

GETTING THE DEAL THROUGH

# Telecoms and Media

An overview of regulation  
in 48 jurisdictions worldwide

# 2008

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## Communications policy

### 1 Policy

How would you summarise government and regulatory policy for the telecoms and media sector? What is the policy-making and policy development procedure? Has the EU regulatory framework (including the market reviews) been fully transposed into your national law?

Until May 2007 the telecommunications sector in Bulgaria was regulated by the Telecommunications Act 2003, which implemented the old EU regulatory framework (acquis 1998/2000). Following the country's accession to the EU on 1 January 2007, a new Electronic Communications Act (ECA) was adopted in May 2007 (promulgated in State Gazette, issue 41, 22 May 2007). This implements into the national law the current EU regulatory framework for electronic communications (acquis 2002). The ECA substantially liberalises the telecommunications sector but the full transposition of the new EU regulatory framework is not yet completed as the adoption of secondary legislation is still in progress. The Methods on the Conditions and Order for Designation, Analysis and Evaluation of the Relevant Markets and the Criteria for SMP Designation has been published in State Gazette, issue 27 on 11 March 2008 and the commencement of markets review is expected shortly.

Competence for the electronic communications sector is vested in the Council of Ministers, the National Radio Frequencies Spectrum Council and the chairman of the State Agency for Information Technologies and Communications. These are the decision- and policy-making authorities, whereas the Communications Regulation Commission is the national regulator responsible for the supervision of electronic communications activities' compliance with the provisions of the applicable legislation.

The media sector is regulated by the Radio and Television Act (RTA) from 1999, with last amendments from 2007, which is generally harmonised with the EU framework. Broadcasting activities are regulated by the Council for Electronic Media (CEM).

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### 2 Convergence

Has the telecoms-specific regulation been amended to take account of the convergence of telecoms, media and IT? Are there different legal definitions of 'telecoms' and 'media'?

The ECA is harmonised with the new EU regulatory framework in which the convergence of telecommunications, media and information technology sectors is a basic principle, meaning that all transmission networks and services should be covered by a single regulatory framework. However, in line with the requirements of Directive 2002/21/EC for separating the regulation of transmission from that of content, where necessary the current

Bulgarian legislation regulates media and telecoms separately. Therefore, two independent regulators have been established – the Communications Regulations Commission and the Council for Electronic Media.

The ECA defines 'telecoms' as undertakings providing public electronic communications networks or services as sole traders or legal entities that carry on electronic communications in a commercial way in accordance with the ECA. With respect to 'media' the RTA provides that radio and television operators are natural persons or legal entities holding licences or registrations for radio and television activity.

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### 3 Broadcasting sector

Is the broadcasting sector or content regulated separately from telecoms?

The broadcasting sector is regulated separately from telecoms by the RTA. There are two authorities competent with regard to the broadcasting activities – the CRC, regulating the transmission and the technical issues and the CEM, regulating the content of the broadcast programmes.

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## Telecoms regulation

### 4 WTO Basic Telecommunications Agreement

Has your jurisdiction committed to the WTO Basic Telecommunications Agreement and, if so, with what exceptions?

Yes, without exceptions.

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### 5 Public/private ownership

What proportion of the stock of any incumbent operator is in the ownership of the public or of private enterprise?

Currently the incumbent operator in Bulgaria – the Bulgarian Telecommunications Company (BTC) is privately owned. In 2004 the first step for its privatisation commenced when the state sold 65 per cent of its capital to Viva Ventures, a subsidiary of the American private investment fund Advent International. In 2005 the rest of the state-owned shares were sold on the Sofia Stock Exchange. At present the state holds a 'golden share' in BTC conferring to it certain rights, namely right to veto the most important decisions, to appoint some of the members of the managing bodies of the BTC, and other rights. The restriction on reselling the shares of BTC, provided in the privatisation contract, expired in June 2007 and in August 2007 AIG Investments acquired 90 per cent of the BTC shares from Viva Ventures and minority shareholders through its daughter company AIG Capital Partners.

**6 Foreign ownership**

Do foreign ownership restrictions apply to authorisation to provide any telecoms services?

Bulgarian legislation does not provide for any foreign ownership restrictions with regard to the provision of electronic communications services.

**7 Operator exclusivity**

Does any operator have exclusivity, and, if so, for which services, and for how long?

The electronic communications market in Bulgaria is currently liberalised and no provider of electronic communications services has any exclusive rights. On 1 January 2003 the monopoly BTC held over the provision of fixed voice telephone services and leased lines expired.

**8 Fixed, mobile and satellite services**

Comparatively, how are fixed, mobile and satellite services regulated? Under what conditions may publicly available telephone services be provided?

All electronic communications services are regulated by the ECA and the principle of general authorisation applies. However, for the provision of services that require use of scarce resources – radio frequencies, positions of the geostationary orbit or numbers from the National Numbering Plan, a permit by the CRC has to be granted, meaning that publicly available telephone services may be provided after receiving permission from the CRC for use of numbers.

