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국제학석사학위논문

# **The Evolution of Korean Broadcasting**

## **Regulation:**

**Ownership, Foreign investment and Quota for  
domestic program regulation**

한국 방송법의 변화 :

소유규제, 외국 자본 규제 그리고 편성규제를 중심으로

2016 년 8 월

서울대학교 국제대학원

국제학과 유럽지역학 전공

노 현 진

**The evolution of Korean broadcasting regulation:  
Ownership, Foreign investment and Quota for domestic  
program regulation**

A thesis presented

By

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To

Graduate Program in International Area Studies

In partial fulfillment of the requirements

For the Degree of Master

In the subject of International Studies

Graduate School of International Studies

Seoul National University

Seoul, Republic of Korea

August 2016

**The Evolution of Korean Broadcasting regulation:  
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이 논문을 국제학석사학위논문으로 제출함

2016년 8월

서울대학교 국제대학원

국제학과 유럽지역학 전공

노현진

노현진의 국제학석사학위논문을 인준함

2016년 8월

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## **Abstract**

# **The evolution of Korean broadcasting regulation: Ownership, Foreign investment and Quota for domestic program regulation**

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With the emergence of the WTO, the scope of trade has been expanded from goods to services. Regarding the service sector, particularly opening the broadcasting industry was one of the controversial issues since the broadcasting industry was considered not only as an industry but also as a part of culture. Korea maintained protectionist stance along with France and Canada while U.S. and Japan support liberalist stances. Despite its protectionist stance, Korea gradually eased its broadcasting industry since 1980s. This paper aims to examine how Korea eased its broadcasting regulation through different regimes. We will examine particularly three regulations policies of broadcasting law: the restriction on ownership, foreign investment and the quota for domestically produced programs. Also this study will compare the degree of openness of Korean broadcasting market with the ones of different countries such as the U.S and France.

The Korean Broadcasting Act was eased particularly in three regimes: Chun Doo-hwan, Kim Dae-jung and Lee Myung-bak regimes. During Chun Doo-hwan regime, the broadcasting law was amended as the democratization was realized in

Korea. The amended law contained new clauses related to openness policy in broadcasting market such as restriction on inflow of foreign capital. During Kim Dae-jung regime (1998-2003), Korea eased all three regulations amid the wave of ‘globalization. When Lee Myung-bak took power, the restrictions on ownership and on foreign investment were greatly eased due to business friendly policy and Korea-US FTA.

Compared to the regulation policy of the U.S. and France, Korea is on the way of opening its broadcasting market. Though Korea has tightened regulated policy in foreign investment compared to the two countries, it has gradually eased the restriction on foreign investment. Particularly, after Korea-US FTA, foreigners are allowed to own stocks or equity shares unlimitedly of program providing business operator.

Although Korean broadcasting market was mitigated after Korea-US FTA, it is only confined to the Korea-US FTA case, not other FTAs that Korea has signed. Unlike most countries, the U.S has maintained liberalist stance. So the issue of opening the broadcasting market will not likely to revisit during the other FTA negotiations. Thus, we have to see Korean broadcasting market not from trade perspective but from purely broadcasting policy perspective. This is because broadcasting industry is different from other industries since it is a part of culture and not easily considered from commercial perspective.

**Keywords:** protectionist stance, deregulation policy, Korean broadcasting industry, different regimes, the degree of openness

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# **I. Introduction**

## **1) Research Background and Research Question**

With the emergence of WTO system, the scope of trade has been expanded from goods to service and intellectual property. However, WTO member countries have different opinions in terms of opening the service sectors. Particularly, broadcasting industry has been long considered not only as an industry but also as a part of culture and public interest. There are two different opinions in terms of opening the broadcasting industry: protectionists and liberalists. Liberalists such as US demand that WTO member countries open broadcasting market according to the WTO principle while protectionists such as the EU, Canada and France have insisted ‘cultural exception’ since broadcasting industry is a part of culture. For example, in Canada-US FTA, Canada excluded audiovisual service industry from the trade negotiation even though Canada knew that the US would retaliate.<sup>1</sup>

Korea has also maintained the protectionist stance. However, compared to 1970s and 1980s, Korea opened its broadcasting market gradually through the different regimes. Before 2000, there were no provision about opening broadcasting industry such as upper limit of foreign investments. However, as the service sector became prominent from the end of 1990s, Korea took consideration of opening broadcasting industry. Thus starting from 2000, Korea concretized the restriction on ownership and

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<sup>1</sup> WTO체제하의 방송산업 변화에 대한 연구 ( I ) 2003. 12 연구보고 03-13 p. 18  
이상우/초성운/이한영/박천일/한은영/신호철/채정화

established provisions about foreign investments and domestic program quota.

Given those situations, the purpose of this study is to answer these questions: How Korea eased its broadcasting market through the different regimes? Which regulation policy has been more eased between restriction on ownership and on broadcast programming? What is the degree of openness of Korean broadcasting market compared to the one of other countries such as the U.S and France?

In order to answer these questions, this paper mainly consists of two parts. Firstly, we will see the evolution of Korean broadcasting regulation through the different regimes mainly in three regulation policies: restriction on ownership, foreign investment and broadcast programming. Secondly, this study will look at the broadcasting regulation policy of different countries such as the U.S. and France to examine the degree of openness of Korean broadcasting market.

## **2) Scope and Definition**

To clarify the main concept and precise the process of this study, I would like to define keywords and the scope of this research. First, this research will analyze how Korea eased its broadcasting regulation through different regime from the end of 1980s until 2015 looking at three articles: Article 8 (The restriction on ownership), Article 14(Investment and contribution by foreign capital) and Article 71(Programming of Domestic Broadcast Programs).

Secondly, this research compares the degree of openness of Korean broadcasting market to the one of the U.S and France considering foreign investment and the quota

for domestic programs<sup>2</sup>.

Lastly, there are numerous terminologies that are used in broadcasting industry. Before we move on, we will look at the definition of terminologies that are used in broadcasting industry.

‘Program provider (PP)’ refers to businesses that provide broadcasting programs to cable television system operator (CATV). For example, terrestrial broadcasting (KBS1TV, KBS2TV, SBS, MBC, EBS), general programming (JTBC, MBN, TV Josun, channel A), and specialized programming ( MNET, OCN, tvN etc).

Cable Television system operator (CATV) or simply SO (System Operator) refers to businesses that have facilities of cable television system operator (hereinafter “CATV”). It receives permissioned broadcasting programs and delivers the programs. i.e. CATV contracted to several PP(Program providers) so CATV deliver several PP channels to viewers. The individual viewer does not receive program directly from PP.

Network Operator (NO) or signal transmission network operator refers to businesses that install and operate transmission lines. Programs are not delivered to viewers directly from PP- CATV. To deliver programs to viewers, transmission lines are mandatory. For example, KT, SK broadband, LG daycom

We call cable TV including all three businesses PP, SO and NO. Terrestrial broadcasting can be considered to have three businesses PP, SO and NO. Terrestrial

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<sup>2</sup> We will not consider the regulation of ownership. This is because we have to examine too many heterogeneous factors at the same time. So the scope will be too broad and inconsistent to compare the regulation among the three countries.

broadcasting (KBS, SBS, MBC, EBS) delivers channels to cable TV but it transmits and delivers airwaves through its own transmitting station. It also provides satellite broadcasting (Mugunghwa satellite for a fringe area).

### **3) Previous Research**

Most of the past literatures were focused on the changes of Korean broadcasting industry after KORUS FTA. Some focused on Korean broadcasting industry amid WTO negotiations by comparing regulation policy of different countries. There were researches about broadcasting regulation due to the change of the government. However, there were no researches about how and when Korean broadcasting industry has been eased. The relation between regulation policy of Korean broadcasting industry and the change of the government was first introduced by Jineung Choi (2013). Choi studied the broadcasting regulation policy from 1998-2008 when democratic party had taken power. Before 1998 and after 2008, conservative party took power so Choi aimed to study whether broadcasting regulation policy has changed dramatically when Democratic Party took power. Choi stated that there was no dramatic change in broadcasting regulation policy during the period 1998-2008. The reason for this is that the nation's ideology which emphasized the public interests of broadcasting has not changed ever since the democratization was realized in 1987.

Insuk Jeong (2009) studied current issues and prospect for the Revision of the Broadcast Law in Korea. When the broadcast law was revised, she explained the controversial issues regarding easing broadcasting regulation policy, particularly restriction on ownership. Restriction on ownership and cross ownership were eased

after the revision of the broadcast law.

Choi's research is meaningful from the perspective that he captured the relationship between the government and broadcasting deregulation policy. However, Choi did not take into consideration on whether broadcasting deregulation policy was changed when conservative party took power. He only studied the correlation between the change of broadcasting deregulation policy and the change of government with Democratic Party. Thus, it is not sufficient to capture the big picture of development of deregulation policy of Korean broadcasting industry depending on the government.

Jeong did not explain why Korean Broadcasting Act was revised. Jeong explained how Korea eased its broadcasting regulation but did not provide the motivation and background of the change in broadcasting regulation.

