis. Firstly, Baker defines his ideal democracy in terms of a politically egalitarian conception, the one person/one vote principle, and predominantly represented in ownership of mass media (2007:6-7). Secondly, Baker points out the potential risks of concentrated ownership, such as power going unchecked and being deployed irresponsibly (2007:16). Freedman shares a similar concern and considers ownership an essential issue, since the expansion of media conglomerates can influence market behaviour, shape public opinion and weaken the diversity of media systems (2008:105-6). These opinions

predicated on democratic concepts also echo with Doyle's pluralist argument that concentration of ownership may lead to the over-representation of certain viewpoints favourable to corporate media, and thus constitutes an obstacle to the fair representation of a wide range of concepts (2002a:26). Thirdly, Baker applies economic analysis to the issue of ownership, arguing that the profit-oriented media market is fundamentally detrimental to the production of creative media content (2007:28-9). Likewise, James Curran (2002:220-4) claims that if more and more large, profit-oriented corporate companies control the media, the democratic role of the media may give way to market corruption and suppression. Similarly, in examining the relationship between global media ownership and democracy, McChesney (2001) openly concludes that powerful corporate media may hinder public engagement in media policymaking and become 'a poison pill for democracy'.

While many have linked the concentration of media ownership to the deterioration of democracy, media economist Benjamin Compaine argues that many negative effects of media concentration are actually imagined or assumed and lack a real basis in evidence. In his book-length study of various media industries (Compaine, 2001), he refutes the fundamental notion that media ownership has become increasingly concentrated, arguing there are in fact 'more channels, more choice and more owners' of media outlets than ever before. He maintains that competition between media companies is actually rising rather than declining as many presume. Even if some media conglomerates get larger after mergers and acquisitions, argues Compaine, both the anti-trust standard and the socio-political standard, two evaluation frameworks introduced to identify the degree of concentration, will effectively prevent the media industry from becoming the monopoly that many people fear (2000:547). He then argues that it is the owners of media outlets, not concentration itself, that influences the partiality of news coverage (Compaine and Gomery, 2000). He also hails the development of communications technology, arguing that it has significantly changed the media industry and is able to provide a greater number of information outlets than before. Compaine's research has far-reaching implications because industries and regulators alike tend to reference his research to support the relaxation of ownership rules. Largely in line with Compaine's arguments, the FCC in the US introduced the Diversity Index (DI),

an analytic tool based on anti-trust standards and developed from Compaine's method for measuring the diversity of media environments and backing up regulatory decisions in relation to media ownership (Freedman, 2008: 110).

Although Compaine has produced a detailed and evidence-based study, Hesmondhalgh (2001) and Baker (2007:56-72) challenge his basic assumption, arguing that the concept of 'media as a whole' on which he has based his conclusion is not a viable tool for analysing any media markets. Hesmondhalgh suggests that although Compaine is partly right in claiming that some media industries are more diverse than before, he is overly complacent about the existence of media conglomerates and their potential harm to an independent media system (2001). For his part Baker uses content creation and delivery as an example, explaining that they are both part of the media industry but are so distinct from each other that they should not be regarded as interchangeable services in the same media market (2007:60-1). Both Freedman and Baker raise criticisms regarding the Diversity Index (DI). Freedman (2008:110-1) argues that the DI fails in three respects: first, it only takes into account the number of media outlets, ignoring the relative influence of each. Second, the DI does not address the diversity of views represented in the media content; and third, the FCC acted in a somewhat deceptive manner in the course of introducing this new way of measuring media diversity as the sample 'Anytown USA' represented a relatively diverse media landscape which has in reality been decreasing. The surreptitious development process and implementation of the DI again demonstrates a desire on the part of the FCC to unleash new ownership rules. The FCC has a reputation for forming friendly relationships with the industry and for responding more readily to industry requests than to the needs of the general public (McChesney, 1993; Aufderheide, 1999).

Regulation is not one-dimensional nor uniform, according to Hardy (2004:151): certain aspects of regulation are likely to vary according to the different contexts and 'sensitive' areas that obtain in different countries. The point is especially germane with regard to the issue of media ownership. In Europe, the media have been regulated along political and cultural lines, rather than being simply one of the commercial elements of society, compared with media systems in the US. This deep-rooted tendency still differentiates media systems and their regulators in

Europe from those in other countries, in spite of the fact that they are witnessing similar convergence trends. As a result, regulators in Europe adopt a more restrictive approach towards media ownership than their US counterparts (McQuail, 2007). But even within the same country, or agency, perspectives on ownership can be very diverse. The process that in 2003 saw the relaxation by the FCC of cross-media ownership rules encapsulated conflicts between Republican and Democratic commissioners. The majority Republican commissioners praised the development of technology and innovation and tried to significantly loosen ownership rules, conforming to business lobbying power by presenting selective information, while the others adopted an oppositional position and fought for more public participation in media ownership issues (see McChesney, 2004 Chapter 7).

In transitional societies where a democratic culture of media and politics are much needed, the media has unfortunately attracted vulture-like tycoons and political powers hoping to grab a share of a lucrative and influential emerging markets (Voltmer, 2006b). It has been a common scenario for the lion's share of media resources to be transferred after transition into the hands of private corporate powers that have long had friendly relationships with the previous or incumbent authoritarian governments. Examples from Eastern Europe to Latin America and Asia all tell the same story. Democratisation in post-transition Asian countries, argues Lent (1998), often means the transfer of media power from political dictators to economic oppressors. Consequently, although the number of media outlets in these countries is increasing, diversity of ownership is merely illusory, since it does not translate into diversity of content or perspectives. In this context, tracing the way in which media ownership has been transferred during a country's transition to democracy is meaningful since the process can illuminate the politico-economic power network.

Before the discussion of both my cases extends to the details of how different sides of the ownership debate impacted on the regulator, it will be useful to summarise the relevant legal regulations in relation to the management of broadcast media in Taiwan. The parent law is the Radio and Television Act (hereafter the Act), and most judgements are made by referring to the Enforcement Rules of the Radio and Television Act (the Rules), a supplementary document formulated according to

Article 50 of the Act. Relevant to the transfer of media ownership in the Rules are Articles 18 and 19, which state the limits of transfer that may be undertaken by a natural person as well as by a judicial person. The major difference lies in the limits of shareholding percentage: if the transferee is a natural person, no application shall be approved if he/she

in combination with his/her spouse, lineal relatives by blood and marriage, and relatives within the second degree of consanguinity, holds more than 50 per cent of the shares of the business; or holds more than 10 per cent of the total shares of a newspaper or terrestrial radio/television business. (Executive Yuan, 2007a)

While for a judicial person who applies for a shareholding transfer,

the application shall not be approved if the transferee, individually or in combination with related businesses, holds more than 50 per cent of the total shares of a newspaper or terrestrial radio/television business. (Executive Yuan, 1976)

Another crucial article that is even more frequently referred to by applicant corporations is Article 14 of the Act, which regulates ‘the change of responsible persons’:

The radio/television businesses shall have permission from the regulatory agency for broadcast suspension, stock transfer, and change of names or responsible persons (Executive Yuan, 2006a).

The difference between these three articles seems minor, but it is significant. Cases related to Article 14 are usually dealt with as a formality, focusing on the eligibility of the succeeding persons while having nothing to do with the transfer of the shareholding. By contrast, the applications filed under Articles 18 and 19 of the Rules receive more detailed scrutiny because they are regarded as involving a change of management. Most of the transaction applications involved in the two sub-cases analysed in this chapter were, unsurprisingly, filed under Article 14 of the Act, and the discretion of the commissioners to decide whether they were accepted for review under Article 14 sometimes allowed for the suspicion of politicisation.

Different Positions on Ownership

The two cases in the present chapter show how the nascent independent regulator has handled the question of the concentration of media ownership while

dealing with pressures from political powers and from the regulated industries. This section outlines four factors bearing on the different positions taken on the issue of ownership: namely, political, personnel, economic and socio-political. In the following paragraphs, the four factors are put in context to examine how they impacted on the development of the cases.

Both cases are relevant to the democratisation process addressed in Chapter 4, in which media reforms was aimed at repealing the power of the state, the political parties and the military played a part. Among the various powers, the long-ruling Nationalist Party (Kuomintang, KMT) was the most influential actor as it effectively controlled the CTV, one of the three terrestrial TV channels, and BCC, the largest radio corporation, to name just a few, and was in charge of most of the media outlets. The party-state KMT exerted its power over the media through the Hua-Hsia Holding Company, which owned 33.94% of the Chinese Television (CTV) and 96.95% of the Broadcasting Corporation of China (BCC). Although the media environment has gradually become more open with the lifting of martial law, substantial change took place only after the Democratic Progressive Party (DPP) came to power in 2000. The first change of government speeded up the reform of media ownership policy significantly, as the new DPP government facilitated a series of policies to review the allocation of media ownership. There had been loud calls to eliminate the influence of political powers from the media, including that of political parties, the government and the military, leading to the amendment of the Radio and Television Act in 2003, which stated that all capital invested by political powers should be withdrawn before 26 December 2005.

The first transfer of KMT media assets took place right before the aforementioned deadline when the KMT sold the Hua-Hsia Investment Holding Company, thereby transferring some media assets to the Jung-li Corporation for a total price of NT\$9.3billion dollars (£180 million). The Jung-li Corporation is headed by Albert Yu, the chairperson of the China Times Group, whose father was the founder of the newspaper China Times and had enjoyed the patronage of the KMT for many decades (Lee, 2000a). The deal was widely regarded with suspicion, as many Pan-Green politicians speculated that it was unreasonable for a newspaper suffering from declining readership and financial deficit to spend such a fortune

(Peng and Tien, 2005). Unverified accounts implied that Jung-li was simply a conduit used to transfer capital from China or Hong Kong, which is illegal, as Chinese capital is always held to be implicated in conspiracies to control Taiwanese media (Wang et al., 2005).

Jung-li Corporation thus applied for a ‘change of responsible persons’ in relation to the CTV and BCC after the transfer, and this marked the beginning of the series of similar applications central to this chapter. Jung-li Corporation treated the takeover of Hua-Hsia Holding Company as an ordinary business practice although in fact it should have been subjected to review under Articles 18 or 19, since the acquisition effectively gained them control of media outlets. Simply put, Jung-li tried to elide the ownership issue and define the acquisition as a case of ‘change of names or responsible persons’, which are often approved on a formalistic basis without detailed inspection. This is to say, that the Jung-li Corporation violated regulations, since the law requires that the shareholding of a single judicial person cannot exceed 50 per cent, and Albert Yu actually owned 99 per cent shareholding of the Jung-li Corporation. However, regardless of the apparent evidence of cross-media ownership, the NCC pursued the review under Article 14 and approved the application.

In post-transition countries, even if the centralised media system has been transformed with the advent of democratisation, the formerly privileged parties try hard to keep control of the media and they often remain influential in the new media system (Jakubowicz, 1995). In Taiwan, the KMT also sought to retain a certain degree of control over media assets through the existing politico-economic network despite being forced to officially scale down its influence. Within months of Jung-li’s takeover, the assets were traded again separately and each case generated doubts about the original deal, as evidence came to light to suggest that Jung-li used a fraudulent means to help the KMT meet the deadline and ease the transfer of properties. And the party seemed to play a role in the deals that followed the initial transfer, such as the sale of the CMPC to an IT company, the BCC transfer at the end of 2006, and the sale of TV channels in 2008.

The KMT was largely responsible for both the development and the transfer of the BCC. The BCC enjoyed significant privileges under the party-state, such as

national frequency allocation and the use of land for transmitters for free or at an extremely low cost. As of the early 1990s, it was already the largest and most prominent radio corporation in Taiwan, commanding 32% of the overall radio industry as regards the amount of radio transmitters, and 43% in terms of consumed electric power (Cheng, 1993:33-36). The KMT was also believed to be involved in the transfer of the BCC not only in Jung-li's takeover but also in its later acquisition in 2006, by a famous media mogul, Jaw Shaw-kong. Jaw is arguably the most well-known media businessman in Taiwan, having first won renown as a KMT legislator, and was regarded as one of the country's most promising politicians. After losing to Chen Shui-bian in the election for Taipei City Mayor, the capital city of Taiwan, in 1995, Jaw established the UFO Radio Company and hosted several political talk shows. Within ten years, UFO had become one of the most profitable and possibly the most politically influential radio network in metropolitan Taipei (Shyr, 2007a).

Political factors

The buyout of the KMT media assets by the Jung-li Corporation was a harbinger of a powerful joint media corporation resulting from cross-media ownership. It could have been an illustrative case for the regulator to demonstrate how it would tackle the issue of media concentration and its possible repercussions, if it had not been distracted by political conflicts. However, media reform under the DPP administration was more about forcing the KMT to withdraw its investment in and control over the media than establishing a balanced media environment. The DPP government focused solely on condemning the KMT for unjustly acquiring the media resources during the martial law era and endeavoured to claim these assets back through judicial procedures. The goal was political and the scope narrow, and normative concepts such as diversity and pluralism were disregarded. Political opponents not only catalysed the amendment of legislation and precipitated the following cases but also predetermined the DPP's reaction to any transfer of media ownership relevant to the KMT.

Although Jung-li's acquisition fell within the remits of the NCC, the DPP government tried to intervene and attempted to annul the deal by examining the source of capital and other details of the transaction. The DPP defined Jung-li takeover as a political rather than an economic or cultural issue from the outset of

evaluating, and placed more emphasis on achieving ‘transitional justice’ than on the potential impact of a new media conglomerate. Reviewing the performance of the regulator in handling the Jung-li case, one former NCC commissioner points out that the Executive Yuan asked the ‘wrong question’: having committed itself to politicising the case it was unable to address the issue of market power (Interviewee 8). To sum up, the KMT tried to transfer the properties into the hands of its industry friends in the course of political transition, while political partisanship determined the position of the DPP as anti-transfer in every KMT-related ownership case.

So it was that the DPP administration again intervened in Jaw’s acquisition of the BCC and accused the NCC of ‘overt failure to detect the fraudulent deal’ (Wang et al., 2007). The Executive Yuan vowed to scrutinise the deal between the KMT, Jung-li and the BCC with regard to the source of capital and any secret agreements. The focus was still on claiming that the BCC was a national property and should not be delivered by the KMT into private hands of companies. After the NCC approved the BCC application, the Executive Yuan moved to assert control over the commission by revoking its decision as well as threatening to sue the commissioners for corruption and dereliction of duty (Shih and Shan, 2007). All of this again testifies to the way that the political opposition prejudged the issue, and the failure of both sides to recognise a nascent global trend towards media mergers and takeovers, and to address the possible consequences of Taiwan joining this trend.

The other case relevant to this chapter addresses the acquisition of the Jung-li Corporation by the Want-Want group in 2008, which formed the Want-Want China Times (WWCT) Group, whose assets include the CTV, CtiTV and China Times. Although the KMT was not explicitly involved in the deal, a high-ranking manager in the WWCT Group implied in an interview with me that the takeover of major media assets would not have been possible without the consent or implicit support of the KMT, then in government.

The government, or some staff members working closely with the Premier or President, must have known about the deal, and even to some extent agreed the deal before the Want-Want Company announced it to the public. The China Times Group is such an influential media corporation that the government wouldn’t just let it go, and business

people are no fools: who is willing to invest billions before making sure that the government is on the same side as them? (Interviewee 21)

Political opposition between the KMT and the DPP explains the confrontations concerning ownership and other media policies, especially those that occurred during the DPP's rule as a minority government. The DPP administration was a minority for the whole of its eight-year period in government, since it never effectively dominated the legislature. The power and popularity of the DPP declined as a result of its conflicts with the Pan-Blue, which usually led to negative coverage and comments in the media.

Political fumbling and repeated confrontations with the opposition turned the DPP into the underdog and gave rise to gradual change in the political climate that impacted on the regulator in various ways. First of all, after the KMT won an absolute majority in the Legislative Yuan in 2007, in early 2008 it supported the amendment of the Organisation Act of the NCC to make the appointment process constitutional. Since triumph in the legislature often presages victory in the presidential election also, this amendment might be interpreted as a deliberate strategy on the part of the KMT, since it determined that future commissioners of independent agencies were to be entirely appointed by the Premier and approved by the legislature. It also rectified the unconstitutionality of the NCC established by the judicial interpretation discussed in Chapter 5, which was itself largely made possible by the change in the political climate.

Second, it seems that anticipation of another change of government influenced the ruling on the BCC case. In 2008, the KMT presidential candidate was generally expected to win the election, and this move on the part of the NCC seemed to many emblematic of this expectancy (Shih, 2008). The regulator, it might be conjectured, had delayed its response to the BCC application in order to avoid interference from the DPP, widely considered to be on the way out. The timing of the NCC ultimatum for Jaw to complete the acquisition, when it finally came, was particularly significant: the new deadline was 20 March 2008, two days before the presidential election. This again implies that a change of government would have a substantial influence on the development of media policy in relation to issues such as concentration and cross-media ownership. A high-ranking cabinet member in the

DPP administration also considered the BCC case a missed opportunity attributable to the change of government:

We tried our best and managed to prevent the takeover of the BCC when we were in office, and I am sure that the process would have been completed if we had stayed in office, but unfortunately it is beyond our control now. (Interviewee 16)

The changes in the political climate had an influence on regulatory policymaking, but did it result in better regulatory performance? The KMT claimed that its acquisition of both legislative and executive power, of ‘complete governance’, would lead to better performance in policymaking and full accountability to the public. According to observations by former and existing commissioners, the change of government did affect regulatory judgements and the autonomy of the regulator, but in quite unexpected ways. One former NCC commissioner comments:

When we were in office, the Executive Yuan did not have any channel to influence our decision, which was the reason why the DPP government was unsatisfied with us because we were not a rubber stamp agency and even kind of on the opposition side of the government. But now [after the change of government] everything has changed, the Premier can just phone the Chief Commissioner to discuss certain cases, as the government appoints the Commissioners. There is no independence whatsoever when the NCC and the government are always in the same alliance. (Interviewee 6)

The changes of government in both 2000 and 2008 clearly impacted on the development of ownership policy. Through existing politico-economic networks, the control of media outlets was transferred from the party-state to corporate business. After first coming to power in 2000, the DPP attempted to prevent the concentration of media ownership; however, its narrow focus on KMT media outlets prevented it from developing a more complete and insightful picture. In 2008 the regulatory environment changed again because the KMT retained both the executive and legislative power. It seemed that circumstances were favourable to the media corporations, but different regulatory personnel held different viewpoints concerning media concentration. The next section examines why and how the personnel factor affected regulatory development.

The personnel factors

Political struggles were apparent in both the case studies considered here, but they were certainly not the only factor, since the independent regulatory agency is supposed to exert discretionary power and conduct fair reviews without fear of intervention. Since regulatory decisions are made by consensus in weekly commission meetings, in addition to taking the possible political influence into account, it is also important to examine how different commissioners interpret these issues. This part looks at the judgements of the NCC in relation to the two cases and examines the impact of the different political contexts and changes of personnel on the decision making of the regulator.

The transfer of the KMT's media assets to the Jung-li Corporation was the first high-profile issue following the inception of the NCC because it related to some prominent media outlets and caused an intense confrontation between the DPP government and the regulator. Although commissioners were put forward according to their profession and were supposed to be politically neutral, one leading member of a media reform group pointed out that the imprint of political affiliation on commissioners is rather unmistakable.

