
Foreign Dominance Notification: a model or a dinosaur?

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Foreign Investment and the FBA Seminar

circulation version
Includes references to the Seminar BOOKLET

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Agenda

About telecoms and the Digital Economy

‘The FBA standard’ of ownership

Chronology in development of the FDN and how it could apply to other sectors

Elements of the FDN

Future of the FDN

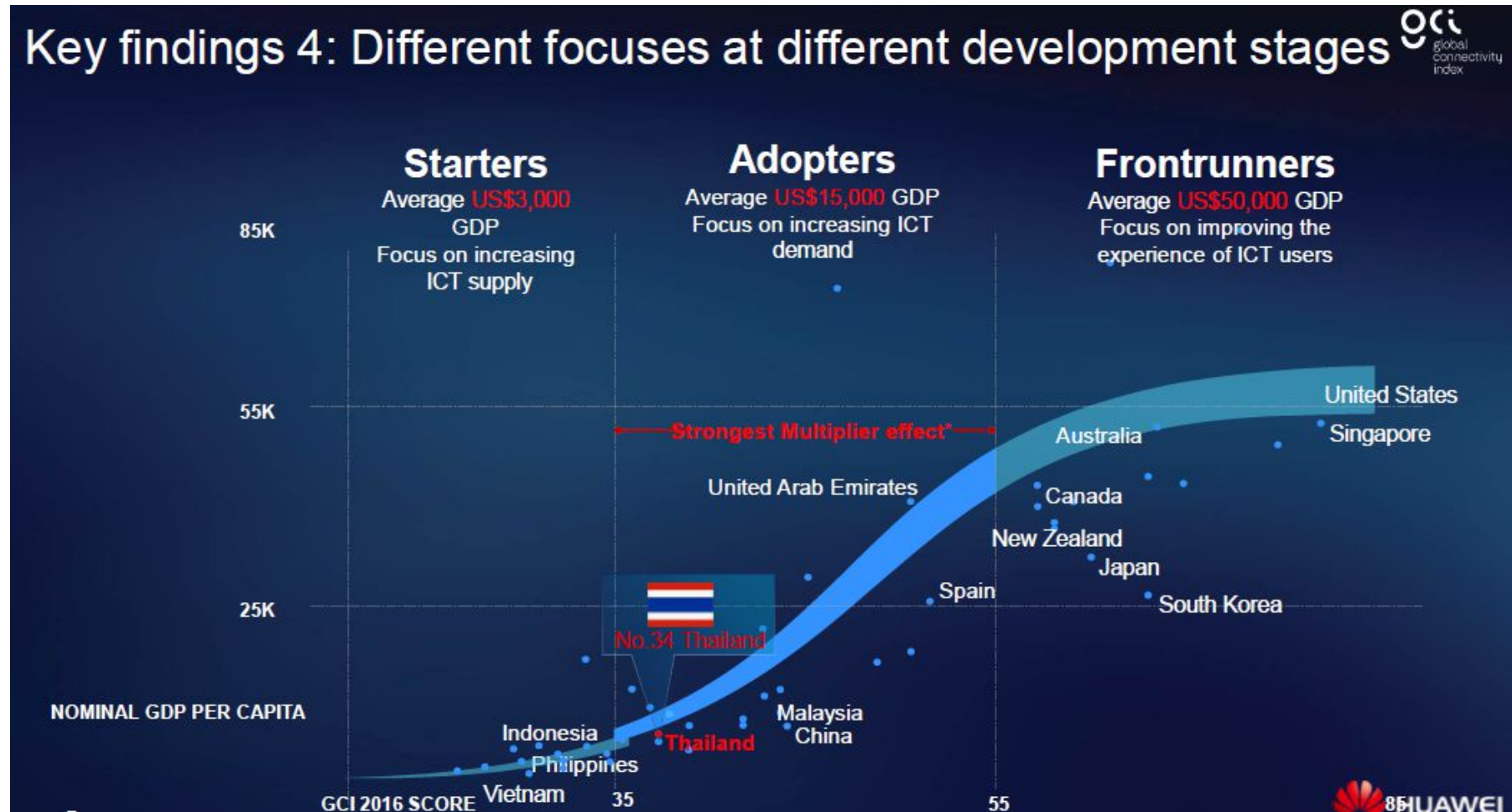
The Digital Economy is....