This paper aims to identify when and how broadcasting regulation was eased considering article 8 (the restriction on ownership), article 14 (Investment and Contribution by Foreign Capital), article 71 (Programming of Domestic Broadcast Programs) with Enforcement Decree of Broadcasting Act article 4 (the restriction on ownership), article 14 (Investment and Contribution by Foreign Capital) and article 57 (Programming of Domestic Broadcast Programs).

#### **4) Research Methodology**

As for the methodology and framework, three regulation policies are chosen: restriction on ownership, foreign investment and broadcast programming. Chronologically, this paper examines how Korea mitigated its broadcasting regulation through three different regimes: Chun Doo-hwan, Kim Dae-jung and Lee Myung-bak

regime.

This study is based on the three articles of Broadcasting Act and Enforcement Decree of Broadcasting Act from the website of Supreme Court of Korea. With the history of these three articles found at the website, this paper analyzes how the content of these articles have been eased each time the broadcasting law was amended since 1980s. The analysis of these articles shows Korean broadcasting law was amended due to both external circumstance and internal politics such as globalization wave from 1990s and business friendly policy during Lee Myung-bak regime. Also this study took into account of previous research related to Korean broadcasting industry.

To compare the regulation policy of Korean broadcasting industry with the one of the US and France, this study found out broadcasting regulation of the two countries from relevant previous research and official website of institution such as FCC (Federal Communication Commission) and CSA (Conseil Supérieur de l'Audiovisuel).

## **II. Korean deregulation policy of broadcasting industry through different regimes**

We will look at how Korean regulation policy has been eased since 1980s. Korean broadcasting regulation was particularly eased during three different regimes: Chun Doo-hwan (1980-1988), Kim Dae-jung (1998-2003) and Lee Myung-bak (2008-2013). We will study broadcasting law article 8, 14 and 71 as well as considering broadcasting Enforcement Decree of the Broadcasting Act article 4, 14 and 57 from 1980s. Particularly, broadcasting law article 8 was concretized and article 14 and 71 were newly established from 2000.

### **1) Chun Doo-hwan Regime (1980-1988)**

During Chun Doo-hwan regime, Korea became finally democratic society in 1987. In 1987, the broadcasting law was amended. The purpose of amendment was clearly written: ‘abolish Broadcasting Committee and Korea Communications Standards Commission which are established under the previous press law, and establish Broadcasting Committee that has independent right as an organ of consultation and decision-making body’.<sup>3</sup>

The amended law contained new clauses related to openness policy in broadcasting market: Restriction on inflow of foreign capital (article 8), overseas broadcasting (article 33), and building Korean broadcasting station in foreign country

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<sup>3</sup> 방송법 개정문 이유

(출처 : 放送法 제정 1987.11.28 [법을 제3978호, 시행 1987.11.28] 문화공보부 > 종합 법률정보 법령)

(article 39)and building foreign broadcasting branch in Korea (article 40). In 1990, article 40-2 (recommendation on the order of foreign imported broadcasting programs) was newly established.

## **2) Kim Dae-jung regime (1998-2003)**

During Kim Dae-jung regime from the end of 1990s, ‘globalization’ was in the wave as communication technology developed so that the borders between the nations were breaking up. Amid the wave of ‘globalization’ and the negotiation at WTO DDA (Doha Development Agenda) round, opening broadcasting market was one of the important issues. However, at WTO DDA, the WTO members could not meet the agreement. After the failure of the DDA negotiations, the US changed the policy from multilateral agreements to bilateral agreements. The US thought that it would be difficult to meet agreements with multilateral system because Europe and the majority of third world countries were against to open audiovisual service sectors. Thus, the US accelerated bilateral agreements (Free Trade Agreement) that was easier to meet agreement. The US demanded that other countries open broadcasting markets.<sup>4</sup> For example, US signed Free Trade Agreement with North America called “NAFTA (North American Free Trade Agreement)” in 1994. Afterwards, there were more FTAs emerged pivoting on the US: FTAs between US and Chile, Chile and Korea, Korea and the US. The failure of the ministerial negotiation in Cancún WTO ministerial conference in September 2003 and tentative suspension of the WTO/DDA negotiation played as a drive force for FTA to be expanded rather than multilateral trade

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<sup>4</sup> 시청각 서비스의 해외 통상 규범 및 무역장벽에 관한 연구 - 영화진흥위원회 / 영상산업정책연구소 연구2팀- p. 21

agreements<sup>5</sup>

This external condition was reflected in Korean broadcasting law. Until the end of 1990s, Korea maintained ‘protectionist policy’ because Korea was afraid of losing identity due to the influx of other cultures. However, from 1998, Korea started to seek foreign markets actively and aggressively under the pressure of opening broadcasting industry after having suffered from Asian Financial crisis.<sup>6</sup> Since 2000, Korea showed the signs that it was aware of the openness as it concretized restriction on ownership and established new laws regarding restriction on foreign investment (Article 14) and the quota for domestic programs (Article 71).

**a) Restriction on ownership (Article 8 of Broadcasting Act and Article 4 of Enforcement Decree of Broadcasting Act)**

In 2000, Article 8 was more concretized. According to Article 8 of the broadcasting law amended in 2000, a broadcasting business owner can only own other broadcasting businesses up to certain level. If the turnover of a broadcasting business owner exceeds 33% of total Korean broadcasting businesses sales, the owner will be restricted on cross ownership and on ownership of stocks. The purpose of this restriction on ownership was to limit monopoly and to ensure the fair competition.<sup>7</sup>

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<sup>5</sup> 정연교, 노재봉 (편) 2005.5

<sup>6</sup> 시청각 서비스의 해외 통상 규범 및 무역장벽에 관한 연구, KOFIC 연구보고 07-8 머리말 - 영화진흥위원회 / 영상산업정책연구소 연구2팀- 머리말 p. V

<sup>7</sup> **Article 4(2) Presidential Decree No.16751, 13. Mar, 2000** : The term, the cases “in excess of the scope as prescribed by the Presidential Decree”, as it appears in the text of Article 8 (5) of the Act, means the cases falling under any of the following subparagraphs:

1. Where the ratio taken by the sum of sales proceeds (limited to sales proceeds from the broadcasting business, such as incomes from commercial broadcasts, those from broadcast receiving fees, and those

## **b) Investment and contribution by foreign capital (Article 14 of Broadcasting Act and Enforcement Decree)**

In 2000, restriction on foreign capital provision (article 14) is newly established. Previously there had been no clauses related to foreign investment or foreign capital. According to article 14<sup>8</sup>, a CATV broadcasting business operator, satellite broadcasting business operator and program providing business operator (excluding a person engaging in general programming or specialized programming of news reports) or a signal transmission network business operator could take foreign investment up to certain level. According to article 14(2)<sup>9</sup> and article 14(3)<sup>10</sup> of Broadcasting Act, a CATV broadcasting business operator, satellite broadcasting business operator and

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from sales of broadcast programs from among sales proceeds on the settlement of accounts; hereinafter the same shall apply) of a specific broadcasting business operator (excluding a program providing business operator; the same shall apply hereafter in this subparagraph), together with the sales proceeds of a broadcasting business operator specially related to the relevant broadcasting business operator, exceeds 33/100 of the aggregate sales proceeds of the entire broadcasting business operators: Provided, That this shall not apply to the case of the broadcasting business operators prescribed in each subparagraph of Article 8 (2) of the Act;

2. Where a terrestrial broadcasting business operator owns the stocks or equity shares of a specific satellite broadcasting business operator in excess of 33/100; or

3. Where a satellite broadcasting business operator owns the stocks or equity shares of a specific CATV broadcasting business operator in excess of 33/100.

<sup>8</sup> **Article 14 of Broadcasting Act No. No.6139, 12. Jan, 2000**

<sup>9</sup> **Article 14(2) Broadcasting Act No. No.6139, 12. Jan, 2000:** A CATV broadcasting business operator, satellite broadcasting business operator and program providing business operator (excluding a person engaging in general programming or specialized programming of news reports) may not receive an investment or a contribution of property from a person falling under any subparagraph of paragraph (1) **in excess of 33/100 of the total stocks or equity shares of the relevant corporation.** <Amended by Act No. 6139, Jan. 12, 2000>

<sup>10</sup> **Article 14(3) Broadcasting Act No. No.6139, 12. Jan, 2000 :** A person operating a signal transmission network business may not receive the investment or contribution of property from a person falling under any subparagraphs of paragraph (1) due to holding **in excess of 49/100** of the total stocks or equity shares of the relevant corporation.

program providing business operator (excluding a person engaging in general programming or specialized programming of news reports) may not receive an investment or contribution of property from foreign capital or foreign investment in excess of 33/100 of the total stocks or equity shares of the relevant corporation. And signal transmission network business operator may not receive foreign investment in excess of 49/100 of the total stocks or equity shares of the relevant corporation.