None of the commissioners are members of any political parties, but it is undeniable that this agency includes the former General Manager of the BCC, and those who have strong ties with the Pan-Blue Coalition through their family and interpersonal networks. (Interviewee 22)

The Jung-li case is revealing as many commissioners deliberately took the application at face value. The regulator treated it as an application concerning a change of responsible persons, and approved it accordingly on the basis that there was no evidence indicating any involvement from foreign capital. By doing so, the regulator sidestepped the matter of cross-media ownership, with regards to which the Commission included only a single sentence vaguely pointing out that 'the issue of cross-media ownership needs more consideration in the future' (National Communications Commission, 2006a). In response to this account, a dissenting opinion to the NCC's ruling claimed that the regulator should not shirk its responsibility by literally interpreting the legal rules and turning a blind eye to the potential 'synergy' effect of media concentration (Shyr, 2006). One former commissioner also implied in an interview that it was problematic that the regulator tried to review the transfer by pursuing 'examination as to form' with regard to the

legality of Jung-li's capital, instead of 'examination as to substance' concerning the impact of cross-media ownership. In his opinion, the regulator thus missed the chance to discuss the issue of media concentration thoroughly because it was dominated by politicisation.

There are too many eerie coincidences and too much vagueness in Jung-li's buyout of KMT media assets in the first place. I believe it is a problematic case, but what I am more concerned about is the abuse of market power rather than the partisan tendencies of the new owners. However, neither the Executive Yuan nor other NCC members accepted that, as there were few deliberations about market power in the Jung-li case. (Interviewee 8)

The BCC case seemed to strengthen the impression of the NCC's bias in favour of the KMT. It was a more complicated case since the BCC was transferred from Jung-li to a group of four companies, with the same application for a change of responsible persons. More controversially, although this time the BCC was transferred to four companies, they were actually front companies financially controlled by another four companies relevant to Jaw – so-called re-investment in financial operation (Shyr, 2007a). In a public announcement, the NCC, recognising the influential status of the BCC, asserted that it would pay close attention to four issues, namely the source of capital, the principle of dispersed shareholding structure, the concentration of broadcasting resources, and elimination of political power from the media outlet (Liu, 2007a). However, the regulator later agreed to approve the transfer of the BCC without making any real reference to these four issues, choosing to proceed instead on the basis of a written promise signed by Jaw. The written promise was comprised of nine agreements, in which Jaw agreed to return two radio frequencies to the government, to have its shares traded in public within two years, to raise the percentage of self-made programs, to guarantee that there would be no illegal investment from foreign capital, and to reduce Jaw's wife Liang Lei's shareholding in UFO Radio from 34 percent to below 10 percent within six months of the approval and so on (Shan and Shih, 2007). Although the NCC claimed that the written promise was legally binding and the regulator had the authority to annul the approval should there be any violations, the former Director-General of the GIO, Shieh Jhy-wey, argued that these criteria should have been regarded as prerequisites for approving the application (Su and Peng, 2007; Shan and Shih, 2007).

There were indications that the agency tried to lend a helping hand to the Pan-Blue political power during the deliberative process, and the final belated ultimatum clearly revealed its inclinations. Constrained by the many administrative impediments posed by the Executive Yuan, the regulator had for a long time been somewhat circumspect as regards any review of the criteria in the written promise and did not scrutinise the follow-ups. It was not until the end of February 2008 that the NCC was asked again to explain the development of the BCC case, and by then the deadline by which the nine agreements discussed above were to have been met had already passed. Criticism began to mount after the commission meeting failed to materialise, which was interpreted as the regulator trying to delay the review until after the presidential election. When the commission meeting finally took place, it was not surprised to learn that Jaw was still ‘heavily involved’ in the BCC, while his wife Liang still had not reduced her shareholding of the UFO Networks to below 10 percent. Instead of declaring the application invalid, the NCC issued an ‘ultimatum’ demanding that Jaw and Liang reduce the shares within 15 days, or the approval would be annulled (Shan, 2008). The new deadline, according to the ultimatum, would be 20 March 2008, two days before the presidential election that the KMT candidate was generally expected to win.

This again raised suspicions regarding the political tendency of the NCC, as most of the commissioners had been put forward by the Pan-Blue coalition. The belated decision drew considerable criticism, even from within the Commission. Lin Dong-tai, one of the five commissioners present at the meeting and a commissioner put forward by the KMT, filed a dissenting opinion stating that, with regard to such a significant media takeover, the ruling seemed to blatantly favour Jaw.

Should the 15 days have been necessary given Jaw’s plight, it should have been provided right after the proposed dates according to the written promise, not another two months later. This decision would again be interpreted as an unfair handling and tarnish the autonomy and the image of the NCC (Lin, 2008a).

Another commissioner present at the meeting also expresses his disapproval, suggesting that many relevant stakeholders did not reveal the truth when answering the enquiries from the commissioners.

I was very disappointed at that time because what they said was blatant lies, including the financial situation, and personnel of the holding companies. Many of them are public figures with considerable influence on society, and they lied to us in order to obtain ownership of the BCC. (Interviewee 24)

Despite the dissenting opinion, the NCC was sympathetic to the corporation as it ‘understood Jaw’s plight’, and accepted his explanation that he was hesitant to meet the requirements due to the ‘uncertain political environment’ (Liu and Chou, 2008; Shan, 2008). A former commissioner explained to me that the politicisation of the decision lay in the bundling together of the right to annul the previous decision – so as to reassure the autonomy of the NCC – on the one hand, and the offer of another deadline on the other. He reflected on the pros and cons of granting the 15-day ultimatum, implying that the conflicts between the Executive Yuan and the regulator influenced the final decision and created space and possibilities for those who tried to aid Jaw with the regulatory decision:

It may sound absurd because, in order to secure the right to annul the application, we had to accept the package proposal, which included the 15-day grace posed by another commissioner. I did think the new deadline was unfair and wanted to file dissenting opinions concerning that; however, if I had done that, this case would have failed to pass because it needed at least four votes. (Interviewee 8)

A source inside the BCC admitted that he would have questioned the reasonableness of the case were it not for his position:

I would say it is a rough and rather rushed decision. The NCC had delayed for quite a while in handling this case but they just ignored it instead of thinking about it thoroughly. In spite of many contradictory opinions within the Commission during the process, the NCC still passed it right before another change of government and resignation of the first-term commissioners. I can only say it is odd. (Interviewee 15)

It must be noted first that the ‘contemporary’ label deployed in this thesis in relation to the NCC is simply a way of differentiating the agency as it exists at the time of writing from in the agency of 2006, as six out of seven commissioners left their posts in 2008, which practically made the subsequent agency a new institution characterised more by novelty than continuity. According to the original design, the agency would not be identified by ‘terms’ since the commissioners would serve in staggered terms. However, the constitutional interpretation of unconstitutionality

impacted on the design of the agency and almost all the commissioners left before the end of the grace period in 2008. Therefore, for the sake of discussion, this study calls ‘first term’ those commissioners who took the position at the inception of the NCC, and ‘contemporary’ those who followed.

The main difference from the circumstances surrounding the previous BCC case and the later WWCT case is that there had been a change of personnel in the NCC. The reason that the change of personnel represents such a sharp discontinuity can be understood from both external and internal factors. The first term commissioners were put forward by political parties in a high profile review process. Different parties supported candidates with whom they agreed in order to secure their voice within the independent regulatory agency. The commissioners thus had relatively strong party affiliations although were not actually party members. This is particularly true for those backed by the Pan-Blue coalition, as many of them previously worked in party-owned corporations or served in think tanks for the Pan-Blue camp. A director of a media reform activist group confirmed to me that power struggles between the two political coalitions resulted in the appointment of commissioners who have strong political tendencies.

The political confrontation led to a peculiar and extremely complicated nomination process of the NCC, as if the complexity would guarantee its independence. But if you look into it, you will see it was clearly power struggle fuelled by highly politicised political environment. (Interviewee 22)

If the regulatory judgement regarding the BCC case was largely determined by the politicised conflicts between the Executive Yuan and the regulator, the WWCT case demonstrated how a relatively neutral review could be conducted. As opposed to the first term commissioners, who made deliberative use of examination as to form, referring to ‘formal external legality’, in order to sidestep the issue of media concentration in the BCC case, in their review of the WWCT case the contemporary commissioners emphasised the impact of cross-media ownership on the diversity of media content (Hung and Liu, 2009).

Again in contrast with their predecessors, the new, less politically affiliated NCC commissioners insisted on ‘protecting the right of consumers, guarding public interest, and maintaining media diversity’ (National Communications Commission,

2009), and flagged up the consequences of cross-media ownership in relation to the WWCT case. They referred to the Communications Basic Law, which is a rather broad and general law proclaiming the overarching aim of communications development. The NCC commissioners justified their more wide-ranging examination by pointing to Article One of the law, which stressed that its purpose was to ‘safeguard the rights of citizens, protect the interests of consumers and promote cultural diversity’ (Executive Yuan, 2004). The contemporary NCC held a public hearing to discuss the WWCT case and approved the application conditionally, insisting on seven provisos, aimed at ameliorating the possible negative consequences of cross-media ownership. The seven provisos were later reduced to five, covering media management, administration and operation. For instance, they prohibited management personnel, board directors and supervisors from either television station concurrently holding similar positions in the other station; they demanded the establishment of separate ethics committees within three months; the stations were to have their own editorial and program review personnel, who were to submit a report on internal quality control procedures to the NCC within three months; and the two TV stations were not to be allowed to share studios (Shan, 2009b).

The examination of the detail quickly drew criticism and the NCC was accused of an abuse of the law, because in Taiwan there were no laws specifically regulating cross-media ownership, apart from the limitations on shareholding laid down by the Radio and Television Act, which can be circumvented, as we saw with the Jung-li-BCC case. The WWCT Group followed suit and also made their application by way of the ‘change of responsible persons’ article, but was nonetheless faced with substantial examination. One NCC commissioner emphasised deficit of diversity and plurality in media content as a possible consequence of cross-ownership in her concurring opinion, reiterating the necessity of pursuing a substantial examination prior to regulatory judgement (Weng, 2009). Likewise, the Chairperson of the NCC, Bonnie Peng, also declared the media products to be public goods, therefore the NCC conducted the review with careful deliberation (Tsui, 2009). Additionally, the NCC declared that it would apply examination as to substance procedures to subsequent cases relating to media ownership (Lin, 2009),

which was also very different from how their predecessors went about reviewing the BCC case.

The major difference between the written promise of the BCC case and the five provisos in the WWCT case can be understood with regard to *intention*. In the former case, the first-term NCC approved the application based on the promise while Jaw's wife still held a 34% stake in the UFO Radio Company, which was an overt violation of the law. The ultimatum issued by the NCC was exceptionally controversial, since despite having failed to keep his promise Jaw was allowed one more chance when the regulator took his standpoint into account. By contrast, in the WWCT case the contemporary regulator sought input from scholars and civil society groups in a public hearing that took place before the review process began. According to the concurring opinion presented by a contemporary commissioner (Weng, 2009), the regulator had much more sympathy than previously with the idea that the media had a social and cultural value that needed to be maintained, in addition to their economic value as commodities.

The focus of the two documents was also different, with the former concerning itself with general principles, leaving the details loosely regulated, while the later one homed in on concrete aspects of media management and specified determinate time-frames. For instance, on the issue of ownership the regulator requested that 'both BCC and UFO radio companies should operate independently, maintaining a competitive relationship between one other' (Chen, 2007b). But the definitions of 'independent operation' and 'competitive relation' were vague, and the document did not specify exactly what the regulator would regard as a violation of the promise. As a result, even one former commissioner who had at the time approved the BCC case later raised doubts in the interview about 'whether the two companies were actually separated' and implied that Jaw and his wife were 'probably still influential in both companies' (Interviewee 8). The contemporary NCC was very specific in the provisos, stating clearly that these two television channels were not allowed to share or combine studios or the resources of their advertising, sales and programming departments, thereby ensuring that they were independent from one another (Shan, 2009b).

The extent of political affiliation among the first term commissioners was an implicit but significant factor because different political coalitions wanted to make sure their interests were represented at a time of intense political struggles. The high level of confrontation also meant that the review process for commissioners was highly politicised. One contemporary NCC commissioner reflected on the difference between them and their first-term counterparts and suggested that the latter were greatly constrained by the state of political confrontation to the degree that they were incapable of enforcing any significant solutions:

The discretionary power of previous commissioners was significantly impeded by political conflicts. Once their hands were on a certain individual company, it was likely that the decision would be politicised and there would be conflicts with the Executive Yuan... It is understandable that they made rather passive regulatory judgments, as any intention of tackling substantial problems was highly likely to be challenged in the course of political conflicts. (Interviewee 23)

By contrast, the review process of the contemporary commissioners had a rather low profile as a result of a state of political stability in which the KMT dominated both the executive and legislative branches of the state. As a former Pan-Blue legislator claimed, this made the selection of new commissioners a procedural affair because ‘no one really cared about it’, which resulted in the appointment of some commissioners who, in her view, ‘would have been scanned and filtered out under a more careful review’ (Interviewee 17). She was referring here to some of the contemporary commissioners who insisted on regulating to improve the quality of media content, which she regarded as ‘unrealistic and ridiculous’. In other words, without the political confrontation – or the ‘more careful review process’ according to the former lawmaker – the regulatory agency could possibly include a more comprehensive range of commissioners, including those who take into account the interest of the wider public.

In addition to the political atmosphere, a factor only occasionally discussed in the general literature but frequently referred to in the Taiwanese regulatory context is the background of the NCC commissioners themselves. In his seminal research, Lichty (1962) analysed how the educational and occupational background of the FCC commissioners shaped the focus and direction of regulatory decisions. Lichty suggested that the commissioners with a better understanding of broadcasting

industry were central to the release of the 'Blue Book' in 1946, which insisted on the value of public interest in programming (1962:104-5). In Taiwan, the first term NCC was originally made up of 13 commissioners, four of them from legal studies, three from communications studies, three from telecommunications studies, two from industry and one with an economics background. In the shadow of political disputes and unconstitutionality, only nine commissioners took their posts, and the telecommunications experts all withdrew: the agency might therefore be said to have been weak from its very inception. Legal professionals comprised almost half of the agency and they included the Chairman, the two Vice Chairmen, as well as the spokesperson for the agency. Their voices were dominant in deciding the direction of the newly established regulatory agency, and were widely regarded as favouring free competition.

It seems to be the case that commissioners with a legal background focus on anti-trust measures and free competition, while commissioners from communications studies tend to emphasise the social impact of the media. One chairperson of a leading media reform organisation suggested in the interview that personnel are the key to determining the regulatory philosophy of the agency (Interviewee 22). One former commissioner agreed with this observation, but pointed out that here the key factor was not just the legal background of the dominant faction but the fact that three out of the four legal experts specialised in competition law:

Not all legal scholars celebrate the advent of liberalisation and a lot of them still focus more on control. What matters is the belief in competition law, which aims to improve the market structure by use of regulatory mechanisms. We believe that the reform of structure is more important than that of composition; in other words, we focus more on the shape of the market than the individual cases. (Interviewee 8)

Since three commissioners had a competition law background, and two others had previously worked in industry, it is not surprising to find that the first term NCC was not too keen on thwarting cross-media ownership.

There were seven commissioners in the contemporary NCC following the amendment of the NCC Organisation Act, two of them from communications studies and two from economics, while the remaining three have backgrounds in legal studies, telecommunications engineering, and industry, respectively. Although the

composition does not seem to differ greatly from that of the previous commission, except with regard to the decreasing prominence of legal expertise, a closer look into the occupational background of the individual commissioners will provide more clues to the fundamental dissimilarities between them. For instance, one of the economic experts used to be the convener of a public policy subcommittee in the Foundation of Consumer Protection, a not-for-profit organisation scrutinising the conduct of companies on behalf of consumers. In addition, the only commissioner with legal expertise previously worked in local government, and was responsible for reviewing petitions and appeals filed by citizens.

Those who do not consider background a meaningful variant attribute the shift of regulatory focus to style of leadership within the agency and the nature of political intervention facing the regulator. One high-ranking bureaucratic official in the NCC discussed the change of leadership style in relation to the division of labour within the Commission:

During the first term, individual commissioners did not supervise any of the departments, as decisions were solely made through consensus achieved in the weekly commission meetings. The contemporary commissioners do it differently, as each of them supervises one or more department, and, even though they don't dictate, their personal opinion inevitably play a crucial role in shaping the direction of the department as well as in presenting the opinion of the department on its behalf in the meeting. (Interviewee 18)

Economic factors

As distinct from the political and personnel factors, the importance of the economic factors seems to be generally agreed upon by industry-related members, who have strong tendency to deregulate and relentlessly lobby for relaxation of media ownership rules. Every proposal to promote the relaxation of ownership regulation will include the argument that less regulation will facilitate better competition and give rise to more choice for consumers. The capitalist instinct to pursue profits was accepted without question. Even if the media corporations agree that concentration of media ownership may be unfavourable to a democratic society, they insist that no single company controls the media market. Compaine's argument (Compaine and Gomery, 2000) that the media market is a very competitive one in which individual market corporations are unlikely to dominate is often cited. These

neo-liberal beliefs have spread through the developed as well as the developing countries around the world since the 1980s, and are clearly imprinted on the Telecommunications Act of 1996 in the United States and the Communications Act of 2003 in the UK (Sterling, 2000; Freedman, 2008). Celebration of the market's superiority and infallibility and scepticism about government regulation constitute the defining doctrine of neo-liberalism (McChesney, 2008:15). When the NCC made their preliminary decision on the seven provisos in the WWCT case, criticisms were presented, arguing that it should be left to the market and the consumers, and not the regulator, to decide on the issue of cross-media ownership (Lu, 2009). In a public hearing held by the Legislative Yuan regarding 'the role of the NCC in digital convergence', legislators, industry representatives, and scholars were invited and their opinions carefully orchestrated. The speakers included Chen Chao-ping, CEO of Cable Broadcasting Institute in Taiwan (CBIT), a powerful lobbying organisation, who argued that the government should give way to the market forces:

No one knows the development of this market better than people working in the industry; if Taiwan still believes in a market economy, the government should withdraw the hand from the industry (Hsueh, 2009c).

Moreover, scholars were invited to insist that deregulation is an irreversible trend. As a professor in media management, Chen Ching-he, pointed out:

The NCC should acknowledge that in the era of convergence, wise management is more important than heavy regulation. The regulator should impose low levels of regulation and help the industry grow and prosper (Hsueh, 2009c).

In addition to this pro-market stance, media corporations' drive to maximise profit has also been influential in shaping ownership policy. In the FCC's 2003 relaxation of ownership policy, one of the three major arguments was about profits, with the regulator being persuaded that ownership rules undermined profitability and needed to be abolished (Freedman, 2008:109). The need for profit was taken for granted by the WWCT Group, whose lawyer explicitly stated that 'People should not say no to media conglomerates...Without profitable business corporations, who is capable of throwing tens of millions dollars into operating the heavily indebted media outlets?' (Chen, 2009). Some legislators sided with the industry, arguing the NCC for intervening in the management of the media:

Media corporations are also business corporations, they are undoubtedly profit-driven in order to survive. Concentration of ownership is an efficient way to keep costs down and should not be restricted as long as it does not form a monopoly. The NCC as a regulator should guide and assist but not stifle the development of the media industry. (Interviewee 20)

The first term NCC too seemed to be more sympathetic to industry than civil society groups. One former commissioner explained to me why they declined to take into account a civil society review in evaluating the performance of the media outlets:

Because media corporations invest millions of dollars in the production of media content, we believe that their rights should also be guaranteed and their performances should not be judged by civil society groups who simply comment and criticise. (Interviewee 8)

Another discourse based on a similar ideology emphasises the potential loss or constrained development resulting from the regulatory judgement. The WWCT Group published a news article arguing that the inaction and delay of the regulatory agency reviewing the application not only jeopardised the operation of the corporation itself, but had a wider impact on ‘the rights of the mass consumers’ (Cheng, 2009), by which it meant the impact of regulatory judgment on the profitability of the shareholders of the CTV. As conflict intensified, the Group printed an advertisement accusing the regulator of ‘violating the law and abusing its regulatory power’, and warning that their actions would lead to immeasurable damage to the country’s communications industry (Central News Agency, 2009).

