Outline

I. Introduction

II. Theoretical Discussion

III. Regulatory Reform in Asia:
   - 3.1 Korea
   - 3.2 Malaysia

IV. NCC in Taiwan
   - 4.1. The Establishment of NCC and no. 613 Ruling
   - 4.2. Institutional Integration
   - 4.3 The performance of NCC
     - 4.3.1 organizational law modified
     - 4.3.2 nomination and dismiss
     - 4.3.3 capability
     - 4.3.4 veto power

V. Conclusion
I. Introduction

• Since neoliberalism became prevalent in the nineteen-eighties, numerous domains worldwide, specifically in telecommunications, as well as other public monopolies, have been privatized allowing liberalization. The liberalization of communications markets has required a new set of regulatory principles in which fair competition in the market place can be more effectively ensured.

• One of the most visible and significant institutional transformations has been the removal of the broadcasting and telecommunications industries from public administration to the control of independent regulatory authorities (IRAs) (Iosifidis, 2011, p.188).

• Gilardi (2008) and other scholars examined the establishment of IRAs and found that, depending on state traditions and structures, political policy and state reforms, to name but a few, the degree of independence of the regulatory authority in the telecommunications and broadcasting sectors varied considerably around the world.
• With the Federal Communications Commission (FCC) of the United States, which was established in 1934 under the Communications Act, being viewed as a progressive model by many developing countries, both academia and industry in Taiwan were expecting that a kind of independent communications agency might be established on the island, especially after the lifting of Martial Law in Taiwan in 1987.

• What’s more, since Taiwan was so eager to become a member of WTO in late 20th century, the government promised to do everything possible to relax strict regulation on industries, including telecommunications, finance, and energy, etc.

• With the newly elected government led by the Opposition Party, Democratic Progress Party (DPP) in 2000, a brand new era for Taiwanese citizens and governance began.
• The Fundamental Communications Law and Organization Law were initiated and passed during the DPP government term (2003-2005) while the KMT controlled the majority of the Legislative Yuan. Acknowledging the importance of independent regulatory agencies, the two major parties endeavored to make a concerted effort to plan together.

• Consequently, the independent National Communications Commission (NCC) in Taiwan was established in 2006 and serves as the authority responsible for regulating telecommunications and broadcasting services.

• Originally, this authority belonged to both the Directorate General of Telecommunications and the Department of Broadcasting Affairs of the Government Information office; the merged mandate of the NCC was a milestone, one that was indicative of the advent of digital convergence.
Purpose of the Study

• The purpose of this paper is to study the independent communications agency in a context outside of the United States and Europe. The history, developments and problems the newly established and independent agency, the National Communications Commission (NCC), in Taiwan has gone through will be carefully examined.

• Has this experiment successfully fulfilled its objectives stipulated by the Fundamental Communications Act? In an era of convergence, is a Ministrial Bureau more appropriate than an independent agency to plan and execute policy?
II. Regulatory Reform

• Gilardi listed three major variables for this: credibility, political uncertainty and political institutions matter for delegation to independent regulatory agencies.

• Five dimensions are especially relevant; namely, the status of the agency head, that of the members of the management board, the relationship with government and parliament, financial and organizational autonomy, and regulatory competencies. Taken together, these given dimensions can be used to develop an index of formal independence (Gilardi, 2008, p. 56).
• While most governments acknowledge the importance of establishing an independent regulatory agency, each faces the idea differently. Chen (2015) indicated that the control of regulatory agency by the government could be examined by the criteria such as nomination, dismissals, budget, veto power, and change organization status by law.

• And the administrative limitation of an independent agency could be examined by the following criteria: (1) Is the independent regulatory agency able to make policy? (2) Could the IRA execute/fulfill its mission? (3) Who has the final say? (4) Is there any political intervention?
III. Regulatory Reform
South Korea

- South Korea boasts of being one of the most connected countries in the world. There were four government authorities in the 20th century responsible for regulating the communications industry – the Telecommunications Commission, the Ministry of Information and Communication (MIC), the Broadcasting Commission and the Ministry of Culture and Tourism. By December 2007, the government had enacted a law eliminating the MIC and calling for a unified broadcasting and communications commission, merging the Broadcasting Commission, the Telecommunications Commission and MIC’s Broadcasting Policy Office (Iosifidis, 2011, p.190).