**9 Satellite facilities and submarine cables**

In addition to the requirements under question 8, do other rules apply to the establishment and operation of satellite earth station facilities and the landing of submarine cables?

According to the ECA, the market launch of radio equipment conforming to the Products Technical Requirements Act and using radio frequencies harmonised within the European Union is free. The CRC together with the National Radio Frequency Spectrum Council prepares and publishes a list that contains all the types of such radio equipment and the requirements for its technical parameters. The launching of radio equipment may be restricted only with regard to the effective use of the radio frequency spectrum, to protect human life and health or to safeguard national security and defence.

As for the landing of submarine cables, the issue is regulated both by the internal legislation (Sea Space, Internal Waterways and Harbours of the Republic of Bulgaria Act) and international treaties to which the Republic of Bulgaria is a party, mainly UN conventions among which are the UN Convention on the Continental Shelf of 1958 and the UN Convention on the Law of the Sea of 1994.

According to the Sea Act, Bulgaria has exclusive rights to land cables in internal waterways. In the same act it is provided that foreign countries may place cables on the continental shelf over which Bulgaria exercises exclusive right of use, only in conformity with certain requirements and more specifically in cases where it shall not be detrimental to the interests of Bulgaria related to exploring, developing and using the natural resources of the shelf and the protection of the sea environment. The exact route of the cables is subject to agreement between the interested parties.

There is no specific regulation concerning private entities landing submarine cables. With that respect the general regime for the right of way through property belonging exclusively to

the state shall apply and permission from the respective district governor should be granted. The procedure will be more complicated though as the permission should be coordinated with several ministries, namely the Ministry of Defence, the Ministry of the Interior, the Ministry of Environment and Waters, the Ministry of Regional Development and Public Works, and others.

**10 Radio frequency (RF) requirements**

For wireless services (eg, mobile), are radio frequency (RF) licences required in addition to any telecoms services authorisations, and is an RF licence available on a competitive or non-competitive basis? Are RF licences allocated using auctions or other procedures? Is licensed spectrum tradable in any circumstances?

Where the provision of electronic communications services requires an individually assigned radio spectrum, permission has to be granted. Permission is issued on a competitive basis following a tender or auction that may only be skipped in those cases exhaustively listed in the ECA, namely:

- for state authorities' own requirements;
- for foreign diplomatic missions;
- if the number of candidates is smaller or equal to the number of persons that may be granted individual rights;
- for the provision of electronic communications through analogue terrestrial radio transmitters, following a decision of the CEM; and
- temporary permission (for a term not longer than six months).

Individual rights may be reassigned to third parties but only with permission of the CRC. According to the ECA, providers holding an individual permission for use of radio spectrum may assign it in whole or in part. The CRC permits assignment provided this does not distort competition or lead to changes in the conditions for use of the scarce resource. If analogue terrestrial transmitters are used, an additional requirement is that the assignment should not result in a change to the broadcasted programmes of providers governed by public law.

The conditions and the procedure for permission reassignment are subject to regulation by secondary legislation issued by the CRC.

**11 Third generation services**

Is there any regulation for the specific roll-out of third generation mobile services (eg, in terms of licences, geographic coverage, national roaming for new entrants, etc)?

No specific regulations are provided for third generation mobile services, meaning that the general regime is applicable. As with the provision of other mobile services, an individual permission has to be obtained to allow the use of the assigned radio frequency spectrum.

In May 2005, the CRC issued UMTS licences to the two existing GSM operators (Mobiltel and Globul) and to BTC. With a decision of the CRC from March 2006 the licence granted to BTC was transferred to its wholly owned subsidiary – BTC Mobile, which also holds the third GSM licence.

Individual licences issued to all the three operators provide that within two years of their issuance each of the 3G operators has to ensure national coverage of at least 15 per cent of the country's population and the international airports, and within five years – at least 50 per cent of the country's population, with speed of the data transfer of at least 384Kb/s for the five biggest cities and 144Kb/s for the rest of the country. The three licen-

sees had to provide 3G within two years of the issuance of the licences. By May 2007 all three licensees had launched their 3G services. As for the national roaming for new entrants, no such obligation is provided.

## 12 Fees

What fees are payable for each type of authorisation?

Currently the issue is regulated by two acts – the ECA, regulating the types of fees payable, and the Tariff for Fees Collected by the CRC under the ECA (promulgated in State Gazette No. 106/14 December 2007, 'the Tariff'), regulating the amounts of the fees. According to the ECA, the CRC is entitled to collect the following types of fees:

- one-off fee for issuance of permission for use of individually assigned scarce resource;
- one-off fee for amendment and supplement of the permission;
- annual fee for use of individually assigned scarce resource;
- annual control fee; and
- fees for different administrative services.

