

MALAYSIAN NEW ICT POLICY: REGULATORY REFORM AND THE NEW MODE OF GOVERNANCE

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Abstract

The overall aim of this paper is to evaluate the impact of new information and communication technologies (ICTs), in particular the digital convergence, upon new mode of governance in Malaysia. The researcher questions whether changes adopted by the Malaysian Government will be sufficient to meet the implicit objective of developing a new mode of governance that is at the core of the country's information age agenda. More specifically, this paper addresses two research questions. First, how and why the old regime of governance is affected by digital convergence in Malaysia and, second, whether Malaysia is capable of embracing the opportunities brought by digital convergence and effectively addressing the challenges through institutional and regulatory reforms. The study is rooted within the larger debate of the policy network with an attempt to generate further analysis of new mode of governance impacted by ICT in the context of Malaysia. The main sources of data and methodologies used in this paper include, content analysis of Malaysian government policy documents and Parliamentary Hansards and semi-structured interviews with key policy makers, regulators, and experts of Malaysian ICT and convergence initiatives.

Keywords: policy network, ICT, new regulatory framework, new regulatory regime, digital convergence

1. INTRODUCTION

As a country which has taken deliberate but cautious step on ICT agenda as well as in the convergence and the network media, Malaysia is compelled to make efforts toward a more open and integrated policy environment (Leo Moggie, 1999). Digital convergence is a rapidly growing sector which is unprecedented in the Malaysian economic history, extending the penchant for information society rethorics launched during the middle of 1990s. The atmosphere for a cooperative partnership between public, private and community sectors to achieve the Vision 2020 developed through a national-scale policy framework, or the so-called `National IT Agendaø(NITA) (Tengku Mohd Azzman, 1998). It is widely believed that digital convergence will be an increasingly important policy avenue in the years to come as the industry has sustained very rapid volume of growth rates over the last decade and its share of total ICT sector continues to climb.

The NITA - based on the motto `turning the ripples into tidal wavesø in Malaysian ICT policy (NITC, 2000) was conceived to be `a major milestoneø towards digital convergence. More importantly, various policy, regulatory and institutional reforms were subsequently initiated, such as the creation of the Communication and Multimedia Act (CMA1998) and the Malaysian Communication and Multimedia Commission Act (MCMCA1998) to promote the development of the new digital convergence industry, and the introduction of industry forums to promote self-regulatory environment (see MAIT, 2002, pp. 1-2; COMNET-IT website, 2004).

A good deal of debate exists between those who see these changes as significant and those who were skeptical about the development, especially amid the worst financial and political crisis which struck the region in 1997/8, when the MSC was still in its formative stage.¹ Alvin Toffler, an influential member of the MSCø International

¹ For example, Kamarulzaman and Aliza (2001, p. 6) commented that: "since 1997, it has passed a number of acts and legislatures aimed to create the right environment for the development of the communications and multimedia (C&M) industry and to position Malaysia as a major hub for the C&M information and content services". From the viewpoint that Multimedia Super Corridor (MSC) need to be supported by a high-capacity, digital telecommunications infrastructure designed to the highest standards in capacity and reliability, Hishamudi and Khatibi (2004, p. 309)

Advisory Panel had openly criticised Dr Mahathir's style in dealing with the crisis, arguing that the viability of the project would be at stake under a 'climate of political repression' (Matthew, 1998). To clear any doubt, rather than retreating from such a high-priced ventures, in July 1998, the Government declared continued state support for the MSC by allocating special added funding as part of its National Recovery Plan (Anon, n.d.). This meant that Mahathir's Government viewed that the growth in the IT and C&M industry as critical for future development. Nowadays, issues that have marked the expansion of the industry include coherent regulatory framework, uncertainty surrounding the roles of Industry Forums (IFs) and their impact on governing the new regime, perceived weaknesses of Industry Codes to facilitate industry growth, allegations on the weak position of the MCMC to resolve persistent conflicts regarding broadcasting media and a host of others related issues (see Ahmad N., 2008 for a broader discussion on these issues).

Meanwhile, despite an exponential impact of technology, there is very little field investigation to provide evidence on the determinants as well as implications of policy networks and their constituents, particularly in the case of Malaysia. Recently, much more research has been conducted mainly on eGovernment and eCommerce aspects, which falls short of concrete theoretical exposition, particularly on the basis of detailed studies of digital convergence. While ad hoc actions have been initiated to adapt public administration to the values of network governance in correspondence with the eGovernment agenda, there seems to have been patchy effort directed at synthesising views on the implications of digital convergence or developing strategies for dealing with its implications. Furthermore, the notion 'command and control' or 'top-down' approach in policy making among Malaysian administrators and politicians is widely mentioned, has rapidly become an object of criticism without any substantive examinations, thus obscuring its success stories.

contended that multimedia environment and telecommunication industry will play an important role to ensure the success of the MSC.

Against this background, this paper aims to discuss how successful was the development of Malaysian ICT and digital convergence policy since the middle of 1990s with particular focus on the networked governance structures in the policy process. One of the fundamental questions concerning the future of Malaysia's national agenda is how to reform the regulatory framework and achieve good governance. It is acknowledged that good governance depends critically on the ability of state actors - be it public, private or civil communities to utilise information and communications technologies (ICTs) by making use of regulatory networks, and engaging in multiple levels of interactions. The concept of 'policy community' involves the process which allows members to share resources and experiences through the 'complex web of interactions as well as participate in the process of policy making and refinements' (Humphreys, 1994, p. 9). The issue is whether this could be applied to Malaysia's case.