The economic pressure on regulatory decisions came from both inside and outside the borders of Taiwan. In early June 2009, at the same time as the WWCT row was blowing up, the American Chamber of Commerce in Taipei (AmCham), arguably the most powerful foreign-trade organisation in the country, published its annual *Taiwan White Paper*, denouncing the NCC as one of the major ‘sources of frustration’ for foreign investors (2009:6). Since its first issue in 1996, the *Taiwan White Paper* has addressed many key issues bearing on American investment in Taiwan, and been well responded to by the government. The Council for Economic and Planning and Development is responsible for synthesising information from different departments and responding to issues that AmCham raises. According to a

retired government official, who had taken part in the telecommunications liberalisation in Taiwan, concerns touched upon in the *Taiwan White Paper* will usually be tackled in joint meetings at Cabinet level, and sometimes high-ranking officials are required to meet with representatives from AmCham in order to negotiate a mutual agreement on policy (Interviewee 25).

In its 2009 report, AmCham offered several suggestions in relation to information and communications technology (ICT) development. It urged the regulator to keep freeing up the market and terminate the implementation of price-capping mechanisms:

[the] Committee strongly encourages the Taiwan government to champion liberalization as a means to broaden consumer choice and service innovation.... Specifically, we ask the NCC to allow market forces to dictate the growth ... to allow the pricing of telecom and media services to be market-defined rather than set through government-determined price ceilings...Taiwan's consumers are wise enough to make buying decisions on their own, and ultimately it should be consumer choice that the regulator seeks to foster. (American Chamber of Commerce in Taipei, 2009:61-3)

The emphasis on the free markets, together with AmCham's timely white paper, was largely quoted by economics scholars and industry leaders, and intervention from the government described as old-fashioned and ignorant of the global tendency. Neo-liberal slogans such as 'Let the consumers choose whatever they want' and 'Let the market function by itself' are presented as the simple truths without any need for further explanation (Lu, 2009; Huang, 2009).

Socio-political factors

Consideration of the socio-political factors generally involves the adoption of a more normative approach to the evaluation of the consequences of media concentration, as the work of scholars such as Curran, Baker, Freedman, and McChesney demonstrate. In Taiwan, it is mostly civil society groups and academia that serve as the representatives of this socio-political constituency. Media as public goods, diversity and democracy are some of the concepts on which their positions are based. Media scholars and some of the contemporary commissioners insist the media products are public goods and that the frequency spectrum resources belong to

the public, so any transfer of ownership should be submitted to public scrutiny rather than proceeding in secrecy (Soong, 2009; Lo, 2009).

Many who are unsatisfied with the media content resulting from the overhasty liberalisation of Cable TV in the mid-1990s demanded a more deliberative policymaking process. Following Jung-li's acquisition of the KMT media assets, some media activists and scholars have asked the regulator not to 'approve any application unless the applicants commit to greater responsibilities and higher levels of service' (Lo, 2008b). During the public hearing of the WWCT Group, civil society groups, including the Association of Taiwan Journalists, the MediaWatch Foundation and the Consumers' Foundation, as well as scholars, expressed their dismay at the increasing power of media proprietors and the declining diversity of media content as a result of cross-media concentration (Chen, 2009). Scholars suggested the NCC 'hold more hearings and allow a detailed investigation into the source of Want Want Group's capital and shareholding structure', and warned that the concentration of media 'violates the spirit of legislation aimed at protecting fair competition and the public interest. We therefore call on the NCC to reject this change in stock ownership' (Hung and Liu, 2009).

Finally, and possibly most importantly, activists and scholars contended that a sound democracy is only possible with a diverse media system in which media outlets are not controlled by corporate powers and different viewpoints can be presented equally (Lo, 2009). After the WWCT Group published its confrontational advertisement, media scholars and civil society groups claimed that the attack – widely and pervasively disseminated through the media conglomerate's own numerous outlets – 'exactly demonstrated the harmful exploitation of media power resulted from cross-media ownership' (Tsai, 2009). Several media reform groups held a press conference, arguing that the advertisement and the partisan comments that followed epitomised the negative effects of media concentration, which made the media tools to serve private interests, and significantly limited the diversity of viewpoints (Tsai, 2009).

Different Forms of Political Interference in the Regulation Process

The two cases in this chapter have in common the fact that both of the companies involved used to belong to the party-state, and the fact that their transfer involved the concentration of private media powers. These continuities notwithstanding, changes in political circumstances and NCC personnel, among other factors, make comparison between the cases especially helpful in illuminating the different forms of political influence exerted on the regulator. This section explores some of the ways in which powerful forces intervened in the two case studies, acting through the bureaucratic administration, media outlets, and the legislative process in various ways according to the nature of the political environment at any given time. In addition, it demonstrates how the accountability and independence of the regulator were presented as contradictory characteristics, counterbalancing one another.

Administrative interference

The antagonism between the NCC commissioners and the DPP government was, since its inception, public and intense, and there were recurrent administrative disagreements between the two. The discussion in Chapter 5 demonstrated that the state was able to deploy its considerable resources to interfere with policymaking of the regulator through administrative mechanisms. Although the NCC is an independent regulator, it is still part of the administration, and the implementation of policy cannot proceed without coordination with many other sectors. Soon after the NCC decided to approve the BCC application, with a proviso, the Executive Yuan announced that it intended to revoke the ruling of the NCC and refer the commissioners to the judiciary, since they had failed to conduct a fair review and were under suspicion of dereliction of duty (Shih and Shan, 2007).

However, the threat was fairly empty, as independent agencies are guaranteed discretionary power with regard to regulatory judgement. Nevertheless, the self-acknowledged independence enjoyed by the NCC was not enough to see the regulatory decision put into practice in the face of the administrative impediment. The Executive Yuan ordered the Ministry of Economic Affairs (MOEA) not to pass the ‘illegal transfer’, effectively interfering with the regulatory policymaking. A leading journalist familiar with the communications industry reflected in an interview that despite the NCC’s claim that its decision remained valid and

unaffected, as long as the MOEA did not officially approve the BCC takeover, payments, loans and contracts would remain frozen, and the name of the CEO could not be changed either, bringing management of the company to a deadlock (Interviewee 15).

A former NCC commissioner considered the administrative interference political gimmicks to impede the regulator. In the BCC case, the Executive Yuan based its decision on Article 117 of the *Administrative Procedure Act*, stating that:

The authority rendering an unlawful administrative disposition may withdraw ex officio the disposition in whole or in part upon the lapse of the statutory period of remedy; the same may be done by its superior authority. (Executive Yuan, 2005a)

The commissioner argued that the Executive Yuan in fact had no right to revoke the ruling of the regulator and criticised it for deliberately playing with legal rules with ambiguous interpretations.

The interpretation is some kind of ‘technical foul’; anyone with legal knowledge knows that a department cannot revoke the ruling of other departments unless the properties of the case are within the remits of the department in the first place. This case demonstrates that the institutional design of independent agencies in Taiwan is far from complete and mature, which provides authorities at higher levels with the power to command. (Interviewee 8)

On the other hand, in the WWCT case a more indirect and nuanced kind of interference was at work, partly because the KMT government maintained a relatively friendly relationship with the NCC. Though there was no longer any explicit hostility and impediment from the Executive Yuan, one current commissioner remained sceptical about the autonomy of the regulator:

The regulator enjoys the legal status of an independent agency and we don’t have to follow orders from the cabinet according to law. However, to a certain extent the Premier is still our ‘boss’. You would know how much pressure the regulator bears if you saw how busy the phone in the office of the Chief Commissioner is. (Interviewee 27)

Media interference

Administrative interference often takes place in an implicit way within bureaucratic circles, while media interference operates according to the opposite

logic, bringing pressure to bear by catching public attention. Given the friendly relationship between the KMT and the regulator, the government was unlikely to intervene in the WWCT case in an explicit way. So the WWCT Group had to take advantage of the synergistic effect of cross media ownership, launching a series of criticisms of the regulatory judgement. The Group placed front-page advertisements not only in its own papers but also in *Apple Daily*, a newspaper which enjoys a high readership thanks to its uncovering of political scandals. That advertisement pictured three commissioners who were said to dominate the commission meetings and accused them of abusing their regulatory power. Over the next three weeks, the WWCT media conglomerate, which included two national newspapers, a 24-hour news channel, a terrestrial channel and a magazine, generated dozens of news articles and op-ed pieces, greatly influencing public opinion. According to media reform groups, in the seven days following the appearance of the advertisement there were 37 related news items on CtiTV, the WWCT's news channel, 33 of them offering a negative perspective on the NCC, and 20 of them quoting exactly the same headlines as the channel's sister newspaper (Hsu and Liu, 2009).

Evaluating the effect of the media attack, one of the three commissioners claims that the media attack almost forced those subjected to it to leave their posts.

All of us wanted to resign at first following the release of the WWCT statement...it was also suggested we pay extra attention to our private lives because paparazzi might keep us under surveillance and try to make up stories... we were finally persuaded by so many friends not to be intimidated by the immense pressure imposed by the media conglomerate. (Interviewee 23)

One veteran journalist observed that the advertisement did damage on both sides. On the one hand, it was harmful to the image of the media group; but on the other hand, and more importantly, it posed a challenge to the fledgling regulatory agency which had not yet fully recovered from the political confrontation with the previous DPP government, and further emphasised its accountability (Interviewee 21).

The WWCT's strategy allowed it to stay on good terms with the government, and even the regulator. Instead of criticising the regulator as a whole, it singled out

three commissioners, apparently seeking to separate the ‘black sheep’ from the others. A source in the WWCT explained the strategy:

We definitely don’t want to be an enemy of the regulator, and we know that most commissioners are more sympathetic to us. Only some of them hold a rather aggressive attitude towards us, dominating regulatory judgements; they are the targets that we intended to denounce. (Interviewee 21)

Legislative interference

In addition to the name-calling advertisement and other vitriolic attacks in the media, industry leaders turned to legislators to seek support to ‘check and balance’ the independent regulatory agency. In Taiwan, the power of the Legislative Yuan is immense, as legislators are capable of paralysing the operations of the government by boycotting the review of draft bills or even the budgetary sessions. One commissioner considered legislative interference to be very effective in hampering regulatory decision-making.

Because commissioners have to attend the legislative session and be grilled by legislators, Congress does have the power to influence our decision. Every time we try to implement any new regulatory activities or judgements, the business people will turn to the legislators for help, and most of the time we will be asked to amend the rulings. (Interviewee 23)

The prominence of the elected politicians is also recognised by many other actors in the policy arena. One senior civil servant regarded the pressure from the legislature as the greatest obstruction for the regulatory agency.

Business leaders find the patterns of policymaking to have changed significantly, as they probably used to get things sorted out by having a meal with the ministers or director generals of government departments. While now they definitely have no way to access and persuade most commissioners at short notice, they usually ask for the support and assistance of legislators with whom they have long maintained a friendly relationship. (Interviewee 18)

One chief executive officer of a leading industry-lobbying group also stated quite baldly that the Legislative Yuan is the ‘real battlefield’ for lobbying around bills, rather than dialogue with the regulator:

We have tried to improve the mutual communication between the regulatory agency and industry groups, but it is usually in vain. We did not think our voices had been heard or taken into account even though we had participated in the public hearings. Colleagues from other lobbyist groups say that the most effective way is actually inviting legislators to come and sit with us, it is more useful than anything else. (Interviewee 19)

The strong alliance between industry and legislators was again demonstrated by the WWCT case. The group held a symposium to discuss ‘the role of the NCC in an era of digital convergence’, attended by legislators and many industry representatives, where the regulator’s rulings were debated and questioned (Yu, 2009).

Legislative interference, mostly from the Pan-Blue coalition, was much more visible in the WWCT than in the BCC case, because legislators did not just try to intervene or alter the regulatory decision, but attempted to extend their influence over the regulatory agency by seeking the power to both appoint and remove personnel. Shortly after the WWCT Group published the advertisement criticising the NCC’s decision, some Pan-Blue legislators expressed their lack of confidence in the ability of the NCC commissioners and suggested the amendment of an ‘exit mechanism’ to enable the dismissal of commissioners from their job (Hsueh, 2009b, a; Wang, 2009). The concepts of democracy and accountability were highlighted in the proposal, and the Pan-Blue legislators called upon to ‘make the regulator more accountable and responsive to the public’ (Hsueh, 2009a). In fact, Taiwan is not alone in seeking a balance between autonomy and accountability in independent regulatory agencies (Majone, 1994a), but its approach is at odds with the literature on the subject, which suggests that accountability should be achieved by public scrutiny and transparency (Majone, 1999).

According to the proposal, legislators would have the right to suspend the members of independent regulatory agencies from their posts. A legislator who drafted this proposal argued in an interview with me that the autonomy of the regulatory agency does not necessarily translate into fixed tenures:

Any institution can be an independent agency as long as it is not interfered with in terms of decision-making, but I consider it logically flawed if only the fixed term can guarantee the autonomy of the agency.

Why do we guarantee the jobs of certain commissioners even when their misdeeds fail the general expectation? Even the president could be deposed from power; I don't see why the IRA should be immune from being held accountable to the public. (Interviewee 20)

A KMT legislator who supported the amendment also argued that

Keeping the regulatory agency independent does not mean that commissioners can do whatever they want regardless of what the public think. We legislators have the right to dismiss the Cabinet and even the president, let alone the IRA. If we cannot counterbalance what the commissioners in IRAs do, how do we make them accountable to the public and do you think it is still a democracy? (Interviewee 28)

The proposal passed its first reading and is currently waiting to be reviewed for the second reading in the Legislative Yuan. Although it is generally understood to have been triggered by the WWCT case, and while many rather low expectations regarding its effectiveness, the proposal nonetheless casts a shadow over the regulatory agency as a potential limit to its power. Moreover, it will inevitably impact on the performance of the IRAs as commissioners will be forced to be subject to elected politicians who tend to focus on short-term policies and pleasing the public in order to win the next election (Gilardi, 2008).

Democratisation: a Dilemma

This chapter has examined the various positions on ownership that might influence an independent agency in its regulatory judgements, and the various powers that have exerted in order to influence the regulator through different forms of interference. The last section looks more closely at the central dilemma faced by the IRA: despite being regarded as an emblem of democratisation, it has been criticised for violating the democratic spirit by being too intrusive and too unaccountable.

Democracy: freedom from regulation?

As discussed previously, the development of neo-liberalism coincided with a wave of democratisation processes in many developing areas. The powerful rhetoric of the free market soon associated the free society with freedom for the consumer in a vision that has gained a great deal of acceptance over the past three decades. Market discourse, proceeding under cover of the slogan 'deregulation for

democracy', is triumphant on both the national and international levels. The NCC, like its counterparts across the globe, is challenged by this discourse, which equates regulation with the obstruction of economic development, and checks on cross media ownership as anti-market sabotage. Taiwan was inevitably subsumed under the wider neo-liberal trend when it attempted to participate in international economic organisations like the GATT, later the WTO, in the 1980s.

However, this research has demonstrated that political context plays an even more decisive role than economic developments, in the creation and transformation of IRAs in post-transition countries. Market discourse, sugar-coated with talk of democracy and liberalisation, and tied up with the possibility of lucrative transfers the state-owned enterprises to private corporations, became the dominant ideology for politicians in many countries. Especially in new democracies in Latin America, Eastern Europe and Asia, where most media outlets were used to being controlled by the state, privatisation and deregulation became unstoppable tendencies (Manzetti, 2000; Lee, 2000b). In Taiwan, neo-liberal discourses emerged around the same time as the liberalisation of the media, which was among other things a response to democratic demands from political dissidents that had found wider support from a public sick of authoritarian rule. As I tried to demonstrate in my discussion of the 1993 Cable Law in Chapter 4, the political and the economic were closely intertwined with the notion of freedom. Years of authoritarian control had made the media and the public sceptical about any form of regulation imposed by government – but receptive towards proposals regarding the establishment of IRAs.

In the Taiwanese political context, then, free market discourse has been able to acquire a deeper meaning and power by invoking memories of the authoritarian past, against which it contrast itself. Concepts like freedom of speech and democracy have become sacred cows, and unassailable rhetorical devices. Media corporations interpret the concepts as a 'democratic license to sensationalism', producing biased programmes antagonising people holding different political views or even where media content has nothing to do with promoting the public interest, and the role of watchdog has been entirely abdicated (Rawnsley, 2007:74).

This poses a problem for the regulator, which cannot regulate without being accused of anti-democratic political oppression. The link between democratisation

and marketisation is strong, as many of my interviewees have pointed out that since Taiwanese people have paid such a price for democracy, that citizens should rather put up with some ‘temporary social turbulence’ than lose what they have gained and hand control back to the government (China Times, 2009a). A high ranking member of staff in the China Times Group, whilst not agreeing with the kind of political witch-hunt represented by the WWCT advertisement, also insists that the government should not intervene in the media in any way.

The power of government can become uncontrollable if it goes unwatched. We have had enough experience of that in the past and we should learn a good lesson from it. (Interviewee 21)

The administrative discretion of the NCC is often presented as the return of an authoritarian rule where the government maintains the ultimate power in interpreting the law. Criticism had it that the NCC was even more powerful and fearful than the state apparatus in that it not only intervened regarding content but also in the way that media corporations ran their business (China Times, 2009b). Metaphors invoking totalitarian rulings were used to generate hatred of the regulatory judgements. An industry leader also used the analogy, arguing that ‘only when the hand of the government completely retreats from the media, can Taiwan truly enjoy the freedom of the media, speech and press’ (Huang, 2009).

Business powers are certainly familiar with the trick: both Jaw and the WWCT Group characterised the regulatory decisions as political oppression. When Jaw announced publicly that he would withdraw his purchase of the BCC at the end of 2007, he claimed that to be ‘just an ordinary businessman running a radio company’, incapable of wielding any power against political intervention (Liberty Times, 2007). He accused the DPP government of ‘relentless persecution’ and attempting to liquidate him and his colleagues through various government mechanisms, making it impossible for him to run his business (Shan, 2007; Lin, 2007b). He also used a lot of figurative expressions referring to actual historical incidents and attempted to relate the DPP government to the previous authoritarian regime. For example, he stated that this political repression was as horrifying as the ‘White Terror’, an infamous term referring to the 228 Massacre of 1947 and the political suppression that followed it in the martial law era of KMT rule. News analysis in the China Times and Commercial Times, both affiliated with the WWCT

Group, described the regulatory decision as constituting ‘the restoration of the “Cultural Affairs Department”’, the KMT propaganda mechanism during the martial law era (Lee, 2009; China Times, 2009b).

One commissioner considered the degree of democratisation to be the key factor in determining the national response to regulation:

The regulation of media content has always raised concerns about violating freedom of the press in post-transition countries. It is a problem inseparable from the process of democratisation. In Taiwan, public spheres between the government and private corporations are underdeveloped, which leads to an insufficient discussion about public issues before they are polarised. (Interviewee 6)

The tension between autonomy and accountability

Autonomy is fundamental to IRAs’ capacity to keep political and corporate power at arm’s length and to maintain the neutrality of regulatory judgement. However, in post-transition countries the independence of IRAs sometimes gives rise to intense power struggles between the IRA and political power (Barlett, 1997; Barnett, 1999). The NCC has faced challenges from the state and legislature from its inception, and what came to be perceived as its excessive autonomy, or lack of accountability, placed it at the centre of conflicts over the relationship between IRAs and democracy. The WWCT case saw legislators, business people, and the WWCT Group compare the agency with the authoritarian regime of the country’s past. Legislators criticised it for supposed lawlessness and for acting like ‘an emperor with supreme power’ (Tan and Hsueh, 2009). The legislators put forward as the embodiment of democracy their proposal for an amendment that would give the government the right to fire commissioners and thereby ‘hold the regulator accountable to the public’. They denounced the NCC for its sophisticated legal interpretations that violated the essence of the rule of law, the founding principle of democracy:

The NCC bypassed the constitutional rights of the Legislative Yuan and invented legal interpretations to achieve their own utopian ideals. In addition, it turned the due process of formalistic examination of a routine case of the change of board members into an excessive substantial examination similar to a public trial (Lee, 2009).