“.....all economic activity mediated by software and enabled by telecoms infrastructure....”

A well-structured, well-functioning, economically efficient telecoms sector is an essential underpinning for an innovative and economically effective digital economy

A typical index

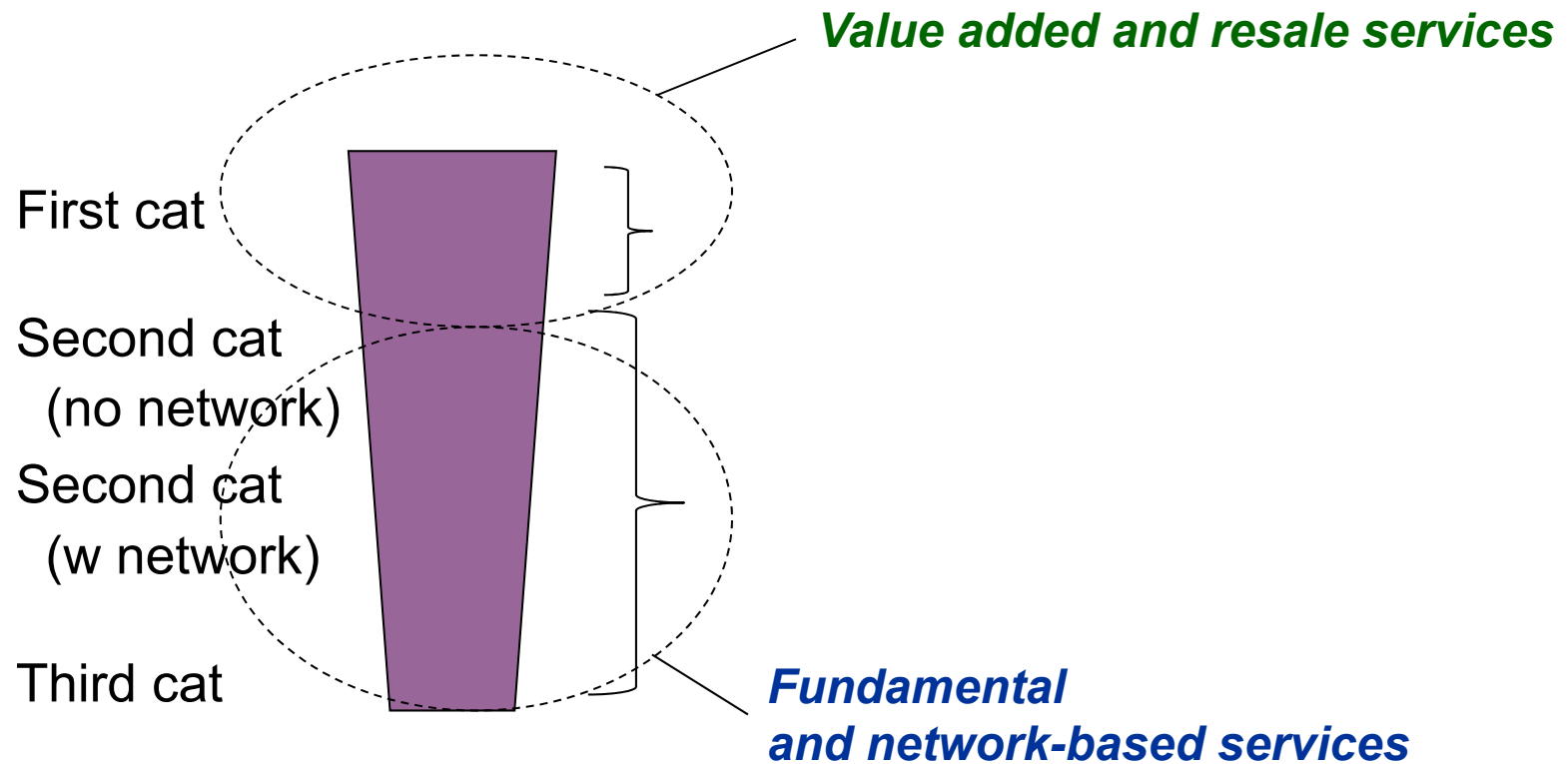
50 countries, 40 indicators ; Thailand at 34/50



