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Master's Thesis

**Impact of Regulations on Korean Broadcasting
Market and Implications on the Future FTA**

: Case Study of US, UK, and Japan

규제가 한국 방송시장에 미치는 영향과

미래 FTA에 대한 시사점

: 미국, 영국과 일본의 사례 연구를 통해 본 한국의 방송시장

2018년 2월

서울대학교 국제대학원

국제협력전공

차해리

**Impact of Regulations on Korean Broadcasting Market and
Implications on the Future FTA
: Case Study of US, UK, and Japan**

Dukgeun Ahn Professor

Submitting a Master's Thesis of International Cooperation

February 2018

Graduate School of International Studies

International Cooperation

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국문초록

규제가 한국 방송시장에 미치는 영향과 미래 FTA에 대한 시사점

: 미국, 영국과 일본의 사례 연구를 통해 본 한국의 방송시장

한국의 방송시장은 어느 때보다도 호황을 누리고 있다. 2015년도의 자료를 보면, 방송 콘텐츠의 수출 규모는 미국과 영국에 이어 한국이 세 번째이고, 방송 강대국이었던 일본이 한국에 뒤를 이어 네 번째를 차지하고 있다. 불과 몇 년 전만 해도 해외 자본으로부터 국내 시장을 지키기 위해 다양한 규제 제도를 운영하던 한국이, 이제는 명실공히 방송 수출국의 지위를 얻게 된 것이다.

그러나 외국인의 방송시장 진입을 막는 오래된 규제제도는 그대로 남아있다. 대표적인 규제는 두 가지이다. 첫째는, 해외 자본이 국내 시장을 잠식하지 않도록 외국인의 국내사업 소유를 막는 “소유 규제”이다. 방송 사업자와 채널에 따라 차이가 있지만, 지상파 방송에 대해서는 외국인이 조금의 지분도 가질 수 없다. 둘째는, 국내에서 제작된 콘텐츠가 전체 방송에서 일정 비율 이상 차지하도록 한 “편성 규제”이다. 국내 제작물이 해외에 비해 경쟁력이 낮아 자생력이 없을 경우를 대비한 방어조치이다. 한국은 이 두 규제 모두 순차적으로 완화시켜왔다. 하지만 현재 채택한 규제의 수준이 현재와 미래의 상황에 적합한지에 대해서는 판단해볼 필요성이 있다.

연구 방법으로 해외 사례를 분석하였다. 미국, 영국, 일본의 시장의 현황을 파악하고, 그들이 가지고 있는 두 가지 규제의 수준을 확인하였다. 그 결과, 많은 부분 시장을 자유화시킨 세 나라에 비해서 한국의 규제 수준이 높음을 확인할 수 있었다. 한국 방송 시장이 비교국가들과 비슷한 경쟁력을 가지고 있다고 전제하였을 때, 미래의 FTA 협상을 위해서 규제를 낮출 필요성이 있는지도 이 연구를 통해 확인하고자 했다.

핵심어: 방송, 규제, 소유규제, 편성규제, FTA

학번: 2014-24212

Abstract

Impact of Regulations on Korean Broadcasting Market and Implication on the Future FTA : A Case Study on US, UK and Japan

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Korea broadcasting is now an emerging market, lucrative in global business. Korea is ranked world number three as the exporter of broadcasting contents after United States and United Kingdom, followed by Japan, based on year 2015 according to the study by Japanese Ministry. Far from the past where government had to implement various foreign quotas to protect the domestic business, now Korea has attained the sustainable status to act as an aggressive exporter in this field.

However, the vestige of past regulations to control influx of foreign capital still remains now. There are mainly two regulations being applied to foreign business entities. “Ownership Cap for foreigner” and “Programming Quota for domestic content”. Firstly, foreigners or any entities that widely defined as foreign can’t own shares of broadcasting business property in excess of certain ratio from the total amount. This is to protect the domestic business from dominance of foreign capital. Secondly, from the total programming hours of domestic broadcasting system, certain ratio of programming hours must be allocated to the domestically-produced contents. This is also to protect the domestic market so that it achieve proper competitiveness before it is pushed out of the business. Korean government has made effort to gradually alleviate the regulation for recent 20 years. But there still lies the need to find out whether the current regulations are posed at appropriate level compared to the global standard.

Therefore this paper examines the regulations of three other countries which are United States, United Kingdom, and then Japan. Even though Korea has lifted many regulations so far, it is

noticeable that neighboring countries has clearly lower guard to their domestic market. Also this paper concludes with implication for Korea regarding the future FTA.

Keywords: Broadcasting, Regulation, Ownership Cap of Foreigner, Programming Quota for Domestic Content, FTA

Student ID: 2014-24212

LIST OF TERMS

In this paper, terms are used under the definition amended by Act No.13821, Jan 26, 2016.

1. The Term “Broadcasting” means, planning, programming or producing broadcast programs, and transmitting them to the general public (including the recipients under individual contracts; hereinafter referred to as "viewers") through telecommunication facilities, referring to any of the following items: television, radio, data, digital multimedia.

2. The term "broadcasting business" means a business of providing the following broadcasts:

(a) Terrestrial broadcasting business (지상파방송사업): A business of managing and operating wireless stations on the ground aimed for broadcasting, and of providing broadcasts by using them;

(b) CATV broadcasting business (종합유선방송사업): A business of managing and operating CATV broadcasting stations (referring to the cable broadcasting station facilities and the employees thereof in whole for providing multi-channel broadcasting; hereinafter the same shall apply), and of providing broadcasts by using the transmission and line facilities;

(c) Satellite broadcasting business (위성방송사업): A business managing and operating wireless stations by owning or leasing the wireless facilities of artificial satellites, and of providing broadcasts by using them;

(d) Program-providing business (방송채널사용사업): A business of using a specific channel by entering into a contract to exclusively use the whole or some of airing hours of the specific channel with a terrestrial broadcasting business operator, a CATV broadcasting business operator, or a satellite broadcasting business operator;

(e) CATV relay broadcasting business(중계유선방송사업)": It means a business of providing CATV relay broadcasts: receiving and relay-transmitting (including the audio and video recordings which do not alter any broadcast programs; hereinafter the same shall apply) a terrestrial broadcast (referring to a broadcast done using the wireless stations on the ground aimed for broadcasting), etc.