The two cases in this chapter illustrate the different types of challenge facing the regulator, and suggest that the regulatory judgement was marked by politicisation. The BCC case explores how the autonomy of the regulator may be constrained by administrative impediments resulting from political confrontation, and how political affiliation can impact on regulatory decision-making. The WWCT case, demonstrates that even where there is relative harmony between government and regulator, economic power can mobilise political support in its struggle with the independent regulatory agency. Although in principle one of the characteristics of IRAs is that they enjoy independence from political influence thanks to their legal autonomy and the fixed terms granted to their members, both these measures seem to have failed in the Taiwanese context.

Conclusion

The two cases presented in this chapter tell the story of how different NCC cohorts under different administrations dealt with the issue of media concentration. Despite being an independent regulator, the way in which the NCC shaped and enforced of policy was shown still to be determined largely by political factors, such as the state of the opposition and change of the political climate. Even the NCC personnel changes had much to do with the political atmosphere, since it was political concord that was responsible for the greater diversity of commissioners, less affiliated with political ideology than their predecessors. The observation is consistent with an international scenario in which the burgeoning of IRAs worldwide as a consequence of depoliticising regulation, but the attempt is unlikely to succeed without accounting for domestic political context (Christensen and Lægreid, 2006a). In post-transition Taiwan it is the ideal of democracy that has paradoxically empowered and enslaved the regulatory agency: autonomy bestowed upon it is deeply compromised by the equally democratic insistence on accountability

Moreover, issues of media concentration also demonstrate that democratisation does not necessarily lead to a society where diverse information flows freely. Instead, it may mean that the control of the media is transferred from the hands of government to those of media conglomerates through processes of concentration and acquisition. In other words, media corporations may gradually come to nullify explicit political struggles in the course of political transition, and

become the major actors in media policymaking. If this turns out to be the case, the examples in this chapter not only illuminate the contrasting intellectual and ethical positions of the profit-driven media corporations on the one hand and those who expect the media to serve public interest on the other, but also the huge gulf between these two sides in terms of resources, with the corporations able to mobilise their media outlets as well as their mastery of legislative mechanisms against regulators of whom they disapprove. Clarifying the relationship between democratisation and regulation through more and deliberative discussion is an essential first step toward empowering citizens to stand up against entrenched politico-economic interests.

Chapter 7

The passage of the Communications Management Act

The establishment of the NCC and the debates around cross-media ownership discussed in previous chapters are each, to a different extent, related to developments around digital convergence. The advent of convergence facilitates integrated communications services that were formerly provided by completely different industries. It also poses challenges to regulatory practices, as the rapidly evolving technological environment has rendered the relatively static legal frameworks obsolete. Calls to review related laws and incorporate them into a flexible framework to accommodate communications services have been gaining strength. This chapter explores the trajectory of the long-awaited legislation, the Draft Bill of the Communications Management Act (the 'Draft Bill'), and pays attention to its rather unexpected and premature end. The analysis begins with a discussion about legislation as a powerful tool in policymaking, it points out the emerging deregulatory concepts fleshed out in the Draft Bill and investigates the powers of resistance during the formative process of the convergence legislation. By detailing the policymaking process this chapter demonstrates how legislation can be a politicised process in which various stakeholders try to have their interests inscribed and the changing positions of policymaking result from strategic political action rather than rational debates over policy goals. It argues that a truly responsible regulator in post-transition countries, by taking transitional politics into account, should utilise legislation as a regulatory tool to consolidate democracy in the long run.

Legislation as a Tool in Policymaking

The amendment of legal rules is illuminating when examining public policy. It casts light on the general tendency by creating new, fixing existing or deleting old provisions. The Telecommunications Act of 1996 in the US rewrote the Communications Act of 1934 and is regarded as a significant move towards deregulation by considerably loosening ownership restrictions, especially in the broadcasting industry (Aufderheide, 1999; Bauer and Wildman, 2006). On the other side of the Atlantic the legislation of the Communications Act of 2003 in the UK is

also believed to be the harbinger of a much more market-dominated regulatory framework (Doyle and Vick, 2005). Legislation also has a direct impact on the shaping of industry. It has been particularly influential and explicit in the development of the media industry, as antitrust legislation undermines the dominance of the incumbent industry. Legal amendment in line with technology convergence has also rendered many industries more prosperous. Through antitrust legislation in the 1940s, for instance, the US regulatory agency successfully forced Radio Corporation of America (RCA) to sell its news branch. AT&T also had to be divided into smaller regional companies. By contrast, some decades later, it was also through legislation that many conglomerates took shape after deregulation during the Reagan administration (Croteau and Hoynes, 2006). Moreover McChesney (1993), by examining media reform movements in the US between the 1927 Radio Act and the Communications Act of 1934, examines the contexts of the legislation and demonstrates that a regulatory framework is by no means 'presupposed' nor 'given' but a fierce battle between different powers (1993: 258).

Analysis of discourses used in the provisions of laws can also lead to insightful results. Livingstone et al. (2007a) trace the discursive development of the use of 'citizen', 'consumer' and, eventually, 'citizen-consumer', in the Communications Act of 2003 and other earlier legal documents. They claim that, by binding citizens to consumers, the essential meaning of 'public interest' could be fundamentally altered to serve the interest of markets instead of the public. Patricia Aufderheide (1999), reviewing the legislative progress of the US Telecommunications Act of 1996, demonstrates a similar process whereby the 'public interest' was shaped and appropriated by different competing groups and powers to achieve preferred goals when reviewing the legislative process of the Telecommunications Act of 1996 in US.

In other places, where policy formation procedure is not yet fully developed, legislation can illustrate not only the change of regulatory philosophy or the regulatory regime but also the politics of policy between different regulatory agencies or even different governments in power. Ruth Teer-Tomaselli (2011) reviews several pieces of legislation with respect to media policy in South Africa from 1990 to 2010 and points out that legislation has gradually become the tool

through which the state controls both regulatory agencies and the media system. Therefore examination of the legislative process of new acts is essential and meaningful as it presents the underlying regulatory philosophy as well as the powers and interests behind the provisions that cause conflicts and debates.

This chapter examines the process by which the Draft Bill of the Communications Management Act was introduced by the regulator, contested by the industry and civil society alike, and eventually returned for further deliberation by the Executive Yuan. The Communications Management Act was characterised as a decisive instrument aimed at integrating the Telecommunications Act with the Radio and Television Law, Cable Radio and Television Law, and Satellite Broadcasting Law into a single code. The integration of the three broadcasting laws is considered a problematic task since the laws were introduced under a carrier-specific logic in specific historical contexts. The Radio and Television Law, for example, was first promulgated in 1976, and although six minor revisions have been undertaken its provisions are nonetheless still outdated in relation to contemporary political and technological realities. A typical example is that up to today the provisions of Article 21, which regulates the ‘unacceptable content’ of media, still include ‘Contraven[ing] the national policy of anti-communism and recovery of the Chinese mainland or the government’s laws and regulations’ (Executive Yuan, 2006a). One government official in charge of media content regulation admits that he would not be able to respond if people were to raise questions about whether or not media content in relation to Taiwan independence violates the law (Interviewee 18). In addition the contradictions between the three broadcasting-related laws are particularly timely and controversial as the Radio and Television Law sets limits on the percentage of individual shareholdings, while there are no such rules in relation to the cable and satellite industry. Moreover, cross-media operation made possible by convergence has posed another significant challenge to traditional regulatory frameworks.

Weeding out dated legal rules is part of the NCC’s responsibility, as clearly stated in Communications Basic Law: ‘related communications statutes shall be amended in accordance with the principles outlined in this Act not later than 2 years after the establishment of the NCC’ (Executive Yuan, 2004). In response the NCC

set up a Task Force for Legal Convergence and presented the Draft Bill in September 2007 after more than 30 internal meetings. It was set out to keep up with convergence by establishing ‘a competitive communications and broadcasting environment as well as assuring freedom of communications and broadcasting’ (National Communications Commission, 2007c) and aimed to achieve convergence legislation in one go. The Draft Bill contains 185 articles in eleven chapters and was largely considered as a complete rewrite of existing laws within the context of a modest level of convergence (Shyr, 2008a). It integrated communications services and divided them into three layers: Infrastructure and Network, Platform, and Content and Application.

The Draft Bill did not pass the internal review in the Executive Yuan, let alone go through the actual legislative process in the Legislative Yuan of being enacted and implemented. After substantial criticism the Executive Yuan returned the Draft Bill to the NCC four months later, asking for ‘more thorough deliberations’. The NCC officially responded that it would review the comments and leave the decision to the next term’s commissioners. One month after taking their posts the succeeding commissioners explicitly stated that priority would be given to amending the existing broadcasting laws step by step given that the ‘media legal framework was incapable of accommodating development of digitalisation’ (National Communications Commission, 2008). At least temporarily, then, the experiment of law-based convergence had come to an end.

Nevertheless the Draft Bill is still illustrative in many aspects. Its general objectives explain the line that the regulator tried to take, and the amendments made after public hearings reveal the relative strength of the different actors involved. Above all the failed attempt demonstrates the impact various interest groups had on the legislative process, the subtle resistance from the bureaucratic system to this process, and the power struggle between the regulator and the executive branch of administration. The following paragraphs firstly outline some critical points in the Draft Bill, then consider the relationship between the articles and claims presented by the regulator, and evaluate how influential these provisions have been in shaping a new regulatory framework. Secondly, the discussion is focused on how the general climate of opinion shifted from supporting single legislation to supporting divergent

legislation. Lastly, and most importantly, the analysis reveals the forces of resistance behind the law making process and points out that in transitional societies legislation is more politicised than mechanical and that any attempts to implement a new legal framework in a political, economic and social vacuum will be fiercely contested.

Emergence of the Draft Bill

The standpoint of the NCC was made abundantly clear when, in the very first paragraph of the preamble, it foregrounded the introduction of competition in having successfully liberalised the telecommunications market in Taiwan since the 1990s. By contrast it pointed out that the three broadcasting laws had not received any major amendments for decades. It highlighted the internal contradictions caused by technology convergence and indicated that it was time for reform. According to the NCC (2007e) ‘convergence, globalisation and deregulation’ are the three trends that have dominated the telecommunications industry since the 1980s, and are the guiding principles underpinning the Draft Bill.

First of all it would be fair to say that convergence created the need for legislative reform, as technology is the driving force in facilitating the integration of telecommunications and media services into the encompassing concept of ‘electronic communications services’ used in the Draft Bill. The necessity for an integrated regulatory and legal framework was, accordingly, also highlighted under the wave of convergence since ‘existing broadcasting laws were incapable of regulating relevant cross-media operation due to digitalisation’ (NCC, 2007e:2). From the outset, when the regulator discussed the possible policy framework, it concluded in this vein that ‘given the management of future communications services, a modest to high level of convergence should be employed in the legal framework’ (NCC, 2006b). In other words, the regulator considered it unwise to amend the existing laws one after another instead of incorporating them into a single code in one go as convergence was expected to take place in the near future.

Secondly the new legal framework set out to embrace globalisation, by which the regulator meant attracting the investment of foreign capital. In order to realise this aim, the regulator radically changed the regulatory framework from vertical to horizontal, from a traditionally carrier-specific model to one defined by provided

services, in order to correspond to both technology convergence and the competition pressure imposed by transnational companies. To successfully replace the old framework with a horizontal one, the barriers of each service had to be lifted and cross-media operation permitted. In the policy statement on the Draft Bill, presented after the first-stage public consultation, the NCC claimed that only by creating a level playing field between domestic and transnational players could domestic companies survive and keep their competitive edge. Without recognising this reality, argued the regulator, it would be impossible and impractical to try to further protect local culture, support the content industry and enhance the competitiveness of the communications industry (NCC, 2007d).

Having attempted to integrate the existing laws, the NCC failed to deal with the fundamental difference between the Telecommunications Act and other media-related acts. The telecommunications industry used to be considered as a public utility and regulation has focused on the conditions concerning its financial and technological capacities. The broadcasting laws, however, are concerned with the impact of the media's effect on public opinion and social culture, and regulate content and operators much more stringently (Shyr, 2009b : 110). The Draft Bill seemed to integrate the different legal acts in a mechanical and uncritical way without discussing the unique properties of media goods and how the convergence would cope with them.

Unlike its counterparts such as the FCC or Ofcom, which announced their aim to 'replace regulation with a marketplace approach' (Horwitz, 1989:260) and 'operate with a bias against intervention' (Ofcom, 2003), the NCC advanced no such policy manifesto. However deregulation, although only implicitly expressed, had become the inevitable consequence of this piece of legislation under the principles of convergence and globalisation.

The regulator outlined that the proposed regulatory framework was attempting to integrate the related laws in three areas: technology convergence, industry order and social regulation. Key provisions included the introduction of horizontal 'platforms' in replacing the previous regulatory structure. To give just a few examples in each category, these included network infrastructure, services, and content application; relaxation of cross-media operation; regulation of monopoly and

unfair competition; empowering diverse cultures; and protecting the rights of consumers. In general the regulator stated that, by applying these provisions, the rewrite aimed to ‘bolster competition efficiency in communications industry, enhance universal service, protect the rights of consumers and the deprived, ensure the freedom of communications, and promote media self-regulation as well as civic participation and oversight’ (National Communications Commission, 2007e:3).

Apart from the ostensibly irresistible trend of convergence the NCC held up industry development and diversity as the two main reasons policy change was necessary. This section examines the relevant provisions and analyses the arguments between the regulator and its opponents so as to pinpoint the stance of the regulator. The analysis suggests that the concept of industry development was applied in lifting many barriers for new entrants to markets and relaxing the limits on foreign investment and cross-media ownership. On the other hand, the idea of diversity was appropriated by the regulator as it holds an uncritical attitude towards content regulation and is reluctant to set any percentage limits on local programming and media access to public, education and government (PEG) programming, which used to be mandatory across the broadcasting industry. Put simply, these two seemingly contradictory ideas were both focused in a certain way so as to benefit corporate interests. The following paragraphs examine some significant changes in the Draft Bill from the previous laws and suggest that, in the name of promoting industry competitiveness and cultural diversity, the regulator seemed to retreat from the regulatory arena and pave the way for that legislation was thus sympathetic to corporate power. In particular the section pays attention to the articles amended in line with external responses following public hearings in order to evaluate the influence, through the mobilisation of available resources, of different actors on the regulator.

Promoting industry development

Promoting industry development was evidently prioritised in the Draft Bill, as it comprised the first two main chapters after the introductory text and formed one-third of the contents. The relevant articles clearly formed a more liberal, corporate-friendly regulatory framework through their proposals to lift structural restrictions and ease the financial responsibilities of business. Analysis also suggests that the

regulator seemed to be more sympathetic to corporate business and attempted to guard private property with public power through the law.

With regard to the structural restrictions, the most influential provisions were the amendments of the upper limits on foreign investment in communications infrastructure and other media services and the limitations on cross-media ownership. There is a clear and present contradiction in limitations on foreign investment between the existing Telecommunications Act and broadcasting laws where the regulator tried to level the ground to accommodate convergence. Among these existing laws the Telecommunications Act is subject to the least regulation as it holds that ‘the total direct shareholding by foreigners may not exceed forty-nine per cent, and the sum of direct and indirect shareholding by foreigners may not exceed sixty per cent’ (Executive Yuan, 2007b). The Radio and Television Act, by contrast, has the most stringent regulation as ‘[t]hose without ROC [Taiwan] nationality may not be promoters, shareholders, directors, or supervisors of a radio/television business’ (Executive Yuan, 2006a), indicating that no foreign investment is allowed in terrestrial broadcasting.

In the Draft Bill (§25) the NCC proposed three options with different levels of regulatory intensity. Option A upheld the tradition of the existing laws, prohibiting foreign investment in terrestrial broadcasting and limiting the total direct and indirect foreign investment in a company operating a cable broadcasting system to sixty per cent, and the total shares directly held by foreign shareholders to less than twenty per cent, as stated in the Cable Radio and Television Act (Executive Yuan, 2007a). Option B took a step towards deregulation, relaxing the permitted share of foreign investment in terrestrial broadcasting industry up to twenty per cent, with the rest of the provisions the same as under Option A. Option C adopted a more deregulatory stance, as it only limited the share of foreign investment in terrestrial broadcasting to twenty per cent while lifting all other rules relating to foreign investment and personnel structure.

Opinions from the industry were highly consistent. Virtually all of them supported the deregulatory option, at the very least, or asked for more. More discontent was widely expressed as they urged the regulator to evaluate further the efficacy of the limitation on foreign investment. They applauded the deregulatory

options, claiming that ‘the input of foreign investment is beneficial for making the terrestrial broadcasting service more flexible and helping enrich the content of programmes, [and] therefore should be encouraged’ (National Communications Commission, 2007b:83-5). In addition, corporate business also attempted to adopt financial standards of general commence for the media and communications industries. Citing the Company Act they stated that those who represent one-third or more of the total number of issued shares may be influential in forming crucial resolutions, and thus submitted that foreign investment in cable and satellite broadcasting industry should be raised, and the share of foreign investment permitted in terrestrial broadcasting adjusted up to thirty per cent (National Communications Commission, 2007b:84-5).

In opposition, a dozen civil society groups and scholars jointly submitted that Options B and C should not be considered as:

Most countries in the world prohibit foreign investment from owning their domestic terrestrial broadcasting industry. In addition, it does not benefit either the development of local film and TV industry or rights of labour to further relax the share of foreign investment the percentage of foreign investment in cable and satellite media ownership (National Communications Commission, 2007b:85-6).

This ‘free to choose’ strategy drew criticism as the regulator was apprehensive about declaring its standpoint and presenting its policy goals clearly (Economic Daily, 2007). After the public hearings the NCC, ‘after thorough deliberation and taking the impact of the broadcasting industry on culture into consideration’, nonetheless decided to adopt Option B ‘to the advantage of industrial development’ (National Communications Commission, 2007b:83-4). The regulator would raise the limit on foreign investment in the terrestrial broadcasting industry to twenty per cent, while further raising that in the cable broadcasting industry to forty-nine per cent in accordance with the Telecommunications Act. This decision attracted criticism from civil society groups as they censured the regulator for ‘achieving the decision on the pretext of judging from the feedback from the public hearings’ (NccWatch, 2008:270).

It is worth noting that in the policy statement set out by the NCC after the first stage of public consultation the regulator pointed out public concern about foreign

investment in particular. It reiterated the regulator's commitment to competition and the lessening of restrictions on foreign investment accordingly (National Communications Commission, 2007d:19). In addition the statement suggested that foreign investment in infrastructure facilities and cable systems would not necessarily restrict local culture. It further argued that the impact of foreign investment could be counterbalanced by setting up quotas of local programmes (2007d:20).

Another step towards a deregulatory framework lay in the fact that the Draft Bill would no longer curb cross-media ownership as previous laws did, but proposed relaxing the restrictions by simply imposing constraints on business above a certain size. Article 37 provided that 'shareholders, directors, or supervisors of newspapers, broadcasting business and their associated enterprises that take up to one-fifth of the total market share are not allowed to be promoters, shareholders, directors, or supervisors of other broadcasting service enterprises' (National Communications Commission, 2007c).

