

# 美國有線電視的特許、整合及競爭管制 ——市場與法律政策的分析

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本文論述美國對於有線電視的特許、整合及競爭的管制經驗。以有線電視市場及產業的發展狀況為背景，說明管制的政策、立法及實施情況。

長久以來，美國絕大多數的有線電視為分區特許獨占。依傳統的見解，有線電視也被視為「自然獨占」。然而一九八〇年代之後，此一見解已受到某些經濟學家及「重疊經營者」的挑戰。以往，由於有線電視產業規模小，分區中由一家廠商經營，即為已足。一九八〇年代之後，有線電視市場的蓬勃發展，產業規模的擴大，使得有線電視的分區市場，可以容納新的經營者。有線電視屬於自然獨占的觀念應該加以修正。

隨著有線電視產業的蓬勃發展，市場的集中愈來愈明顯。前四大的 MSO (多系統經營者) 在九〇年代中期，即水平控制全國一半以上的市場，而約半數的全國性頻道則與 MSO 有垂直整合關係。有線電視產業的高度集中及費率的節節上漲，使得國會通過「一九九二年有線電視消費者保護及競爭法」。該法提供四個法律機制來管制整合及競爭：1. MSO 訂戶數的限制，2. 整合關係頻道的限制，3. 節目取得，4. 播放頻道約定的管制。第一個機制由於被業者指控為違憲，目前暫停施行。第二個機制，則以較為寬鬆的方式施行。第三個機制為有效的不正競爭防止立法，在過去幾年內，已有數十個案例報告。相對上，第四個機制則實務重要性較低，尚未有案例出現。

**關鍵詞：**有線電視，執照，特許，競爭，反托拉斯，整合，自然獨占

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# **Regulation on Cable Television Franchising, Integration and Competition in the U.S. —Analysis of the Market, Law and Policy**

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## **ABSTRACT**

This article gives an overview of the U.S. experience on regulating cable television franchising, integration and competition. The focus will be on the cable market and industry, as well as on regulatory laws and policies, and their implementation.

For decades, there has been a practice of awarding only one franchise in each cable district in the U.S. and therefore most cable systems were de facto monopolies. Under traditional wisdom, cable television was characterized as a “natural monopoly”. Since the early 1980s, this view has been challenged by economists and by “overbuilds” (potentially second cable firms within the same district) in courts. The author argues that cable systems are not necessarily “natural monopolies”. Before the 1980s, the scale of the cable market was rather small—single cable firms would provide an adequate supply of services and therefore not many cable systems were interested in competing. The boom of market growth in the 1980s enhanced industry scale and profitability and therefore attracted competitors. The notion of cable television as a natural monopoly should be revised.

After the mid-1980s, the concentration of the cable market became notable. The top four MSO (Multiple System Operators) horizontally have controlled half of the national market since the mid-1990s and half of the national channels vertically integrated with MSO. The industry concentration and huge increase in cable rates pushed Congress to enact the Cable Television Consumer Protection and Competition Act of 1992.

The 1992 Act contains four legal mechanisms to regulate the integration and competition of the cable industry: (1) limits on MSO subscribers, (2) limits on channel occupancy, (3) program access rules, and (4) carriage agreement rules. While the first mechanism was voluntarily stayed by the Federal Communications Commission (its constitutionality is being challenged in courts), the second rule has been enforced in a relaxed way. The third mechanism proves to be an effective piece of legislation with which dozens of cases have been resolved in the past few years. In contrast, no case has been reported under the fourth rule.

**Key Words:** Cable television, cable franchising, competition, antitrust, natural monopoly, integration.