I . INTRODUCTION

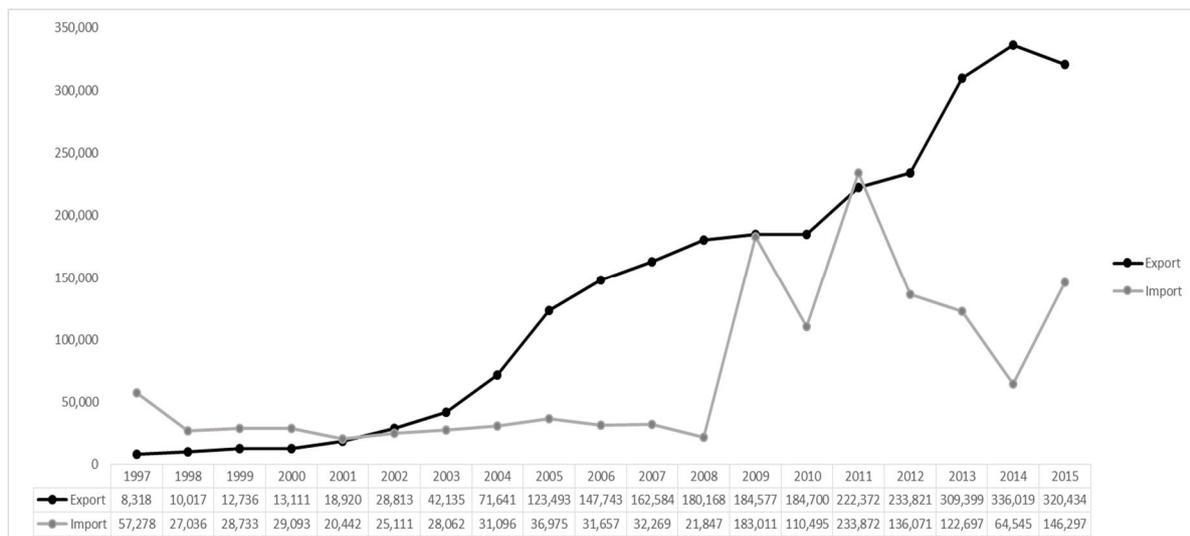
1. Background

1.1 Korean broadcasting business, ever competitive

Korea is the world’s third largest exporter of broadcasting content after the United States and United Kingdom. Japanese Ministry of international affairs and communications released a data to show that the U.S exported the largest amount in 2015, selling 21.3 billion U.S dollars of broadcasting contents. U.K recorded the second with 3.3 billion dollars, followed by South Korea exporting 320 million dollars, while Japan was in fourth with 238 million dollars. These three countries other than Korea are chosen to be the subject of this study, due to their competitive business status in global market of broadcasting industry.

Also referring to the following data provided with the trade volume of broadcasting contents, exports has surpassed the imports of the foreign contents as of 2002, and dramatically and constantly increased. There are several years when imports also surged such as in year 2008, 2011, and 2015. However while import trend is yet unstable and unpredictable, exports have gradually increased and perched on the stable status with great volume. Increase in export can be translated that it is not a coincident or a temporary boom, rather a gradual and steady trend.

Figure. Trade Export and Import of Korean broadcasting contents from 1997 to 2015



The Ministry of Culture, Sport and Tourism, 2017. ¹

This is due to the new “Hallyu”(or “Hanryu”) trend which has become an influential global phenomenon since 21st century. This Korean wave was sparked with Korean drama then quickly transferred to music, and many more cultural factors. American political scientist, Joseph Nye saw Korean Wave as “the growing popularity of all things Korean from fashion and film to music and cuisine.” Exports of TV program have increased ever since, and not only the completed versions of TV program are well sold in foreign countries, but also the formats of program like “Running man” and “Mu-han-do-jeon” were sold. Here are the programs of which formats were exported to Chinese broadcasting stations.

Chart. Korean TV programs sold abroad

Station	Title of program	Consumer	Year
KBS	Immortal song (불후의 명곡)	Dragon TV	2012. 11.
	Inight 2days (1박2일)	Sichuan Satellite TV	2013. 6.
	Gag Concert (개그콘서트)	Dragon Satellite TV	2014. 9.
MBC	I'm a singer (나는 가수다)	Hunan Satellite TV	2012. 8.
	Where are you going, dad (아빠 어디가)	Hunan Satellite TV	2013. 4.
	Real Men (진짜 사나이)	Hunan Satellite TV	2015. 1.
SBS	K-pop Star (K팝 스타)	Shandong Satellite TV	2013. 5.
	Running Men (런닝맨)	Zhejiang Satellite TV	2014. 10.

NEWSIS (2015. 6. 23.)

1.2 FTA of Korea, in amid the global trend

Currently, Korea has concluded 15 FTAs with 52 countries as of 2017. October. Starting with Chile in 2004, Singapore, EFTA, ASEAN, India, EU, Peru, US, Turkey, Australia, Canada, China, New-Zealand, Vietnam, Colombia made contracted FTA with Korea. It includes the world’s largest economic bloc, EU, as well as Korea’s largest trading partner which is China.

The reason why, FTA and regional trade agreement prevails lies in the lack of WTO effect in

¹ 2016방송산업실태조사보고서, 2016콘텐츠산업통계

liberalizing the trade. According to Beginda Pakpahan, the political and economic analyst at the University of Indonesia, “The WTO Doha round negotiations have deadlocked for more than a decade. The developed and developing countries failed to reach a collective position on provisions regarding trade liberalization which needed to be included in the future multi-trading system.” Also, he points out “the economic recession or growth stagnation the developed countries faced urged the trade protectionism in order to save their industries and minimize potential social unrest.”

As the consequence, employment of the bilateral or regional agreements which involve lesser entities were timely and more effective than the former version of contracts.

In amid the global trend, there are many FTAs under negotiation, and FTAs that are to be readjusted or renewed. Korea-China-Japan, RCEP, 6 countries in Central America, Ecuador, Israel, ASEAN-Revision, Chile-Revision, in sum 8 FTAs with 24 countries are the FTAs under negotiation. And US, one of the biggest trading partner has claimed to readjust the FTA agreement.

Korea is in situation where more precise and accurate positioning on FTA is ever needed. Broadcasting industry was not considered most disputable in the negotiation due to the small volume of trade relative to the other main sectors such as agriculture and manufacturing. In the initial stage of FTA, priorities lied in different values. However, broadcasting field is not to be overlooked now and if there are any measures that harm the growing momentum of broadcasting industry, they should be clearly lifted. Also, if there are any regulations that are ineffective but can be played as cards in the FTA negotiation, it should well be utilized.

2. Research Question and purpose of the study

This paper observes the current situation of broadcasting market in Korea, especially in regards to the existing regulations against influx of foreign capital. There are mainly two types of regulations aiming to protect the domestic business. “Ownership Cap of foreigners”, and “Programming quota for domestic contents”. These are the two measures that are deemed most commonly seen in abroad.

The paper analyzes whether Korean government is also imposing these regulations to the domestic

business to the appropriate level.

In order to do so, case study of the foreign countries, US, UK, and Japan, will be conducted. They are the three countries that are globally ranked from number one to number four with Korea included in the third ranking, in the export volumes of broadcasting contents in 2015 (which is the most updated statistic so far as of 2017 December). Also, according to the survey conducted in 2001 by Korean Broadcasting Committee, they were coincidentally the top three of the exporters to Korean terrestrial broadcasting business in animation contents. This also make them the analytically important nations, because being the biggest exporters to domestic market imply the further potential dominance they have in Korean market in the possible situation of market opening.

And this paper would further make attempts to provide implications on future FTA. The measures might be helpful in protecting the unprepared market. Or, it can be harmful in developing the business environment of the domestic broadcasting market. With these assessments, the paper hopes to answer the question of “what to do in future negotiation of FTA between Korea and others”.

II . BROADCASTING REGULATIONS ON FOREIGNER

1. Ownership Cap of Foreigner

The foreign ownership cap is settled so that foreign capital can't invest on Korean broadcasting business property above certain level. Especially, in Korea, No terrestrial broadcasting business operator or community radio broadcasting business operator shall receive an investment or contribution of property from any foreign capital. However, depending on the TV channels, receiving foreign contribution is allowed to some extent.

2. Programming Quota for domestic content

The Programming Quota for domestic contents indicates the rule that channels have to stick to during the programming. Domestically-produced contents should be allocated to the programming above certain ratio. And as the matter of fact, foreign contents are programmed with limit, due to the priority the domestic contents has.

These two regulations are deemed necessary for the rights and interests of broadcasting viewers to be secured. Also they plays roles to form the democratic public opinion and to improve the national culture as the whole. Moreover, through the process of guaranteeing the freedom of broadcasting, they urge the development of broadcasting industry and strengthen public welfare.

However, the newly lighted question is whether these regulations are indeed suitable under current circumstance of which Korean broadcasting business is gaining growing momentum in global market. Though protectionism is needed when necessary, it is time to study and calculate the benefit and loss of this regulations. There can exist some reasons for readjustment if the regulations are deemed too strict compared to other countries, or on the other hand, Korean broadcasting business might be loosening grip too much with overconfidence.