Feedback from academics rejected this provision and attempted to suggest that the regulator redraft a more comprehensive regulation in relation to cross-media ownership. Drawing on examples from the US and South Korea they argued that ownership of different media by the same company in one market should remain prohibited, because to regulate according to market share would simply lead to fraudulent trading since it is easy for enterprises to set up front companies to hide their actual trading (National Communications Commission, 2007b :94-5). Besides, market share in this provision is a controversial yardstick since it is not a fixed measurement and is thus ineffective in enforcing the law. Nonetheless, the regulator still upheld the idea:

Due to digital convergence and information integration, the boundaries between different transmission media are getting blurred. Restrictions on cross-media ownership run counter to trends in technological development. By preventing companies with significant media power from taking part in cross-media ownership, this provision pays due consideration to both sides of convergence and anti-monopoly (National Communications Commission, 2007b :95).

Although the regulator claimed that it had considered the issue of cross-media ownership between convergence and anti-monopoly, the result showed that it chose

to turn a blind eye to the unique cultural properties of media products. Similar observations can be applied to responses to another case of foreign investment in which the regulator acknowledged the significance of the media, but still came to the conclusion that investment would not affect the performance of the media or could be controlled even if it did. There was also inconsistency in provisions concerning further relaxation of the market share of cross-media ownership, and even though the NCC recognised the impact of the media on the public (2007b:95-6) it still ended up with a provision largely favourable to business power.

In addition to the structural reform, the Draft Bill benefited corporate business through substantially alleviating their financial responsibilities in the levy of the Special Fund and the scales of financial penalties. The Special Fund is accumulated from annual revenues of system operators in the cable industry. It has been scheduled since 2001 to enhance universal service for the development of the broadcasting industry, to support the construction of relevant public facilities and to donate to the Public Television Service Foundation (Executive Yuan, 2007a). In the first version of the Draft Bill (§85) the NCC kept the provision, but they deleted it after the first six public hearings, stating in the second version that ‘the Executive Yuan should annually allocate sufficient budget to donate to the Public Television Service Foundation’. This amendment aroused criticism as the regulator thus went beyond its own duties and shirked responsibility for developing public service broadcasting, which it left solely to the Executive Yuan. On the other hand the NCC was questioned about the fact that it seemed more concerned with the interests than the obligations of corporate industry, arguing that it was unreasonable for cable service providers to subsidise public service broadcasting and local cultural and public facilities as they already paid a licence fee. The Draft Bill demonstrated that the NCC apparently focused more on private property rights than public welfare and that it sided with the cable industry by holding its purse strings instead of pressuring it into making a contribution to enhance the quality of the media environment in general.

This fundamental debate rested upon whether the Special Fund should be appropriated to enhance the development of public service broadcasting. The commissioners argued that the Special Fund should be used exclusively for its

designated purpose, implying that the allocation designed by the GIO, the previous regulator, was unjust and made it possible for the cable service providers to transfer these hidden costs to consumers (Shyr, 2007b; Lin, 2007a). However, the rather distorted form of fund allocation has its historical context: the cable industry experienced a frenetic boom during the political transition, while public service broadcasting was left relatively ignored and suppressed. Thus the 2001 legislation demanded that the revenue of the cable industry be utilised to make some contribution to improve of the quality of the congenitally weak public service broadcasting system. Moreover, given the fact that the Executive Yuan seldom arranged a sufficient budget for Public Television Foundation, any further reduction of the Special Fund would only exacerbate the situation. Only when the context is taken into consideration can the sharing out of the Special Fund make sense and the ideal of the regulator seem impractical to most people who had been working on media reform for years. Yielding to pressure from academics and civic groups, the NCC restored this provision to the final version, but amended the share the cable service providers should set aside from 1% to 0.7 %. The regulator stated that the levy of Special Fund would only apply on condition that the budget from the Executive Yuan still fell short, and specified that the provision should be invalidated once the government budget met the needs of Public Television.

Another dramatic turn was the adjustment of financial penalties, which constituted Chapter Ten of the Draft Bill. In the first version the maximum penalty was significantly increased from around three million NTD (£60,000) to fifty million NTD (£1 million) with regard to regulation of market entry, operation management, consumer protection, and management of significant market powers. The increased penalty provoked an outcry from industry leaders, who argued that the heavy penalty would threaten the survival of domestic companies, which do not have strong capital bases like international conglomerates (National Communications Commission, 2007b: 236-40).

After the public hearings, as a consequence of ‘taking the capacity of the industry into account’, the second version of the Draft Bill significantly decreased the financial penalties to as much as fifty times lower (Gu, 2007a). A civic group, the Campaign for Media Reform, claimed that the reduced penalty permitted

corporate business to ‘make the same mistakes fifty times’ since the penalty would not pose a threat to them (Gu, 2007a). A civil servant in the NCC maintained that the lowered penalty was designed to ease ‘the uncertainty for the industry’ and calm doubts about over-delegation of regulatory power (Gu, 2007a). The government officer also insisted that the law would be more effective and feasible since the regulator would apply a more proactive attitude towards imposing a penalty on corporate business and would no longer hesitate to do so as before. Many civic groups were dubious as they did not believe that enforcement of the law would change and thus worried about the much more lenient penalties. The dramatic adjustment further illustrated the hasty policymaking process and made the public more sceptical about the appropriateness of the Draft Bill.

Diversity

Diversity was also highlighted in the Draft Bill, although its definition was never clarified. To empower diverse culture, claimed the regulator in the preamble, is one of the aims of the Communications Management Act, yet, somewhat ironically, the term ‘diverse culture’ was not even mentioned in the first version of the Draft Bill. The term was added to later versions following a suggestion from a media scholar after public consultation (National Communications Commission, 2007b:51). In addition, discussion about the idea of diversity, either internal or external, was scarce, and diverse culture was assumed to be the natural result of competition, which, according to Karppinen (2008), is an illusion of ‘naïve pluralism’. Karppinen criticises the ‘naïve celebration of multiplicity’ in media policies, arguing that any media policy hailing diversity culture without taking the unequal social relation of power into account is undemocratic (2008: 36-7).

The NCC held that many restrictions had to be removed to keep up with the ‘diverse’ culture in contemporary society. More problematically, diversity in the Draft Bill was used to justify the deregulation in relation to programming without taking into account the plethora of evidence arguing that unregulated competition will only lead to the homogeneity of media content (Bagdikian, 1997; McQuail et al., 1998; Meier and Trappel, 1998). Additionally the regulator also left untouched the characteristics of media products as public goods and merit goods, thanks to which corporate business might be less motivated to produce quality content because

of low profitability, and thus require the intervention of regulatory power to serve the public interest.

Under the name of ‘diversity’, the regulator removed the limits on the minimum of PEG programming and the quota of local programmes in the Draft Bill. According to the existing Radio and Telecommunications Act, radio and television PEG programmes should account for ‘no less than 45 per cent of the total weekly broadcasting time of radio stations, or 50 per cent of the total weekly broadcasting time of television stations’ (Executive Yuan, 2006a). However, the regulator excused this provision by arguing that now society is seen to be open and diverse because of technological advancement, the content of programmes has a wide range. It is thus ‘difficult to be categorised’, and the limit on the percentage of programming may constrain the diversity of content as there are many topic-specific channels that might not fit the previous rules (National Communications Commission, 2007b:199). Furthermore, in a revealing proposal, the regulator argued that it considers PEG programming to be the responsibility of public service broadcasting, and imposing limits on this programming is, for commercial broadcasting companies, a way of ‘exploiting the public power to restrict the thriving of private property’ (Lin, 2007a; Gu, 2007b).

Moreover, the regulator further disarmed itself by deleting the provisions relating to quotas of local programmes (§153), regardless of the fact that local content forms a crucial part of most media regulatory regimes. Content regulation by way of producing local and quality programmes helps promote local and national culture and has been adopted by many countries and regions (Buckley et al., 2008), especially those focusing on forming distinct national or regional cultural identity. Among many examples, the ‘Television without Frontiers’ directive issued by the European Commission, later renamed ‘Audio-Visual Media Service Directive’, actively states that European programmes should constitute the majority of airtime, with at least ten per cent reserved for those made by independent producers (§16 and §17) (European Commission, 2007). Countries in other continents, such as Canada, South Korea and Australia, also have similar rulings that made some attempts to ensure the development of domestic culture. By contrast, the NCC kept silent about the need for protecting local culture and interpreted the regulation of local

programming from a negative perspective, holding that the constant rebroadcast of the same programmes has already proved the previous regulation incompatible with changing realities. Additionally the regulator suggested that it would be unreasonable to impose similar restrictions on those foreign channels transmitted via satellite as this might impede industry development as well as the performance of cultural diversity (National Communications Commission, 2007c: 210-11).

The selective perception of diversity in favour of deregulation, while understating its potential repercussions, marks the standpoint of the regulator as being particularly close to the interests of corporate power. Civic groups argued that the NCC ignored the fact that the broadcasting environment had already deteriorated to a worrying extent and more deregulation would just exacerbate this, making the commercial broadcasting companies increasingly market- and profit-oriented in a more explicit and unashamed fashion (Citizen Media Reform Alliance, 2007). Likewise, to delete provisions with concrete criteria and replace them with the discretion of the regulatory agency heralded a retreat from promoting domestic broadcasting and cultural identity.

Silver linings: the anti-hatred provision

Although this legislation was criticised overall for prioritising the interest of corporate business while underrating that of the public, it did not mean that it was devoid of any merits. Some provisions introduced in the Draft Bill were important moves to formulate a more viable regulatory system including the introduction of anti-hate speech (§148). The regulator for the first time included hate speech and discrimination against women under the remit of content regulation, in addition to inhibiting media content which is unlawful or harmful to the physical or mental health of children or juveniles or is likely to disrupt public order or adversely affect good social customs in related broadcasting laws.

The proposal can be seen as a positive attempt for the regulator to step into these issues of media content since tackling hate speech in Taiwan inevitably meddled with the restrictions on speech and comments resulting from political confrontation. Legislation of the anti-hate speech is yet another piece of ‘modern’ legislation learned from other developed countries, since the regulator explained that it was inspired by similar legislation in many other countries, such as the UK,

Germany, Ireland, Canada, Singapore and so on. It is regarded as a global trend by the NCC and further supported by the fact that the government had signed the International Convention on the Elimination of All Forms of Racial Discrimination in 1960 and 1970 (United Nations, 1966).

The provision aroused diverse responses. The industry in the public hearings considered the provisions on hate speech and discrimination to be not only impractical and unfeasible but politically provocative and thus suggested that the regulator delete the provision. Civic groups, including Association of Taiwan Journalists, Awakening Foundation and Citizens Media Reform Alliance, on the contrary, positively acknowledged that it was a good starting point. Although many commented that simply creating regulation of hate speech was nothing more than political gesture, they asked for more detailed regulation and not to leave the implementation solely to the broadcasters as self-regulation had proved ineffective for past decades.

Citizens or consumers?

The discussion of the rewrite of communications laws clearly drew a line between different groups as well as the interests they are trying to promote. While industry leaders and the NCC put the emphasis on industry development and competition, the civic groups and academia focused on the wider cultural and social implications of the law. This gap inevitably reflects a fundamental contrast in relation to whether people are treated as citizens or consumers, as media is so relevant to the formation of political culture. Recent studies point out an unfortunate tendency for people not to be encouraged to discuss public affairs and practise citizenship through media outlets. Additionally, consumers and customers have replaced terms like audience, readers or listeners in the media content (Lewis et al., 2005). The analysis in this chapter seems to demonstrate a similar consumer-led trend in the legislative process, also spotted in the US and UK, as the regulator tended to follow the revisions put forward by the industry instead of civic groups (NccWatch, 2008:251-260).

The Draft Bill has taken a similar route to these earlier pieces of legislation, placing much more weight on consumers while marginalising the concept of citizens. Lo (2008a) compares different provisions of laws presented before and after

the creation of the NCC, highlighting the lack of concern of the regulator for empowering citizenship through legislation. He traces the different ways the term ‘citizenship’ has been used between previous and present legislative proposals (2008a: 8). The Draft Three Broadcasting Laws proposed in 2003 by the DPP government explained in the very beginning that their purpose was to ‘accommodate the convergence of technology, encourage the sound development of broadcasting industries, safeguard cultural diversity, protect the rights of citizens and promote social welfare’ (Executive Yuan, 2003). Citizenship here was still flagged up and placed alongside competition. In the Draft Bill, however, the law was enacted on a different basis, to ‘ensure the freedom of communications and effective competition, promote the interlinked application between different communications technologies, enhance the universal service and access to communications service, and safeguard the rights of consumers and the minority’ (National Communications Commission, 2007c). The absence of values such as ‘citizenship’ and ‘diversity’ in the first place indicated that the interests of the public had ceased to be regarded as the priority of the legislation.

Counting the frequency of use of specific terms can be an effective way to demonstrate the hegemony of ideas, as Freedman did in evaluating the significance of ‘public interest’ in communications laws (2008:64). A search through the Draft Bill (including the preamble and Policy Statement) shows the trend: the term ‘consumers’, absent from previous relevant broadcasting laws, is now dominant, featuring a massive 63 mentions in the Draft Bill, while ‘citizens’ received just nine mentions in the same act (Lo, 2008a).

According to the above analysis and discussion the regulator prioritised industry competitiveness, and tended to equate public interest with that of consumer interest and diversity with the number of channels offered. In a word, it presented far less intention of, and commitment to, enhancing the public interest, diversity or citizenship from the viewpoint of citizens instead of consumers. A former commissioner, also a key figure in the drafting process, disputes the criticism that it favoured corporate powers. He argues that the priority of legislation always varies in accordance with the different problems underpinning the overall regulatory framework. In this case, the aim of the Draft Bill was ‘to set up the basic regulatory

structure and mechanism' instead of introducing criteria of accountability or penalties, but many civic groups simply 'lost sight of this' and therefore 'apparently got the focus wrong' (Interviewee 8). Based on this remark it is thus not surprising to find that the law has, from the outset, considerably focused on, and been mainly adjusted according to, the opinions of the regulated industry instead of those of the civil society groups or academia.

During the review process there have been some issues regarding the NCC's favouring of corporate interests by trying to eliminate the amount that Cable channel providers are supposed to contribute to the 'Special Fund' in order to subsidise programmes for minorities, and by greatly lessening the penalties for violating related laws. It also indicates that the ideology of the regulator in policymaking is mainly deregulatory and the mechanism for achieving the regulatory aim is based on market logic. The many policy changes in the Draft Bill discussed in this chapter can be understood in this way. To sum up, that passage of the Draft Bill would have rendered the regulator a tiger without claws: it would have greatly lessened the limits on foreign investment and cross-media ownership, and would have adopted the philosophy of 'renewal expectancy' in which exit mechanisms for broadcasters are virtually abolished. It would also have benefited corporate business significantly as it would have helped them become more profitable by lowering the range of financial penalties and the percentage of revenue that the cable service providers were required to put into the Special Fund.

The regulator envisaged a viable system in which market competition would naturally result in the advancement of quality of communications services. This ideal picture has seldom been realised in other countries. A concern of the Draft Bill was that the NCC wanted to tear down an existing regulatory framework they deemed outdated and unfeasible even before the new framework was put into practice. This concern greatly undermined the general consensus of single legislation and dramatically changed the policy direction.

The next section presents the dynamic process of legislative policymaking in which various powers, namely politics, bureaucracy, and industry, actively intervened to secure their own interests through administrative delays, lobbying, and sometimes formation of alliances with different groups. It aims to demonstrate how

the politics of power struggles can lead to policy change despite the fact that convergence seemed like an irrepressible idea to which virtually every actor in the policy arena was committed. However, failure to enact the law does not necessarily mean the failure of neo-liberal concepts to prevail, as the later legislation, although enacted in a more fragmented fashion, still shows the tendency to cope with globalisation and convergence through deregulation and competition.

A legal scholar and NCC commissioner, Howard Shyr, reflects on the U-turn in the opinions of scholars and industry leaders about convergence legislation, indicating that, although nuanced, their attitude towards convergence has become more reserved (2009a). He also associates the short-lived Draft Bill with other unsatisfying policy performance such as the promotion of high-definition television (HDTV) and digital audio broadcasting (DAB), contending that they all reflect the plight of contradictions between multiple communications laws. He argues that simply creating an independent single regulator or a consolidated law will not complete regulatory reform (2009a:285). This section follows the policy formation process and brings to light the politics behind the different arguments about the Draft Bill. It draws on concerns from the viewpoints of industry, politics, and bureaucracy to illustrate their roles in rejecting approval of the Draft Bill at different levels, through different channels and with different impacts.

Forces of Resistance

General criticism: hasty legislation

One of the few criticisms that different groups shared was of the esoteric nature of the bill-drafting process and the rush for public consultation by the NCC. During the drafting process tentative documents were classified and not much information was revealed, which generated much dissatisfaction among industry leaders and civil servants in other relevant departments. As the CEO of an influential business group asks: how the regulator can 'be effective and held accountable' if it is 'unwilling to take advice from the industry and if the policymaking process is not transparent at all' (Interviewee 19). Another experienced lobbyist also disapproves of the way the NCC handled the drafting:

I really wonder that if the NCC has even thought about why they are doing the amendments and rewrite and what issues they are supposed to

tackle. They should have a list of issues and corresponding solutions, but nothing has ever been revealed (Interviewee 11).

Similarly, a former Pan-Blue legislator considers the NCC's closed policy network to be 'divorcing itself from reality':

When drafting new laws, it is unimaginable that you should avoid hearing thoughts from the group knowing the area best and impacted the most by the new provisions. However, it is exactly how the regulator works (Interviewee 17).

One senior consultant to the government, who retired from a high-ranking position in a related department, reflects on the situation when asking former colleagues about the progress of bill drafting but being refused information:

They were told that everything was confidential, and were not allowed to share with any other people outside the task force team, not even with other commissioners not involved in the task force or their colleagues in the NCC. I think it is not reasonable to exclude other commissioners and keep secret the overarching concept of the rewrite (Interviewee 25).

The rather arcane legislative process also caused a stir in the committee, as two commissioners filed concurring opinions expressing their partial agreement with, as well as concern about, the decisions reached in a specific committee meeting with regard to the discussion of the Draft Bill. One concurrence was filed after the first series of public hearings, and dealt with the controversy over the adjustment of financial penalties. It argued that the complaints could have been avoided and policy designed more thoroughly if there had been more time for the seven commissioners to deliberate and reach consensus in advance. It indicated that several commissioners did not even have the chance to read through the whole Draft Bill before it was presented to the public, implying that they were excluded from the policymaking process (Liu, 2007b). On the contrary, the other disagreement presented at the same meeting implied that the whole drafting process had been complicated and 'further burdened by bureaucratic red tape to detail the legislative process filed by some commissioners' (Shyr, 2007c).

In addition to the opaque process, many have also argued that the time available for drafting the act and for public consultation was too short to generate possible deliberative responses and meaningful debates. As Ofcom, the regulator in the UK, suggests, the length of a consultation period has to be decided so that it can

be responsive both to different views and to market changes (Ofcom, 2007). Ofcom developed a framework of three different categories for which different lengths of consultation period are set accordingly, with a minimum period of one month for minor amendments to existing policy or regulation. In the case of Taiwan, however, the NCC called for six public hearings after the release of the Draft Bill, with a consultation period of barely two weeks. This highlighted a disparity in how external viewpoints are valued in the policymaking process under different regulatory frameworks. It is thus not surprising that the NCC was flooded with criticism that this was a reckless policymaking process.

Judging from the opinions in public hearings, the impetuous formation and deliberation process was the target of public criticism. Former ministers, industry leaders, scholars and civic groups alike criticised the regulator for drafting a new regulatory framework without conducting a risk impact analysis (RIA) in advance (National Communications Commission, 2007b: 1-50). Even a high-ranking NCC civil servant, who took part in the Task Force for Legal Convergence, considers the process ‘over-adventurous’. He suggests that the Draft Bill would have been received with much less controversy if the process of drafting had been more transparent and responsive.