Attempts are made to look at this from different angles. The first section very briefly sketches the concept of networked governance structures. Following this, the second section describe major reforms undertaken by the Malaysian Government in the old regime, towards the new regime. Specific areas of focus are political legislative structure, key policy making bureaucrats, and the the birth of new regulatory regime. Next, the third section discusses the relationship between digital convergence policy authority and other actors in the Government. Some of the issues include the actual practice of convergence policy and the process impacted by legislative reform. In the fourth section, discussion draws out policy and regulatory implications as well as the nature of new mode of governance. The conclusion section aims to provide a basis for further dialogue by bringing together earlier observation on the development of Malaysian ICT and new communication.

2. LITERATURE REVIEW

The publication of *The Rise of the Network Society* by Castells in 1996 was widely regarded as marking the beginning of a new era for studies of the policy network and its implication for the new governance mode. Castells perpetuated the notions that a 'network' is a set of inter-connected nodes (1996, p. 501), that 'networks' constitute the

new social morphology of our societies, and that the diffusion of networking logic substantially modifies the operation and outcomes in processes of production, experience, power, and culture (Castells, 1996, p. 500). In essence, these networks are characterised by open structures, ability to expand without limits, integrating new nodes and, as they are associated with the social structure, they are highly dynamic, open system(s), susceptible to innovating without threatening their balance (Ibid., pp. 501-2).

The new regulatory regime (NRR) which is technologically driven aspect of digital convergence adds yet another dimension to the concept of network governance, in that it extends governance beyond the old regime of ICT into the less formal arenas of network partnership. Voluntary compliance and mechanisms for governing digital convergence has always been part and parcel of the very notion of a new regulatory environment. Significantly, like industry players or community associations, they are recognised by, or even incorporated into, the more formal structures of policy processes. In more glaring evidence, as in the case of IFs, and in the implementation of the industry codes, the role of non-State actors are expected to be more dominant. In yet others, as in the existence of the traditional legislations, there may be complications of many sorts, in spite of the more coherent practices. The governance of digital convergence and NRR thus implies not only closer integration within and between the different constituent of the policy actors, but also engagement with the traditional legal systems and frameworks.

Traditionally, the relationships between different constituents of policy actors were essentially seen as hierarchical and mainly unilateral with the central Government at the helm. Each constituent has clear delineated roles and areas of policy manoeuvre. The new mode of governing challenged this traditional metaphors of organised pyramids, and a new model now have to be pictured in terms of inter-connected networks, and complex procedures in decision making procedures (Castells, Ibid). In other words, the NRR equates the credentials of new theories of governance in which governments attempt to steer network of actors in a desired direction rather than manage the sector through traditional policy instruments (Rhodes, 1996).

In *Power/Knowledge: Selected Interviews and Other Writings* (1980, originally published in 1972, p. 121), Foucault formulated his well-known theory which delineates 'governance' from that of 'citizen participation'. The former involves 'a network of relationship among the governed and the governing, rather than a hierarchical relationship between the governed and the governing' (Beresford, 2003, p. 83). Foucault suggests that the process of citizen participation tends to perpetuate the role of the citizen as 'subject to the control of government, dependent on the protection of government, and bound by an identity that is defined by a position in a social hierarchy. Governance, therefore requires that we 'cut off the King's head', and pay attention to the ways in which we direct conduct through the systems of the body of society, which, in essence, requires government participation in citizen activities rather than citizen participation in government activities. Foucault's theory of governance consists of three basic elements:

- ***Relations (or interconnections) between individuals and groups;***
- ***Communication and information "by means of language, a system of signs, or any other symbolic medium" (Foucault, 1983, p. 217); and***
- ***Capacities to modify action.***

However, this is far from straightforward. Network governance structures are harder to model. So within the organisations we are catching glimpses of important features of effective policy networks but are still some way to a more theorised understanding of the often fluctuating and ambiguous relationships at the core. In this sort of situation, Governments need the chance to learn by experimentation within the new paradigm, before designing the best approach to policy process, or moving to new regulatory framework. According to Klijn and Koppenjan (2000, p. 136), the term 'governance' is reserved for theories and cases that take into account the interdependencies of public, private and semi-private actors, in which they refer to as 'self-organising networks'. More specifically, for Newman and Bach (2004, p. 387), 'private sector self regulation carves out a regulatory middle ground between government intervention and pure market mechanism' often more flexible and less intrusive than formal regulation by governments; at the same time, they reduce uncertainty and enhance consumer

confidence beyond levels attainable by the market alone. Proponents of self-regulation hail it as more flexible, adaptive, and less intrusive than formal government regulation, while delivering many of the same benefits (Ibid., p. 390).