III. ANALYSIS OF KOREAN BROADCASTING MARKET

1. Broadcasting market

Chart. Overview of Korean Broadcasting market

KOREA	2016
Population	49.55 millions
Size	100 thousand sq.km
GDP	1411.25 billion US dollars
Regulation organization	Korea Communication Commission
Terrestrial broadcasting	KBS, MBC, SBS
CATV broadcasting	CJ hello vision, t-broad, C&M
Satellite broadcasting	KT skylife

Though there exists slight fluctuation in the numbers, Korea broadcasting export has been gradually and rather extraordinarily increased over time. Broadcasting business can be mainly categorized into three.

1.1. Terrestrial broadcasting business

Three largest national television network is KBS, MBC, and SBS. The broadcasting stations mainly are located on Yeouido, Sangam-dong and Mok-dong. Not to mention they are free-to-air channels, but also provide the official digital television services.

They can be divided again into public broadcasting channels and commercial broadcasting channels. Public broadcasting channel includes, KBS (Korean Broadcasting System) and EBS (Educational Broadcasting System). Established in 1961, KBS is a public corporation funded by the government and license fee. Abiding by the constitution, KBS president is recommended by board of directors of KBS, then nominated by the president of republic of Korea. And the second one, KBS 2 was further launched in 1980. Also EBS was established in 1990 with the purpose of delivering educational contents which is formerly known as KBS 3.

Meanwhile, commercial broadcasting channels include MBC (Munhwa Broadcasting system) launched in 1969, and SBS (Seoul Broadcasting System) in 1991.

1.2. CATV broadcasting business.

In 1995, CATV broadcasting business was launched to provide more diverse channels to the viewers. This business contains, system operator (SO) and program providers (PP) and Network Operator (NO). Most notable SO are CJ hello vision, t-broad, C&M, while PP is divided again into three. Composite channels, engaging in general programming includes JTBC, TV-Chosun, MBN, Channel A. News specialized channels includes YTN and Yeon-hap news TV. And the others like hundreds fall in this categories such as sports channels and cooking channels etc. NO contains U-plus, SK broadband, and KT.

1.3. Satellite broadcasting business

In 2000, the Korean government decided to create an official satellite television provider. Subsidiary of KT Corporation, KT Skylife was founded then. As of year 2008, 200 channels were provided in this platform, and in 2011, number of subscribers reached 3 million.

2. Regulations

2.1. Ownership Cap of foreigner

2.1.1. Current rule

According to the recent law amended on 15th September, 2017, no “Terrestrial Broadcasting” business operator or community radio broadcasting business operator shall receive an investment or a contribution of property from any of the foreign entities (Hereby, includes a foreign government or organization, a foreigner, a corporation, stock or equity shares which are owned by a foreign government or organization or a foreigner in excess of the ratio prescribed by presidential decree which is currently 50%). Though there are narrow exceptions where property contribution is operated for facilitation education, athletics, religion, charity and other international friendship under approval from the Korea communications commission.

And a “Program Provider” engaging in general programming (composite channel) or a “CATV relay broadcasting” business operator shall not receive an investment or contribution of property from any of the foreign entities in excess of 20/100 of the total stocks or equity shares of the relevant corporation.

However, a “Program Provider” engaging in specialized programming of news reports is applied stricter rules of 10/100 of the total stocks or equity shares of the relevant corporation.

A “CATV broadcasting” business operator, “Satellite broadcasting” business operator and “Program Provider” (excluding a person engaging in general programming or specialized programming of news reports) or a “Signal Transmission Network” business operator shall not receive an investment or contribution of property in excess of 49/100. The chart below shows the summary of the regulations.

Chart. Korean Ownership cap of foreigner in 2017

Channel	Ownership cap (2017)
Terrestrial broadcasting	0%
CATV broadcasting	49%
Satellite broadcasting	49%
CATV relay broadcasting	20%
Program Provider (PP)	General Programming (composite channel)
	News reports (news channel)
	Others
Signal transmission network	49%

2.1.2. Change of the rule

The ownership cap of the regulation has been changed over times.

Before the amendment in 2017, different ownership cap has been applied. Year 2008, 2004, 2000 and 1990, drastic change has been made.

Back in 1990, January 1st, none of the broadcasting business could mobilize foreign capital regardless of the channel or type of business. Only exception was when property contribution was received from the foreign organization which aims to operate business for education, athletics, religion, and charity and international friendship under approval from the minister of Bureau of Public Information. It was when the first legitimate rules were set.

However, after 10 years with the dynamism coming from inside and out in cultural sector along with the various FTA experience and development of domestic broadcasting market, the rules were to be readjusted. As of May 13th in 2000, the amendment was made.

“CATV broadcasting”, “Satellite broadcasting”, “Program Provider” business other than composite channel and news channel operator were able to receive supplement from foreign capital in extent to 33/100 of total stocks or equity shares of the relevant corporation. Indeed, the rule stipulates that the businesses are “banned” to receive contributions exceeding the 33/100 ratio, but it should be translated that foreign capitals were “allowed” to melt into Korean market up to 33/100 level.

Also, “Signal transmission network” were freed to accept foreign asset up to 49/100 of total stocks and equity shares.

However, the “Terrestrial broadcasting” business, “Composite channel” business, and “News channel” business, and “CATV relay broadcasting” business operator had regulations unchanged. They were regarded as the main broadcasting business that had greater impact in society and bigger responsibility for public affairs which shouldn’t be controlled by foreign entities.

On March 12th, 2004, another amendment was made while most of the regulations maintained.

“Foreign entities” that have to abide by the regulation were more specifically defined.

- ① Foreign government and organization
- ② Foreigner
- ③ A corporation, stock or equity shares which are owned by a foreign government or organization or a foreigner in excess of the ratio prescribed by presidential decree

On January 1st, 2009, stipulations were more diversified according to the type of the businesses in detail. “Program Provider” from “CATV business” (excluding the composite channel and new channel) had regulations relieved from 33% to 49%. The rest of the channels remained to be applied with the same regulation.

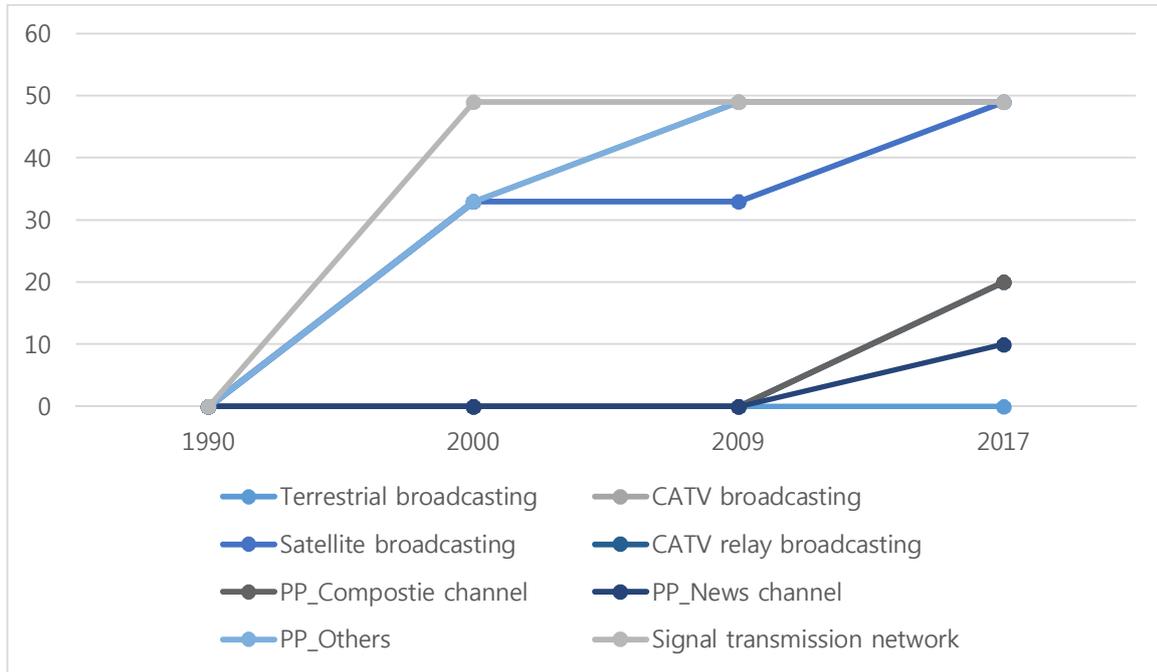
Lastly, in 2017 Satellite broadcasting business was lifted with the measure from 33% to 49%, and CATV relay broadcasting business was finally excluded from receiving non-aid from foreign. It could now receive up to 20% of foreign investment from total share. Also Composite channel had the same 20% investment allowed, with News channel from PP receiving 10%.