The time was so limited and decisions had to be made quickly, which is far from ideal policymaking. There was clearly lack of time for further discussion and commissioners were leaving, but they still insisted in finishing the Draft Bill. It was like jumping into human testing without any prior experiment, thus [it was] understandable that relevant stakeholders would rather resist than bear the risk (Interviewee 18).

However, a former NCC commissioner who played a dominant role in producing the Draft Bill is more confident and regards the call for responses from external enquiries, and responses to external pressure, as a ‘distraction’.

I told them [other commissioners] not to disturb me for three months and I can come up with a draft act. The time I need to draft a new act is shorter than that they need to deliberate on it (Interviewee 8).

Ironically, one of the commissioners in charge of the legislative rewrite of communications laws had rightly critiqued the hasty process that led to the failure to restructure the three broadcasting laws some years before. Shyr (2003b) commented that the attempt in 2003 did not thoroughly think through many issues and failed to

seamlessly connect three different laws within the preparation time of less than one year. Yet perhaps the NCC failed to learn from the mistake: the Draft Bill took only four months to take shape and was a new single law, which was supposed to require more coordination and dedication during the process in order to address all issues comprehensively.

Civil society groups criticised not only the short period for public consultation, but also the disparate treatment by the regulator of the different actors involved. MediaWatch Foundation noted that of the six public hearings the first four were reserved for industry-related groups while only the last two were open for civil society groups and academics (NccWatch, 2008). Furthermore, while other groups were prevented from taking part in the first four public hearings, industry groups were allowed to participate in all six of them, which clearly demonstrated that the NCC regarded the corporate business as ‘main players’, and placed much more importance on the viewpoints of the corporate actors than the others.

Despite the disapproval of favouring corporate power expressed by the civic groups, the strongest opposing voice actually came from within the industry. For the regulated industry the Draft Bill seemed to be much more radical than many had anticipated. As a result of the radical change, most businesses related to each ‘platform’, including the major players in infrastructure, service and content, all asked the regulator for more deliberation and an impact analysis before promulgating the law during the public hearings (National Communications Commission, 2007b:1-50). That partly explains why the industry did not support the Draft Bill even though it appeared to favour corporate power. There was a belief that, although industry had developed procedures to cope with the existing regulatory framework, the structural change might mean more risk and uncertainty and would therefore be unwelcome.

Corporate opposition

As key stakeholders corporate business representatives packed the public hearings, filed hundreds of statements of opinion, and soon mobilised their resources to organise several symposia discussing the possible impacts and consequences of the Draft Bill. The industry greeted the release of the Draft Bill with strong criticism and deep reservations on account of the confidential drafting process. In the

compilation of responses to the Draft Bill gathered from first six public hearings concern about the feasibility of applying ‘one step for all’ legislation in Taiwan alone occupied almost fifty pages (National Communications Commission, 2007b:1-50). The industry also opposed several provisions relating to business management, such as the application of an accounting separation system, which was widely considered as the first step in promoting effective competition by pressuring the incumbent companies to reveal separate costs of different parts of their activities in order to facilitate potential interconnectivity with other smaller new entrants (Thatcher, 1999:210; Noam, 2001:141). Additionally, the discretionary judgement about significant market powers (SMPs), the designation of essential facilities, and the restructuring of the regulatory framework from vertical to horizontal regulation also raised concerns from the industry to some degree.

The rather radical move of integrating communications services into horizontal regulation surprised the industry in general, and particularly worried the media industry because they were more vulnerable than their telecommunications industry counterparts with respect to capital scales and technological competitiveness. One journalist for a leading newspaper, who has been covering communications news for several years, explains the anxious reactions of the media industry to this convergence legislation:

The media industry has been worried about the Draft Bill and advocated gradual amendment of existing laws instead of achieving convergence legislation in one go. The telecommunications industry is much more lucrative and flexible in responding to market change, the odds [are] clearly against the media industry if [the] telecommunications industry decides to step in (Interviewee 5).

The commercial broadcasting industries, especially the radio companies, were concerned about the effectiveness of the new framework as they had the deepest sense of crisis. They focused on protecting themselves from competition with the telecommunications sector and considered it unfair to be put under the same regulatory framework. Some claimed the regulator should either help insulate smaller business from fierce competition by imposing asymmetrical regulation on incumbent telecommunications providers, or provide relevant mechanisms for the traditional media business to exit the market smoothly (National Communications Commission, 2007b: 17).

Resistance also came from the seemingly better placed telecommunications industry, although from a rather different perspective than that of the media industry operators. The change of regulatory framework seemed to impact on the telecommunications industry more than the media industry since telecommunications service providers often cover at least two platforms in this framework. The incumbent operators and new market entrants were both concerned about the excessive regulatory discretion granted to the regulator. For the prominent operators the Draft Bill posed a challenge, as the regulator had the power of defining markets and SMPs and designating certain facilities as bottleneck or essential facilities based on a much wider range of definitions compared to international standards. With regard to the definition of markets the Draft Bill allowed the regulator to actively ‘exercise its discretion and combine two or more services into one specific market other than what is designated by the statutory provisions’ (§51). Although the regulator tried to reassure the industry that additional definitions of markets aimed to reflect changes in the market in a more proactive way, and that change would be made after a process of public consultation, the telecommunications companies still held a sceptical view.

Other than markets the interpretation of SMPs was also controversial, as the industry argued they would be exposed to potential policy risk caused by this vagueness of the legislation. According to the Draft Bill SMPs are subject to an *ex ante* evaluation and recognition, that is to say, the regulations that would be imposed upon corporate business would be largely determined by past conditions. It stated that in specific markets communications service providers ‘own the influence to substantially determine the price and service conditions should be considered as SMPs’ (§54). In addition, the regulator used market share as a criterion to exempt certain business from regulation. However, the interpretation of market share also drew disputes between companies at different levels. Prominent companies argued that the market share of two affiliated companies should be recognised collectively instead of separately in order to include potential competitors under the same restriction. Incumbent companies further suggested that the threshold of market share recognised as SMPs should be set at 50 per cent, as the Fair Trade Act stated. The second market leader also advised that the recognition of SMPs should only

apply to markets with insufficient competition so as possibly to get itself out of the duties SMPs are obliged to bear.

The issue of designating essential facilities refers to the conflict mainly between the incumbent telecommunications service provider, Chung-Hwa Telecom (CHT), and other competitors, since virtually all operators are subject to the ‘last mile’ connection to end users provided by CHT. Transformed from a previously state-owned enterprise, CHT has benefited enormously, even after its privatisation in the 1990s. The Ministry of Transportation and Communication (MOTC) is still the single largest shareholder up to today, and CHT has been a predominant lobbyist in the telecommunications industry. Article 56 deals with designating essential facilities and is highly relevant to the profitability of CHT. According to the Draft Bill essential facilities can be designated according to several criteria: they are necessary for non-market leaders to provide communications services; they are too time-consuming and economically ineffective for non-market leaders to build by themselves; or they will profoundly hinder the compatibility of other communications services providers if denied access. This provision was warmly received by many communications service providers, who asked for more active recognition of bottleneck facilities and rights of negotiating wholesale prices with the incumbent providers so as to promote market competition. CHT understandably fought against the provision, arguing that the NCC’s definition of essential facilities was much too lenient in comparison with international standards. For example, the WTO 1996 Reference Paper (1996) defines essential facilities as those of a public telecommunications transport network and service that are ‘exclusively or predominantly provided by a single or limited number of suppliers’ and ‘cannot feasibly be economically or technically substituted in order to provide a service’. CHT disagreed with the regulator in the definition of essential facilities and argued that it would discourage future new entrants from investing in infrastructure and network facilities, and eventually obstruct the development of the telecommunication industry (National Communications Commission, 2007b:121).

Political tension

Political confrontation not only characterised the creation of the NCC but also continued to play a crucial role in the decision-making and policymaking process. In

one public hearing the Taiwan Telecommunications Industry Development Association stated that ‘after the Draft Bill is presented to the Executive Yuan, we expect the administrative system to listen to the ideas of the industry and to amend the laws step by step’ (National Communications Commission, 2007b:16-7). This opinion clearly tried to provoke potential tensions between the regulator and the government by encouraging the government to ‘listen to the industry’ and confront the regulator.

This opinion signalled another battle ahead. To some extent it was correct, as the Draft Bill was eventually unable to pass the review within the Executive Yuan. One veteran civil servant at director general level considers political bitterness between the central government and the regulator to be ‘the most destructive power in the policymaking process’, a factor that was ‘initially underestimated’ (Interviewee 18). Political confrontation, according to some contemporary commissioners, is the double-edged sword that facilitated the introduction, while at the same time hindered the efficacy, of the Draft Bill. One commissioner believes the conflicts accelerated the emergence of the Draft Bill:

Since the NCC cannot really tackle real issues because these would only worsen the confrontation, they had to focus on something less likely to antagonise the government such as preparing a draft of a new law (Interviewee 27).

According to the commissioner the Draft Bill is in contrast with ‘real issues’, revealing the prejudice against convergence legislation in the first place. On the other hand the tension distorted the formation of convergence legislation, as another commissioner points out that there was actually ‘no regulation at all’ in the Draft Bill, because the aim was rather to ‘defend its existence and subjectivity’ through drafting the new act (Interviewee 23). Therefore she further suggests that the Draft Bill should be understood not in the context of regulatory reform but in the wider context of a political power struggle between the Executive Yuan and the regulator.

In due process, after any draft legislation is presented to the Executive Yuan the Premier has to call for opinions about the draft from different departments within the Cabinet and make a judgement according to their suggestions. In this case, when the Draft Bill was to be discussed, a former commissioner points out that politics

was clearly embodied in the judgement from each department by interpreting every nuance of expression from the Premier:

Under the circumstances of political conflicts, it was not difficult for other departments to fathom the desired reactions, as they only had to echo some concerns which the business groups had already mentioned. It would be enough to delay our progress (Interviewee 8).

He also interprets the return of the Draft Bill by the Executive Yuan in a similar light, as he reflects on why many government departments would come up with ‘suggestions’ that jointly rendered the Draft Bill a failed attempt:

Ministers are high-ranking government officials who are cautious and experienced, they certainly know how to react by checking every subtlety expressed by the Premier. If the Executive Yuan gives the order to fire, they will fight at the frontline without hesitation, which is exactly the situation when the Executive Yuan reviewed the Draft Bill (Interviewee 8).

Bureaucratic delay

In the law making process bureaucratic operation forms the actual practice through which politics between different powers is exercised. In this section bureaucratic delay is explored at different levels, ranging from turf wars between different government departments and passive resistance from staff members to change of leadership, to decisions for succeeding commissioners to overrule previous proposals. The analysis examines various perspectives in order to provide a more detailed observation on the dynamics of the policymaking process.

Along with echoing the Premier at Cabinet level, some departments attacked the Draft Bill in order to protect their own interests, since the regulatory legitimacy and capacity of the NCC would certainly increase with the establishment of a legal framework. Therefore turf wars also contributed to objections to the Draft Bill since bureaucratic institutions competing with or even to some degree rivalling the NCC were prone to downplay, or to be more reserved in evaluating, the significance of the regulator. An illustrative example is the MOTC, an influential voice of comment on the Draft Bill to which the Directorate General of Telecommunication (DGT) used to be affiliated. The fact that the MOTC used to oversee the DGT and at the same time substantially control the operation of the incumbent CHT telecommunications group, which violated the principle of the WTO, led to the creation of the independent

regulator. As discussed above, CHT would have been affected most if the Draft Bill was passed, since the NCC put a great emphasis on regulating the behaviour of the incumbent companies in different markets. In government politics the large tax revenue from CHT to a certain degree supports the importance of the MOTC. The MOTC would therefore endeavour to insulate CHT from any potential challenge. A former commissioner tries to interpret the deliberation of the MOTC through a similar logic:

There is no doubt that [the MOTC] will favour the CHT and be hostile to the NCC because we try to impose regulation on and will probably impact [on] the revenue of the CHT to a considerable extent. In addition, the thriving of the NCC will mean a threat to the MOTC as it might lose the control of Department of Post and Telecommunications to the NCC, which is a brutal power struggle about resources and significance (Interviewee 8).

Besides pressure from the Executive Yuan or other departments, the independent regulatory agency also generated conflicts between different administrative cultures of civil servants who have worked in the public sector and new commissioners. The Office of Telecommunications (Oftel), the British telecommunications regulator in the 1990s, serves as a good example of how the different administrative cultures of regulatory agencies may give rise to departmental confrontation and reform of regulatory frameworks (Hall et al., 2000). In the case of the NCC the new commissioners, irrespective of administrative ethics and organisational culture of consultation with senior civil servants or industry groups, put in place profound obstacles to open policymaking. One civil servant reflected on the passive reaction within bureaucratic institutions due to change of styles of leadership:

After leaving [the NCC] I once asked my former colleagues why they have not conducted policy consultation any more like we used to do before. They said the new commissioners did not like it and they would only be told off when bringing about such suggestions (Interviewee 25).

Facing dominant leadership from the commissioners those civil servants responded with inactivity, which is harmful to the organisational climate and administrative efficiency. As she explains in a rather sarcastic way:

Now [after the creation of the NCC], no one bothers to provide advice for policy since almost all commissioners are doctors, experts, and clearly

‘superior’; the staff members will just do whatever they are told to do. After all, it is the commissioners themselves that have to face the criticism (Interviewee 25).

Furthermore, the change of commissioners and different regulatory philosophy of each commissioner has also impacted on the interpretation of the Draft Bill. A month after taking office, the contemporary Commission made an announcement that the legislation of the Communications Management Act would be temporarily removed from the annual policy goals because the regulatory framework of convergence legislation was still insufficient for the development of digitalisation (National Communications Commission, 2008). Claiming the new commission to be a more ‘practical’ regulator, the contemporary NCC stated that the priority amendment would be made in response to cross-industry digital operation and the regulatory practices at stake, known as cross-media ownership issues and ‘step by step’ legislation. The policy change decided by the contemporary Commission was almost predetermined and without much debate. Drawing upon the aforementioned comments regarding drafting laws as different from ‘real issues’, these conceptions shown by the second-term commissioners evidently demonstrate their disapproval of their predecessors. In addition, their dissatisfaction with the first-term Commission seemed to have affected their judgement about the convergence regulation, which regrettably was not based on rational debate but more on prejudice.

However, while postponing the convergence legislation, the contemporary NCC also reasserted that the overall aim of promoting convergence and competition remained intact. A current commissioner believes that ‘step by step’ legislation is a more feasible strategy:

We should firstly amend the three broadcasting laws to a practical extent and try to create a general statement on top of it. It will share the ethos of the convergence legislation now (Interviewee 27).

The reason the new regulator did not concern itself with working on the Draft Bill, although they shared the same destination according to the commissioner, was because it was simply ‘unrealistic’ even from the outset:

To be honest, I really don’t understand what the Draft Bill is about and don’t think it is going to work either. The existing laws were so outdated that the reality has already been far beyond [its] scope. We are not God so the only thing we can do now is to amend the three broadcasting laws to a

degree that is plausible. Convergence will entail many more issues, and we will then have to respond to them accordingly (Interviewee 23).

The commissioner shows strong disagreement over the performance of her predecessors:

The Draft Bill was clearly a product of political confrontation, as what we can see was simply defending their subjectivity but little had been touched upon content and structural regulation. They have done virtually nothing to rectify the media environment in the past three years. I believe it is wrong if we just let the industry alone, it is shirking the responsibility (Interviewee 23).

According to the above opinions, the step by step legislation proposed by the incumbent commission is expected to include more emphasis on accountability and content regulation. However, experienced civil servants express their concern about the extremely time-consuming legislative process that might delay the realisation of digital convergence as well as weaken the competitive edge:

Now the new commissioners have decided to put the Draft Bill on the shelf and focus on amending the three existing broadcasting laws one by one, it will take a great deal of time and effort since all has to be repeated again, three times (Interviewee 18).

They also imply a more general problem resulting from the lack of a regulatory philosophy for the NCC, and point out how the change of philosophy will influence both the consistency of the regulator and the development of policy accordingly.

It really worries me to see succeeding commissioners always try to reject the decisions made by their predecessors and the regulatory agency being caught in such a loop having no way out (Interviewee 25).

The Draft Bill drew considerable criticism and, as a consequence, the NCC's strategy of consolidating the existing laws has come into question. Many have dramatically changed their position in relation to convergence legislation (Hsieh, 2008). The next section discusses how policy change in this case was provoked by dissatisfied interest groups instead of broader debates over policy goals, and how this convergence legislation ended up being discarded without much agitation.

'One Step for All' vs 'Step by Step'

It is interesting to observe the contrasting responses to the integration of relevant laws before and after the introduction of the Draft Bill. They indicate that policy change did not necessarily emerge as the consequence of policy debate but may have taken place as a political strategy due to the conflicting interests between various stakeholders. Convergence legislation in accordance with technology innovation had been a popular demand of corporate business years before the creation of the NCC. The earlier attempts failed mainly due to confrontation between a minority DPP government and the Legislative Yuan dominated by the Pan-Blue coalition. Thus by the time the NCC was finally established convergence of communications laws was already considered behind schedule and, therefore, one of the priorities of the regulator. That is also the reason the Communications Basic Law prioritised legislative integration for the regulator and set a two-year deadline. Therefore when the NCC announced in early 2007 that it would be drafting the new law based on modest to high levels of convergence, it was clearly implying its intention of introducing ‘one step for all’ legislation (National Communications Commission, 2007a). Taking this background into account, the criticism following the introduction of the Draft Bill and the premature end of the once much-anticipated legislation stand in stark contrast to each other.

As soon as the Draft Bill was presented and called for consultation discontent began to accumulate and pressure mount, despite the fact that virtually all the voices heard earlier had been positive about convergence legislation. The debates were traced back to the feasibility of convergence legislation and the essence of the Communications Basic Law. Some maintained that the NCC misinterpreted this, as tidying up legal texts does not necessarily mean consolidating all existing laws at one go. A leading member of pro-business voice, who claims the Draft Bill was not deregulatory enough and thus did not benefit the industry and consumers, argues that legislation is not an elixir:

The crucial point of making effective policy lies not in legislation, but in creating incentives for corporate business to invest, and [in] whether the policymakers have the vision for future development. Many countries have enhanced their competitive edge in communications sector even though only very few countries, such as Malaysia and the UK, have actually enacted convergence laws (Interviewee 11).

A contemporary NCC commissioner also asserts that the Draft Bill was an impracticable attempt and puts it in a straightforward way, as ‘convergence might well be simply [a figment of the] imagination, which no one really knows what it is’ (Interviewee 23).

Most opposition voices pointed out that the regulator had misconceptions about ‘reality’, which, ironically, was exactly the regulator’s remark about criticism. One former commissioner claimed that dissatisfaction was the result of over-zealous imagination since the ‘dream version’ of the Bill was different in the eyes of the beholders due to their different interests (Shyr, 2009a). He further contends that learning from the legal frameworks in foreign countries without taking account of the domestic context is impractical, implying that those who criticised the Draft Bill were sometimes too engaged with certain western-originated ideas and failed to see the whole picture of Taiwan (2009a:287). Coincidentally using dressmaking as a metaphor, both former and contemporary NCC commissioners expressed their different ideas of single legislation. One former commissioner (2009a) describes the attempt of the Draft Bill as trying to make a dress fit by ‘amending [it] at the same time [as] trying [it] on’, meaning that at first sight it might look awkward and far from perfect, but as time goes by it will eventually find a way to fit the shape of the body. However, another commissioner argues that it was implausible to try to make a dress ‘fit for three different people evidently with different body shapes’ (Interviewee 23).