Major forms of self-regulation include industry codes of conduct, which focus largely on rules and standard setting by industry, largely enforced by the market or - in some instances - by public bodies.² Although there are different forms of self-regulations, Newman and Bach (2004, p. 390) in their recent empirical research suggest that, there are three basic categories of self-regulation situations: first, government intervention, second, self-regulation, and, third, market regulation (see Table 1 below):

Mode of Regulation	Regulatory Goals and Principles Set by	Rules and Standard set by AND enforced by	
Government intervention	Government	Government	Courts, agencies markets
Self-Regulation	Government, industry	Industry	Courts, agencies, industry associations,
Market Regulation	Consumer demand	Firms	Markets

Table 1: Situating Self-Regulation(Source: Newman and Bach, 2004, p. 390)

No matter what kind of political system a country has inherited from the past, the 1990s seemed to be a new era of challenge faced by all states. Neticians and media scholars who consistently attempt to extend the analysis of diverse forms of rule and authority, may not find it easy to explain the fluctuating and turbulent digital world of the 1990s. Taking into account the spectacular reform and approaches of many countries, at national, supranational and global level, there is plenty of literature which casts doubt on the assumption that state hierarchies are getting weaker (e.g. Peters, 2000; Harding,

² Some self-regulatory solutions, however, also feature rule enforcement by industry, frequently through Alternative Dispute Resolution (ADR) systems run by industry associations, fines imposed by such associations or threat of exclusion from them.

1997; etc). If anything, states are becoming stronger or more than ever, influential in determining the ways cities and regions respond to the challenge of globalisation (Harding, 1997, p. 308).

3. THE MALAYSIAN DIGITAL CONVERGENCE; THE OLD REGIME

The process of pursuing the new policy framework in relation to digital convergence is a relatively recent phenomenon in Malaysia. Prior to 1998, although there is no exact definition for such regime; it often refers to a system of networked ICT. The roots of Malaysia's ICT development can be traced back to 1994, when the Prime Minister's Department appointed a team of consultants to determine the core steps and strategies for the country to become a developed nation by the year 2020 (Minges and Gray, 2002, p. 27). Thereafter, ICT projects and programmes reflected the highly authoritative nature of the policy processes of Mahathir's era (specifically during 1994-1998), which featured the influential roles of the few ICT establishments such as the Prime Minister's Department, MIMOS (NITC), Multimedia Development Corporation or MDeC³ (formerly MDC) and Central Agencies.

The change, however, was overshadowed by tremendous regulatory complications as the general framework is still embodied by separate laws, and marked by dilemmas (or conflicts) between the cyberlaws and the traditional laws. As the Malaysian economy becomes more globalised, the search for a new mode of governing in the digital age continues to press policy makers for much needed reforms. The process of governance cannot be understood simply as a function of state actions as key regulatory processes are increasingly being encroached by non-bureaucratic policy actors from outside. For instance, whilst the NITC was responsible for the NITA, the Institute of Strategic and International Studies (ISIS) was required to prepare the concept paper for the K-Economy Master Plan in 2001. Significantly, this demonstrates that the scope of collective action has been widened significantly. Perhaps, the most symbolic of this was the Global

³ MDeC was initially a Government-owned corporation but now incorporated under the Companies Act. Its main role is to oversee the whole operation of the MSC and globally market the MSC Malaysia. MDeC is formerly known as the MDC.

Knowledge Partnership (GKP) which was fully endorsed by the NITC as the model of comprehensive partnership in ICT for the country.

This is not to suggest that the traditional strong policy making authority of Government has now disappeared. While there are some concern regarding the inefficiency of regulatory overlap and duplication, due in part to the federalism structure, Government manages to escape the political dilemma in addressing the potential calamity of the regulatory design. As a matter of fact, some political and economic issues were tackled within the prevailing model of intergovernmental federalism through widening up the policy participation. NITC Strategic Five Thrust Areas, was jointly administered by NITC, designated Ministries and Central Agencies under close supervision by the Office of the Prime Minister. The Five Thrust Areas is a comprehensive programme of national ICT. Again, the regime is of the typical traditional command and control type. Under NITA dating back to 1996, the programmes are closely coordinated with those of the Secretariat of the NITC, the Malaysian Institute of Microelectronic System (MIMOS). Some issues have surfaced with respect to thrust areas. The first centres on the wide impact of the MSC in light of policy development into areas particularly connectivity and digital divide across society. The Government has responded to these concerns by emphasising on bridging the digital divide in rural areas through eGovernment and smart schools, but there has also been interest in private-public partnership to extend the reach of the programme. Second, equally important, were series of hiccups during the implementation when some of the efforts were dampened by many issues such as inability of the contractor to deliver, failure of PC ownership campaign, and limited impact of eGovernment. Thirdly, in the face of revolutionary change in technology, there is the larger issue of the appropriateness of this traditional regime as a means of realising the larger objective of improving governance and new economy. In 2003, Malaysia's global competitive ranking has been lowered despite its rigorous effort to be on top of the scale.

From the beginning, the traditional regulatory regime was fundamentally based on Government incentives or subsidy. These included the development and continuing

support of the MSC project, funding capacity in NITC and relevant Ministries, a variety of federal tax incentives and guarantees for MSC entrepreneurs and small medium enterprises (SMEs), the extension of ICT grants and facilities to digital connectivity programmes, and various targeted budget allocations through federal and state agencies. Nonetheless, based on a strategic study conducted by McKinsey and Co. in 1995, was that, with rising costs, Malaysia was losing its manufacturing edge to lower cost countries in the region. Within the context of national competitiveness, Hazman Shah and Munirah (2003, p.3), argue:

“At the national level, however, despite many innovative changes to improve the quality of public service, many schemes to widen training and educational opportunities and many fiscal and financial incentives to stimulate the businesses to adopt new ways especially through increasing use of IT, innovation and creativity has not truly become a source of mark of national strength”

The Malaysian Government was aware of the logical path it should undertake at that stage. Nuraizah (2003) highlighted the rapid progresses the country witnessed during that period. She explained about an important factor that contributed to the interest in convergence that was evident:

“To maintain our high-growth momentum, we had to move into value-added ICTs and multimedia. It was estimated that the opportunities these would provide could propel our economy to exceed the Vision 2020 projection, hitting a possible high of USD572 billion instead of the projected USD374 billion in GDP growth”.