**c) Programming of Domestically Produced Broadcast Programs (Article 71 of Broadcasting Act and Article 57 of Enforcement Decree of Broadcasting Act)**

Prior to 2000, there were no articles related to quota for domestically produced programs. However, Korea started to gradually open its broadcasting market amid ‘globalization’ waive since 2000 but at the same time, Korea tried to protect its culture by setting a quota for domestically produced programs. Thus the article 71 was newly established in 2000 that gives a specific quota for domestically produced programs depending on the classification of different broadcasting business operators and on the genre of programs. According to the article 57 of Enforcement Decree of the Broadcasting Act<sup>11</sup>, terrestrial broadcasting business operator should air domestically

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<sup>11</sup> **Article 57 Presidential Decree of the Broadcasting Act No.16751, Mar. 13, 2000**

(1) A broadcasting business operator shall, under Article 71 (1)<sup>11</sup> of the Act, broadcast the domestically produced broadcast programs of at least the ratio publicly notified by the Korea Communications Commission, within the limit referred to in the following subparagraphs:

1. Terrestrial broadcasting business operators: 80/100 of the total broadcasting time of the relevant channel for every month.
2. Broadcasting business operator except terrestrial broadcasting business operator: 50/100 of the total broadcasting time of the relevant channel for every month.

(2) Every broadcasting business operator shall program domestically produced movies, animations and popular music among movies, animations and popular music that is aired in accordance with the main sentence of Article 71 (2)<sup>11</sup> of the Act, not less than the ratio publicly notified by the Korea

produced program for 80/100 of the total of the broadcasting time of the relevant channel for every month whereas non-terrestrial broadcasting business operator should air domestically produced program 50/100 of the total broadcasting time of the relevant channel for every month. Regarding the Genre, non-terrestrial broadcasting operators have more quota for domestically produced program among movies, animations and popular music. Terrestrial operator should air movies between 20/100 and 40/100, animations between 30/100 and 50/100 and popular music between 50/100 and 70/100 of the total broadcasting time of the relevant channel. Non-terrestrial broadcasting operators should air movies between 30/100 and 50/100, animations between 40/100 and 60/100 and popular music between 50/100 and 80/100 of the total broadcasting time of the movies, animations and popular music

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Communications Commission, within the limit referred to in the following subparagraphs

1. In case of terrestrial broadcasting business
    - a) Movies: Not less than 20/100 but not more than 40/100 of the total movie broadcasting time of the relevant channel;
    - b) Animations: Not less than 30/100 but not more than 50/100 of the total animation broadcasting time of the relevant channel;
    - c) Popular music: Not less than 50/100 but not more than 70/100 of the total popular music broadcasting time of the relevant channel.
  2. In case of broadcasting business except terrestrial broadcasting business
    - a) Movies: Not less than 30/100 but not more than 50/100 of the total movie broadcasting time of the relevant channel;
    - b) Animations: Not less than 40/100 but not more than 60/100 of the total animation broadcasting time of the relevant channel;
    - c) Popular music: Not less than 50/100 but not more than 80/100 of the total popular music broadcasting time of the relevant channel.
- (3) A broadcasting business operator shall, under Article 71 (3)<sup>11</sup> of the Act, program movies, animations and popular music produced in one country from among movies, animations and popular music imported from foreign countries, not exceeding the ratio publicly notified by the Korea Communications Commission, within the limit of 60/100 of the total monthly broadcasting hours of imported movies, animations and popular music of the relevant channel.
- (4) The Korea Communications Commission shall consult with the Minister of Culture, Sports and Tourism, if it makes a public notification of the programming ratio under paragraphs (1) through (4).

respectively. The Enforcement Decree of the Broadcasting Act of article 57<sup>12</sup> and Broadcasting Act article 71-4<sup>13</sup> set the quota for import from one foreign country within the limit of 60/100 of the total monthly broadcasting hours of animations and popular music of the relevant channel.

<Table 1. The concretization on restriction on ownership and newly established provisions during Kim Dae-jung regime >

	<b>Kim Dae-jung regime (1998-2003)</b>
Article 8	<ul style="list-style-type: none"> <li>▪ If a turnover of a broadcasting business owner exceeds 33% of total sales of Korean broadcasting business, the owner is restricted on ownership and on the possession of stocks</li> </ul>
Article 14	<ul style="list-style-type: none"> <li>▪ In 2000, article 14(restriction on foreign investment) was newly established.</li> <li>▪ A CATV, satellite and PP business operator may not receive foreign investment <b>in excess of 33/100</b> of the total stocks or equity shares of the relevant corporation.</li> <li>▪ Signal transmission network business operator may not receive foreign investment <b>in excess of 49/100</b> of the total stocks or equity shares of the relevant corporation.</li> </ul>
Article 71	<ul style="list-style-type: none"> <li>▪ Article 71 was newly established in 2000.</li> <li>▪ Genre               <ol style="list-style-type: none"> <li>a) Music: 50% – 70% (terrestrial), 50%-80% (non-terrestrial broadcasting) of the total popular music broadcasting time of the relevant channel</li> <li>b) Animation: 30% - 50% (terrestrial), 40% - 60% (non-terrestrial broadcasting) of the total animation broadcasting time of the relevant channel.</li> <li>c) Movie: 20% - 40% (terrestrial), 30%- 50% (non-terrestrial broadcasting) of the total movie broadcasting time of the relevant channel.</li> </ol> </li> <li>▪ Terrestrial broadcasting business operators should air domestic program 80/100 of the total broadcasting time of the relevant channel for every month. Non-terrestrial broadcasting operators should air 50/100 of the total broadcasting time of the relevant channel for every month.</li> </ul>

<sup>12</sup> **Article 57(3) Presidential Decree No.16751, 13. Mar, 2000:** A broadcasting business operator shall, under Article 71 (3) of the Act, program the movies, animations and popular musics produced in one country from among the movies, animations and popular musics imported from foreign countries, not exceeding the ratio publicly notified by the Korea Broadcasting Commission, within the limit of 60/100 of monthly broadcasting hours by fields.

<sup>13</sup> **Article 71(4) Broadcasting Act No.11199, Jan. 17, 2012 :** In order to secure variety in the reception of international cultures, every broadcasting business operator shall program the motion pictures, animations and popular music produced in one country not in excess of the specified ratio, among the annually-aired motion pictures, animations and popular music that are imported from foreign countries, as prescribed by Presidential Decree. <Amended by Act No. 11199, Jan. 17, 2012>

### 3) Lee Myung-bak regime (2008-2013)

We could observe specially that the restriction on ownership Article 8 was greatly eased as Lee carried out business friendly policy. The restrictions on individual ownership and on the cross ownership of total TV program channels, and cable news among conglomerates, press and foreign capital were eased.

During Lee's regime, Korea signed Free Trade Agreement (hereafter "FTA") with the U.S. With the FTA, the regulation of foreign investment is eased. However, the regulation of programming of domestic broadcast programs in the terrestrial broadcasting was still strict. This implies that Lee could not fully abandon the public interest of broadcasting, particularly in the terrestrial broadcasting system.

#### a) Article 8

The Broadcasting Act was amended on 31<sup>st</sup> July in 2009. The ease of the restriction on ownership was pronounced in this amended act.

Broadcasting Act prior to 2009 said "a person could not own in excess of 30/100 of the total stocks or equity shares of a program providing business operator engaged in general programming or specialized programming of news reports". However, after the amendment, the ratio changed to 40/100 from 30/100<sup>14</sup>.

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<sup>14</sup> **Article 8(2) Broadcasting Act No. 9786, Jul. 31, 2009** : No one may own in excess of 40/100 of the total stocks or equity shares of a terrestrial broadcasting business operator and a program providing business operator engaged in general programming or specialized programming of news reports, including the stocks or equity shares owned by persons having a special relation determined by Presidential Decree (hereinafter referred to as "specially related persons"): Provided, That the foregoing shall not apply to cases falling under any of the following subparagraphs: <Amended by Act No. 7213, Mar. 22, 2004; Act No. 8060, Oct. 27, 2006; Act No. 9786, Jul. 31, 2009>

The restriction on ownership of conglomerates and daily newspaper companies was eased. In 2000, a conglomerate and its affiliates or a corporation operating daily newspapers or news correspondence could not own stocks or equity shares of a program providing business operator engaging in general programming or specialized program of news reports. However, from 2009, a conglomerate and its affiliates operating daily newspapers could own up to 30/100 of total stocks or equity shares of a program providing business operator engaging in general programming or specialized program of news reports, and could own up to 10/100 of total stocks or equity shares of a terrestrial broadcasting business operator.<sup>15</sup>

Before 2009, a conglomerate, a corporation operating daily newspapers or news correspondence could own up to 33/100 of total stocks or equity shares of CATV broadcasting business operator and satellite broadcasting business operator. According to amended act in 2009, a corporation operating daily newspapers or news

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1. Where the State or a local government owns stocks or equity shares of a broadcasting business operator;
  2. Where the Foundation for Broadcast Culture established under the Foundation for Broadcast Culture Act owns stocks or equity shares of a broadcasting business operator;
  3. Where any investment is made to a broadcasting business operator aiming at a missionary work of religion.

