

Triple play

Its effects on existing legal and regulatory frameworks

The Mauritian television market is experiencing significant changes, characterized by convergence with digital media, broadband and telecommunications services. Digitalization now allows many kinds of content to be delivered over different networks. For example, in 2006, Mauritius Telecom Ltd (MT) launched MyT, a triple play service providing telephony services, internet services, telecommunication services and video on demand. According to the terms and conditions for My.T, MT provides the My.T Service "consisting of converged services including broadband Internet, voice, and video packages..." Convergence is also possible with wireless broadband technologies. Last month, in partnership with Emtel, MC Vision launched its triple play with television services, internet services and telephony services. MC Vision states in its terms and conditions of service that it distributes a broadband internet and fixed telephony service (the CanalBox service). The expression "triple play" is becoming popular in the television/internet landscape. Triple play broadband enables the delivery of voice telephony, video entertainment and data services over the same network and/or by the same service provider.

Rising broadband penetration will continue to drive the triple play market. Triple play, however, significantly changes the modes of service providers' operations and brings into direct contact two markets: telecommunications and media – that are regulated very differently. These changes require that regulation adapts to new business models and the evolving ICT sector. In this short article, we look at the challenges which triple play has on the existing legal and regulatory frameworks in the country. We briefly examine the Independent Broadcasting Authority Act (the IBA Act) and the Information and Communication Technologies Act (the ICT Act).

THE BROADCASTING MARKET

In this article, reference is purposely made to broadcasting. Under section 18 of the IBA Act, a person cannot provide a broadcasting service unless it is licensed by the Independent Broadcasting Authority (the IBA). If the person wishes to provide a terrestrial broadcasting service, he must first enter into an agreement with MultiCarrier (Mauritius) Ltd for the transmission of the broadcasting service. It is to be noted that MultiCarrier (Mauritius) Ltd has exclusive right to carry the business of terrestrial broadcasting in Mauritius.

What is a broadcasting service? The IBA Act does not give a definition. The word broadcast (as a verb) is, however, defined as "emit sound or images by means of Hertzian waves, satellite or a wired electromagnetic system for the reception by the public..." A company wanting to provide a radio service or television service using frequencies or cable must, therefore, hold a licence from the IBA.

THE TELEPHONY AND INTERNET MARKETS

Under section 24 of the ICT Act, a person cannot operate an information and communication network or service including telecommunication network or service unless he holds a licence from the ICT Authority (the ICTA). The ICT Act creates different types of licences. For example, a company cannot provide telephony services unless it holds a licence from the ICTA. Besides, if a company wishes to provide an internet service to the public, it must hold the relevant licence from the ICTA. Furthermore, a company cannot provide international long distance calls unless it holds a licence allowing it to do so. The licensing regime under the ICT Act does not allow a company which holds a licence to provide

international long distance calls to also provide internet services to the public.

At the moment, MT holds, amongst others, a licence to provide international long distance calls, local calls and internet services. Emtel, another telecoms player also has these three licences. In other words, they are present in these three markets.

TRIPLE-PLAY: WHO ARE THE PLAYERS?

A company intending to provide "triple play" services generally would require three different licences: one for each of the bundled services (i.e., broadcasting, voice and data), instead of one single licence. The provision of triple play can take various forms. In one model, Company A is the provider of contents (for example, audio and images) and also the operator of a telecommunications network or service. In another model, Company A is only the content provider and the contents are transmitted to the subscriber through a telecommunication service which is provided by another company, Company B.

In the first model, Company A must hold the relevant licence under the IBA Act and ICT Act. In the second model, the provision of contents can be transmitted by means of frequencies or wire in which case Company A must hold a licence under the IBA Act. Company B would hold the relevant licence(s) under the ICT Act.

However, what happens if the subscriber to triple play signs his agreement with the contents provider, Company A? Should Company A also hold the relevant licence(s) under the ICT Act because it is providing an internet service and a telephone service? Or should it be assumed that Company A is merely using the telecommunications network of Company B to provide its contents to the public?

With whom does an individual subscribe to triple play – with the content provider or the telecommunication service provider? If Company A provides all the services, the consumer has one point of contact – his service provider, Company A. If, on the other hand, Company A provides the content and Company B provides the telecommunication services, then the existence of two service providers may pose serious consumer protection challenges. If, for example, the consumer's internet service is not working properly, does he turn to Company A, the content provider, or Company B, the telecommunications provider? Also, with whom does the individual sign the subscription agreement, with Company A or Company B? Since Company A is only a content provider, can it provide a telephony service or internet service to the individual without holding the relevant licence(s) from the ICTA?

In addition, under the IBA Act, one of the objects of the Authority is to inquire into public complaints against a licensee (for example, Company A) and take any action it thinks appropriate. The IBA must also ensure that broadcasting services are of such a nature as not to encourage or incite crime or racial hatred leading to disorder or offending public feeling. Under the ICT Act, one of the functions of the ICTA is to entertain complaints from consumers in relation to any information and communication service. Another regulatory challenge which arises is which of the two regulators intervene if materials encouraging racial hatred are transmitted through a triple play service?

COMPETITION ISSUE

A number of issues relating to barriers to entry arise as a consequence of convergence, which in turn, have implications for competition policy. Entry barriers can arise from governmental policies, capital requirements, economies of scale or product differentiation. While they exist to varying degrees in all media industries, it is often considered that the broadcasting industry is one of the most difficult to enter. One critical barrier is capital requirements. The level of capital required is usually prohibitively high in the broadcasting industry and this may constitute a significant barrier to entry.

Furthermore, with the migration towards Internet traffic and increasing

reliance on Internet-based products and services, where television programming can be accessed via multiple devices (for example, a tablet, a mobile phone or a computer), the process of defining the relevant market is likely to become more complex. Where television broadcasting is provided over different platforms, one has to examine the degree of potential substitution between them to understand the extent to which a given market is competitive.

Also, which of the three regulators, the IBA, ICTA or Competition Commission (CCM) will be responsible for any competition-related investigation concerning triple play? It is to be noted that there is a memorandum of understanding between the ICTA and CCM which, inter alia, contains arrangements between the CCM and ICTA for the day-to-day handling of competition cases involving information and telecommunication services. It is understood that the CCM is currently negotiating a memorandum of understanding with the IBA. Finally, it is a moot point as to whether having an entity which is able to provide internet, telephone and television services as a bundled service is conducive to competition in the television, telephony or internet services markets. We conclude this overview of the challenges of triple play by asking ourselves the following question: which is the competent regulator? Is it the IBA or ICTA? The above are but only a few challenges which convergence poses. Serious thoughts may be given for a complete review of the existing legal and regulatory frameworks for the telecommunications and broadcasting sectors.

The author advocates the creation of a common regulator with responsibilities over the telecommunications and broadcasting sector, especially that now these two sectors are under the responsibility of the same Ministry. To have a single regulator for broadcasting and telecommunication is not something new. It is also high time for the existing licensing regimes under the IBA Act and ICT Act be reviewed and simplified.



Ammar Oozeer
Barrister-at-law
Juristconsult Chambers

**“IT IS HIGH TIME
FOR THE EXISTING
LICENSING REGIMES UNDER
THE IBA ACT AND ICT ACT
BE REVIEWED
AND SIMPLIFIED”**