The following chart shows how the regulation has changed over times.

Chart. Change of Ownership cap by year in Korea

Channel		1990	2000	2009	2017
Terrestrial broadcasting		0	0	0	0
CATV broadcasting		0	33	49	49
Satellite broadcasting		0	33	33	49
CATV relay broadcasting		0	0	0	20
Program Provider (PP)	Composite channel	0	0	0	20
	News channel	0	0	0	10
	Others	0	33	49	49
Signal transmission network		0	49	49	49

Figure. Change of Ownership cap by year



This graph indicates the changing foreign ownership cap. In every sector, graph stays parallel which means status remained unchanged, or go upward in any time period, meaning that regulation was relieved.

2.2. Programming Quota for domestic content

2.2.1. Current rule

Pursuant to Enforcement Decree of the Broadcasting Act, amended in 2017, September 5th, there are in total three ways to pursue this regulation.

Firstly, a broadcasting business entity shall broadcast domestically-produced broadcast programs in excess of the ratio publicly announced by the Korea Communications Commission, within the following limits:

“Terrestrial broadcasting” business entities and terrestrial broadcasting programming providers: From 60 up to 80 percent of the total broadcasting hours of the relevant channel for every half year;

“CATV broadcasting” business entities and “Satellite broadcasting” business entities: From 40 up to 70 percent of the total broadcasting hours of the relevant channel for every half year;

“Programming providers”, other than terrestrial broadcasting programming providers: From 20 up to 50 percent of the total half-year broadcasting hours of the relevant channel for every half year.

Chart. Korean Programming quota for domestic contents in 2017

Channel		Programming Quota (2017)
Terrestrial broadcasting		60 - 80
CATV broadcasting		40 - 70
Satellite broadcasting		40 - 70
Program Provider (PP)	General Programming (composite channel)	20 - 50
	News reports (news channel)	20 - 50
	Others	20 - 50

Secondly, there are requirements for quota based on genre.

Every broadcasting business entity shall program domestically-produced movies, animations and popular music among each genre in excess of the ratio publicly announced by the Korea Communications Commission within the following limits. (Exception allowed for religion or education-specialized broadcasting entities.)

Movies: From 20 up to 40 percent of the total movie broadcasting hours of the relevant channel;

Animations: From 30 up to 50 percent of the total animation broadcasting hours of the relevant channel;

Popular music: From 50 up to 80 percent the total popular music broadcasting hours of the relevant channel.

Chart. Programming quota for domestic content by genre in 2017

Genre	Programming quota (2017)
Movie	20 - 40
Animation	30 - 50
Popular music	50 - 80

Thirdly, a broadcasting business entity shall program movies, animations and popular music produced by a single certain country, not more than the 80% ratio, from the total broadcasting hours of each genre. This is conditioned to each relevant channel for every half year. Also this rule is under the Korea Communications Commission. Cultural diversity is what this act tries to achieve from this article.

2.2.2. Change of the rule

Firstly in 1990, there was no such thing as programming quota for domestic content. The first regulation was established in 2000, March 13th. A broadcasting business entity were to broadcast domestically-produced broadcast programs in excess of the ratio publicly announced by the Korea Communications Commission, within the following limits.

“Terrestrial broadcasting” business entities were mandated to provide domestically-produced programs over 80% from the total share. “CATV broadcasting” business entities were to fulfill the 50% requirement. No regulations were stipulated toward other channels.

Chart. Korean Programming Quota for domestic content by channel in 2000

Channel		Programming Quota (2000)
Terrestrial broadcasting		Over 80 (every month)
CATV broadcasting		Over 50 (every month)
Satellite broadcasting		-
Program Provider (PP)	General Programming (composite channel)	-
	News reports (news channel)	-
	Others	-

Also new requirements appeared based on genre. The rule was different depending on whether the channel was terrestrial broadcasting business or not. For the terrestrial broadcasting sector, domestically-produced movies, animations and popular music had to be programmed under the following quota. The case for non-terrestrial broadcasting sector is bracketed.

Movies: From 20 up to 40 (30 - 50) percent from the total monthly movie share.

Animations: From 30 up to 50 (40 - 60) percent of the total monthly animation share

Popular music: From 50 up to 70 (50 - 80) percent the total monthly popular music share

Chart. Korean Programming Quota for domestic content by genre in 2000

Terrestrial broadcasting Genre (non-terrestrial)	Programming Quota (2000)
Movie	20-40 (30 - 50)
Animation	30-50 (40 - 60)
Popular music	50-70 (50 - 80)

Moreover, a broadcasting business entity had to program movies, animations and popular music made by a certain country, not more than the 60% ratio, from the total broadcasting hours of each genre. This is conditioned to each relevant channel for every half year. Also this rule is under the Korea Communications Commission.

It was in September 17th, 2004, when the regulation mostly became identical to the current legislation. The programming quota was before than regulated by monthly unit. However after 2004, regulation unit became quarterly (3 month). Giving more room in the quota can be interpreted as allowing greater flexibility and authority in programming.

Also the Genre quota which was originally divided into two category as Terrestrial and non-terrestrial broadcasting business was integrated into one criteria. Slight change was witnessed in the number. Movie and Animation quota were integrated into the guideline for terrestrial version, and popular music followed the non-terrestrial version, all of which were more lenient guideline comparing the two different version.

What differed with the current legislation is the limitation for one foreign country's programming. A broadcasting business entity shall program movies, animations and popular music

produced by a certain country, not more than the 60% ratio, from the total broadcasting hours of each genre in 2004. For this last different regulation, the quota relieved to 80% as of 2012. 7.18.

Ever since 2014, up until 2017, there was no amendment in the specific number to the quota nor additional regulation.

IV. ANALYSIS OF UNITED STATES BROADCASTING MARKET

1. Broadcasting market

Chart. Overview of United States Broadcasting market

United States	(2016)
Population	309.35 million
Size	9,831.5 thousand sq.km
GDP	14,964.37 billion US dollar
Regulation organization	Federal Communication Commission (FCC)
Terrestrial broadcasting	ABC, CBS, NBC
CATV	Comcast, DirecTV, Charter, Fox, ESPN, USA
Satellite	DirecTV, Claro, Dish Network

ABC, CBS, NBC are the traditionally largest television networks in United States and are so called “Big Three”. ABC was founded in 1943 in New York which and is now a flagship property of Disney-ABC Television Group. CBS was founded in year 1927 and is the flagship property of CBS Corporation. Its head quarter building is also located in New York City. NBC was founded in 1926, the earliest among the three, and it is a flagship property of NBC Universal, a subsidiary of Comcast. Also it shares headquarter neighborhood with the other big threes.