However, these perspectives presented above were gathered through personal interviews and professional periodicals but rarely seen in public discussion. Several interviewees commonly attributed the under-representation of legislation to the lack of communications policy at state level, which led to the rather opaque quality of legislation since the citizens did not have opportunities to take part in formulating better policies through discussion and debates. Government’s vague vision of communication policy is perhaps the main reason why policy change could easily take place and politicisation could operate. One media scholar considers amending the incompatible and dated legal rules as the priority for the NCC, since cross-media ownership is the most timely and problematic issue facing the regulator. However, he also recognises that there has been a lack of consistent regulatory policy at the

state level in the past ten years, which renders the regulatory policymaking ‘highly contingent upon individual will and political climate’ (Interviewee 22), as demonstrated in this case of convergence legislation. A commissioner candidly echoes this point of view, arguing that digital convergence is merely a fig leaf for most stakeholders: government has never taken any substantial action to promote convergence. The industry simply cares about survival, convergent or not. Technology-savvy consumers are capable of finding the information they need, while the relatively information-deprived groups are probably still not going to benefit from convergence (Interviewee 27).

Another perspective on interpreting the sparse public discussion is the contrasting responses from the attention-seeking civic groups and the deliberate public silence of the industry. During the legislative process most of the media coverage related to comments or protests initiated by civic groups. One chairperson of a leading civic group expresses their discontent at the Draft Bill as it took no account of the opinions presented by civic groups in the public hearings and ‘marginalised the participation and opinion of the citizens’ (Interviewee 26). By contrast the industry, although the most active participant in the public hearings, kept a low profile in public coverage. As discussed in previous chapters the industry representatives, who know the political environment well, tend to allocate resources to limit the capabilities of the regulatory agency through political action. In this case of convergence legislation, apart from lobbying and pressuring the elected politicians in the Executive Yuan and the legislature, their voices were also presented in many expert symposia partly organised by the industry. In a conference on the range and function of the convergence legislation, for example, participating experts, largely sympathetic to the industry, expressed their concerns about the ‘rather hasty “one step for all” strategy’ and the ‘incomplete framework for the ultimate deregulation’ (Shih, 2007; Mao, 2007).

Industry leaders were dissatisfied with the Draft Bill, claiming that it fell short of their deregulatory aims and failed to take their opinions into account. On the one hand they asked for more time and for a risk impact analysis before passing the law, while on the other they used all possible resources to thwart the NCC’s plan by mobilising political lobbying and influencing public opinion. Clearly the

communications industry was the actor that benefited most from the interruption of legislation, as this meant a delay of a new accounting system and other responsibilities and thus the retaining of the profitability they have enjoyed for so long. The telecommunications and cable television industries are two of a few regulated industries enjoying excessive profit in Taiwan, according to a report commissioned by government (Shih, 2003). This is confirmed by commissioners who have access to yearly financial reports of the communications industry (Interviewees 6 and 24). A managerial civil servant who took part in drafting legislation considers the rejection of the industry ‘a reaction based on self-interest and reluctance to change instead of taking the future development of the industry as a whole’, which is harmful to the progress of the communications industry (Interviewee 18).

There was little debate over replacing the ‘one step for all’ convergence legislation with ‘step by step’ amendment, and the long-awaited single legislation seemed to be discarded overnight. Little policy discussion was raised about whether the convergence legislation would achieve the objectives set out by the regulator or if there was any alternative way of revising the Draft Bill instead of completely rejecting it. As a senior civil servant maintains, the prompt decision to replace the convergence legislation with ‘step by step’ legislation ‘missed the chance to formulate a set of feasible legislation through public consultation and deliberation’ and meant the immeasurable loss of an opportunity for Taiwan to accommodate digital convergence in an up to date regulatory framework (Interviewee 18). The resistance from industry, the prejudice of the contemporary commissioners against single legislation, and the inactive bureaucratic culture within the NCC all contributed a shovel of soil in burying the Draft Bill as a consequence. The hurried and rather unnoticed process not only made the policymaking a reckless attempt, but also made policy change a politicised reaction to meet the interests of the actors involved instead of the general policy objectives.

A more important shortcoming is perhaps the lack of discussion about the function of legislation as a part of regulatory reform in the contemporary political and social context. One former commissioner (Shyr, 2009a:306-7) points out that the promulgation of the Draft Bill, from the very beginning, was unlikely to be the ‘total

solution' to all problems intertwined with political, economic and social factors, and that 'perfect legislation' was a myth rather than reality. Thus he concludes that the argument is not about whether the law should be integrated or amended step by step, it is about exactly what goals policymaking should aim to achieve. Shyr's comment is paradoxical: it rightly pinpoints the interwoven nature of the regulatory environment of post-transition countries, but this understanding of the complexity was nonetheless not put into practice when drafting the new laws. This absence, when coupled with the politicisation between different actors at certain junctures, inevitably resulted in the dropping of the Draft Bill.

Conclusion

The NCC proposed the Draft Bill four months before the first-term commissioners were scheduled to leave their posts and, according to its design, it tried to accomplish the task of integration at one stroke and seamlessly transfer the existing regulatory framework to a new one. However, these principles were considered impractical and even harmful to sustainable policy since there was no feasible action plan (Chen, 2007a). Similarly, lobbying groups argue that the regulator ignored the different contexts between Taiwan and other countries when transplanting policy frameworks rooted in other advanced countries. As one telecommunications lawyer argues, the ideas in the Draft Bill 'all looked good and made sense', but they were 'just implausible' in Taiwan (Interviewee 11). This chapter has attempted to explore why this was the case and why this legislation ended up in an unexpected way.

Legislation can be an opportunity for a regulator to set up new goals and uphold new values, and it is the most effective tool for envisaging and stimulating desirable industry development. This chapter focused on convergence legislation proposed by a newly established independent regulator in a post-transition country where the communications environment has rarely been fully developed without heavy-handed intervention. During the law making process the regulator borrowed many ideas from its western role models, mainly the Telecommunications Act of 1996 in the US and the Communications Act of 2003 in the UK, in which deregulation and competition were clearly more desired. However, the transplantation of a rather idealised, market-oriented regulatory framework was only

ever going to offer a ‘fatal remedy’ (Hood, 1998, cited in Minogue, 2006) when applied to a post-transition country where political and economic interests are still closely knitted and may together lead to unfair competition. This chapter has not sought to evaluate whether ‘step by step’ legislation is superior to convergence legislation or vice versa, but has emphasised that the political and social contexts of transitional countries are very different from those of western democratic ones, and regulators have to bear this gap in mind. It is exactly what this piece of research has tried to highlight from the outset: that regulatory agencies in newly democratised countries cannot simply duplicate western frameworks without considering their previous political and social contexts. It further argues that a responsible regulator should take legislation as a strategic tool to rectify systemic ideological biases or injustices, and implement rationales of public interest, diversity and citizenship, instead of handing the communications regulatory framework to an unfettered market.

The chapter analysed the reasons why the first-term NCC, despite rigorous efforts, failed to persuade industry leaders, civic groups, and the executive branch to accept its draft bill of convergence legislation. It examined both the content of the Draft Bill as well as the process by which the ‘one step for all’ convergence legislation was replaced by a ‘step by step’ method to amend the three existing broadcasting laws. As for the content, the analysis of the legislation elucidates the tendency to favour industry over the public, and to emphasise consumers while marginalising citizens. With respect to the policymaking process, it suggests that the failure resulted from three main causes, namely corporate opposition, political tension, and bureaucratic delay. The shift from single to divergent legislation was not necessarily a deliberate result of policy change but rather a political strategy, in that the politics of legislation were subjugated to competing political pressures. Although the Draft Bill did not succeed this time the power behind this largely corporate-friendly bill cannot be underestimated, as it has already made explicit the regulator’s deregulatory instincts and their possible consequences. A truly independent regulatory agency should be alert to these debates if it intends to carry out legislation that is beneficial to developing a sound regulatory framework and the consolidation of democracy in the long run.

Chapter 8

Conclusion

This thesis is about media regulatory reform in the context and as part of political democratisation. It aims to bridge the gap between democratic transition and regulatory reform in theory and practice by documenting the development of the National Communications Commission (NCC), the independent media regulatory agency in Taiwan. As described in the Introduction the NCC, despite an allegedly ‘advanced’ model borrowed from Western democratic countries, has hardly kept the government at arm’s length nor been independent of the influence of regulated industry since its inception. In order to problematise this rather derailed policy formation, this thesis has examined the economic, technological, political and, above all, transitional contexts in which the NCC has been located. It has addressed cases with respect to judicial interpretation, cross-media ownership and convergence legislation through which a new regulatory framework has taken shape, and where different powers have tried to take control.

In this conclusion I now return to the main research questions set out in the Introduction concerning the changing relationship between the state, the regulator and the regulated industry under transitional politics. The empirical findings are grounded in the cases selected and in interviews with the relevant actors, and I will evaluate the extent to which they have informed current studies. This study has firstly attempted to identify the main facilitating factor behind the creation of the independent regulatory agency that is foreign to Taiwanese political and regulatory history. The analysis traced the origin of the NCC back to the early 1990s and recorded many similar proposals brought up by different actors at various moments in response to various issues. The introduction of the Independent Regulatory Authority (IRA) was once regarded as the solution to keeping up with technology convergence and maintaining a competitive edge: behind these all-encompassing discourses lay support for industry liberalisation from government officials and lawmakers. In addition an independent regulator was considered essential since it was one of the six criteria in the Reference Paper released by the WTO, one of the few international institutions to which Taiwan was allowed to accede. The creation

of the NCC was, therefore, founded on a mixture of desire for economic development and fear of diplomatic isolation.

More prominently, this thesis has revealed that the proposal of creating an independent regulator emerged as a strategic response to the changing political environment. The long-ruling KMT changed its attitude and publicly opted for setting up an independent regulator after another electoral loss in the legislature in 2001 following their defeat in the presidential election in 2000. By contrast the Democratic Progressive Party (DPP), in spite of being a seemingly loyal advocate of the IRA, was not very keen to realise this promise after coming to power. Along with the government reluctance, interviews conducted for this project revealed that during the process of drafting the NCC priorities were placed on grabbing regulatory power and securing job positions in many government departments, which also effectively delayed regulatory reform in practice. This thesis has challenged mainstream literature in relation to regulatory reform and complemented it with a unique non-Western, newly democratised case. It has argued that, instead of economic liberalisation and technology convergence, politicisation of partisan politics and departmental interests proved to be more effective in facilitating the creation and influencing the regulatory capability of the IRA.

The transitional political background has in many ways influenced the shape, formation and efficacy of the NCC. Chapter 4 has highlighted how politicisation between different government departments and political parties impacted on the formation process and eventually led to the creation of the NCC. It explained how the change of government during political democratisation not only altered different parties' attitudes toward the independent regulator but also intensified the confrontation between the new government and entrenched political interests. This triggered the politicised way of nominating commissioners according to the party ratio in the legislature. The nomination process prior to the establishment of the NCC reflected the predominance of politicisation, presaging entangled conflicts afterwards. Chapter 5 has examined the complex power dynamics of judicial interpretation brought on by the DPP administration. This case has aptly illustrated the intense competition for regulatory power between the state and the regulator, addressing the power struggle at the crucial juncture of political democratisation

between an unstable governing structures and a commitment to media regulatory reform. It has demonstrated how the state attempted to reclaim the power delegated to the NCC by mobilising judicial power to declare the agency unconstitutional. As a result of this judicial interpretation, the state secured its superiority over the independent regulatory agency at the cost of damaging the reputation of the nascent agency. It cast a shadow on the transformation of the media regulatory framework, and again indicated that state power in transitional countries still effectively controls the form of regulatory framework.

Chapters 6 and 7 outline the situation and response of the new regulatory agency in relation to its role at work, and indicate that, although political power is predominant, it is certainly not monolithic, and the regulator can still demonstrate its regulatory philosophy by enforcing rules. The sub-cases in relation to cross-media ownership selected in Chapter 6 have shown the traces of deep-rooted politico-economic networks through policymaking and indicated the imminent predominance of corporate power. The chapter explored how political power, in order to respond to the call for democratisation, attempted to transfer its control of the media to favourable media conglomerates. The impact of these politico-economic relations, although implicit, was beyond doubt, as the regulator was determined to give a green light to the BCC merger case despite being accused of obtuseness and of losing its independence. In contrast, while the regulator dealt with the WWCT case in a more politically neutral manner it was constrained by an immense attack from the industry in the form of name-calling, advertising witch-hunts and legislative interference. In both sub-cases the industry representatives considered themselves victims of political intervention and cried for a free and democratised market environment. This study argues that the claim of democratisation in the policymaking process has clearly been politicised in order to serve the interests of different actors. Chapter 7, on the one hand, examined how the regulator's endeavour to rewrite existing broadcasting laws and integrate them into a single code fell short of success at the last stage, thanks again to some highly politicised power calculations between the various actors. On the other hand it indicated the direction in which the regulator intends to move: towards a more deregulated and competitive, yet not necessarily more diverse and democratic, market.

In addition to the politicisation at different levels that gave rise to the creation of the NCC, the thesis has outlined the perspectives of dominant actors and delineated their impact on policymaking. By analysing policy and regulatory documents and interviewing relevant actors, most of them power elites in the policy circle, a highly politicised policymaking process has been vividly fleshed out. This thesis has demonstrated how regulatory reform projects in post-transition countries can be appropriated as a political tool to serve the ends of partisan interests, regardless of their supposedly depoliticised origin. From its responsibility and composition, from the nomination process of the new regulator to its subsequent judicial interpretation and the exit mechanism imposed by executive and legislative powers, the NCC is a battlefield on which different interests have been contested. The thesis has also explored how various actors, such as politicians, lawmakers, industry groups and civil servants, have reacted to the policymaking process according to their own standpoints in order to take advantage of this highly politicised field of operation. The next section presents four types of actors and gives a more detailed discussion with regard to their roles in different cases.

Actors and Their Politics

Political actors

The first group of actors, evidently, is the political elite, elected or otherwise, who are directly in charge of policymaking and thus capable of initiating new policies as well as overwriting old ones. Political power, as distinct from technological necessity or economic factors, was the *most* visible factor in the creation of the NCC, since analysis has demonstrated that the substantial developments of the regulatory agency were facilitated by conflicts between entrenched political interests. The antagonism aroused in the Press Evaluation Project between the two political coalitions, for instance, forced the president to claim the creation of the NCC as the primary issue for his administration, putting the agency under spotlight. Likewise the case of the licence renewal of satellite channels led to an outbreak of hostility between the two sides. The passage of the Organisation Act of the NCC itself was accompanied by physical violence on the floor of Parliament. The voting process of nominees for the NCC commissioners in

particular saw nominees chosen more for their political affiliation than their professional knowledge.

Political actors not only determined the outlook of the regulatory agency but also prevented it from achieving its maximum performance. The constitutional interpretation filed by the DPP administration declared the nomination process of the NCC unconstitutional and thus left the nascent agency subject to emotional blackmail and enormous criticism. In the meantime the DPP government took advantage of the constitutional interpretation, revised the documents regulating the relationship between the independent regulator and the central government, and significantly weakened the capability of the NCC.

In addition to direct confrontation, the regulatory agency has also been sidelined by administrative impediments mobilised by political actors. These have, perhaps, been even more influential on its performance. From the BCC cross-media ownership case on, the incumbent government has demonstrated that the regulatory power of the NCC could easily be suppressed if other government departments simply did not cooperate, as, for example, when the Executive Yuan ordered the Ministry of Economic Affairs not to approve the application submitted by the BCC. Moreover, the fact that the Draft Bill of the Communications Management Act was tabled and later returned by the Executive Yuan indicates quite clearly that political elites are in a very resourceful position to cripple the work of the independent agency.

The legislature has had a particularly crucial impact on the capacity of the NCC to operate independently through legislative power and budgetary review. The former includes the proposal of implementing 'exit mechanisms' that grant legislators the power to terminate the tenure of commissioners. While the proposal will definitely cast a shadow over the autonomy of the regulatory agency, budgetary power is even more influential according to commissioners, because it provides the most immediate restraint on the capacity of the agency. The power to cut the budget or boycott the budgetary session has strengthened the dominance of the legislators and has subdued the regulator. Faced with this power and pressure on the commissioners during legislative sessions, the regulator has frequently had to reconsider or to modify its regulatory judgements in order to make them less harsh to

the regulated industry. As one industry leader said during this research, the best strategy to counter policymaking power is probably to invite legislators to the public hearings and sit with them, indicating that the pressure put by the lawmakers on the commissioners is considerable (Interviewee 19).

In Taiwan the legislature bears the unmistakable mark of entangled powers rooted in local fractions, and the control of media outlets has been held to consolidate support and mobilise voters during election periods. Not only has past study shown that the rampant development of underground radio stations and cable channels was closely linked to political powers (Taipei Society, 1993), interview data also confirmed this phenomenon. More than one interviewee affirmed that all legislators benefited from local media outlets in eventually winning their elections, thus highlighting the significance of controlling, or at least keeping a friendly relationship with, the media (Interviewees 11 and 23).

Industry actors

Intertwined with political power are industry actors and their quest for profits and increased market share. Business has long been calling for an environment governed by the logic of the free market and that is answerable to technology convergence and the dominance of a neo-liberal global economic framework. The media industry, in particular, has upheld freedom of speech as a stepping stone to an unregulated and lucrative future. Through forming the alliance with political actors, the industry has taken advantage of political and economic liberalisation since the 1970s. Both telecommunications and media industries have craved deregulation and had a rather comfortable development in the past few decades. Research, backed up by interviews, suggests that two of the few industries to enjoy excessive profits in Taiwan are telecommunications and cable television, both of which have been closely linked to incumbent political power (Shih et al., 2005; Interviewees 6 & 24).

The politically resourceful character of these industries has been repeatedly illustrated. It was clearly demonstrated through the Digital Convergence Legislative Alliance (DCLA), in which legislators aimed to promote the development of converged industries by providing legislative and administrative assistance. The reciprocal relationship between political and industrial power became even more blatant when dealing with politically sensitive cases like the controversial

‘ultimatum’ issued by the NCC in an attempt to aid BCC in transferring the property of the party-state into the hands of private industry. Still another case is the highly politicised proposal of the exit mechanism for commissioners, which was introduced precisely when the WWCT group was fiercely attacking the commissioners through newspaper advertisements and its media outlets.

Industries also attempted to exploit the fragile democratic development of the NCC. They frequently challenged regulatory decisions, and accused the agency of political intervention, so as to blur the focus and make the government hesitant about taking further action. During the martial law era the authoritarian government was criticised for both controlling information and repressing freedom of speech by censoring the media and confiscating related materials if it deemed necessary. However, as media outlets mushroomed after political democratisation, the media environment has undergone a hyperactive development resulting in increasing sensationalism. Accusations of political intervention from the industry in cases of licence renewals of satellite channels, and cross-media ownership reviews that failed to consider the impact of increased democracy on programme quality, were relatively indefensible. The chairman of UFO radio company, Jaw Shaw-kong, tried to win public support by applying a ‘white-feather’ strategy, claiming that he would terminate the contract of the BCC deal because ‘I just want to run a media business, that's all. But apparently I can't beat politics’ (Shan, 2007). It later emerged that he had never withdrawn investment from the merger and many claims he had made earlier were in fact misleading or erroneous. The BCC merger case nonetheless sailed through with a suspicion of partisan support.

Civil service actors

The analysis has also highlighted the importance of bureaucratic power in influencing the regulatory agency, a factor that is often under-represented. Although bureaucratic power is usually more passive than political power, it would be a mistake not to pay attention to lengthy reports commissioned or compiled by government departments, often during the policymaking process, as they may contain evidence of the possible policy trends or turf wars between government departments. The reports commissioned by the Directorate General of Telecommunications (DGT) in the 1990s tackling the issue of regulatory reform in

the communications industry all pointed to the same goal: creating a single regulator independent from the state operator. In addition the DGT's blueprint for regulatory reform focused on the allocation and management of spectrum frequency and technology convergence, while that of the Government Information Office (GIO) not surprisingly highlighted the role of the media in society and content regulation. Further, the influence of bureaucratic power is more salient when it comes to technocratic details, as interviews revealed that the focus was on allocation of job positions rather than specific responsibilities or policy trends (Interviewees 4 and 25).