- The Korea Communications Commission (KCC) was launched as a ministerial-level central administrative organization under the authority of the President to proactively respond to the convergence trends triggered by advanced digital technology in the broadcasting and telecommunications sector.
MFCS and KCC

• the MFCS was created to promote the ICT and broadcasting and telecommunications industries, the focus of the KCC, as a collegiate regulatory agency, was narrowed to the regulation of broadcasting and telecommunications operators in order to protect public interests.

• The original KCC role included the promotion of technology and its industries. This has now been transferred to the MFCS after many years of debate on the effectiveness of a consensus-based “commission” system in promoting technology and industry in the media convergence era.
Malaysia

- In 1999, the introduction of the Malaysian Communications and Multimedia Act (1998) repealed the Telecommunications Act (1950) and the Broadcasting Act (1988). This new regulatory framework and structure broke new ground by being the first of its kind in the world.

- Based on the concept of a “technology-neutral” regime, the Act embodies the principles of transparency, adherence to timelines, accountability and self-regulation (Malaysian Communications and Multimedia Commission, 2002). Under this Act, a commission was set up to facilitate national policy objectives.
Commission Meeting

Commission Advisors

- Chair-person Office
- Internet Operation and New Media
- Internet Safety
- Spectrum Management and Economic Regulation
- Digital Environmental Development
- Industry Service
- Industry Strategy
IV. NCC in Taiwan

• 4.1. The Establishment of NCC and no. 613 Ruling

• The government document showed that the no. 2272 of Executive Yuan Meeting and the eighth of Electronic, Information and Telecommunication Strategy Review Board (SRB) made a recommendation to establish a higher ranked independent regulatory agency to design, supervise the development of digital convergence and to formulate a direction for communications regulatory reform.

• Nonetheless, the establishment of the independent agency in Taiwan did not go smoothly. The first issue related to its constitutional status. The institution of independent administrative agencies in Taiwan was a subject of intense controversy, with No. 613 of the Grand Justices Council of R.O.C (Chen, 2009).
• With Taiwan being a relatively new democratic society after 38 years of Martial Law, the two major political parties both sought to enjoy powers by controlling major political resources including financial and personnel assignments.

• Chen believed that the establishment of independent agencies could have had positive effects, such as transaction costs reductions, political insurance, and adaption of new technologies. Nevertheless, his study also found that due to the bipartisan competition between the DPP and the KMT, neither was willing to implement their independence and authorize power to them.
4.2. **Institutional integration & Administrative Integration**

- A major argument related to the Independent Regulatory Agency in Taiwan is how the IRAs could work under the concept of ‘Administrative Integration (or so called administrative unity).

- Since the no. 613 Ruling, NCC was limited by her powers to design and plan the important policies, such as spectrum allocation, ICANN, etc.

- Case I: Resources Allocation and Management
MOTC and NCC

• While the Ministry of Transportation and Communications (MOTC) has exclusive power over spectrum allocation and relevant policy planning that left NCC in charge of spectrum regulation and management.

• For other important policy decisions related to converged development, NCC as an independent regulatory agency did not have full support from the Executive Yuan and that of course affected performances.
2008
KMT
Second Term NCC

2010
Modified Organization Law
Third Term NCC

2012-2016
KMT
Forth Term NCC

2016
DPP
Party Change
Fifth Term NCC

2017
- Digital Communications Act (Draft)
- Telecommunications Management Act (Draft)

Convergence Law
4.3. Performance of NCC

- 4.3.1. Organizational Law modified

There were two changes on Organizational Law of NCC that directly related to narrow the independence of the agency: the first one was issued in Jan. 2008, abandoning nomination of commissioners by party ratio, and giving power to the Executive Yuan in nominating commissioners.

Three years later (Dec. 28, 2011), the Organizational Law was further modified to give Executive Yuan the power to appoint the chairperson and vice chairperson when commissioners were nominated.