As the Government realised that the future will continue to be powerfully shaped by digital convergence, those projections clearly indicate significant pressures that will continue to encourage new mode of governing that had already been established since NITA was first mooted. One of the development concern identified was that public policy may not be able to respond quickly enough to the changes brought on by the

Information age. According to Tengku Mohd Azzman (2000, p. 11), "they all stem from our natural selection of a series of institutions that, historically, were progressively fine-tuned to the dictates of an industrial economy and society". This means that Malaysia as a whole did not want to abruptly demand a shift and sharing of traditional power from the state towards the corporation and the community, but rather in the process of experimenting the "viewpoints and possible solutions to the issues of governance in an 'Internetworked' world" (Abdul Halim in NITC, 2000, p. xvi). As such, the major concern therefore relates to the emergence of flatter and more transparent framework for governance, which he argued "we do not know how to deal with the situation yet. But we are trying and learning" (ibid, p. 11). Unsurprisingly, public officials themselves had been less enthusiastic to prospect of the new mode of governance based on people as conceptualised in NITA⁴.

Early regulatory groundwork was largely driven by the need for suitable legislations. A series of cyberlaws were initiated in the middle 1990s but did not specifically address the need for a more coherent regulatory framework. Some business and political leaders started calls for the removal of some analogue laws, this time with the idea of digital convergence. In 1996, Government seek the help from a consultant, arguing for the removal of traditional laws for the sake of global convergence claiming that analogue laws should be revised for the sake of digital convergence. The Convergence Bill was introduced immediately after that, even referring to a deadline for NRR to be operationalised. The Ministry of Energy, Telecommunication and Post (METP) acted in concert with Cabinet Ministries. The reform issue was discussed at the Government's most influential council, the NITC. Nevertheless, the agenda for convergence had not immediately lead to pervasive change, as the NITC held no direct or formal control over convergence policy. Meanwhile, before 1998, broadcasting activities were regulated by the Broadcasting Act and its accompanying subsidiary legislations.

⁴ Interview with President/CEO of MIMOS, former Secretary of NITC, Kuala Lumpur, 05-Jun-05.

Immediately after the enactment of the CMA1998, promotion of digital convergence became the responsibility of the Ministry of Energy, Communication and Multimedia (MECM) (later Ministry of Energy, Water and Communication or MEWC) and MCMC, which was designated as the super-regulator body for the convergence industry. The Act consolidated legislation concerning broadcasting and telecommunication, and abrogated the traditional Broadcasting and Telecommunications Act previously under Ministry of Information (MoI). The Act not only facilitates the requirements to migrate to the new regime, but also effectively promotes digital convergence as an industry subject to ICT growth. Regulations relative to the convergence industry include the Ministerial determinations, decisions, MCMC's requirement and order. The MCMC, appeared to be confident of the significance of the new regulation just after the launch of the CMA1998. The majority of convergence policy officials persistently considered digital convergence as the only way forward for the country. In 1998, for instance, the Chairman of the MCMC, publicly argued:

“The Commission will work closely with all role players - Ministry, the industry players and the consumer groups towards developing and promoting policies that enhance orderly growth and development for the benefit of all. The success of the Commission shall be measured by the pace of growth and development and by the extent to which it meets the objects of the legislation and the policy objectives”⁵

The Chairman was clearly confident about the benefit of digital convergence in this respect.

The Government included the revision of MIMOS in the list of the major structural reform since ICT was in the mainstream agenda in 1990s. Further evidence of Government willingness to widen industrial participation was the launch of new regime in 1998. For instance, the Industry Forums have been created and managed to come out with Industry Codes of Practices which is involuntarily accepted by industry players. As

⁵ Excerpts from the speech by the Chairman of MCMC at the Industry Briefing and Workshop on the CMA1998, PWTC, Kuala Lumpur, 22 Feb 1999.

opined by the former Chairman of the MCMC, "self-regulation is about good governance operating on an industry-wide basis" (Nuraizah, 2002). Similarly, there were numerous policy papers and consultations as well as industry dialogues initiated by the MCMC in correspondence with a motive for more transparent governance.

While the general intent of these governing mechanism is understandable, the necessity for some civic organisations actually is often overlooked. Prior to NITA, the Prime Minister first mooted Vision 2020 in the 1980s regarding a statement of intent of national goals and principles of a developed country it aspires to be. This sparked numerous debates that attempted to provide the strategic approach to be pursued in tandem with the mantra of technological change. Through NITA, their connections slowly appear to have been strengthened in a number of ways. First, Government seems to widen the policy avenues due to the underlying philosophy of governance of NITA, which is based on "people" (see NITA's triangle model of governance). Traditionally, in terms of organisational structure, the old world paradigm was based upon power, command and control (Tengku Mohd Azzman in NITC, 2000, p. 7). In 1994, the Government designated the NITC as the top most think-tank for national ICT. However, the recent move which clarified the position of MIMOS and lines of reporting to the NITC was not without some drawbacks. It has made such connections much less attractive to the policy side, and eventually many of them have got out of the process. As key regulatory processes are increasingly being undertaken by private sector actors, particularly in areas requiring specialist knowledge, it became more and more difficult for the Government to listen to the civic organisations. Furthermore, the general sentiment was that NGOs is rather distant from the Government, while quite a significant scores of them have been linked with opposition parties. There also appears to be a divided public concern of whether the Internet can be governed at all. As a result, Government has become reluctant to adopt a more liberal attitude, no matter how much this policy sector may be clamouring for greater space.