Turf wars between departments and personalised battles for leadership have proved to be detrimental to the performance of the independent regulatory agency. As Chapter 7 illustrated, along with political factors turf wars also to a certain extent contributed to the disapproval of the Draft Bill from other ministries at Cabinet level, since the success of the NCC would inevitably lead it to outshine other rival institutions. The widespread criticism from other departments thus helped bring about the premature end of convergence legislation. Dissatisfaction with the structure of leadership has become a popular complaint, as some interviewees revealed. For example, there are accusations that most commissioners come from an academic background and are used to 'preaching' and 'not agreeing with each other' (Interviewee 25), forms of behaviour which are quite different to bureaucratic culture. Some civil servants respond to this with passive resistance, according to interviews, deliberately trying not to cultivate a proactive culture of civil service responsibility.

Civil society actors

Academic figures and civil society groups are closely connected in Taiwan because of the traditional respect for intellectuals discussed above and the authoritarian political background that silenced the public. Academics were among the first to form civic groups after the lifting of martial law, and to advocate media regulatory reform in the wake of political liberalisation. The Taipei Society, an association of liberal intellectuals established in 1989 to facilitate comment and debate on current affairs, published *Deconstructing Taiwan's Broadcasting Structure* in 1993, the first book to offer a systematic criticism of media control in the

authoritarian regime. Scholars were later recruited to draft the *White Paper on Communication Policy* for the presidential candidate. In it they proposed the concept of an independent media regulatory agency to replace the politics-laden GIO. Academia and civil society groups once played a prominent part in mobilising media reform and introducing the independent regulator.

It is theorised that civil society in Taiwan emerged as the result of the political opposition movement in the 1970s (Lee, 2004: 35-7). In other words, the introduction and development of civil society in Taiwan had accompanied with constant confrontation with the authoritarian regime and had since been regarded as a political entity rather than an economic one. As partisan politics were intensified by ethnic politics, namely between Pan-Blue and Pan-Green coalitions, civil society has inevitably been caught up in politicisation. It is thus understandable why civil society groups might sometimes be accused of being a mouthpiece for the Pan-Green coalition due to their shared views on certain policy proposals. Politicised evaluations of civil society have been repeated in the cases of the Press Evaluation Project and the Licence Renewal of Satellite Channels, considerably marginalising the opinion of civil society groups in generating public discussion.

The influence of civil society groups on the policymaking process is restricted because they are unwelcome to other actors and thus unable to strengthen their cooperation and advocacy voices. A leading industry figure is openly hostile to those scholars who attended public hearings and showed disapproval of the media merger, arguing that they are ‘jeopardising the development of technology and prosperity of the country’ (Interviewee 19). The voices of civil society groups are sidelined, if not completely ignored, by the NCC, as one former commissioner says that corporate rights have to be considered ahead of the rights of the civic groups, because ‘the former have invested millions on business, while the latter simply pay lip service’ (Interviewee 8).

This study argues that it is exactly because of this marginalisation that we should call for active engagement from civil society groups and the public, since that is the only way to hold back deregulatory tendencies and make media regulatory reform serve the public. It is the citizens that can and should hold the regulator accountable and make the regulator answer to the public interests, instead of private

profits. In Taiwan the chairman of the WWCT group utilised media outlets to attack NCC commissioners before receiving an unprecedented response from civic groups: more than 150 scholars, 300 media workers and many more citizens jointly filed a letter of complaint accusing the WWCT group of mishandling the media on behalf of private interests (Shan, 2009a; Loa, 2009). In the US the FCC's proposal to relax media concentration was finally suspended by Congress and the Court after millions of Americans expressed their opposition (Baker, 2007). Both incidents convey a clear message: both corporate power and government can be undemocratic, and only active civic engagement and making the voice of the public heard in the policymaking process can counterbalance them. Civic groups must be empowered to provide checks and balances on the seemingly irreversible deregulatory trend by constantly holding the agency accountable and putting it under public scrutiny, thus benefiting a stronger democracy.

Politics of Democratisation and Its Implications

The story of the NCC is undoubtedly incomplete if the background of political democratisation is not taken into account. In the following section I will place the creation of the NCC in the transitional context and examine how the politicisation exerted by various actors at different levels has affected the independence of the agency and the development of a regulatory framework. I will also evaluate the extent to which the NCC has influenced the regulatory landscapes, and the implications for regulatory policymaking. I argue that the independent regulatory agency is not simply a by-product of politicisation; it has, instead, actively intervened in the process of democratisation.

Democratisation

This thesis has first and foremost provided an example different from mainstream literature's claims for regulatory reform, that the emergence and proliferation of IRAs correspond to changing global economic circumstances and corresponding new forms of governance. It has indicated that partisan politics can play a more decisive role in determining the future development of IRAs by drawing upon examples in transitional societies. It has shown that although Taiwan is very different from countries such as Indonesia, Poland, and South Africa in terms of

social, economic and cultural background, they share similar challenges in creating and sustaining IRAs in the context of transitional politics.

It is appropriate to say that the NCC has constituted a symbolic meaning in Taiwan's transition to democracy, distinct from its counterparts in Western European countries. Media regulatory reform has been introduced at the conjunction of the past history of an authoritarian regime and the growing global economic integration and convergence as a step towards a more democratic society. It has posed a timely challenge to the newly democratised country with respect to technological, economic, social and political circumstances. The bottom line of the NCC has been a solution to fulfil the commitment to democratisation because of the transitional background. It has thus given rise to power struggles in devising the nomination process and the subsequent political conflicts.

The cases studies have reflected the situation and difficulties facing the NCC, and illustrate how relations between state and industry have changed in the context of democratisation. For political power in transitional societies, to delegate the regulatory power of the media to an independent agency means cutting the lifeline of political dominance, as the state-media relationship has been closely linked through blatant control or clientelism. The politicisation of the nomination process by partisan interests was understandable since political powers still wanted to control the media without explicitly breaking the promise of democratisation. Similarly the constitutional interpretation emerged from the same process as the incumbent government attempted to invalidate the legitimacy of the regulator through a legal mechanism.

Transitional politics sometimes also forced the independent regulator to modify its regulatory strategy. The necessity and legitimacy of media regulation is constantly under question as the undemocratic past has rendered government the major enemy of media freedom and hence painted a rosy picture of a free media market. However, we can identify a contradiction, as numerous examples have borne out that leaving the media to the market alone will not inevitably lead to democracy. The formation process of the NCC can also be interpreted from this perspective, as it initially aimed to free the regulatory framework from political intervention but was in reality constrained by a mix of political and market forces.

A transitional background has never really been a focus of the literature of regulatory reform, partly due to the Western European and North American political context of that writing. The influence of transitional politics can be seen explicitly in the impact of politicisation on the independence of the IRAs. Research into the delegation of regulatory power, mainly focusing on Western European cases, suggests that contextual factors such as the ‘shape’ of the state, traditional regulatory structure, policy learning and leadership all, to some extent, affect the chances for IRAs to thrive (Thatcher, 2003). Thatcher has rightly pointed out that the proliferation of IRAs can be a result of policy learning in which countries seek examples from other advanced and successful models, as the Taiwanese case has shown. Mounting confrontation in relation to media regulation has accentuated the need for a more ‘advanced’ and less partisan media regulatory framework. A proposal to introduce an independent regulatory agency came out of many investigative trips and meetings seeking successful examples and plausible solutions. That is, the creation of an independent regulatory agency might be a preferred policy decision in a move towards democracy but regulatory reform is not likely to take place simply by ‘getting the institution right’ without paying attention to the domestic political context (Ngo, 2006:126). This conclusion was previously advanced by scholars to explain the different results of similar economic strategies adopted by Argentina and Taiwan. These can now be used precisely to describe the different consequences of regulatory reform between Taiwan and other countries from which it aims to learn.

Independence

Derived from the previous authoritarian regime, the concept of independence has easily been the overriding concern when examining the design and practices of the NCC. It is also by understanding the distorted political context of Taiwan that we can move on to discussing how this has undermined the NCC by damaging its independence and exposing it to the strategic interests of other actors. Analysis of the cases has shown that independence has been utilised as a politicised concept, as there has been little discussion of what it really means or what it should include. The Pan-Blue and Pan-Green coalitions opposed each other while pursuing their own proposals of nominating NCC commissioners, with both claiming to protect against the abuse of independence. In addition industry leaders complained about the

‘excessive independence’ of the NCC and argued that the agency should be subject to proper checks and balances (Interviewees 11 and 19). The analysis has demonstrated that the NCC was certainly not independent of political power, nor was it completely independent of the regulated industries. A politicised nomination of the commissioners, and the restrictions imposed by the executive branch in dealing with cross-media ownership cases, indicated that the agency was subordinate to political power. Examples include the administrative impediments in the BCC case and the pressure by legislators in the WWCT case. The controversial regulatory decision of the BCC case was hardly persuasive for anybody – even an insider admitted it was an ‘odd’ decision (Interviewee 15). The modification of the draft bill for convergence legislation, that relaxed ownership rules, removed the quota of local programming, and decreased fines, was clearly in favour of corporate power. Even though the convergence legislation was suspended, the overall trend of promoting a more deregulated market was still underway.

Nonetheless, it is equally an absurd idea to claim that the NCC has no independence at all. As an independent regulator it would, at some points, stand on its own feet and not give in to the interference of any other power. I suggest that the independence of the agency can be illustrated from the outset by the nominees’ withdrawal from the prospective commission, which stimulated public attention and discussion about the role and responsibility of the IRA (Chapter 4). The agency also demonstrated a degree of stubbornness after the constitutional ruling: nine commissioners unanimously released an announcement that they would stay in post until January 2008, when the terms of the lawmakers who devised the nomination rules and approved their appointments were due to end (Chapter 5).

Many more cases than those examined in this thesis would demonstrate that the independence of the NCC is not always undermined. Consider, for example, the TVBS Asphalt Duck case briefly discussed in Chapter 5, when the NCC refused to impose heavy penalties on the cable channel as instructed by the Executive Yuan, as the commissioner insisted that ‘the evidence does not justify the punishment’ (Interviewee 8). Likewise, when News-In-Motion, a new genre of Internet reporting that turns saucy news headlines into animation, drew criticism from concerned parents, the Executive Yuan immediately instructed the NCC to temporarily shut

down the server and inflict punishment on the company. The NCC disobeyed the instruction as the commissioner insisted on ‘retaining freedom of the press and low level of regulation of the Internet content’ (Interviewee 23).

How do we interpret the meanings of these seemingly contradictory examples, as the agency at some times seems independent, and others less so? This thesis has suggested that political atmosphere, political affiliation and personal background might influence the regulatory decision-making process. The analysis has also pointed out that politically sensitive cases are prone to attract more powers into the process and taint the regulatory decision-making process with more politicisation. The independence of the IRAs offers a very different picture in well-democratised countries and transitional societies, as Western-oriented research has maintained that once the independent regulators are established they generally enjoy a fair degree of autonomy and examples of governments overturning regulatory decisions or sacking commissioners of the IRAs are extremely rare (Gilardi, 2008). My research has shown that this is not necessarily wrong, but is perhaps not applicable to countries which enjoy a far more fragile concept of civil society and democracy.

Politicisation

This thesis has spent a considerable amount of time examining the impact of politicisation at different levels on the shaping of the independent regulator. It has attempted to explore the reasons why a similar idea of creating an IRA in Taiwan has led to a very different performance and regulatory environment. Looking at media regulatory reform in transitional societies, the analysis has demonstrated that the real driving force behind the creation of the NCC was, above all, partisan conflicts between political parties. This is another argument less observed in mainstream literature. It certainly does not mean that politicisation is ignored in the literature of regulatory reform: on the contrary, politicisation has been a recurrent theme in recent scholarship. Many scholars have given demonstrations of how politicisation has influenced the shape of new regulatory frameworks through new laws, the domination of certain think tanks, and regulatory capture (Aufderheide, 1999; Fischer, 1993; Christensen and Lægveid, 2006a). Rather than this downplayed

significance, my research has considered politicisation as the main attribute of the creation of the NCC, through the prism of partisan politics, turf wars and politico-economic networks intertwined with the transitional background.

Politicisation, of course, should not be taken as the sole reason for the mediocre and controversial performance of the NCC, as the tendency towards a more neo-liberal regulatory structure has also occurred in many other countries, advanced and less so. Factors discussed earlier, such as technology advancement and emergence of a global economic system, are evidently essential and make a new media regulatory framework a timely issue for countries under political and economic transition. This statement can be confirmed throughout the thesis when the context of democratisation in Taiwan is taken into account, and where power elites have to uphold democratic principles but are reluctant to relinquish control of the media.

My research has unveiled the very blatant way in which politicisation occurs in transitional societies, which I think has been underexplored and is critical to determining the future trajectory of communications development. For many transnational companies and supranational regulatory institutions transitional countries remain relatively undiscovered lands with lucrative possibilities, and many media conglomerates have flooded into Eastern European and Latin American countries. For the public, however, it is a chance to claim back the media that should have served them from the hands of the authoritarian regime before the channels and outlets are transferred to powerful corporate business in the name of the free market.

Democracy at Stake

The call to intervene in the process of politicisation and to maintain the independence of the regulatory agency is thus relevant to the essence of my research question: to what extent does the creation of the NCC promote a better democracy in Taiwan? The delegation of regulatory power to the NCC was certainly the first positive sign, while the subsequent politicised nomination process somewhat dampened the optimism. While the BCC case rendered the NCC a discredited agency, the insistence of some commissioners on the principle of media diversity during the WWCT case was truly inspirational. Despite the fact that the Draft Bill of

the CMA was largely favourable to the industry, the campaign for media reform has connected dozens of civic groups and has formed a clear voice at the public hearings. The answer, therefore, is still pending.

Many examples have demonstrated that a regulatory agency independent of partisan and industry interests is essential for democracy to thrive: this Taiwanese experience has shown that institutional design is one thing, but practice can be totally different. The conflicts and challenges facing the regulatory agency demonstrate that there is no shortcut to building up reputation, and politicisation can easily damage the nascent independence of the regulatory agency. The analysis and discussion of the selected cases has elucidated that political power struggles are more likely to create a deadlock in politics or collusion with industry powers than to strengthen the democracy at stake.

The most effective movement to counter political power, as many examples have illustrated, is not the power of the media or the industry, but of the people. It was tens of thousands of people who took down the Berlin Wall down in 1989 and removed the physical barrier that divided the country. In 2011 tens of thousands of people in Tunisia and Egypt who relentlessly organised marches and demonstrations eventually brought down their undemocratic governments. Two decades have passed but something remains the same: democracy is never given by the state but earned by people through civic intervention. Likewise the quest for a more democratic society through policymaking has to rely on active public engagement. The key to reviving media regulatory reform lies in a strong civil society.

As is shown in the cases and analysis, some aspects of this need to be scrutinised as they shed light on the paths to the future development of the NCC. First, this thesis calls attention to the future nomination process of NCC commissioners, as the public should be informed and have the right to raise issues relevant to regulatory policy during the nomination process. A nomination process that is open to civil society groups and takes their opinions into account can facilitate public discussion and understanding of media policy and increase the accountability of the independent regulator. Second, to hold the policymaking process more accountable, the information of public consultation and lobbying activities should be made transparent and open to the public. Third, civic groups and citizens should play

a role in subcommittees either by sending representatives to participate in the meetings or by calling for public consultation. Media regulatory reform is an unavoidable process during political transition and Taiwan is certainly at a democratic crossroads. The NCC has made a detour in the past few years, and this thesis has attempted to identify both the source of the problems it has faced as well as some of the principles it needs to safeguard if its pursuit of public interest is to endure.

Appendices

1. List of Abbreviations

AVMSD	Audio-Visual Media Service Directive
BBC	British Broadcasting Corporation
BCC	Broadcasting Corporation of China
CATV	Community Antenna Television
CHT	Chunghwa Telecom Company
CMA	Communications Management Act
CNP	the New Party
CTL	Cable Television Law
CTS	Chinese Television System
CTV	Chinese Television
DCLA	Digital Convergence Legislative Alliance
DCMS	Department of Culture, Media and Sports
DGT	Directorate General of Telecommunications
DI	Diversity Index
DPP	Democratic Progressive Party
DTI	Department of Trade and Industry
EU	European Union
FCC	Federal Communications Commission
FTC	Fair Trade Commission
GATS	General Agreement on Trade and Services
GATT	General Agreement on Tariffs and Trade
GIO	Government Information Office
IMF	International Monetary Fund
IRAs	Independent Regulatory Agencies
IWF	Internet Watch Foundation
KMT	Kuomintang (The Nationalist Party)

MoD	Multi-media on Demand
MOEA	Ministry of Economic Affairs
MOTC	Ministry of Transportation and Communication
NCC	National Communications Commission
NICI	National Information and Communications Initiatives Committee
NPM	New Public Management
NRAs	National Regulatory Authorities
NRC	Nomination Review Committee
NTIA	National Telecommunications and Information Agency
OECD	Organisation for Economic Co-operation and Development
OFCOM	Office of Communication
OFTEL	Office of Telecommunications
PBS	Public Broadcasting System
PEG	Public, educational, and governmental programming
PFP	People First Party
RDEC	Research, Development and Evaluation Commission
SMPs	Significant Market Powers
STAG	Science and Technology Advisory Group
T&WM	Tobacco and Wine Monopoly Bureau
TGC	Taiwan Garrison Command
TIBC	Telecommunication, Information and Broadcasting Commission
TSU	Taiwan Solidarity Union
TTV	Taiwan Television
TVoIP	Television over Internet Protocol
UN	United Nations
WTO	World Trade Organisation

2. List of Interviewees

Code	Role	Gender	Date of Interview	Remarks
1	Academic Civil Society Activist	M	03 September 2008	Pilot Interview
2	Academic White Paper Contributor	M	10 September 2008	Pilot Interview
3	Civil Servant, GIO and NCC	M	16 September 2008	Pilot Interview
4	Civil Servant, GIO	F	12 February 2009	
5	Journalist	M	18 February 2009	
6	NCC Commissioner Academic	M	19 February 2009	
7	Legislator, DPP	F	24 February 2009	
8	NCC Commissioner Academic	M	26 February 2009	
9	Legislator, CNP	M	26 February 2009	
10	Academic Civil Society Activist	M	27 February 2009	Same as Interview -ee 1
11	Telecommunications Lawyer Industry Lobbyist	M	27 February 2009	
12	Director General, GIO Academic	M	02 March 2009	
13	Minister without Portfolio, Executive Yuan	M	03 March 2009	

	Academic			
14	Journalist	M	03 March 2009	
15	Journalist	M	03 March 2009	
16	Director General, GIO	M	04 March 2009	
17	Legislator, KMT	F	05 March 2009	
18	Civil Servant, GIO and NCC	M	19 January 2010	
19	CEO, Industry Association	M	28 January 2010	
20	Legislator, Pan-Blue Coalition	F	01 February 2010	
21	Editor-in-Chief, WWCT Group	F	02 February 2010	
22	Academic Civil Society Activist	M	03 February 2010	
23	NCC Commissioner Academic	F	08 February 2010	
24	NCC Commissioner Academic	M	09 February 2010	
25	Civil Servant, DGT and NCC	F	09 February 2010	
26	Academic Civil Society Activist	F	09 February 2010	Phone Interview
27	NCC Commissioner Academic	F	13 February 2010	
28	Legislator, KMT	F	26 January 2010 22 February 2010	Phone Interview Written Reply

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