Cable television was first introduced in year 1948, when the big three terrestrial networks were prevailing. The service was provided mostly to the middle class residents in the suburbs and less to the urban and rural residents with low income. US total subscription was in peak in year 2000, with 68.5 million consumers, though it turned into a slow downfall until 2013 with 54.4 million subscribers left. Coincidentally, some telephone service business have dived into the competition offering television service, attracting 11.3 million subscribers in the same year 2013. ²

The first satellite was built in 1975 by RCA, under the name Satcom1 for the use of television networks of “big three” national corporations. Later on, DirecTV (stylized as DIRECTV or

² The survey is provided by Federal Communications Commission in US.

simply DTV) launched its satellite service in 1994 transmitting the digital satellite TV and audio to US, and Latin America etc. It is a subsidiary of AT&T. Moreover, Dish Network and Claro are competitively attracting the consumer in the market.

2. Regulations

The Federal Communications Commission (FCC) is the regulatory organization in United States. The FCC guards the all activities of communications by radio, TV, wire, cable, satellite in United States. This agency implements and enforces communication laws and regulations, while counter measured by the US Congress. ³

US regulates the ownership and investment of the foreigners, but excludes the complicated regulation on the programming. This plays great role as the leverage in US-EU negotiation talk on the broadcast programming regulation. US can raise voice to EU pushing them to reduce the programming regulations with the national quota, since they themselves keep no regulation on this sector. Nevertheless, US market is barely embedded with the foreign programs for the competitiveness of the domestically produced programs.⁴

³ Refer to the FCC official website.

<https://www.fcc.gov/about-fcc/what-we-do>

⁴ 정보통신정책연구원. (2016). 방송통신 분야 국내외 동향 분석 및 '17년 시장 전망 연구, 방통융합정책연구 KCC-2016-01, 44p.

2.1. Ownership Cap of foreigners

2.1.1. Current rule

Chart. US Ownership Cap of foreigners in 2017

Channel		Ownership Cap (2017)
Terrestrial broadcasting		20%-100%
CATV broadcasting		- (As of 1934)
Satellite broadcasting		
CATV relay broadcasting		
Program Provider	Composite channel	
	news channel	
	Others	
Signal transmission network		

Communication Act of 1934, hold no foreign ownership restrictions regarding all the broadcasting business including CATV broadcasting and payed channels with only small exception of terrestrial broadcasting business and aeronautical en route or aeronautical fixed radio station.

Communications Act 47 code 310 stipulates on License ownership restriction;

“No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by any alien or the representative of any alien, and any corporation of which more than one-fifth (20%) of the capital stock is owned of record or voted by aliens or their representative thereof or by any corporation organized under the laws of a foreign country. Also it is the same to any corporation directly or indirectly controlled by any other corporation of which more than one-fourth (25%) of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”⁵

However, over the past several years, the FCC has positively reviewed measure to alleviate foreign ownership restrictions on its broadcasting sector in order to improve its service competitiveness and profitability. On April 20th, 2017, the full adoption of new regulatory guidelines provided an important turning point in the US terrestrial broadcasters market opening by alleviating

⁵ Communication Act 47 code 310

the strict criteria for reviewing foreign capital inflows in broadcasting. In some cases, permission was granted to increase the foreign shareholding limit of terrestrial radio stations from 25% to 100%.

2.1.2. Change of the rule

In 1934, The Communication Act did not place any special restrictions on foreign investors' investment in cable-TV business, including multi-channel pay-TV. However, in accordance with the Article 310 of the Communications Act, the broadcasting, telecommunications carrier, aeronautical mobile station, or radio station have been limited with the foreign ownership cap. More specifically, the broadcasting has been clarified to be the “terrestrial broadcasting business” only. Under the Act, the Federal Communications Commission (FCC) achieved the authority to issue licenses for wireless communications and to regulate broadcasting businesses.

First, the Communications Act stipulates that a foreigner who owns more than 20% of shares or exercises voting rights is not able to obtain a broadcasting station license. Subsequently, it does not permit a company to directly or indirectly control a company owned by a foreigner in excess of 25% of the shares, if the FCC determines that the business does not comply with the public interest. The FCC has the authority to investigate the transfer of licenses, and it is a principle that public interest is decided by collecting opinions of the Ministry of Justice and the Ministry of Defense. As a result, there was early discretion to allow the FCC to review and authorize the transfer of broadcasting to companies with 25% or more stakes in foreigners under the Communications Act. (However, there was no precedent in the broadcasting sector until 2017, when foreigners exercised their discretion to acquire a stake of more than 25%)⁶

In 2012, Coalition for Broadcasting Investment (CBI) urged FCC to clarify the criteria to allow the investment in excess of 25%. FCC assessment standards were vague and unclear. Also, National Association of Broadcaster (NAB) pointed out the fact that internet broadcasting/ SNS

⁶ Communications Act of 1934
<https://transition.fcc.gov/Reports/1934new.pdf>

businesses such as Netflix, Apple, Google, Twitter have already been competitive in the media market, influential enough to propagate any national values and norms. This makes the logic of FCC weak which consider terrestrial broadcasting business the only and main instrument of communication and that should be controlled domestically in order to guard the national security against propagative threat in possible national emergency. Therefore, it was persuasive to say that maintaining the exceptional regulations on terrestrial broadcasting business only is unfair in the competitive media market.⁷

In 2013, November, partially responding to the previous arguments, the FCC issued a declaratory ruling that acknowledge its misunderstanding on the foreign policies regarding ownership of broadcasting business. It made clear that “even if alien ownership exceeds 25% of the holding company of a licensee, it may in fact be permissible”. However, FCC regarded that propagative threat to national security via media is still the relevant concern that needs to be confirmed. Therefore, case-by-case investigation to approve that it does not pose any threat to national public interest was decided to be adopted by FCC. Though the remaining shortage is that the criteria for the approval is yet unclear.⁸

In 2016, new policies to assess and compute the suitable level of foreign ownership to be approved to each broadcasting business was applied. Also FCC adopted many more rules to open the broadcasting market to the non-US investment in the same year.

There existed one more good reason for the FCC to relieve regulation on foreign ownership cap. FCC had the same statutory standard applied to both the “common carrier/ wireless” (like Sprint and T-Mobile) and “broadcasting” sector, but in reality had different effect. For common carrier and wireless business, foreign ownership was authorized to full potential while in broadcast it was not. These disparate treatment between the two business sectors urged the FCC to adopt new rules so that

⁷ 정은진, 미국 방송분야 외국인 투자에 대한 FCC의 규제완화

⁸ Broadcasting Clarification order, (2013). 28 FCC Rcd 16244, (2013).

it can narrow the gap. After the renewal of stipulation, when evaluating the foreign entities the appropriate level of investment above 25%, FCC took parallel position of treatment, only with some broadcast-specific distinctions. Also FCC eliminated the outdated measure to magnify the percentage of foreign ownership level with publicly traded stock.⁹

The new rules allow foreign entities to increase the level of ownership once approved by the FCC without an additional approval. The level of ownership differs according to whether it is a “non-control” position or a “controlling” position. If it is the former case, one can increase the foreign ownership cap up to 49.99% without further consent, while if it is latter case, then one can increase up to 100%. Also the restriction to approve only “one” broadcast station has changed too. Once approved for one, then acquiring other stations without additional speculation was allowed. Moreover, FCC lowered the regulation on the companies that are publicly traded with the exercise of due diligence. Though the 25% of foreign ownership level should be complied, if the ownership exceeded the standard of 25% level due to the circumstances beyond control and unforeseeable during the process of company trade, it was retroactively permitted.¹⁰

Finally, in February of 2017, the FCC Media Office announced two judgments on the investment of private foreign investors' radio stations. On 23th February, the FCC released its first decision to approve 100% foreign ownership of US broadcasting radio stations which are licenses of 7 AMs, 8 FMs, 13 FM translators and 1 TV translator in Alaska, Texarkana, and Arkansas and Texas. The broadcasting was approved to the Australian couple. The other case is that FCC approving a Cayman Island's investment of Pandora up to 49%. These are significant because it is the first judging example to demonstrate the effectiveness of the system at the same time as introducing a new legal system.¹¹

⁹ Cooley Alert. (2016). FCC Approves Rules that loosen limits on foreign ownership of broadcast companies. <https://www.cooley.com/news/insight/2016/2016-09-29-fcc-approves-rules-that-loosen-limits-on-foreign-ownership-of-broadcast-companies>

¹⁰ David Oxenford. (2016). FCC updates foreign ownership compliance policies for broadcast companies. <https://www.broadcastlawblog.com/2016/10/articles/fcc-updates-foreign-ownership-compliance-policies-for-broadcast-companies/>

¹¹ David Oxenford. (2017). FCC Approves for the first time 100% foreign ownership of US broadcasting stations.