Source: Global Connectivity Index (Huawei) at 'Opportunity Thailand' 15 Feb 2017

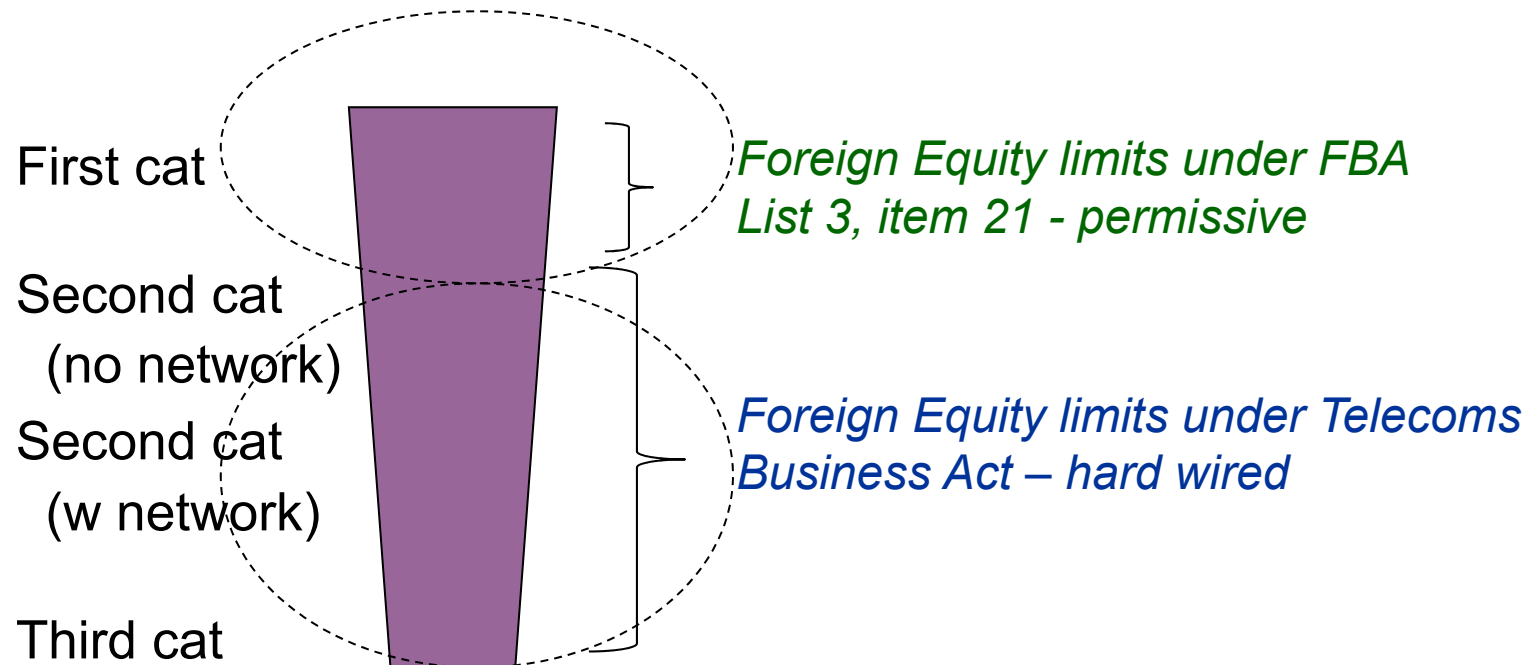
Telecom licence categories

Three categories based on GATS Telecom chapter concepts



Telecom licence categories

Three categories in Telecoms Business Act based on GATS, but Foreign Equity Limits across three licence categories are governed by two laws:



The 'FBA standard'

Telecom Business Act prior to 2006 – for categories 2 and 3:

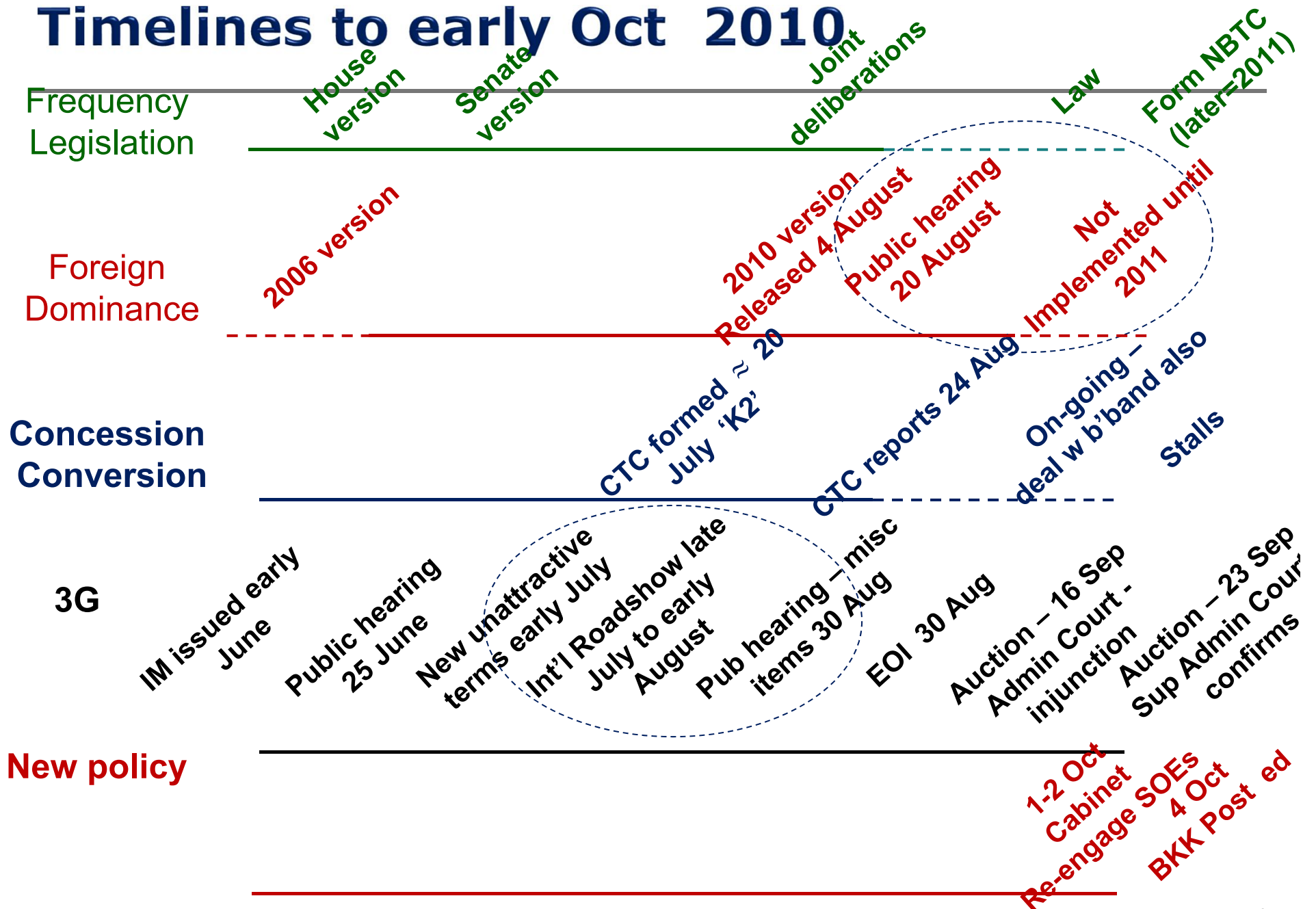
- 25% FEL
- Some control elements

Late 2005 changes made it similar to the FBA standard (a juristic person with 50% or more foreign ownership).