The nature of digital technology propels a new kind of relationship, since cyber-space is no respecter of any boundaries, and if anything, this situation is intensified with the

`killer applications' afforded by digitalisation. The Government may see this as a threat. However, with the impending march towards `globalisation and convergence', there is a constant pressure for the Government to secure the principles of governance to ensure that the system works for all.

Two significant changes seem to have resulted by the apparent reluctance of the Government to reduce the scope of state political influence. The first was the abandonment of collective political collaborations vis-à-vis NITA, as mentioned above. Consequently, civic organisations and groups no longer get their views heard automatically, but they must instead exhaust other avenues, for instance through mass-media or Internet. In recent years, naturally, bloggers gain prominent to champion issues on the ground and are somewhat more critical than politicians. The Internet is an important determinant in this regard.

The second significant change was the change of premiership in the 2003, which saw Abdullah replacing Dr Mahathir as the Prime Minister. The expectation that the new Prime Minister would make substantial reform turned out to be true. In retrospective, it is widely acknowledged that Dr Mahathir himself take personal stance of many ICT initiatives, inside or outside the countries. Even though the ICT agenda remained important, many structural reforms have happened eventually. Currently, the NITC remained as the highest think-tank body for ICT and expected to continue the NITA's agenda. This is often more challenging with the size of its members having been reduced to half of the previous.⁷

Regardless of the legitimate concern over the current mechanisms developed in the new regime, the key bureaucrats thus have significant ability to deny or require modification of proposals for new or amended regulatory framework, given the above scenario.

⁶ The concept of `globalisation' is mentioned together with `convergence' as there has been considerable research on how digital convergence was significantly impacted by the global political discourse, i.e. international arrangements, leading to fundamental and constant refining of the latter.

⁷ Before 2004, for example, the NITC members were comprised of varied backgrounds, thus were able to come out with rather comprehensive views on policy recommendations. Under these circumstances, it is not surprising that many observers relate the changes in the policy interest and orientation on the changing of the country's Prime Minister.

Together with the generous provision of Ministerial and federalist power under the law, where a 'change' may pose a significant threat to political status-quo, the ability of key bureaucrats to foreclose the debate for change has frequently been a significant critique to the industry development. Of course, this has also effectively undermined calls for change of a radical nature. At the operational level, the potential for some digital convergence activities to fall under traditional and convergence laws, and the regulatory regimes surrounding the issue of Government broadcasting particularly, have caused problems. As common in Malaysian Constitution, the Federal Administrative power of the Minister is written to allow extensive administrative discretion and the lack of transparency in the exercise of this discretion is potentially an issue. Of course, the extent to which such intensification of digital convergence may compensate for the overall reduction of the scope of collective action varies across different new ICT policy issues. Nonetheless, even though the Government may be the nominal architects of new mode of governance and celebrates views remaining in the traditional network, their interests have been further undermined by forces from 'above' (Ahmad N., 2008).

Such caveats have proved to be of no barrier to the development and increasing influence of the evolving discourse of good governance. Most of the companies and industries were initially not so enthusiastic about convergence policy as it demands use of their own resources, for instance in the universal service obligations projects. But they often come around once the new policy framework is put on the agenda. In this context, it should be noted that the idea of governance promoted in the new regulatory regime while becoming increasingly sophisticated and 'less narrowly economic', continues to set the nature of convergence policy. For industry players, it is not because they were compelled to do so, but rather their interests would be at stake if they refuse to do so. The new consensus seeks to extend and complement the former emphasis on governance reform based on NITA, even though it no longer has the function of collective participation, may well formalise the social side of the policy position of the whole ICT agenda.

4. RELATIONSHIP BETWEEN CONVERGENCE REGULATOR AND OTHER GOVERNMENT ACTORS

One of the striking qualities of the status of the convergence policy authority, the MCMC, vis-à-vis other Government actors is its status as the `semi-independent regulatory commission'. As the key regulatory body charged with promoting digital convergence in the country, the MCMC is rather independent in several ways. For example, the MCMCA establishes a MCMC Fund, which is to be administered and controlled by the MCMC. Money for the fund may be amounts provided by Parliament, licence fees, administration charges, levies and other charges imposed by the MCMC, income from the investments, monies derived from the sale, disposal, lease or hire of property, mortgage or charges acquired by the MCMC, money earned from consultancy and advisory services provided by its borrowings (Surin, 2003). The MCMC formally belongs to the MEWC (MECM before 2005), and not to the Ministry of Science, Technology and Innovation (MoSTI), MoI, Ministry of Finance (MoF) or Ministry of International Trade and Industry (MITI), which obviously has similar if not more, interest in convergence policy. Due to this design, like other jurisdiction, legislation and regulations concerning ICT, the role of MCMC still remains scattered across other departments and agencies under Ministries.

One important issue, is, the MCMC often finds itself isolated within the Government due to its very status. The MCMCA1998 as well as the CMA1998 give generous provisions, which made the MCMC appear as part of the family of judicial bodies. There is for instance, concern with regard to working with the Minister. According to the CMA1998, the MEWC Minister may give directions to the MCMC regarding the performance of the functions and powers of the MCMC, and the MCMC is obliged to give effect to such directions (Ibid). Besides, the Minister also can issue determination in any matter specified in the CMA1998 without consultation with any of the licencess or other person, in which every Ministerial direction shall be registered by MCMC as soon as it is practical (Surin, 2004).