2.2. Programming Quota for domestic contents

The United States don't have any regulations on the programming sector.

V. ANALYSIS OF UNITED KINGDOM BROADCASTING MARKET

1. Broadcasting market

Chart. Overview of United Kingdom Broadcasting market

United Kingdom	(2016)
Population	62.77 million
Size	243.6 thousand sq. km
GDP	2,618.89 billion US dollar
Regulation organization	Ofcom
Terrestrial broadcasting	BBC, ITV, Channel 4, Channel 5
CATV	Virgin Media
Satellite	Sky, Freesat, British Sky Broadcasting,

In the United Kingdom, the term "public service broadcasting (PSB)" is defined to be the "broadcasting intended for public benefit rather than to serve purely commercial interests". And they are divided into two sector, BBC centered "Public system" and ITV centered "Private system" all of which are the public service broadcasting as the whole.

The BBC, is most famous for being the first public service broadcaster (PSB) in UK, founded in 1922. Being the PSB, it is funded by a license fee and does not program advertisements. Also being the world's oldest broadcasting organization and largest by number of employees at the same time, it is one of the most notable station. It's established under a Royal Charter. Lord Reith, the first director general, introduced many concepts that would later become the definition of PSB in the UK where he adopted "inform, educate, and entertain" as the mission. BBC basic channel constitutes of BBC1, BBC2, BBC3, BBC4, and 6 special channels are CBBC, Cbeebies, BBC News24, BBC Parliament, BBC Alba.

In 1955, the first commercial broadcaster ITV was launched. It was designed to break the monopoly of the BBC service. Later, government mandated it with a similar obligation in return for the right to broadcasting. It contained a certain level of local news coverage and arts as well as religious programming.

The next commercial television broadcasters are Channel 4 and S4C founded in 1981. Both being state-owned, they were to provide diverse forms of PSB in UK. Channel 4 more focused on the needs of minorities and arts. S4C was serving mainly of Welsh language. Next, Channel 5 was launched in 1997 with another special mission. It included the mission to provide programming from various genres and European oriented contents, with maximum limits on the number of repeats.

Moving on to the section of CATV, Virgin Media is the only media business that has national level of CATV business. It was founded in 2006. As of 2016, 3.71million viewers subscribed the service. This virgin media provides over 260 of CATV broadcasting channels.

Satellite Broadcasting Business. The biggest satellite broadcasting business in Britain is “Sky”. Established in 1990, Sky Television and British Satellite Broadcasting merged into “BSkyB”. Sky runs 30 TV channels, namely “Sky TV”, “Anytime+”, “Sky Go”, “Sky Broadband” and many more. As of 2016, Sky was subscribed by 21.8 million viewers over Britain, Germany and Austria as well as Italia, and 12.4 million solely in Britain.

2. Regulations

The Office of Communications which is in short form, “Ofcom”, is the government-approved regulatory to control TV, radio and video-on-demand sectors, fixed-lined telecoms (phones) and mobiles and postal services, and the airwaves which wireless devices operate over. According to its mission, “It makes sure that people in the UK get the best from their communications services and are protected from scams and sharp practices, while ensuring that competition can thrive. It operate under a number of Acts of Parliament, including in particular the Communication Act 2003”.¹²

In 2001, the Ofcom was created with the Queen’s speech in UK parliament. It was later found out to be the creation of “super-regulator” to oversee medial channels. Being launched in 2003, it inherited the duties of following five different regulators: the Broadcasting Standards Commission,

¹² Introduction of Ofcom from its official website.
<https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>

the Independent Television Commission, the Office of Telecommunications (Ofcom), the Radio Authority, and the Radio communications Agency. Also, in year 2016, the regulation of VOD (video on demand) was transferred to Ofcom from the Authority for Television on Demand. Lastly, in 2017, it was BBC that was transferred to Ofcom, originally from the BBC Trust, under the 2016 Royal charter.

2.1. Ownership Cap of foreigner

2.1.1. Current Rule

There are currently no restriction on the foreign ownership.

2.1.2. Change of the rule

In 1984, British government was very sure to open the market of CATV early in 1980s to promote the market. Even before 1988 when US oriented business “Bell” was unofficially allowed to invest in UK broadcasting market, as of year 1984, already 90% of CATV market proper share was taken up by the foreign capital.

In 1989, “Television without Frontiers” directive was adopted by European Council. It is deemed the basic legal framework and cornerstone for broadcasting business in EU. Its main purpose was to co-ordinate the diverse rules that each member states have and to remove national barriers to each domestic broadcast market. The rules stipulated on following issues: major events, proportion of EU-produced content, advertising, sponsorship, and teleshopping, the protection of minors and public order, and rights to replay. And it freed the retransmission of TV programming when it comes to the programs produced within EU member states. It includes the concept of equally treating the EU originated programs as domestically produced ones (Country of origin principle).¹³

¹³ Patrice Aubry. (2000). The television without frontier directive, Cornerstone of the European Broadcasting policy.

There was widely accepted concept that EU members are not considered as “foreign” states to different extent case by each nations. But Spain is the country where clearly adopt the idea that capital of EU member states are not deemed as foreign state. And for UK, these concepts were gradually adopted since then.

In 1990, the foreign ownership cap was introduced to non-EEA (European Economic Area) countries by the Broadcasting Act. Hereby, the individuals and bodies from outside the member states were unable to hold ownership of UK broadcasting business share, though certain licenses were allowed for some cable and satellite service. This restriction was expanded up until 1996, when it was lifted.

In 1996, the opening of the market was further delivered by the Broadcasting Act 1996.

Non-EEA companies could also hold certain licenses cable and satellite services. This act was very much effective as seen in the example of BSkyB. This satellite broadcasting business is the only business in this sector and at the same time the non-British business.¹⁴

In 2003, however, the Communications Act 2003 removed the disqualifications on ownership of Broadcasting Act licenses by non-EEA persons who were now free to hold any broadcasting licenses. Remaining ownership restrictions were to be solely abided without specific ruling applied to foreign entities.¹⁵ It was deregulatory in its approach, and aimed to liberalize and simplify the ownership rules.

As the consequence, all the global citizens has become qualified to be holders of UK broadcasting terrestrial broadcasting licenses regardless they are EEA citizens or not. It was most

¹⁴ 한은영. (2003). WTO 시대 각국의 방송서비스 규제 정책 비교, 정보통신정책, 15(8).

¹⁵ Media ownership. www.webarchive.nationalarchives.gov.uk.

controversial removal of the restriction, for many feared that it would turn out to be the unwelcome opening of the UK broadcasting market to US capital.

Regardless of the critic, the government strongly adhered to its deregulatory proposal. To them, it was more of a nonsense to arbitrarily discriminate Australian, Canadian, and US investors when German, Finnish, and other EU countries were enabled to invest on UK broadcasting business. As the whole, the government wanted to enlarge the volume and diversify the source of inward investment in order to embrace new ideas and technology. Though government recognized the concern about the risks posed to the UK broadcasting market, the government also believed that there are adequate safeguards in place prepared from the nationality quota sector.¹⁶

2.2. Programming Quota for domestic content

UK don't have quota to regulate the domestically produced programs to be set.