<sup>15</sup> **Article 8(3) Broadcasting Act No. 9786, Jul. 31, 2009**: Notwithstanding the provisions of paragraph (2), a company belonging to an enterprise group that falls under the criteria prescribed by Presidential Decree, including the gross amount of assets, among the enterprise groups provided for in subparagraph 2 of Article 2 of the Monopoly Regulation and Fair Trade Act (hereinafter referred to as "conglomerate"), and its affiliates (including specially related persons), or a corporation (including specially related persons) operating daily newspapers under the Registration, etc. of Periodicals Act or news correspondences under the provisions of the Act on Promotion of News Communications (hereinafter referred to as "news correspondence") shall not own stocks or equity shares in excess of **10/100 of the total stocks or equity shares of a terrestrial broadcasting business operator**, and shall not own stocks or equity shares in excess of **30/100 of the total stocks and equity shares of a program providing business operator** engaging in general programming or specialized program of news reports. <Amended by Act No. 6803, Dec. 18, 2002; Act No. 6905, May 29, 2003; Act No. 7213, Mar. 22, 2004; Act No. 9786, Jul. 31, 2009>

correspondence could own up to 49/100 of total stocks or equity shares of CATV broadcasting business operator and satellite broadcasting business operator.<sup>16</sup>

According to article 4 of Enforcement Decree of Broadcasting Act amended 31<sup>st</sup> December in 2008<sup>17</sup>, the standard of a conglomerate which is forbidden to own a terrestrial broadcasting business and a program providing business engaged in general programming or programming specializing in news reports was eased; enterprises that cannot operate a broadcasting business( terrestrial broadcasting, program providing business engaged in general programming or programming specializing in news reports ) are companies whose assets are in excess of 10 trillion won whereas it was previously 3 trillion won.

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<sup>16</sup> **Article 8(5) Broadcasting Act No. 9786, Jul. 31, 2009:** Every corporation (including any person in a special relationship with such corporation) that publishes a daily newspaper or runs a news correspondence provided for in the Act on the Promotion of Newspapers, etc. shall be prohibited from holding shares and equities in excess of 49/100 of the total number of the shares and equity shares of any CATV broadcasting business operator and any satellite broadcasting business operator. <Amended by Act No. 8301, Jan. 26, 2007; Act Nos. 9785 & 9786, Jul. 31, 2009>

<sup>17</sup> **Article 4(1) Presidential Decree No. 21236, Dec. 31, 2008:** Companies belonging to enterprise groups which shall not concurrently operate a terrestrial broadcasting business and a program providing business engaged in general programming or programming specializing in news reports or own its stocks or equity shares pursuant to Article 8 (3) of the Act and their affiliated companies shall be the enterprises which belong to an enterprise group the gross amount of assets of which is in excess of **ten trillion won as of the date** on which such enterprise group is designated as an enterprise group subject to the mutual equity investment limit from among the enterprise groups designated as enterprise groups subject to the mutual equity investment limit under Article 14 of the Monopoly Regulation and Fair Trade Act and from among enterprise groups and affiliated companies under subparagraphs 2 and 3 of Article 2 of the same Act. <Amended by Presidential Decree No. 17819, Dec. 26, 2002; Presidential Decree No. 18548, Sep. 17, 2004; Presidential Decree No. 19390, Mar. 10, 2006; Presidential Decree No. 21236, Dec. 31, 2008>

The restriction on the market share of CATV was according to Enforcement Decree of Broadcasting Act article 4-2<sup>18</sup> and article 4-4-3.<sup>19</sup> Previously a CATV broadcasting business operator could own market share up to 33/100 of the aggregate sales proceeds of the entire program providers. However, according to Enforcement Decree of Broadcasting Act amended in December 2008, a CATV broadcasting business operator could own market share up to 1/3 of the number of household subscribers to the entire CATV broadcasting business. Also before 2008, a specific CATV broadcasting business operator could operate a business in the area up to 1/5 of the entire CATV broadcasting zones.<sup>20</sup> After 2008, a CATV broadcasting business

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<sup>18</sup> **Article 4(2) Presidential Decree No.21236, Dec.31,2008**:"In excess of the scope prescribed by Presidential Decree" in the main sentence of Article 8 (5) of the Act means a case falling under any of the following subparagraphs:

1. If the ratio comprised of the sum of sales proceeds (limited to sales proceeds from the broadcasting business, such as incomes from commercial broadcasts, those from broadcast receiving fees, and those from sales of broadcast programs from among sales proceeds on the settlement of accounts; hereinafter the same shall apply) of a specific broadcasting business operator (excluding a program provider; hereinafter the same shall apply in this subparagraph), together with the sales proceeds of a broadcasting business operator specially related to the relevant broadcasting business operator, **exceeds 33/100 of the aggregate sales proceeds of the entire broadcasting business operators**: Provided, That this shall not apply to the case of the broadcasting business operators prescribed in each subparagraph of Article 8 (2) of the Act;
2. If a terrestrial broadcasting business operator owns in excess of 33/100 of the stocks or equity shares of a specific satellite broadcasting business operator; or
3. If a satellite broadcasting business operator owns in excess of 33/100 of the stocks or equity shares of a specific CATV broadcasting business operator.

<sup>19</sup> **Article 4(4)3 Presidential Decree No. 21236, Dec. 31, 2008** :

“Cases exceeding the scope prescribed by the Presidential Decree” in the main sentence of Article 8 (7) of the Act are cases falling under any of the following subparagraphs: <Amended by Presidential Decree No. 18548, Sep. 17, 2004; Presidential Decree No. 20649, Feb. 22, 2008; Presidential Decree No. 20672, Feb. 29, 2008>

3. If the sum of the number of household subscribers to a CATV broadcasting business managed by a specific CATV broadcasting business operator and the number of household subscribers to a CATV broadcasting business specially related to the relevant CATV broadcasting business operator exceeds 1/3 of the number of household subscribers to the entire CATV broadcasting business;

<sup>20</sup> **Article 4(4)3 Presidential Decree No.20323, 15. Oct, 2007** :

The term "in excess of the scope prescribed by the Presidential Decree" in Article 8 (7) of the Act means

operator could operate a business in the area up to 1/3 of the entire CATV broadcasting zones.<sup>21</sup>

According to Enforcement Decree of Broadcasting Act article 4 amended on 26<sup>th</sup> January in 2010, the cross ownership between a terrestrial broadcasting business operator and a CATV business operator became possible up to mutually 33% of stocks or equity share.<sup>22</sup> Previously, the cross ownership between a terrestrial broadcasting business operator and a CATV was prohibited. The cross ownership between a CATV business operator and a terrestrial broadcasting business operator became possible to

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the case falling under any of the following subparagraphs: <Amended by Presidential Decree No. 18548, Sep. 17, 2004>

3. If a specific CATV broadcasting business operator operates a business of CATV broadcasting in the area exceeding one fifth of the entire CATV broadcasting zones

<sup>21</sup> **Article 4(4) Presidential Decree No. 21236, Dec. 31, 2008** : If a specific CATV broadcasting business operator operates a business of CATV broadcasting in the area exceeding one third of the entire CATV broadcasting zones;

<sup>22</sup> **4(5) Presidential Decree No. 22002, Jan. 26, 2010**: "In excess of the scope prescribed by Presidential Decree" in the main sentence of Article 8 (6) of the Act means cases falling under any of the following subparagraphs: <Amended by Presidential Decree No. 22002, Jan. 26, 2010>

1. Where the ratio comprised of the sum of sales proceeds (limited to sales proceeds from the broadcasting business, such as incomes from commercial broadcasts, those from broadcast receiving fees, and those from sales of broadcast programs from among sales proceeds on the settlement of accounts; hereinafter the same shall apply) of a specific broadcasting business operator (excluding a program provider; hereafter the same shall apply in this subparagraph), together with the sales proceeds of a broadcasting business operator specially related to the relevant broadcasting business operator, exceeds 33/100 of the aggregate sales proceeds of the entire broadcasting business operators: Provided, That the foregoing shall not apply to cases of the broadcasting business operators prescribed in each subparagraph of Article 8 (2) of the Act;

2. Where a terrestrial broadcasting business operator owns in excess of 33/100 of stocks or equity shares of a specific satellite broadcasting business operator;

3. Where a **satellite broadcasting business operator** owns in excess of **33/100** of the stocks or equity shares of a specific **CATV broadcasting** business operator;

4. Where a terrestrial broadcasting program provider owns in excess of 33/100 of stocks or equity shares of a specific CATV broadcasting business operator;

5. Where a CATV broadcasting business operator owns in excess of 33/100 of stocks or equity shares of a specific terrestrial broadcasting program provider.

improve the regional broadcasting management.<sup>23</sup>

## **b) Article 14**

During Lee's regime, we could point out that the regulation policy of investment and contribution by foreign capital is eased. Prior to Lee's regime, there were no provisions about foreign capital for program providing business operator engaging in general programming and in specialized program of news reports, and a CATV relay broadcasting business operator.

