



Two powerful Chinese media regulators merge

In March 2013, the State Council announced the merger of two Chinese regulators: the General Administration of Press and Publication and the State Administration of Radio, Film and Television and created a mega-ministry, the General Administration of Press, Publication, Radio, Film and Television (GAPPRFT). The merger of the national press and broadcasting regulators is intended to boost the development of Chinese culture industries and increase their global influence. As Chinese media grows exponentially and shows its strength on the international scene, leading media partner Jeanette Chan and counsel Hans-Günther Herrmann from the Hong Kong office of *Paul, Weiss, Rifkind, Wharton & Garrison* and partner Glenn Su from the Beijing office of *Fangda Partners* have joined forces to explain the implications of the regulators' merger for industry participants.

What do you think is the main driver of this institutional reform?

The merger of the State Administration of Radio, Film and Television (SARFT) and the General Administration of Press and Publication (GAPP) was part of a broader institutional restructuring involving a number of other ministries and was also part of the systematic cultural reform that began in 2003. More specifically, the merger of SARFT and GAPP was driven by the need to reduce overlap of responsibilities between the two regulators, trim red tape and streamline bureaucracy. For instance, the lack of administrative consistency and coordination between SARFT and GAPP had led to the situation where SARFT might allow certain contents to be published in the form of radio, film or television programs while the same or similar contents were banned by GAPP from print publication, or vice versa. In addition, with the arrival of the Internet era, SARFT and GAPP each tried to exert control over the various Internet-based new media. Finally, the Chinese government expected that the merger would serve to promote the development of China's modern communications system, underpinned by digital information technology, and strengthen the competitiveness and influence of Chinese media and culture.

What are the functions of the new 'Super Ministry of Broadcast and Press?'

According to the *Plans for Institutional Reform and Functional Transformation* of the State Council, the newly merged ministry of broadcast and press is principally responsible for the overall planning of the development of the press, publication, radio, film and television industries, the supervision and administration of the relevant organisations and businesses, as well as the contents and quality of publications and radio, film and television programmes, and copyright administration.

More specifically, according to a detailed plan regarding the main functions, internal organisation and staffing arrangements of GAPPRFT (the Detailed Plan) issued by the State Council in July 2013, the key functions of GAPPRFT are to:

- a) formulate policies and guidelines with respect to news, publishing, broadcasting, film, television and propaganda;
- b) draft rules and regulations with respect to news, publishing, broadcasting, film, television and Internet audio-visual programming and the services and technical standards of such sectors;
- c) approve the establishment of, and oversee the operations of, entities engaged in news, printing, publishing (including



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- online publishing and digital publishing), broadcasting, film, television and Internet audio-visual programming;
- d) monitor the content of Internet audio-visual programs, films, radio programmes and television programmes;
 - e) promote platform convergence among cable television networks, telecommunications networks and the Internet;
 - f) regulate the importation of publications, films, radio programmes and television programmes; and
 - g) regulate copyright administration and copyright protection matters.

Will the new ‘Super Ministry’ have increased power compared with other agencies?

The new ‘super ministry’ was formed by combining and streamlining the functions previously performed by each of SARFT and GAPP separately on its own. Such a combination does not appear to have changed the power configuration among itself, the Ministry of Culture, the Propaganda Department of the Communist Party and the Ministry of Industry and Information Technology (MIIT.)

Will this reform lead to more liberal regulation in the media industry in China?

Before the merger, SARFT and GAPP regulated the Chinese media industry through a tight licensing system. The nature of the merger, namely whether it is simply a merger of previously separate functions or a true reform, hinges on whether the newly merged ministry is willing to deregulate the current licensing system. At this stage, the merger of SARFT and GAPP appears to have a major effect only on the organisational structure. Although GAPP/PRFT has ceased to perform 20 functions from SARFT’s and GAPP’s roster of responsibilities and has delegated seven functions to its branches at the provincial level pursuant to the Detailed Plan, most of the abandoned or delegated functions are minor ones and do not significantly relax GAPP/PRFT’s control of the media sector. We understand that GAPP/PRFT is due to issue more policies in order to truly implement the goal of the Chinese government which is to reduce an overlap of responsibilities, to trim red tape and to streamline bureaucracy. Pending

such new policies, the merged regulator has not relaxed the previous licensing system set up by the two former regulators.

