

109 年委託研究報告

特定電信服務市場界定及市場顯著
地位者認定研究暨相應競爭政策、
法規調適與革新建議委託研究採購
案

計畫委託機關：國家通訊傳播委員會
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提要

關鍵詞：市場顯著地位者；市場界定；電信競爭政策；特定電信服

務市場

本研究之主要目的係研析歐盟、英國市場界定與市場顯著地位者認定制度及實例分析，並協助委辦單位執行《市場顯著地位者認定及解除認定實施辦法》、《市場顯著地位者互連管理辦法》、《市場顯著地位者資費管理辦法》及《市場顯著地位者會計制度及會計處理準則》四個子法公告施行相關之公開說明會等行政事宜，同時依相關法規執行我國特定電信服務市場界定、市場顯著地位者認定及特別管制措施之分析、建議和實施流程。並研析《電信管理法》與《電信法》於過渡期間之轉軌是否平順，藉由檢視國內實施成效並比較其他國家不對稱管制實施情形，提出法規妥適性評估和相關法規或政策建議，供主管機關參考。

重要發現

一、歐盟、英國之特定電信服務市場界定、市場顯著地位者認定及管制措施課予

本研究研析歐盟特定電信服務市場界定、市場顯著地位者認定及市場顯著地位者管制措施課予原則，並透過英國實例分析，探討其市場界定、市場顯著地位者認定及管制措施課予之實務作法。

我國參考歐盟作法進行首次市場界定，就過去已進行事前管制的業務，遵循平順轉軌原則，依法評估界定是否為特定電信服務市場。未來可視技術發展、監理需求與國際趨勢，並配合我國電信產業或數位經濟發展政策，逐步考量鬆綁空間。參考歐盟 EECC 將市場界定後的適用期間由三年延長為五年，反觀我國初次進行市場界定，每三年檢討一次應屬合宜。俟實施期間較長，且相關市場界定及市場顯著地位者認定結果呈現穩定，再考慮延長市場界定之適用期間。

二、其他國家經驗

觀察英國、韓國與澳洲對於市場顯著地位者管制，可看出各國在固網主要管制對象為既有業者，可視區域（地理市場）競爭情況調整；行網主要管制接續費率，管制對象為所有 MNO 業者。另從鼓勵競爭角度，放寬小型業者管制，若小型業者有明顯價格影響能力時，再課予管制措施。因此，建議主管機關可參考上述國家經驗，在市場界定和市場顯著地位者認定時先行鬆綁，若日後管制成效不如預期，再重新調整管制措施。

重要建議

一、我國特定電信服務市場界定之施行建議

基於歐盟與英國電信市場界定與市場顯著地位者認定之研析結果，以及召開多次產官學研專家座談會，蒐集與綜整各界意見，提出施行建議：

依《電信管理法》及《市場顯著地位者認定及解除認定實施辦法》，建議界定我國五個須事前管制的特定電信服務市場，包含固網語音零售服務市場、固網寬頻零售服務市場、固網批發服務市場、固網語音接續服務市場，以及行網語音接續服務市場。

就市場顯著地位者認定及特別管制而言，我國於固網相關之各特定電信服務市場，建議管制對象為中華電信。行網相關服務市場僅管制行網語音接續服務市場，管制對象為各 MNO 業者。綜整上述建議，我國管制市場以批發服務市場為主。

國際上對多數零售服務市場雖已解除管制，但綜合考量各因素與新舊法平順轉軌，建議維持前述界定之五個特定電信服務市場，惟零售市場服務如固網語音零售服務及固網寬頻零售服務市場之上網服務部分，可於下次檢討市場界定範圍時，重新檢視管制成效及鬆綁空間。

二、資料蒐集內容及方式

(一)蒐集原二類電信業者資料

為了掌握電信市場發展的全貌，建議主管機關仍應蒐集原第二類電信事業之相關資料。建議依《市場顯著地位者認定及解除認定實施辦法》第 3 條，於界定特定電信服務市場時，得蒐集原二類電信業者資料。

(二)新興數位服務發展相關資料蒐集

未來新興數位服務市場如低軌衛星、OTT 通訊服務等，評估有無必要界定市場。建議主管機關可定期蒐集新興數位服務之相關資訊，如供應商、用戶數、營收等資料，以掌握市場發展狀況，未來即使不需單獨界定市場，亦可用於特定市場之替代性服務評估。

(三)資料蒐集方式

建議未來主管機關可依本研究設計各特定電信服務市場之資料格式及內容，建置資料系統供電信業者填報，以利資料保存、正確性、可稽核性，俾於主管機關或其他使用者匯出資料進行後續應用。

二、相關法規修正建議

(一)後續子法修正

在固網語音接續服務市場僅認定中華電信為市場主導者，若未來其他固網語音服務業者收取過高費率，恐有違公平競爭之虞。建

議每三年定期檢視特定電信服務市場界定时，依市場資料檢視該市場之市場顯著地位者認定。現階段相關子法暫無須修法，可於每三年定期檢視特定電信服務市場界定，視四子法實施情形，評估有無修法必要。