However, Lee eased the regulation that these broadcasting business operators could receive foreign investment up to certain level. Since 2009, a program providing business operator engaging in general programming or a CATV relay broadcasting business operator could receive foreign investment or capital up to 20/100 of the total stocks or equity shares of the relevant corporation. In case of a program providing business operator engaging in specialized program of news reports, 10/100 of the total stocks or equity shares of the relevant corporation.<sup>24</sup>

Moreover, satellite broadcasting could take more investment compared to the past (from 33% to 49%). Overall, the regulation policy of investment and contribution

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<sup>23</sup> 방송법 시행령 개정이유

<http://glaw.scourt.go.kr/wsjo/lawod/sjo190.do?contId=1692865#1466232519779>

<sup>24</sup> **Article 14(2) Broadcasting Act No.9785 July.31, 2009** : A program providing business operator engaging in general programming or a CATV relay broadcasting business operator may not receive an investment or a contribution of property from a person falling under any subparagraph of paragraph (1), in excess of **20/100 of the total stocks or equity shares of the relevant corporation**; and, in cases of a program providing business operator engaging in specialized program of news reports, **10/100 of the total stocks** or equity shares of the relevant corporation. <Amended by Act No. 9786, Jul. 31, 2009>.

by foreign capital is eased during Lee's regime.

The greater degree of deregulation could be observed after Korea-US FTA particularly regarding restriction on foreign investment. According to the article 14-3 of Broadcasting Act amended on 13<sup>th</sup> March 2015,<sup>25</sup> FTA partners (a foreign government, a foreign organization or a corporation that foreigners own in excess of 50/100 of the total stocks or equity shares) could possess stocks or equity shares unlimitedly of program providing business operators (excluding a person engaging in general programming or specialized programming of news reports or specialized programming of selling products).

After the KORUS FTA, Korea allowed FTA partners without restriction to invest in non-terrestrial broadcasting operators. FTA partners that Ministry of Science, ICT and future planning notify will not be considered as a foreign government so they can own stocks or equity shares of program providing business without any restriction. This means that Korea has opened its broadcasting market. Although Korea has not deregulated its terrestrial broadcasting business, it is on the way of opening its broadcasting market.

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<sup>25</sup> **Article 14(3) Broadcasting Act No. 13220 March.13,2015:** A CATV broadcasting business operator, a satellite broadcasting business operator, a program providing business operator (excluding a person engaging in general programming or specialized programming of news reports) or a signal transmission network business operator may not receive an investment or a contribution of property from a person falling under any subparagraph of paragraph (1) in excess of 49/100 of the total stocks or equity shares of the relevant corporation. However, in case of a program providing business operator (excluding a person engaging in general programming or specialized programming of news reports), **FTA partners (a government, an organization or a corporation that foreigners own in excess of 50/100 of the total stocks or equity shares)**, Korea signed bilaterally or multilaterally and Ministry of Science, ICT and future planning notify, **shall not be considered as a person falling under subparagraph (3)** of paragraph (1) even if they are satisfied the necessary conditions of subparagraph (3) of paragraph (1). <Amended by Act No. 9786, Jul. 31, 2009 ; Act No. 13220, Mar. 13, 2015 >

#### **d) Programming of Domestic Broadcast Programs (Article 71 of Broadcasting Act, Article 57 of Enforcement Decree )**

In the amended Broadcasting Act<sup>26</sup>, we could observe the tendency of easing the regulation of programming of domestic broadcast programs. Firstly, we could see that the period for quota for domestically produced program was changed from ‘every quarter’ to ‘every half year’. The purpose of this change is to increase autonomy of broadcasting business operator regarding broadcasting programming.<sup>27</sup>

Secondly, the amended law set a lower limit for domestically produced programs for terrestrial broadcasting business and non-terrestrial broadcasting business.<sup>28</sup> In 2000, the quota for domestically produced programs for terrestrial broadcasting business was 80/100 of monthly entire broadcasting times while non-terrestrial program was 50/100. However, in the amended act, terrestrial broadcasting business operators and terrestrial broadcasting program providers should program domestically

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<sup>26</sup> **Article 57 Presidential Decree No. 23087 Aug.19, 2011**

<sup>27</sup> 방송법 시행령 개정이유

(출처: 방송법 시행령 일부개정 2011.08.19 [대통령령 제 23087 호, 시행 2011.08.19] 방송통신위원회 > 종합법률정보 법령)

<sup>28</sup> **Article 57 Presidential Decree No. 23086 March.13,2015**

(1) A broadcasting business operator shall, under Article 71 (1) of the Act, broadcast the domestically produced broadcast programs of at least the ratio publicly notified by the Korea Communications Commission, within the limit referred to in the following subparagraphs: <Amended by Presidential Decree No. 18548, Sep. 17, 2004; Presidential Decree No. 20219, Aug. 7, 2007; Presidential Decree No. 20672, Feb. 29, 2008; Presidential Decree No. 23087, Aug. 19, 2011>

1. Terrestrial broadcasting business operators and terrestrial broadcasting program providers: Not less than 60/100 but no more than 80/100 of the total broadcasting time of the relevant channel for every half year;
2. CATV broadcasting business operators and satellite broadcasting business operators: Not less than 40/100 but no more than 70/100 of the total broadcasting time of the relevant channel for every half year;
3. Program providers except for terrestrial broadcasting program providers: Not less than 20/100 but no more than 50/100 of the total broadcasting time of the relevant channel for every half year.

produced program not less than 60/100 but no more than 80/100 of the total broadcasting time of the relevant channel for every half year; CATV broadcasting business operator and satellite broadcasting business operator should air not less than 40/100 but no more than 70/100 of the total broadcasting time of the relevant channel for every half year; Non-terrestrial program providers should air not less than 20/100 but no more than 50/100 of the total broadcasting time of the relevant channel for every half year. With a lower limit, the quota for different genre of domestically produced program was reduced.

Although the quota for domestically produced program was eased in general, the quota for domestically produced animations was tightened. Previously, only terrestrial broadcasting business operator and terrestrial program providers had to program domestically produced animations in more than specified ratio under the conditions prescribed by Presidential Decree. However, with the amended law<sup>29</sup>, not only terrestrial broadcasting business operator and terrestrial broadcasting program provider but also a person engaging in general programming shall program domestically produced animations.

Secondly, the Broadcasting Act allowed putting more weights on ratio of programming if domestically produced animations are aired during the prime time.

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<sup>29</sup> **Article 71 Broadcasting Act No.11199, Jan. 17, 2012**

Article 71(2) : A broadcasting business operator shall program, among the motion pictures, animations and popular music, which are broadcast annually, the motion pictures, animations and popular music which are produced in the country in more than the specified ratio under the conditions prescribed by Presidential Decree: Provided, That a terrestrial broadcasting business operator and a person engaging in general programming shall newly program the animations which are produced in the country, among the whole programs broadcast annually at the relevant channel, in more than the specified ratio under the conditions prescribed by Presidential Decree. <Amended by Act No. 11199, Jan. 17, 2012>

Thus, we could observe that the quota for domestically produced animations was tightened. This is due to the public interests of animations since viewers of the animations are mainly children and adolescents.

We could observe that the quota for different genre of domestically produced program was relieved with a lower limit. However, the regulation policy regarding domestically produced animation was strict. Despite Lee's business friendly policy, the regulation of quota for domestically produced animations was strict due to the public concerns.

After the Korea-US FTA, regulation of the domestically produced program was eased. Particularly, the quota for foreign produced program from one country was increased. According to the Article 57 of the Enforcement Decree of the Broadcasting Act amended on 2<sup>nd</sup> Dec 2011<sup>30</sup>, a broadcasting business operator can program movies, animations and popular music produced in one country from among movies, animations and popular music imported from foreign countries, not exceeding the ratio publicly notified by the Korea Communication Commission, within the limit of 80/100 of the total half-year broadcasting hours of imported movies, animations and popular music of the relevant channel.

Before the Korea-US FTA, the limit was 60/100 of the total half-year broadcasting hours of imported movies, animations and popular music of the relevant channel. This

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<sup>30</sup>**Article 57(4) of Presidential Decree No.23345, Dec.2,2011** : A broadcasting business operator shall, under Article 71 (3) of the Act, program movies, animations and popular music produced in one country from among movies, animations and popular music imported from foreign countries, not exceeding the ratio publicly notified by the Korea Communications Commission, **within the limit of 80/100 of the total half-year broadcasting hours of imported movies**, animations and popular music of the relevant channel. <Amended by Presidential Decree No. 23345, Dec. 2, 2011>;

reflects the effect of Korea-US FTA, allowing Korea to import US-made programs more than before. Thus, Korea relieved the quota for overseas programs from one foreign country.