What happened – 1 (see also BOOKLET p. 14)

Time frame	Event / Developments
Late 2005	TBA amended to allow up to 49% (from 25%) foreign equity for Type 2 and Type 3 licences, and removes control/board restrictions
During 2006	NTC shows interest in additional controls on foreign participation
2007	Proposals to change definitions in the FBA
2010 - 2011	Idea of foreign dominance restrictions / views canvassed
Aug / Sep 2011	NTC reduced to few commissioners; split on the FDN; NTC passes FDN by bare majority at 11 th hour
Later 2011	NBTC comes into being; succeeding NTC (sister organisation NBC had never been formed)
Dec 2011	Public hearing on a revised FDN
May 2012	Further revised FDN proposed. NBTC engages in further dialogue
June 2012	Public hearing; revised FDN issued and comes into force July 2012

Timelines to early Oct 2010



What happened – 2 (see also BOOKLET p. 14)

Time frame	Event / Developments
July 2012	MOC issues proposed Guidelines for interpreting FBA, similar to FDN. (Later, not proceeded with)
September 2012	Council for Trade in Services (Geneva) – agenda (on-going)
2013	Some changes to List 3, by Decree
Nov 2014	Reported suggestion by DBD to use FDN type rules, economy-wide
Nov 2014	Foreign business community via Board of Trade working group and others prepare proposals
11 Nov 2014	Hearing on FBA
26 Nov 2014	MOC hearing on FBA – ‘town hall’ style meeting
3 Dec 2014	PM announce no change to FBA for now
2015/2016	DBD spokesperson floats idea of change of definition
2016	Some changes to List 3, by Decree
Jan 2017	Relying on a 1972 Decree about safety, AOL issuance terms are revised to restrict holders, using some FDN-type principles
2017	Some changes/consolidations to List 3, by Decree
Jan 2018	AOL restrictions in force
2018	DBD spokesperson floats idea of change of definition; three statements about removing items from List 3

Elements of FDN – tests for being Foreign Dominant

- 1) Indirect shareholding – eg by nominees
- 2) Preference shares
- 3) Control / influence in policy, management, board
- 4) Financing relationship – loans, security
- 5) IPR arrangements
- 6) Procurement
- 7) Joint Business operations
- 8) Transfer pricing

See also BOOKLET p. 15

Administrative challenges

How does it work? – proportionality – assuming a minority shareholding, do these elements amount to additional percentages (somehow)?

FDN is still with us, is still an administrative burden for government and private sector

Departures from the FBA standard

Broadcasting – control and nationality factors, which are used by many states. (but new issues in on-line media – improper influence etc – not about ownership)

Insurance with some caps at 25% but in practice differently applied

FIBA – (see Primer)

BoT regulations (eg on money lending)

Aviation services from January 2018, relying on a 46 year old Decree – restricts nationality, control, shareholding for an Air Operating Licences (AOL), on safety grounds.

Guillotine



www.sslicence.go.th

Review and comment:

Now 370 items in first batch of 1,000 through May

Review / comment on the 370 on SSL site. So far TH only, EN navigation and instructions in development

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Future of the FDN

Changes since 2012

Now:

- Thailand 4.0
- Guillotine / Simple and Smart Licence project to remove unnecessary administrative burdens
- Telecoms industry changes – all three major operators have foreign partners.

An on-going unnecessary burden; time for dialogue ...

Thank you