(二)建議未來檢視樞紐設施範圍時排除市內用戶迴路，且暫不納入光纖

市內用戶迴路已列入固網批發服務範圍，若有需要可針對市場顯著地位者進行管制，且因技術演進，業者不需仰賴市內用戶迴路提供零售市場之固網寬頻服務。建議未來檢視樞紐設施範圍時，可排除市內用戶迴路。另外，FTTx 與 cable 上網服務近年競爭激烈，兩種技術在固網零售寬頻上網服務之市占率日漸降低，且於本次市場界定，固網寬頻零售服務市場已包含固網零售電路產品。基於法規鬆綁和鼓勵投資原則，建議暫不將光纖納入樞紐設施。

(三)建議海纜電路出租市場無需界定為特定電信服務市場，及海纜

登陸站及其附屬設施不納入瓶頸或樞紐設施

以海纜電路出租市場而言，海纜系統依提供產品區域及速率不同，需求者可自供應商中選擇合適的海纜電路頻寬產品；而業者對於海纜登陸站接取及內陸鏈路租用亦表示無障礙或困難，故本研究認為海纜電路出租市場無需界定為特定電信服務市場。另探討海纜

登陸站管制，在《電信法》架構下，主管機關公告之瓶頸設施，並未包含國際海纜登陸站及附屬設施。《電信管理法》通過後，國際海纜登陸站及其附屬設施互連（含接取）之可能解決方案，建議不納入瓶頸或樞紐設施；欲與國際海纜登陸站及其附屬設施互連（含接取）者，可依《電信管理法》第 5 條登記為電信業者，以及同法第 13 條請求互連。

(四)法規轉軌進一步調適議題

1. 共頻共網

亞太電信與遠傳電信合作案之成因，係因亞太電信未取得 3.5GHz 頻譜，雙方合作有助於維持我國現有電信市場之競爭結構。因本案之合作型態為相互投資，雙方合作是否產生共同效果，導致減損市場價格競爭，後續監理重點應觀察兩者是否有不為競爭、共同效果等有違市場公平競爭之事實。主管機關除要求雙方提供股東會或董事會之會議紀錄外，更需稽核雙方公司之人事、財務或業務是否仍維持獨立運作，並密切觀察兩者合作深度，評估雙方合作對市場競爭結構及市場力量之變化與影響程度。

就監理層面而言，主管機關應持續關注共頻共網合作後，對市場結構、市場競爭、主導者認定等影響，以及合作雙方是否遵守承

諾，彼此合作僅限於網路層。若未來雙方存在反競爭行為，市場分析時評估是否應將兩者市占率合併計算，以反映其市場力量。

2. 垂直場域應用

關於垂直場域應用是否應界定市場，觀察目前國際電信監理趨勢，仍依技術類型對傳統電信市場進行管制，尤以批發市場為主，未見其對垂直場域應用提出事前管制之相關政策。國際監理政策目前重點在於垂直場域應用之頻譜規劃及推展，並嘗試不同之商業模式。在商業模式尚未成熟之際，建議主管機關應持續關注國際垂直場域應用之監理政策及我國垂直場域應用之發展現況，以事後管制為原則，無須界定市場。

3. 破碎化應用（智慧應用）

對國家通訊傳播委員會（NCC）而言，破碎化應用（智慧應用）的監理應著重於電信業者提供應用服務業者之網路連結、傳輸服務相關監理議題。

惟垂直場域應用服務市場仍處市場發展初期，建議監理重點在於，維持電信業者在網路層之競爭，讓應用服務業者可選擇與不同電信業者合作，以事後管制為原則，鼓勵創新，發展多元智慧應用服務。

4. 屏除傳統思維之市場界定方式

觀察目前國際市場界定或主導者管制，仍是從傳統電信市場以技術別區分。即便在各國積極佈建 5G 網路以及面臨如人工智慧、數位平臺蓬勃發展下，對新興服務市場及市場競爭產生革命性的影響。惟尚未見各國主管機關對此變化，採取市場界定或管制之相應措施。

建議目前市場界定宜以既有市場界定方法為基礎，其他新服務視數據可取得性，從服務替代性角度，使用質化或量化工具評估對既有市場衝擊，並每三年檢討我國特定電信服務市場界定範圍是否合宜。

5. 電信公司相互投資持股、合併、重組或另組公司

國外共頻共網案例多採合資方式，並依個案審查。我國亞太電信和遠傳電信共頻共網案例，遠傳電信採取兩階段投資亞太電信股權的模式，與國外案例不同。若雙方維持網路/批發層級合作，有利我國市場競爭及消費者權益提升。惟主管機關後續仍需觀察雙方合作後，是否出現聯合行為或其他反競爭行為，並檢視雙方深化合作是否違反共頻共網承諾。

Abstract

Keywords: Significant Market Power (SMP), market definition, telecommunications competition policy, specific telecommunications service market

“Telecommunications Management Act” was promulgated on June 26, 2019 in Taiwan. According to “Telecommunications Management Act”, the National Communications Commission (NCC) has drafted related regulations, including “Regulations Governing the Determination and Cancellation of Significant Market Power”, “Regulations Governing Interconnection involving Significant Market Power”, “Regulations governing fees of Telecommunications Enterprise with Significant Market Power” and “Accounting Standards and Regulations for the Telecommunications Enterprise with Significant Market Power”.