<Table 2. The mitigation of the three regulations during  
Lee Myung-bak government>

	<b>Lee Myung-bak government (2008-2013)</b>
Article 8	<ul style="list-style-type: none"> <li>▪ Ownership restriction: A person can own up to 40/100 of the total stocks or equity shares of a PP business operator (Previously the ratio was 33/100).</li> <li>▪ A conglomerate and its affiliates or a corporation operating daily newspapers or news correspondence could own up to <b>30/100</b> of total stocks or equity shares of a PP and could own up to <b>10/100</b> of total stocks of a terrestrial broadcasting business operator.</li> <li>▪ the cross ownership between a terrestrial broadcasting business operator and a CATV business operator is possible up to mutually <b>33% of stocks or equity share</b>. Previously, the cross ownership between a terrestrial broadcasting business operator and a CATV was prohibited.</li> </ul>
Article 14	<ul style="list-style-type: none"> <li>▪ A PP business operator engaging in general programing or a CATV relay broadcasting business operator could receive foreign investment or capital up to <b>20/100 of the total stocks or equity shares of the relevant corporation</b>. In case of program PP engaging in specialized program of news reports, <b>10/100 of the equity shares of the relevant corporation</b>.</li> <li>▪ Satellite broadcasting could take more investment compared to the past (<b>from 33% to 49%</b>)</li> <li>▪ <b>FTA partners</b> (a foreign government, a foreign organization or a corporation that foreigners own in excess of 50/100 of the total stocks or equity shares) that Ministry of Science, ICT and future planning notify will not be considered as a foreign government so they can own stocks or equity shares of program providing business except terrestrial business operators without any restriction.</li> </ul>
Article 71	<ul style="list-style-type: none"> <li>▪ The period for ratio of domestically produced program has changed. Previously, a broadcasting business operator should organize domestic program <b>quarterly</b>. After 2009, a broadcasting business operator could program home-made broadcast program <b>half-yearly</b>.</li> <li>▪ Set lower limit for quota for home-made broadcast program: The quota for home-made program became 60%-80% from 80% for terrestrial broadcasting operators. For non-terrestrial, the quota changed to 40%-70% (CATV, Satellite) and 20%-50% (PP except terrestrial) from 50% of the total broadcasting time of the relevant channel for every half year.</li> </ul>

We will look at the summary of how the Korean broadcasting regulation has been eased from democratization Chun Doo-hwan regime to Lee Myung-bak government.

<Table 3. The summary of the evolution of Korean broadcasting regulation>

	<b>Chun Doo-hwan government</b>	<b>Kim Dae-jung government</b>	<b>Lee Myung-bak government</b>
Article 8	Article 8, Restriction on influx of foreign funds. From 12 <sup>th</sup> January, article 8 has changed into “restriction on ownership”	If a turnover of a broadcasting business owner exceeds 33% of total sales of Korean broadcasting business, the owner is restricted on ownership of stocks	Ownership restriction: A person can own up to 40/100 of the total stocks or equity shares of a PP business operator (Previously the ratio was 33/100).
			The cross ownership between a terrestrial broadcasting business operator and a CATV business operator is possible up to mutually <b>33% of stocks or equity share</b> . Previously, the cross ownership between a terrestrial broadcasting business operator and a CATV was prohibited.
			A conglomerate and its affiliates or a corporation operating daily newspapers or news correspondence could own up to <b>30/100</b> of total stocks or equity shares of a PP and could own up to <b>10/100</b> of total stocks of a terrestrial broadcasting business operator.
Article 14	In 1987, Article 14 was the terms of members of the committee whereas Article 8 was a clause about restriction on foreign investment	In 2000, article 14(restriction on foreign investment) was newly established.	A PP business operator engaging in general programming or a CATV relay broadcasting business operator could receive foreign investment or capital up to <b>20/100 of the total stocks or equity shares of the relevant corporation</b> . In case of program PP engaging in specialized program of news reports, <b>10/100 of the equity shares</b> of the relevant corporation.
			A CATV, satellite and PP business operator may not receive foreign investment <b>in excess of 33/100</b> of the total stocks or equity shares of the relevant corporation
			Satellite broadcasting could take more investment compared to the past ( <b>from 33% to 49%</b> )

		Signal transmission network business operator may not receive foreign investment <b>in excess of 49/100</b> of the total stocks or equity shares of the relevant corporation	<p><b>FTA partners</b> (a foreign government, a foreign organization or a corporation that foreigners own in excess of 50/100 of the total stocks or equity shares) that Ministry of Science, ICT and future planning notify will not be considered as a foreign government so they can own stocks or equity shares of program providing business except terrestrial business operators without any restriction.</p> <p>The period for ratio of domestic program has changed: Previously, a broadcasting business operator should organize domestic program quarterly. After 2009, a broadcasting business operator could program home-made broadcast program half-yearly.</p>
Article 71	None	<p>Article 71 was newly established in 2000. Terrestrial broadcasting business operators should air domestic program 80/100 whereas non-terrestrial broadcasting operators should air 50/100 of the total broadcasting time of the relevant channel for every month.</p> <p><b>Genre</b>  <b>Music:</b> 50% – 70% (terrestrial), 50%-80% (non-terrestrial) of the total popular music broadcasting time of the relevant channel  <b>Animation:</b> 30% - 50% (terrestrial), 40% - 60% (non-terrestrial broadcasting) of the total animation broadcasting time of the relevant channel.  <b>Movie:</b> 20% - 40% (terrestrial), 30%- 50% (non-terrestrial broadcasting) of the total movie broadcasting time of the relevant channel.</p>	<p>The period for ratio of domestically produced program has changed. Previously, a broadcasting business operator should organize domestic program <b>quarterly</b>. After 2009, a broadcasting business operator could program home-made broadcast program <b>half-yearly</b>.</p> <p>Set lower limit for quota for home-made broadcast program: The quota for home-made program became 60%-80% from 80% for terrestrial broadcasting operators. For non-terrestrial, the quota changed to 40%-70% (CATV, Satellite) and 20%-50% (PP except terrestrial) from 50% of the total broadcasting time of the relevant channel for every half year.</p>

### **III. Analysis of development of deregulation policy of Korean broadcasting industry**

We could observe that Korea eased its broadcasting regulation through three different regimes, influenced by internal political circumstance and external situation such as Lee Myungbak's business friendly policy and KORUS FTA.

During Chun Doo-hwan regime, Korea first show signal to open its broadcasting market by establishing new provisions such as restriction on inflow of foreign capital (article 35) and building foreign broadcasting branch in Korea (article 40) after democratization realized in 1987. Amid the globalization wave at the end of 1990s, Korea made more concretized move to open its broadcasting market by establishing new provisions about foreign investment and quota for domestically produced programs.

When Lee Myung-bak took power, the restriction on ownership was greatly eased that conglomerates can own certain stake in Program Providing (PP) business and terrestrial broadcasting business operator. With KORUS FTA, restriction on foreign investment is deregulated that FTA partners can own stocks or equity shares of non-terrestrial PP business operators without any restriction.

Thus, we can see the restriction on ownership and on foreign capital have been gradually eased throughout three different regimes. However, the regulation of programming of domestically produced broadcast programs has not been dramatically eased. Before KORUS FTA, the upper limit of airing programs produced in one foreign country was eased from 60/100 to 80/100 of the total half-year broadcasting hours of imported broadcast programs. However, the ratio of the broadcast programming such as popular music, movies and animation has not changed much.

## **IV. Analysis of comparison through case studies**

### **1) Case Studies**

In this chapter, we will look at the broadcasting regulation policy of the U.S. and France focusing on the degree of opening. The U.S. and France have maintained two extreme stances; the U.S. has maintained liberalist stance whereas France kept protectionist stances. Through the case studies, we will compare the degree of openness of Korean broadcasting market with the two extreme stances. We will see each country's restriction on investment and contribution by foreign capital and programming of domestically produced broadcast programs.

#### **a) The U.S.**

The US deregulated its broadcasting market since Telecommunication Act amended in 1996. Federal Communications Commission (FCC) said “The goal of this new law is to let anyone enter any communication business - to let any communications business compete in any market against any other”.<sup>31</sup> The US government eliminated the regulations barriers among telephone, CATV and terrestrial broadcasting businesses to provide better services to viewers, implementing indiscriminately free competitions. The purpose of American broadcasting regulation is to guarantee public interests and fairness in highly competitive market system.<sup>32</sup>

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<sup>31</sup> Federal Communications Commission(FCC) website

<https://www.fcc.gov/general/telecommunications-act-1996>

<sup>32</sup> 미국의 방송법 - 장호순- p. 45

## 1. The regulation of investment and contribution by foreign capital

The U.S. traditionally welcomed influx of foreign capital because they believed that it could expand the employment and increase in tax revenue. The U.S, however, changed their attitude when Japanese increased direct investment. The sectors where foreigners are limited to invest in the U.S are domestic aviation industry, shipping industry, nuclear industry and broadcasting industry.<sup>33</sup> The regulation that restricts foreign investment in broadcasting industry is Communication Act. The article 310 of Communication Act, which was amended to ‘Telecommunication Act’ in 1996 as aforementioned, describes the restriction on foreign investment as below.<sup>34</sup>

1. A foreign government or a representative of foreign government cannot get operating right for broadcasting business
2. A company established by foreigner or foreign law
3. A company that foreigners own more than 20% of voting right or shares of the company.
4. A company that is ruled by foreign company directly or indirectly more than 25% of the capital or voting right of the company