Isolation often turns to vulnerability. Since the MCMC is a tiny agency regardless of its formal legal position, it is very difficult to withstand outside pressure without any considerable support from policy makers and other ministries. As a matter of fact, it is often the case of which MCMC is caught in the middle of political battles between different Ministries. There is only the MEWC that deals directly with convergence policy. In retrospective, the NITC previously accommodates numerous groups supporting 'people-based agenda' but convergence policy has to face the issue of how and why they are best suited, and in which ways they can be improved. After all, the new convergence sector generally appeals to business interests, which are often seen as peripheral to ICT-wide policy.

Until now, the absence of direct support from the NITC was compensated by private involvement, notably the industry players. The MCMC, together with the MEWC often promote various advisory and consultative initiatives for the new regime to materialise, for instance through Industry Forums. As convergence unfolds, the network collaborations has been greatly enhanced since 1998. The NITC was scaled down and seen not as robust as it used to, and the more robust role of MCMC gained ground for closing the digital divide. The Government's decision to remove the non-bureaucrat members from its committee, as well as the rebranding of the MECM to become the MEWC in 2005, can already be seen as counter to the original intention of NITA philosophy and the convergence scheme. For instance, the Government may designate a single Ministry to handle convergence in pursuit of political objectives, yet such a decision is questionable in the convergence community, where the initial formation of MECM is seen as a basic requirement for successful convergence.⁸ Consequently, the original philosophy of NITA's governance is seemingly no longer enjoying the same rigour. Due to predominantly traditional regulatory mechanisms, the MCMC seems to be challenged by a mature sector of ICT characterised by a few incumbents with a long history of interactions with Government, while promoting a relatively new and technologically sophisticated sector dominated by industry players.

⁸ Interviews with various members of Industry Forum (in May 2005) who remain to be anonymous.

To some extent, arguably, the MCMC has special relationship with Government. The former staff of Department of Broadcasting and Telecommunication were transferred to the MCMC upon its abrogation. This was initially one of the reasons why the MCMC had a relatively high number of posts for staff who came from the previous agency under MoI. According to the MCMCA1998, the MCMC shall consists of a Chairman, one member representing the Government and two to five other members who will be appointed for a period of two to five years. The provision for the appointment of who shall be appointed as the Chairman and the Commissioners are actually open to wide interpretation. Indeed, for all the three appointed Chairmen so far, the post was allocated to retirees from senior civil servant who had served various Ministries, such as the MOSTI and MEWC itself. As this is becoming norms, many see the Chairmanship post of the MCMC just as one exclusively reserved for a figure who shall hold favourable view of the Government.⁹

As transpired, the MCMC naturally has arm length relationship with the MEWC. This is not surprising given that it had long been considered important to keep the MCMC away from the MoI or even MoSTI in order to avoid their political control over the convergence industry. When MoSTI was most active and enthusiastic, the MEWC was the only Ministry that could hold out against MoSTI. The MoSTI had the ICT sector under its domain, but the convergence sector had often seen peripheral to new ICT regime.

Madieha (2004) indicates that while there is a form of self regulation and the Forum as an industry body is put in place, there is clear evidence that the Forum is answerable to the Commission in its administration of the Industry Code. The MEWC in turn, is the only Ministry responsible for the successful implementation of the Code. In other words, the clear authority to deal with this particular issue is vague. No wonder, every time issues

⁹ In consequence, the Chairman of MCMC work closely with the Minister of MEWC. Indeed, the Minister can use his Ministerial determinations to urge the Chairman to comply with any decision made by the Government. The Chairman were not necessarily loyal to the Government. Yet, it could well be argued that the Government managed to minimise the political friction or rift due to this position in view of their past services.

regarding content in the digital media crop up, the MCMC receives a fair share of blame, the MEWC is heavily lambasted, whilst the MOI escapes the political dilemma.

The MCMC's vulnerability also seems to be magnified by the concentration of decision-making power on the Minister. It is true that the Minister's view weighs no more than the Commissioners, but since the functions of individual Minister is vital, nor are they placed at particular division of the MCMC, the Minister holds an almost exclusive authority over MCMC and with external parties, and this had in substance made the MCMC subject to the control of the Minister. Of course, strong leadership would be a merit when the Chairman has so much vigour and enthusiasm. On the other hand, the stand-off of the Chairman might increase the MCMC's vulnerability in which one single person is exposed to political pressure.

5. DIGITAL CONVERGENCE: THE NEW MODE OF GOVERNANCE ?

In retrospection, one of the particularities of the NITA was to disseminate the idea that new mode of governance is desirable, or even critical for Malaysian information age agenda. NITA was successful in opening up the path to NRR with a view in creating a public policy environment that encourages the growth of the C&M industry and facilitates the development of an electronic marketplace where the possibilities for trade and investments are limitless¹⁰. The idea remained even after the NITA and related reforms were over. A number of specific reforms were motivated and were subsequently achieved as efforts for promoting NRR. The abrogation of Broadcasting and Telecommunications Acts (replaced by the CMA1998) was perhaps the most important achievement in terms of infrastructure and institutional building.