Therefore, this study aims to complete the implementation procedures of the four regulations mentioned above, including data collection and analysis for relevant markets, SMP assessment and suggested remedies for SMP in relevant markets. This study reviews the implementation results of defined relevant markets and SMP assessment, and studies the appropriateness of the provisions of the above regulations. The conclusion of this study provides a reference for the amendment of regulations, if needed, and competition policy.

The findings are summarized as follows.

Market definition, significant market power determinations and remedies of EU and UK

Based on the results of research and analysis on the definition of the EU and UK telecommunications markets and the identification of prominent market players, as well as holding several expert consultation meetings to collect and synthesize opinions, proposed recommendations are as below:

With reference to the approach of European Union (EU), “Telecommunications Management Act” has introduced market definition and market competition evaluation mechanism to define relevant markets subject to ex-ante regulation; to conduct a competitive analysis thereon; and to adopt asymmetric “ex ante” control measures with respect to SMP. It is in order to maintain fair competition in the specific telecommunications services markets and to activate the development thereof. As for other services markets, operators are required to comply with general obligations, giving them more operating flexibility under the market mechanism to facilitate market competitions.

In accordance with “Telecommunications Management Act” and “Regulations Governing the Determination and Cancellation of Significant Market Power”, this research proposes to define five specific telecommunications service markets that should “ex ante” control, including fixed-line voice retail service market and fixed-line broadband retail service market, fixed-line wholesale service market, fixed-line voice connection service market, and mobile network voice connection service market.

Regarding SMP determinations and specific remedies, Chunghwa Telecom is recommended for each specific telecommunication service market. The mobile network service

market only regulates mobile network voice connection service market, and regulates all Mobile Network Operator (MNO).

The recommendations of this study are as follows:

1. Types and methods of data collection

It is recommended that the competent authority should collect relevant information on the type II telecommunications enterprise and emerging digital services, assessing whether it is necessary to define the market.

2. Recommendation for amendments to regulations

At this stage, there is no need for amendments to the relevant sub-laws. The definition of the specific telecommunication service market can be reviewed regularly every three years, depending on the formal implementation of the four sub-laws, and then whether there is a need to amend the law.

3. Essential facilities

When inspecting the scope of essential facilities in the future, it is recommended to exclude the local loop. Based on relaxing regulations, and encouraging investment, it is recommended not to incorporate optical fiber into essential facilities for the time being.

4. Submarine cable circuit rental market and submarine cable landing station control

This study consider that the submarine cable circuit rental market does not need to be defined as a specific telecommunication service market.

For submarine cable landing station control, after

“Telecommunications Management Act” is passed, it is not recommended to integrate the possible solutions for the interconnection (including access) of the international submarine cable landing station into essential facilities. If there is a need to interact with international submarine cable landing station, a telecommunications company should follow Article 5 of “Telecommunications Management Act”, and request interconnection in accordance with Article 13 of “Telecommunications Management Act”.

5. Frequency and Network Sharing

In terms of supervision, the competent authority should continue to pay attention to the impact of frequency and network sharing cooperation on the market structure, market competition, identification of dominant players, etc., whether the cooperating parties abide by their commitments, as well as cooperation is limited to the network level. If the two parties have anti-competitive behaviors in the future, the market analysis should be conducted to evaluate whether the market share of the two should be combined to reflect their market power.

6. Vertical field application

Observing the current trend of international telecommunications supervision, we can see that the traditional telecommunications market is still regulated according to the type of technology, especially the wholesale market. And proposed prior control policies for vertical field applications has not been seen yet.

It is recommended that the competent authority should

continue to pay attention to the supervision policies of international vertical field applications and the current development of vertical field applications in our country, based on the principle of ex post control, without the need to define the market.

7. Fragmentation application (smart application)

As far as NCC is concerned, the supervision of fragmented applications (smart applications) should focus on the supervision issues related to the network connection and transmission services provided by telecommunications industry to application service providers, while the principle of ex post control should be adopted to encourage innovation and develop diversified smart application services.

8. The market definition method

It is recommended that the current market definition should be based on the existing market definition method. Other new services should be based on the availability of data. From the perspective of service substitution, it is recommended to use qualitative or quantitative tools to assess the impact on the existing market, and to review whether the scope of market definition of specific telecommunications service market is appropriate every three years.

9. Co-investment and shareholding, merger, reorganization or set up a company by telecommunications companies

Foreign co-frequency and co-network cases mostly adopt the mode of joint ventures and are reviewed on a case-by-case basis.

In the case of Asia-Pacific Telecom Co., Ltd (Asia-Pacific Telecom) and Far EasTone Telecommunications Co., Ltd (Far EasTone Telecom) sharing frequency and network, Far EasTone adopts a two-stage investment in Asia-Pacific Telecom equity model. If the two companies maintain cooperation at the network/wholesale market, it will be able to promote market competition and improve consumer rights.