Basically, the U.S. allows the foreign investment up to 20 % regardless of terrestrial broadcasting, cable and Satellite broadcasting. However, foreign investor should go through ‘public interest test’. There are two ways that foreign businessmen access the American broadcasting business: pass approval procedure or M&A (Merger

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<sup>33</sup> 방송시장 개방 법제와 정책 - 정윤식- P.458

<sup>34</sup> 방송시장 개방 법제와 정책 - 정윤식- P.458

and Acquisition) of the existing broadcasting media.<sup>35</sup> In the U.S, public interest test is an important factor for broadcasting business license and for Merger and acquisition deal. According to FCC, the ‘public interest’ embraces ‘localism’, ‘diversity’ and ‘competition’. In other words, the question on whether localism, diversity and competition promote if a foreign business accesses the American broadcasting market is the basis of judgement. Obtaining business approval or investing or doing M&A in the US broadcasting market is impossible if a new foreign business or foreign capital cannot guarantee localism, diversity and competition. In other words, a foreign business must meet different standard (public interest test) other than article 310 of the telecommunication act. During the procedure of public interest test, there are possibilities that FCC makes an arbitrary decision.<sup>36</sup>

## **2. Programming of domestically produced broadcast programs.**

The U.S does not have restriction on quota for domestically produced broadcast programs. Despite the absence of the restriction on the quota, few foreign programs broadcast in American broadcasting market (심석태 p. 213).<sup>37</sup> This is because of the size of American broadcasting market with their superior status of American giant companies in international broadcasting market. The size of American culture market including films, music and publication is bigger than Asia-Pacific region and even bigger than the one of combining Europe, Middle East and Africa all together. The U.S media companies have international competitiveness compared to other

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<sup>35</sup> 방송시장 개방 법제와 정책 - 정윤식- P.458

<sup>36</sup> 방송시장 개방 법제와 정책 - 정윤식- P. 459

<sup>37</sup> 방송시장 개방 법제와 정책 - 정윤식- P. 460

companies in different regions because American media companies do not have language and culture barrier (심석태 p. 70)<sup>38</sup>

The U.S has the biggest domestic broadcasting market with its large and high-quality TV, film, video and cable programs. The American broadcasting operators earn 70% of the production cost from the domestic market.<sup>39</sup> Moreover, the U.S has competitive advantage in the world market since its language is English. The U.S, with its different races and various cultures, is the macrocosm of the world. Thus, different people in other regions can accept American programs without any barriers.<sup>40</sup>

#### b) **France**

France has maintained opposite stance against the U.S; France insisted ‘cultural exception’ to respond the U.S pressure to open broadcasting market. The European Union (formerly EC), particularly France, has severely opposed to open audiovisual sectors. However, the U.S continuously put pressure to open broadcasting market since audiovisual products were the one of the leading exports of the US to the EC. In 1986, the EC signed the ‘Single European Act (SEA)’. The purpose of SEA was to form ‘region without borders’ that guarantees the free flow of goods, person, service and capital. The broadcasting sector was not exception in the Treaty.

In 1989, Council of Europe adopted ‘European convention on Transfrontier

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<sup>38</sup> 방송시장 개방 법제와 정책 - 정윤식- P. 460

<sup>39</sup> 방송시장 개방 법제와 정책 - 정윤식- P. 460

<sup>40</sup> 방송시장 개방 법제와 정책 - 정윤식- P. 461

Television) and the EC adopted ‘Council Directive’ for 12 member states regarding broadcasting law and administrative provisions. The EC has common regulation regarding the culture sovereignty and protection. The common regulation is a guideline or a recommendation so it carries little legal binding force. However, in the reality, it has significant binding power. France has more strict regulation than ‘transfrontier television’.

French broadcasting act is based on la loi de la liberté de la communication ( law of liberty of the communication) established in 1986. The purpose of this act is to abolish the national monopoly of audiovisual industry and to privatize broadcasting and radio operators. France amended its broadcasting act several times as broadcasting industry changed due to rapid technology development. Amid this change, France consistently pursued broadcasting policy that reinforce the role of CSA (Conseil Supérieur de l’Audiovisuel), the independent French regulatory organization in audiovisual industry. Additionally, European convention on Transfrontier Television reflected in French domestic broadcasting act that France tightened its regulation of public broadcasting. European convention on Transfrontier Television.<sup>41</sup>

### **1. The regulation of investment and contribution by foreign capital**

According to the ‘la loi de la liberté de la communication ( law of liberty of the communication)’ amended in August in 2000, foreigners are not allowed to own in excess of 20 % of total capital of terrestrial broadcastings. It is considered as a

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<sup>41</sup> WTO 체제하의 방송산업 변화에 대한 연구(I) 2003.12 - 이상우/성운/이한/박천일/한은/신호철/채정화- p.151

‘foreigner’ if an owner is a foreigner, capital is from foreign country and the president of an association is a foreigner.<sup>42</sup> However, there is no restriction on foreign capital in Satellite broadcasting business and cable TV.<sup>43</sup> A person or a company is not allowed to own directly or indirectly 49% of the voting rights of the terrestrial-like broadcasting in all over the country.<sup>44</sup>

## **2. Programming of domestically produced broadcast programs.**

Taking into consideration EC guideline, French broadcasting act ‘la loi de la liberté de la communicatio’ states that 60% of the European programs should be broadcasted during the prime time and 40% of them should be French programs.<sup>45</sup> The prime time for France 2, France 3 and TF1 are 6pm~ 11pm every day and 2pm~11pm on Wednesday.

France keeps its protectionist stance implementing the quota for European product as well as for French programs. France carries out the prime time regulation. There are prime time regulation for France 2 and France 3<sup>46</sup> and the three main terrestrial broadcasting such as TF1.<sup>47</sup>

To sum up, the restriction on the quota for domestically produced program is more severe than the one on the foreign investment in France. Foreigners can invest or own up to 20% of terrestrial broadcasting capital whereas there is no restriction on

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<sup>42</sup> 방송시장 개방 법제와 정책 - 정윤식 - P. 467

<sup>43</sup> 방송시장 개방 법제와 정책 - 정윤식 - P. 467

<sup>44</sup> 방송시장 개방 법제와 정책 - 정윤식 - P. 467

<sup>45</sup> 방송시장 개방 법제와 정책 - 정윤식 - P. 468

<sup>46</sup> France 2 and France 3 are public broadcastings.

<sup>47</sup> TF1 once used to public broadcasting but now it is a private terrestrial broadcastings

foreign investment in satellite broadcasting business and cable TV. We could say that the regulation of the quota for domestically produced program is more severe than the 'European convention on transfrontier television' as there are different regulations other than the quota for domestically produced programs such as prime time regulation and language regulation.

## **2. The current degree of opening of Korean broadcasting market**

We have seen the broadcasting regulation policy of the U.S. and France. Here, we will examine the current degree of openness of Korean broadcasting market regarding foreign investment and the quota for domestic program.

### **1) The regulation related to the restriction on foreign investment and foreign capital (Article 14 of broadcasting law and Enforcement Decree of the Broadcasting Act)**

- Terrestrial broadcasting: foreign investment and foreign capital are prohibited
- A program providing business operator engaging in general programming or a CATV relay broadcasting operator can get foreign investment up to 20% of the total stocks or equity shares of the relevant corporation.
- Program providing business operator engaging in specialized program of news reports shall receive up to 10/100 of the total stocks or equity shares of the relevant corporation.
- CATV broadcasting business operator, program providing business operator, satellite broadcasting business operator or a signal transmission network business operator can

receive not in excess of 49% of the total stocks or equity shares of the relevant corporation.

Also according to the article 14-3<sup>48</sup> Broadcasting Act amended on March 13<sup>th</sup> 2015, FTA partners (a foreign government, a foreign organization or a corporation that foreigners own in excess of 50/100 of the total stocks or equity shares) could own stocks or equity shares unlimitedly of program providing business operators excluding a person engaging in general programming or specialized programming of news reports or specialized programming of selling products. We could see that terrestrial broadcasting market is not opened for foreign investment whereas CATV broadcasting business operator, program providing business operator, satellite broadcasting business operator or a signal transmission network business operator are more open to the foreign investment up to 49% of the total stocks or equity shares of the relevant corporation. Thus, non-terrestrial broadcasting business are gradually opening towards foreign investment.

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<sup>48</sup> **Article 14(3) Broadcasting Act No.13220 March 13, 2015:** A CATV broadcasting business operator, a satellite broadcasting business operator, a program providing business operator (excluding a person engaging in general programming or specialized programming of news reports) or a signal transmission network business operator may not receive an investment or a contribution of property from a person falling under any subparagraph of paragraph (1) in excess of 49/100 of the total stocks or equity shares of the relevant corporation. However, in case of a program providing business operator (excluding a person engaging in general programming or specialized programming of news reports), FTA partners (a government, an organization or a corporation that foreigners own in excess of 50/100 of the total stocks or equity shares), Korea signed bilaterally or multilaterally and Ministry of Science, ICT and future planning notify, shall not be considered as a person falling under subparagraph (3) of paragraph (1) even if they are satisfied the necessary conditions of subparagraph (3) of paragraph (1). <Amended by Act No. 9786, Jul. 31, 2009 ; Act No. 13220, Mar. 13, 2015 >

## **2. The regulation for the quota for foreign program (Article 71 of the Broadcasting Act, Article 57 of the Enforcement Decree of the Broadcasting Act )**

The quota for foreign program is regulated in two ways: different types of business operator (terrestrial broadcasting business operator, CATV broadcasting business operator, program providers etc) and genre (movies, animation and popular music).