Furthermore, it remains unclear whether the merger will lead to liberalisation or deregulation of the industry at all. Reducing the numbers of regulators may not necessarily translate into more relaxed regulatory oversight. The Chinese government remains prudent about reforms that may impact culture and ideology, and liberalisation in the media industry requires more than the efforts of a newly merged ministry alone, which is also under the leadership of the Communist Party’s Propaganda Department.

What do you think the reform will do to the existing approval regimes in the media sector going forward?

The media industry is characterised by the competing claims of various agencies. In addition to GAPP and SARFT, other media regulators such as the Ministry of Culture and the MIIT approve ‘cultural products,’ license Internet content providers and intervene in other aspects of content production and distribution. The GAPP/SARFT merger does not change this, because their respective regulatory turfs have little overlap. Media businesses – both foreign and domestic – may still have to obtain many concurrent, time consuming approvals. For instance, the Detailed Plan specifically states that the division of responsibilities and functions over the administration of animation and online games remain unchanged after the merger. Therefore, the operation of online games is still under the regulatory purview of the Ministry of Culture and for an online games operator, the requirements for the relevant approvals and permits have not been reduced.

Furthermore, the Detailed Plan specifically requires that GAPP/PRFT should enhance its administration over the digital publishing, online publishing and online video and audio service sectors. It is anticipated that GAPP/PRFT will become more active in regulating those sectors and will impose certain licensing requirements.

Will the reform have any impact on platform convergence?

SARFT – and the new ministry as its successor – actively work to implement convergence. This task is also listed in the Detailed

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Plan as one of the major foci of GAPP RFT. A national cable TV network operator – expected to be set up within a few months – will focus on promoting connectivity, including inter-connectivity of regional networks, and convergence of technologies, operations and management. The ministry is also preparing a three-year convergence plan for the period 2013 to 2015. Under this plan, all cable TV networks at county level and above will be digitalised by 2015, with 80 percent of them able to provide internet access, IPTV, video-on-demand and interactive entertainment services.

One interesting question is whether GAPP RFT will become more active in regulating TV games than SARFT was. GAPP approved operation of online games and import of foreign online games, and imported online videos have to be registered with the National Copyright Administration (previously under GAPP). SARFT, by contrast, had not created a licensing regime for TV games. Will GAPP RFT expand GAPP’s authority to TV platforms and close what some see as a loophole in the current regime? Will GAPP RFT try to encourage interactive content on TV sets to strengthen competition against other devices? Will GAPP RFT reconsider its ban on importation of set top boxes for games?

What impact do you think this will have on foreign investors?

Neither the Plans for Institutional Reform and Functional Transformation nor the Detailed Plan makes any reference to the role or involvement of foreign investors in the Chinese media sector. Both print media and broadcasting are prohibited industries for foreign investment. There is no indication that this policy will change. The limited avenues for foreign investment and participation in content production, distribution and technology are not affected by the merger and will continue to be avail-

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able. Opportunities in these areas will increase, since the Chinese government is pushing for the growth of large media groups, and the merger of GAPP and SARFT is part of this drive.

Which of the media sectors involved will benefit more from this reform?

The Chinese authorities see television as the more strategic medium, because it connects more directly with people as a propaganda tool and satisfies a stronger demand for entertainment and information. If the new ministry has to choose between print and broadcasting interests (e.g. in authorising acquisitions, facilitating cross-media licensing or providing State funding,) it is more likely to favour broadcasters.

Will this reform lead to heightened merger and acquisition activity in the media sector?

Yes. The Chinese government wants to consolidate the media and culture sectors so that large and strong media groups will emerge. The new ministry will encourage mergers and acquisitions among broadcasters and publishers. Unlike its predecessor authorities, the ministry will not be concerned that a state-owned enterprise under its supervision will escape from its portfolio and come under the authority of another regulator in such a deal.

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