Just as the NITA's model of governance has been controversial, CMA1998, which provided the per se provision for NRR based on self-regulation and voluntary compliance, had caused intense debate until now. The purpose of this law is to promote a new form of governing in the digital age, since the country has committed to become the global

¹⁰ Excerpt from the speech by Abdullah Badawi, the Deputy Prime Minister, at the 20th Anniversary Celebration of the MECM and the launch of the CMA1998, 31 March 1999.

hub for C&M industry. The concept of new governance has been transformed into a new dimension - from ICT to digital convergence governance. The CMA requires Minister approval before commencing with the development of any convergence related policies. It spells out when an invitation for public consultations must be carried out, along with the criteria for a positive assessment. Indeed, this was not a mandatory practices; that before 1998, there was no act which directly specifies that a policy development must have a proper procedures as such in order to be approved. Dialogues or consultations if any were on choice, not obligation.

While NITC actually formed smart collaboration through NITA framework, bureaucrats had long kept a persistent concern over the role of MIMOS as the secretariat of NITC.¹¹ Moreover, the NITC's model of governance has not fully materialised as it was originally intended. In this context, apart from an account of the contentious debate of the NITA's new mode of governance based on people, the fact that the NRR still managed to take the ICT policy agenda into a new dimension cannot be denied; Government's effort to undertake unprecedented regulatory reform could be cited as a case in point. The Government through the MEWC and the MCMC clearly played a critical role in this process promoting leadership qualities at times (occasionally in controversial circumstances), collaborating with industry players in revolutionary, coordinated and participatory manner. The development of NRR, however, raised a few issues of particular concern for governance enthusiast, e.g. the exclusion of public broadcaster from Content Code, the limited role of the MCMC and the generous power of the Minister. Industry forums as new policy actors were interacting one another and with the MCMC as the regulator, thus pointing to a new dimension of networked type of governance of digital convergence.

In hindsight, the NITC has spoken about the benefit of new forms of policy integration. In 2000, NITC:

¹¹ Interviews with key officials of MEWC and MoSTI who remain to be anonymous.

“The NITC recognises that Malaysia’s migration into the eWorld or ICT-based world requires a new model of decision-making, a model where the state, the corporation and the community form a smart partnership that hinges upon the collective wisdom, cooperation and responsible action of all stakeholders in development. This model of decision-making currently serves as the pillar of the NITC’s Governance Agenda”

It should be noted that this statement was made when NITC represented the Government of Malaysia (since 1998) and co-host the GKII together with the World Bank. This was obviously among the first formal attempt to represent the view of the NITC.

Interestingly, the Government suddenly changed their stance before the governance model fully materialised. In 2004, the Government organised a high-level Government Advisory Committee headed by the Chief Secretary to the Government in early 2003, and tasked with recommendation to the NITC (MEWC, 2003). As governance takes a new shape, to organise a dialogue itself was not necessarily a sign of change, but an obvious response was that there were some disagreements about the revolutionary concept of governance proposed by NITC. The discussion was not made open to the public and the Committee quickly recommended some provisions for change for the NITC.

Meantime, the sudden change of the industry players was most widely explained by persistent pressure from either the Government, through the MECM or the MCMC. It was also suspected that the industry players changed their attitude because the Government suggested that the planned organisational reform would also mean that incumbents will not forever be the dominant players (see for instance Raslan, 2003; Anon, 2004). Of course, organisational reform did not completely remove the bureaucratic conflicts and competition between the related Ministries and the Government might not change its position for pure political reasons. However, it should be noted that those speculations was too simplistic to be taken into account.

Regarding the role of MCMC in governing the industry beyond 'regulating', two programmes are of interest in that they indicate the apparent willingness to expand the industry through new mode of governing. First, the CMA1998 specify that subjected to the approval of MCMC, and Industry Forums will be established and is eligible for financial and administrative assistance for a start-up as well as continuing activities. Second, as explained, in conjunction with the new emphasis on self-governing and voluntary compliance, the IFs are required to establish and promote the use of industry codes of practices amongst its members. Additionally, the MCMC does not limit its option for policy inputs as policy consultations are also open wide for any interested parties or individual in the public to express their opinions.

With respect to regulatory implementation, MCMC has had to face the vertical integration issues between different levels of governing institutions. Problems were caused by mixing old 'command and control' statutes administered by various Ministries/agencies with 'convergence' legislation or the CMA1998. Similarly, regulatory complications carried on through the MCMC has been complemented with various formal and informal mechanisms created within each regulatory domain, such as dialogues with industry leaders, industry forums, working groups such as the IPv6 Committee, Digital TV Committee and various technical committees. Despite making steady progress, the MCMC's weakness in dealing with issues particularly regarding the development of the NRR clearly raised a few issues of particular concern for governance enthusiasts, e.g. the exclusion of public broadcasters from the Content Code, the limited role of the MCMC and the generous power bestowed on the Minister (see for instance Ahmad and Dai, 2007). Until now, the Government does not intend to remove the clear demarcation between content regulation, content development and content enforcement which is spread across various Ministries and agencies. Furthermore, exceptions are given to RTM, arguing that Government broadcasters are governed by their in-house codes. Nonetheless, the MoI could not keep even that position when controversies arose regarding the broadcasting content. Politicians and other consumer groups complained about the MCMC's reluctance to take a more coherent approach. Often the MoI managed to escape the political dilemma, but this is not without the MoI putting further

pressure on reinstating its power over the content and broadcasting. As a result of this, and after an intense debate in the Parliament, the Government agreed to form a special committee headed by the Deputy Prime Minister to suggest an amicable solution to this issue. Ironically, the discussion was neither made open to public, nor within the NITC forum, and political reason clouded the whole scenario.