Instead contains the requirements for a minimum of 50% “EU-originated content” to be included in the programming. This is to prevent any drastic invasion of foreign programs toward UK broadcasting market.

There are also additional obligations for “independent production” quota. For the BBC and private territorial broadcastings business (PSB), 25% of total programming hours are to be programmed with the programs made by independent producers abiding by the Communication Act 2003.

Such measures are to act as a guarantee of quality and diversity of the market.¹⁷¹⁸¹⁹

¹⁶ Richard Collins, UK Media Ownership Regulation.

<http://www.cem.ulaval.ca/pdf/RoyaumeUni.pdf>

¹⁷ 한은영. (2003). WTO 시대 각국의 방송서비스 규제 정책 비교 2.

VI. ANALYSIS OF JAPAN BROADCASTING MARKET

1. Broadcasting market

Chart. Overview of the Japanese Broadcasting market

JAPAN	(2016)
Population	126.99 million
Size	378 thousand sq. km
GDP	4.939.38 billion US dollar
Regulation organization	Ministry of Internal Affairs and Communications (MIC)
Terrestrial broadcasting	NHK, Nippon TV, TBS, FujiTV, TVAsahi, TVTokyo
CATV	J:Com, Japan Cable Net
Satellite	WOWOW, NHK, Sky Perfect, JSAT

Japanese broadcasting is dominated by the terrestrial broadcasting businesses.

Public broadcasting Service NHK and top 5 private networks constitute the main part of this market.

NHK is short form of Nippon Broadcasting System, and its official English name is Japan Broadcasting Corporation. Founded in 1926. It is Japan's national public broadcasting organization, and is a publicly owned corporation funded by viewer's payments of television license fee. NHK provides two terrestrial television services (NHK General TV and NHK Educational TV). It also serves two satellite television services (NHK BS-1 and NHK BS Premium, both now high-definition television services). Also radio services (NHK Radio 1, NHK Radio 2, and NHK FM) are available with additional international broadcasting service (NHK World).

On the other hand, there are 5 notable private networks.

Network, NNN has Nippon Television Network Corporation as Key station, ANN has TV Asahi Corporation, JNN has Tokyo Broadcasting System Television, Inc (TBS), TXN has TV Tokyo Corporation, and FNN has Fuji Television Network. Each key station has 5 to 29 network stations nationwide.

¹⁸ Communication act 2003. Chapter 5: Media ownership and control, Restrictions on license holders. 304p.
https://www.legislation.gov.uk/ukpga/2003/21/pdfs/ukpga_20030021_en.pdf

¹⁹ Ofcom. Review of the operation of the television production sector 2015
https://www.ofcom.org.uk/_data/assets/pdf_file/0028/82684/tv_production_sector_review.pdf

Cable TV was established in 1955 to provide broadcasting service to the regions where terrestrial wave didn't reach properly. Therefore, at the early stage, as the supplementary station, CATV focused on resending the terrestrial broadcasting program to the isolated region.

From 2014 until 2017 and also further to the 2020 estimates, CATV has remained and is expected to remain steady status in the market, taking up 15.3% of total broadcasting share, according to the SNL Kagon(2015) Representative CATV is J:Com, Sky PerfecTV, Wowow, NTT Plala, KDDI.

J:Com is currently leading the CATV market occupying approximately 47% of paid CATV subscriber household share as of 2015, though it was a runner-up in the market following after Sky PerfecTV in 2013.

Regarding Satellite Broadcasting, there are two types of satellite broadcasting, namely BS (Broadcasting Satellite) and CS (Communication Satellite). Both satellite provide broadcasting service, but different in that CS has additional function in providing communication service as well. BS is run by 5 main channels such as NHK, WOWOW star channel, while SKY Perfect TV etc are run on CS. Even though they are both satellite broadcast, the regulations applied regarding ownership cap are noticeably different.

2. Regulations

Japanese Broadcasting business is regulated by the Ministry of Internal Affairs and Communications (MIC). MIC is responsible for fundamental framework of Japan regards to economy and social issues. More specifically, the function of MIC is to manage and administer the system of the overall country, vitalize regional areas, administer fire and emergency services, and enhance ICT (Information communications technologies).²⁰

²⁰ Official introduction of MIC
<http://www.soumu.go.jp/english/soumu/index.html>

2.1. Ownership Quota of foreigner

2.1.1. Current Rule

Chart. Japanese Ownership Quota of foreigners in 2017

Channel		Ownership cap (2017)
Terrestrial broadcasting		20%
CATV broadcasting		No restriction as of 1999
Satellite broadcasting	BS (Broadcasting satellite)	20%
	CS (Communication satellite)	No restriction as of 2002
CATV relay broadcasting		No restriction as of 1999
Program Provider (PP)	General Programming (composite channel)	20%
	News reports (news channel)	
	Others	
Signal transmission network		-

As of 1999, for CATV broadcasting there were no regulations on ownership. Which means, all of the foreign entities are free to invest on Japanese CATV business. Also Communication satellite broadcasting has no regulation regarding ownership cap as of 2002. For the rest of the sectors, though they are not deemed severe, 20% of ownership cap remains.

2.2.2. Change of the rule

In the Japanese economy, the portion of the information and telecommunication industry has been gradually expanding to become a leading industry in the 1990s. However in general, the domestic economy was experiencing a long-term recession. Japanese government saw the information and telecommunication industry as an alternative to economic revival.

In this context, policy changes to support broadcasting occurred first particularly in CATV and Communication Satellite broadcasting sector. These two sectors had problems of having too many

channels but contrarily possessing few subscribers, with high dependency on foreign currency, and excessive competition issues.²¹

Looking into the CATV sector first, the most flexible restrictions were applied here. It was seen that not only adopting foreign technic and system like in the past but also additionally attracting foreign capital was necessary.²² In 1993, the regulations on CATV facility operator to have an activity base in the certain area of broadcasting were abolished. Also a single CATV facility operator was approved to have multiple administrative area as the area of broadcasting, widening the scope of a CATV business. At the same time, the alliance with foreign companies has been deregulated and the emergence of Multiple System Operators by joint venture capital and foreign capital has become possible.²³

Through these changes in broadcasting environment for foreigners, in year 1999, CATV ownership cap was also abolished which was 33% in the past. Moreover, requirement for non-foreign board representation rule was eliminated at the same time.²⁴

In Satellite broadcasting, various deregulation measures were implemented, in that digital multichannel systems can overcome the scarcity of waves which is the main point to regulate other channels like terrestrial wave broadcasting. For example, in relation to digitalization, the number of

²¹ 한국방송진흥원. (2001). 방송통신 융합시대 방송정책 및 규제기구 개편 해외사례 연구: 미국, 영국, 일본의 사례를 중심으로. 1(8)

²² 김영배. (1996). 일본의 뉴미디어 규제 완화와 그 배경, 종합유선방송 모노그래프. 95(2).

²³ 한국방송진흥원. (2001). 방송통신 융합시대 방송정책 및 규제기구 개편 해외사례 연구: 미국, 영국, 일본의 사례를 중심으로. 1(8). 106-107p.

²⁴ 방송위원회. (2005). 외국방송의 재송신 승인 방안 토론회 자료집.

digital broadcasting channels that can be owned by one business person or a single person is changed from 2 to 12 channels for TV, and 12 channels to 100 channels for PCM voice broadcasting.²⁵

However, Broadcasting Satellite business and Communication Satellite business were handled differently. Main changes were brought from CS business.