Consequently, the results are (1) NCC belongs to the Executive Yuan, (2) under the supervision of the Executive Yuan, (3) attend meetings of the Executive Yuan, and (4) those who disagree with the decisions made by NCC can appeal to the Executive Yuan instead of appealing to Court directly (Su, 2016).
4.3.2. Nominations and dismissals

- Table 1: Relationships between NCC, the President (Party) and parliament

<table>
<thead>
<tr>
<th></th>
<th>Independent NCC</th>
<th>President</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006-2008</td>
<td>KMT</td>
<td>DPP</td>
<td>KMT</td>
</tr>
<tr>
<td>2008-2012</td>
<td>Independent</td>
<td>KMT</td>
<td>KMT</td>
</tr>
<tr>
<td>2012-2016</td>
<td>Independent</td>
<td>KMT</td>
<td>KMT</td>
</tr>
<tr>
<td>2016- present</td>
<td>Independent</td>
<td>DPP</td>
<td>DPP</td>
</tr>
</tbody>
</table>
### Table 2: Dismissals/Resignations of NCC Commissioners

<table>
<thead>
<tr>
<th>Term</th>
<th>Commissioner</th>
<th>Date Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>First term</td>
<td>Wu</td>
<td>95/02/22 – 96/04/11</td>
</tr>
<tr>
<td></td>
<td>Lin</td>
<td>95/02/22 – 97/03/02</td>
</tr>
<tr>
<td></td>
<td>Liu, C. C.</td>
<td>95/02/22 – 96/04/11</td>
</tr>
<tr>
<td></td>
<td>Liu, Y. L.</td>
<td>95/02/22 – 97/02/16</td>
</tr>
<tr>
<td>2nd term</td>
<td>Peng</td>
<td>97/08/01 – 99/07/31</td>
</tr>
<tr>
<td>Third term</td>
<td>Chen</td>
<td>101/08/01 – 101/10/30</td>
</tr>
<tr>
<td>Fourth term</td>
<td>Tu</td>
<td>103/08/01 – 105/01/31</td>
</tr>
</tbody>
</table>
4.3.3 Capability

- **Table 3:** Number of Dissent/Concurring opinions by NCC commissioners by term

<table>
<thead>
<tr>
<th>Term</th>
<th>Dissenting</th>
<th>Concurring opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>55</td>
<td>23</td>
</tr>
<tr>
<td>Second</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Third</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Fourth</td>
<td>28</td>
<td>23</td>
</tr>
<tr>
<td>Fifth</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>
4.3.4. Veto Players

• Gilardi (2008) discussed the veto players as important as political (un)stability of the IRAs. Chen (2015) also indicated that veto power exercised by the government might be an indicator to examine the independence of IRAs. Table 4 shows the ruling of NCC vetoed by court. It shows that ultimately the veto rate was not too substantial.

• But if the veto rate by Executive Yuan is also considered, the results are quite different. Thirty-two cases of rulings by NCC were vetoed by the Executive Yuan Appeal Board (https://money.udn.com/money/story/5612/2577987)
Conclusion

• Results showed that since the interpretation of No. 613 of the Grand Justices Council Ruling, DPP, the ruling party at that time, did not authorize large scale of independence to this new born independent agency. Three nominated commissioners left before inauguration, followed by another two commissioners who did not finish their terms.

• And when the government changed in 2008, the nominations, individual commissioners' resignation were for personal reason, no political intervention happened. Still, the rifts with other branches still existed. Two Organizational Law modifications especially reduced the independence of NCC.
• It was found that the western model of IRA could not be cultivated and flourish on Asian soil. Rather, the commission has become more isolated, with less support from the Executive Yuan and suspicions from the Legislative Yuan.

• And the telecommunication and media industries are displeased when having to approach various government agencies for solving their short and long term problems.

• The establishment of KCC in Korea also faced similar difficulties. Dr. Su, the first Chairperson of NCC, later became the Vice President of the Judicial Yuan, therefore indicated the changing missions of NCC and suggested that NCC should give up its independent status and upgrade to a Ministerial Bureau, 2.16.2016).
Thanks for Listening