Different business operator (Program provider, CATV broadcasting business operator etc) has different quotas for broadcasting foreign programs.

1. Terrestrial broadcasting business operators and terrestrial broadcasting program providers can air foreign programs not between 20% - 40% of the total broadcasting time of the relevant channel for every half year;
2. CATV broadcasting business operators and satellite broadcasting business operators shall broadcast foreign programs between 30%-60% of the total broadcasting time of the relevant channel for every half year;
3. Program providers except for terrestrial broadcasting program providers shall air between 50% - 80% of the total broadcasting time of the relevant channel for every half year.

The quota for broadcasting foreign programs depending on the genre:

1. Movies: 60% - 80% of the total movie broadcasting time of the relevant channel
2. Animations: 50% - 70% of the total animation broadcasting time of the relevant channel.
3. Popular music: 20% - 50% of the total popular music broadcasting time of the

relevant channel.

Regarding the regulation of business operator, terrestrial broadcasting is the most regulated. CATV and satellite takes second place and Program providing business are the most deregulated. This is because terrestrial broadcasting has strong features of public interests compared to other broadcasting businesses.

In terms of genre, popular music is the most regulated followed by animations and movies. Movies are the most deregulated as they are belonged to commercial arena. Main viewers of animations are adolescents and children so public concerns should be taken into consideration. Popular music is strictly regulated as it is related to a country's culture and identity.

### **3. Comparison through case studies**

Korea broadcasting market has similar degree of openness regarding foreign investment in Cable TV and satellite broadcastings. Terrestrial broadcasting, however, does not allow foreign investment and capital. Regarding the terrestrial broadcastings, Korea maintained more protectionist stance compared to France. This is because terrestrial broadcasting puts more emphasis on public interests.

In terms of the quota for domestic program, Korea eased the regulation more than France that follows its domestic broadcasting act as well as 'European convention on transfrontier television'. France has more severe regulation than 'European convention on transfrontier television' since it has other regulations than the quota for domestic programs such as prime time quota. The U.S. does not have

the regulation of the quota for domestically produced programs. The reason why the U.S. could totally deregulate the restriction on quota for domestic program is that they have competitive advantage in the world broadcasting market with its large-scale domestic market, high-quality programs and the absence of cultural barriers.

After the KORUS FTA, the opening of broadcasting market has become the reality. This is not the question of whether to open or not but the question on how to open the market. It would be better that we accept more foreign investment for Satellite and cable TV broadcastings since these broadcastings need huge initial investments. Currently, Cable TV and satellite broadcasting could have foreign investment up to 49% but we could improve their financial structure and obtain investment funding if we open more these non-terrestrial broadcastings to foreign investment.

Regarding the regulation of broadcast programming, we should only deregulate the competitive channels. The reason why the U.S. could deregulate the programming of domestic broadcast programs is that they have competitive advantages in world broadcasting market. Thus, Korea should only deregulate when it has competitive advantage in world broadcasting market. Most countries set between 50% and 60% as the quota for domestic programs. Thus, it is appropriate that we follow global trends with 50% as the quota for domestic programs.

## **V. Conclusion**

Korean broadcasting regulation has been eased through mainly three different regimes. During Chun Doo-hwan regime after democratization, Korean broadcasting market showed a signal to open its broadcasting market by establishing new provisions such as restriction on inflow of foreign capital. Since 2000, Korea eased its broadcasting industry even more amid the wave of ‘globalization’ in Kim Dae-jung regime.

Korea drastically eased restriction on ownership when Lee Myung-bak, proponent of business friendly policy, took power in 2009. When Korea signed the FTA with the U.S, the restriction on foreign investment was dramatically eased that FTA partners (a foreign government, a foreign organization or a corporation that foreigners own in excess of 50/100 of the total stocks or equity shares) could own stocks or equity shares unlimitedly of program providing business operators. That means foreigners could indirectly own shares of non-terrestrial program providing business operators without any limits.

However, the regulation of broadcast programming has not eased greatly through the three different regimes. Despite Lee’s business friendly policy, the regulation of broadcasting domestically produced animations was strict due to the public concerns.

We have seen the broadcasting regulation of France and the U.S; France and the U.S. have striking different stances regarding broadcasting industry. France has maintained protectionist stance regarding its culture whereas the U.S was liberalists that it insisted that culture is not an exception in trade. Compared to the two countries,

Korea has the most regulated policy regarding foreign investment. Regarding broadcast programming, Korea is placed between the U.S. and France.

By looking at regulation policy of both France and the U.S, we could observe that Korea is on the way of opening its broadcasting market but the degree of openness of foreign investment remains more way to go.

With internal political circumstance and external situation, Korea gradually opened its broadcasting industry. Particularly, after KORUS FTA, opening its broadcasting market became the reality. This, however, is because the US maintained liberalist stance that it insisted that broadcasting industry should not be an exception in trade. But most countries maintain protectionist stances so there will be no pressure to open broadcasting market while signing FTAs with other countries. However, the similar impact on Korean broadcasting market might revisit during the Trans-Pacific Partnership (TPP) negotiations since the U.S. is a member of the TPP. But this is not relevant with other trade negotiations such as Korea-China FTA and Regional Comprehensive Economic Partnership (RCEP)<sup>49</sup>. Thus, we have to see Korean broadcasting market not from trade approach perspective but from purely broadcasting policy perspective as the broadcasting industry is a part of culture that cannot be easily considered from commercial perspective.

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<sup>49</sup> RCEP is a multilateral trade agreement among 16 countries including ASEAN countries, Korea, China, Japan, India, Australia and New Zealand.

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## 國文抄錄

한국 방송법의 변화: 소유규제, 외국 자본 규제 그리고 편성규제를 중심으로

盧炫陳

WTO가 출범함에 따라 통상의 범위가 상품에서 서비스로 확대되었다. 서비스 부문에서도 특히 방송산업은 단순 산업이 아니라 한 나라 문화의 일부분이라고 볼 수 있으므로 방송산업 개방과 관련하여 찬반 논란이 거셌다.

한국은 프랑스, 캐나다와 함께 보호주의적 입장을 취했고 일본과 미국은 자유주의 입장을 고수해왔다. 하지만 한국은 이런 보호주의적 입장을 취해왔음에도 불구하고 1980년부터 점진적으로 방송산업을 개방해왔다.

이 논문은 한국이 각기 다른 정권을 거치며 어떻게 방송산업 규제를 완화했는지 연구해보고자 한다. 우리는 방송법 관련하여 3가지 규제 (소유 규제, 외국 자본 규제 그리고 편성규제)를 연구해보고자 한다. 또한 본 연구는 미국과 프랑스 등 다른 나라의 방송산업 규제를 살펴보면서 한국 방송산업 개방 정도를 알아보고자 한다.

한국 방송 규제는 특히 전두환, 김대중 그리고 이명박 정권을 거치며 완화되었다. 전두환 정권 기간 중 민주화가 실현됨에 따라

방송법이 개정되면서 외국 자본 규제와 같은 개방과 관련 있는 조항이 신설되었다. 김대중 정권 기간인 2000년도부터 ‘세계화’의 물결 속에서 앞서 언급한 3부문 방송산업 규제 완화가 가속화되었다. 특히 친 시장주의 입장을 취하고 있는 이명박 정부가 들어서면서 소유 규제가 크게 완화되었으며 한미 FTA 이후 외국 자본에 대한 규제 역시 완화되었다.

미국과 프랑스 방송 규제와 비교해볼 때 한국은 방송산업이 개방되고 있다고 볼 수 있다. 한국은 편성규제가 엄격하지만 외국 자본에 관한 규제는 점진적으로 완화되었다. 특히나 한미 FTA 이후, 외국인이 방송채널사용사업의 주식과 지분을 제한 없이 소유할 수 있게 되었다.

한국 방송 산업이 한미 FTA 이후 외국 자본 규제가 많이 완화 되었지만 이것은 한국이 체결한 많은 FTA 중에 한미 FTA 만 해당된다. 다른 나라들과 달리 미국은 자유주의 입장을 표명해온 바, 방송산업 개방과 관련된 문제는 다른 FTA 협상에서 다시 거론될 확률은 낮다. 따라서 우리는 한국 방송 시장을 통상 차원 관점으로 바라보기보다는 오로지 방송 규제 관점으로 봐야 할 것이다. 방송산업은 한 나라 문화의 일부분이기 때문에 다른 산업처럼 상업적인 관점으로만 볼 수 없기 때문이다.

주제어 : 보호주의적 입장, 규제 완화, 한국 방송 산업, 주요 사건, 개방의 정도

학번 : 2013-22062