In 1995, the Japanese government recognized foreign operators who transmit broadcasting programs using CS as "broadcasting companies" under the Broadcasting Act. Since then, foreign operators such as Star TV in Hong Kong and Turner Entertainment Asia, a subsidiary of Turner Broadcasting Group in the United States, have been able to operate channels directly as well as providing programs in Japan if they are recognized as a broadcasting company by the government.²⁶

In 2002, finally CS was lifted with the regulation of foreign ownership cap of 20% quota. In other words, foreign capital was from then absolutely free to invest on Japanese CS.²⁷

2.2. Programming Quota for domestic content

Japan don't have any restriction on programming for domestically produced program.

²⁵ 한국방송진흥원. (2001). 방송통신 융합시대 방송정책 및 규제기구 개편 해외사례 연구: 미국, 영국, 일본의 사례를 중심으로. 1(8). 106-107p.

²⁶ 방송위원회. (2005). 외국방송의 재송신 승인 방안 토론회 자료집.

²⁷ 한은영. (2001). "일본 총무성, CS(통신위성) 방송 진입규제 완화 추진", 정책동향, 2001-4-2.

VII. Findings and Conclusion

This paper observed the existing broadcasting regulations of Korea, Japan, US, and UK in regards to the “ownership cap of foreigner” and “programming quota of domestic content”. This aims to assess the Korean foreign regulations in broadcasting as the whole by the comparison study of the neighboring countries that leads the current broadcasting industry.

These two regulations were important because they are the most critical restrictions that control the influx of foreign capital to the each of the domestic broadcasting market. Also, these two are easy to compare among different nations in the sense that they are the common measures that most countries share if not lifted for good and also are stipulated in clear numbers.

First of all, the ownership cap of foreigner.

Korean government strictly ban any influx of foreign capital in terrestrial broadcasting business, while most of the CATV broadcasting and Satellite broadcasting business have more discretionary power to accept 49% of foreign investment. In between the two different degree of regulation, there lie the CATV relay broadcasting business and PP providers of composite channel and news channels. These businesses, allow from 10 to 20% of foreign ownership.

For US, Terrestrial Broadcasting business is banned to be possessed over 20%, but in some cases, permission was granted to increase the foreign shareholding limit of terrestrial radio station to 100% for the first time in 2017. For all the CATV business, there is no such regulation as of 1934 even earlier than Japan.

For UK, there are currently no restriction on the foreign ownership in any of the broadcasting business.

For Japan, it allows even for terrestrial broadcasting business to attract investment from foreign asset up to 20%. And the degree of openness is identical for the Broadcast Satellite and PP programs. But what is noticeable is that for all the CATV broadcasting business, and Communication Satellite business have no restriction exists as of 1999 and 2002 respectively.

Chart. Comparison of Ownership cap of foreigner (Korea, US, UK, Japan)

Channel		Korea	US	UK	Japan
Terrestrial broadcasting		0%	20%-100%	0% (As of 2003)	20%
CATV broadcasting		49%	0% (As of 1934)		0%
Satellite broadcasting		49%			0-20%
CATV relay broadcasting		20%			0%
Program Provider	Composite channel	20%			20%
	news channel	10%			
	Others	49%			
Signal transmission network		49%			0%

For the second regulation, this paper looked into the “programming quota for domestic contents”. This indicates the requirement mandated for the broadcasting business in programming certain amount of domestically-produced programs.

In Korea, there are again two ways to regulate on the programming. Requirements of quota in total hours of programming and quota based on genre. Terrestrial broadcasting business are to program domestically-produced programs from 60-80% of total hour. CATV broadcasting and Satellite broadcasting should do the same for 40-70% while, PP business other than terrestrial broadcasting should abide by 20-50%. On top of this, every broadcasting business entity shall program domestically-produced movies, animations, and popular music in excess of the certain ratio from each genre.

Movie, from 20-40%, Animation 30-50%, and Popular music from 50-80%, but a single country must not dominate over 80% of the total share to ensure the cultural diversity.

For the same issue, Japan and United States doesn’t have any restriction on programming for domestically-produced program. UK contains the requirement for a minimum of 50% of “EU-originated” contents instead of UK-produced contents. Also to ensure the diversity of the content market, UK is obliged for “Independent production quota”, urging the market to allocate more than 25% of total hours for programs produced by independent producers. Guaranteeing the diversity of market is what UK emphasizes, but this is not direct regulation for the foreigners to be sure.

Chart. Comparison of Programming Quota for domestic content (Korea, US, UK, Japan)

Channel		Korea	US	UK	Japan
Terrestrial broadcasting		60-80%	0%	50% (EU- originated content)	0%
CATV broadcasting		40-70%			
Satellite broadcasting		40-70%			
CATV relay broadcasting		0%			
Program Provider	Composite channel	20-50%			
	news channel	20-50%			
	Others	20-50%			
Signal transmission network		0%			

As the whole, it is very clear that in any of the sections of regulation, Korea broadcasting market is adopting the most protective measures in broadcasting industry against foreign capital.

What is more noticeable is that current quota doesn't actually play roles as the guideline to regulate the broadcasting business. According to the survey done by KISDI, terrestrial broadcasting stations were observed to program the domestic contents over 95% to 100% except for the EBS though it still lingers high above the original regulation quota of 80%. This shows how the current guideline is unnecessary as the regulations. If this is the case, the unrealistic regulations can be rather used as the card to win other benefits in the process of negotiation of FTA between other countries.

Chart. Korean Programming ratio of domestic contents in terrestrial broadcasting business

Year	2009	2012	2015
KBS1	96.8%	95.3%	97.5%
KBS2	97.2%	96.4%	97.1%
MBC	96.5%	97.9%	97.6%
SBS	98.2%	100.0%	99.9%
EBS	93.2%	81.1%	89.3%

KISDI 2013, 2016 ²⁸

There is wide consensus in Korea that terrestrial broadcasting as well as other channels such as news and general programming channel are playing important roles in setting public values and agenda, and what is broadcasted should be determined with high degree of consideration to the national interest. This idea has automatically affected the legislation so that it can be more protective and isolative.

²⁸ KISDI. (2016). 방송평가 기반조성 2016년 방송사업자 편성현황 조사, KISDI. (2013). 2013년 방송사업자 편성현황 조사.

However, this Korean norm about the role of broadcast is far from indigenous. Japan, US, and UK, they all share the same idea. It was acknowledged that in their countries too, national security is prioritized among various social values. There is rather no country where its government is totally free from the temptation to control their citizens with the broadcasting, which is one of the most influential and effective tool to relay the governmental message. Nonetheless, it was shown that in Japan, US, and UK, motives to develop and enhance the market through market liberalization won over the security issue. More precisely, blocking the inward foreign capital to only certain channels like terrestrial wave broadcast was deemed ineffective in securing national interest as the whole, in the era of multiple-channel society.

Also, there were several more country-specific reasons to open markets. For US, unclear criteria for foreign ownership approval made itself to relieve the regulation, and the fact that the same Communication Act was applied more favorably to the foreigners who invest on “common carrier and wireless” sector, while it was not for broadcasting business urged to narrow the gap. For UK, the arbitrariness of regulations favoring EU investors on the ground of “Television without Frontiers” directive, raised unfairness issues leaning toward non-EU investors. Not to mention that the rules were liberalized in this context. For Japan, broadcasting business was seen relatively competitive in the global market enough to save the national economy in the recession period of 1990s. More foreign investments toward broadcast business were encouraged in this manner along with the change of the regulations that make them possible.

Korean broadcasting business has opened its market to foreign investments more than ever, and it took place most recently. However, according to the observation in this paper, there are still more rooms for the Korean government to alleviate the regulations applied to each of the different channels to certain extent. And it is clear that in the future FTA negotiation, these facts can play great roles in settling the contracts.

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