Because of strong opposition from the MEWC, which has already formed a coalition with the MCMC and convergence industries at that time, the situation remained unchanged. The Government only initiated a special liaison Monitoring Committee for Public and Private Broadcasting. It could well be interestingly argued that the political decision to maintain the CMA1998 status-quo is to compensate the loss of the NITC for MEWC to MoSTI. The MoI accepted the reform eventually, not because it supported the original position of the MCMC, but rather because it has no sufficient resources to accomplish another big structural reform - the split between the 'hard' and 'soft' aspect of ICT development policy for the MEWC and the MoSTI. This reform was achieved in 2005. Meantime, for the NITC, the provision of people-based agenda remained initially, but seemed to lose its vigour afterwards, due to lack of substantial discussion. The irrelevance of the NITC was even clearer in the policy discussion about digital convergence. In fact, during interviews with the author, the general impression is that 'digital convergence affairs are under the authority of the MEWC/MCMC, and 'everyone else is not supposed to touch on it'¹²

Overall, no matter how complicated the ICT and convergence scheme in Malaysia is, the country has been trying to devise the institutional domain to respond and adapt to the digital technology revolution. Moving away from the old regime, convergence is further strengthened by the MCMC assumed merging regulatory responsibilities, pulling together the previously separate government Ministries/agencies, hence integrating the policy initiatives for C&M sector; and secondly, the relocation of the NITC under MOSTI - is pushing the ICT agenda to a new dimension of governance. Perhaps from a rather

¹² Interviews with the key figure of the former NITC members as well as insiders from the MoSTI and MEWC who remain to be anonymous.

negative point of view, with reference to the central theme of the thesis, i.e., the interplay between networked governance and digital convergence, empirical materials suggests that the Government's attempt to move away from a hierarchy to network mode of governance has met with the harsh reality of conflicts and tensions involving vested institutional interests. The politics of the 'power islands' over the digital agenda setting at the top level shows how deeply the hierarchical structure (and mentality of policy makers) is embedded in the Malaysian society.

6. CONCLUSION

The article examines how much Malaysian digital convergence policy changed during the recent years, particularly focusing on the networked governance structures between relevant domestic actors. Along side with the relationship between civil society and the Government, the scope of 'people-based' policy agenda has been transformed as a result of digital convergence, but an eventual process seems to serve in part as compensation to the lack of consistent approach to the NITA's search of new mode of governance. The change in policy orientation was an essential feature which shaped the overall emphasis in governance, underpinned by the dynamic change of digital convergence suggests that much effort is still needed at the regulatory level in term of utilising ICTs for achieving good governance.

Those network reforms represents a recognition of the development impacted by Malaysian digital convergence policy. The relevant institutions, mainly the MEWC, MoSTI and MCMC organised its staff and dealt with the 'hard' and the 'soft' aspect of ICT policy in facing the new reality. However, the overall reform was somewhat intriguing. Ironically, the policy process toward the curtailment of NITC members (and subsequently the losing of NITA's vigourness), almost in relevant to these changes exhibits the weaknesses of the NITC in shaping the trend in the policy network.

Of course, this is not to suggest that the current framework is a casualty. Since digital technologies are most pervasive and unprecedented, the general trend would continue to be driven towards new mode of governance. Furthermore, it is appropriate to restrict

the NITC's role in the policy making rather than policy implementation. Moreover, the NITC is merely an advisory Council without any control by legal accord. Neither is it argued here that all the institutional reforms are politically unreasonable. As a matter of fact, the status of the NITC under the ambit of MIMOS is controversial from an economic or political point of view (interview with some insiders).

In retrospective, the case of NITA indicates that it is politically and potentially highly risky for the Government to nurture new 'people-based' governance at the expense of further technological advances brought by the convergence trend. Both a relatively pluralistic and flexible ICT policy orientation over the years by the Government and a somewhat cautious attitude can be seen towards convergence scheme. This indicates that policy flexibility is of critical importance to the success of the new mode of governance. To a great extent, the success of further, continued digital convergence development will depend on the ability of government to expand the network activities and capacity of the industry players in the sector as well as upon the planning and participatory consultation exercises required to gain sectoral and national support for rigorous convergence activities. They have thus become 'critical network' in the sense that their outcomes are vital determinants of licensing and other provisions surrounding convergence operations. Furthermore, whatever is the final decision, it is important to ensure sufficient and wholistic discussion for policy-making, but it seems difficult to do so until the NITC or MCMC become more representative.

Clearly, digital technology has forced the Government to continue its mission to bring the best to the people, beyond mere rhetorical commitments. Against this background, the NITC will gain more bureaucratic control in the near future, but it is not clear whether this will lead to a real reminiscent or development of the 'NITC's people-based governance policy' without dismantling the current elitist framework between relevant actors to meet political agenda of the State. NRR is a remarkable example in Malaysia as the desired goal of government to become the hub for C&M activities. This not only involved fine tuning the existing policies, and better coordination between different regulatory bodies but has also introduced new actors, particular new methods of

regulating mechanism. But the existing regulatory style has encountered many constraints, considering the widely employed metaphor of government seeking new governance through steering complex networks of public and private actors which is often stymied with rather unilateral traditional approach possibly through ineffective bureaucracy.

Comparative studies of different models from different countries' experiences may help to build a greater understanding of the complex relationship between policies and practices, and indeed, will certainly provide compelling reasons for future research.

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