It is provided in the ECA that the annual control fee may not exceed 1.2 per cent of the annual gross revenue from the provision of electronic communications networks or services, excluding VAT and after deduction of payments to other undertakings for access, interconnection, transit, roaming, value added services, as well as costs for settling of intellectual property rights over radio and television programmes. The 2008 fee is set at 0.2 per cent for undertakings with gross annual revenue exceeding 100,000 leva (approximately €51,130) and no fee for undertakings with gross annual revenue below that threshold.

The one-off fee for permission to use individually assigned scarce resource shall be cost oriented – that is, it will be equal to the administrative costs for the preparation and issuance of the permission.

## 13 Authorisation timescale

How long does the licensing authority take to grant licences or other necessary authorisations?

Because the general authorisation regime applies in Bulgaria, a person wishing to carry out public electronic communications need only notify the CRC to be entered in a special register kept by the regulator. This entry has to be performed within 14 days of the date of submission of a complete notification.

When permission for use of individually assigned scarce resource is required, the procedure may take from six weeks to eight months, depending on whether a tender or auction should be performed (see question 10) and if international coordination is needed.

## 14 Licence duration

What is the normal duration of licences?

The permission for use of individually assigned scarce resource is issued for the maximum period of 20 years and may be extended for up to 10 years. The ECA introduces the possibility for granting temporary permissions for a maximum of six months when the use of scarce resources is needed for testing new electronic communications technologies or new technical devices or networks, as well as when the scarce resource is needed for temporary events or for advertising of electronic communications devices or equipment.

## 15 Modification and assignment of licence

How may licences be modified? Are licences assignable or able to be pledged as security for financing purposes?

Permission for use of scarce resources may be modified unilaterally upon the decision of the CRC and in the following cases:

- force majeure;
- national security needs;
- changes introduced in the national legislation or decisions of international organisations that bind Bulgaria; and
- public interest needs with regard to the effective use of the scarce resource, protection of end-users' interests and provision of the universal service.

Further, the individual permission may be modified upon a duly reasoned request of the provider. The decision-making authority is the CRC, which examines the grounds of the request and decides within 30 days.

As for the assignment of an individual permission, it is permitted but a prior authorisation by the CRC is required (see question 10).

Permission to use scarce resources is an individual administrative act and according to Bulgarian legislation the administrative act may not be subject to a pledge.

## 16 Radio spectrum

Is there a regulatory framework for the assignment of unused radio spectrum (refarming)?

Currently there are no explicit regulations concerning the assignment of unused radio spectrum. However, as pointed out in question 15, in certain cases, exhaustively listed in the ECA, the individual permission for use of radio spectrum may be amended and one of the grounds on which the CRC might modify the conditions of the permission granted is the ineffective use of the scarce resource.

## 17 Cable networks

Is ownership of cable networks, in particular by telecoms operators, restricted?

Bulgarian legislation does not provide for any restrictions in this respect. It should, however, be noted that the public authorities, exercising the rights of the state or the municipality in undertakings that perform electronic communications, must separate their managing and controlling powers with regard to such undertakings from their powers related to providing rights of use.

## 18 Local loop

Is there any specific rule regarding access to the local loop or providing for local loop unbundling?

According to the ECA and in conformity with the EU legislation, the CRC may impose an obligation for local loop unbundling on undertakings with significant market power. In such cases the provider must publish a reference unbundled offer (RUO). The RUO is subject to control by the CRC, which may make amendments to it. It is prohibited for individual contracts to contradict the RUO.

The obligation for publishing of RUO also existed under the old Telecommunications Act, abolished by the ECA. In conformity with that act the incumbent operator – BTC – filed a draft RUO in 2004, which was approved by the CRC with some amendments imposed by the regulator. BTC challenged CRC's decision before the Supreme Administrative Court (SAC), which repealed the decision. In July 2006 a new BTC reference unbun-

ding offer was approved by the CRC, and was again appealed by the incumbent. However, it should be noted that as the decision's preliminary enforcement was not suspended by the court, the CRC's decision is currently enforceable and binding.

#### 19 Internet

How are internet services, including voice over the internet, regulated?

There are no special regulations related to provision of internet services and the general authorisation regime applies, except in cases where a scarce resource (such as radio frequencies and numbers) is used and individual permission is required. The same also applies for providing voice over internet services.

#### 20 Broadband

Is there a government financial scheme to promote broadband penetration?

Currently there are no financial schemes to promote broadband penetration in Bulgaria.

#### 21 Interconnection

How is interconnection regulated? Can the regulator intervene to resolve disputes between operators? Are wholesale (interconnect) prices controlled and, if so, how? What are the basic interconnect tariffs?

The ECA promotes the principle of free negotiation of interconnection arrangements between providers. However, if no agreement has been reached, the CRC may impose an obligation for interconnection of networks to ensure end-to-end connectivity between end-users, following the principles of objectivity, transparency, proportionality and non-discrimination. The CRC may intervene ex officio or upon any party's request in interconnection matters if it is needed to develop competition or the internal market, or in favour of end-users. In conformity with the EU legislation, the CRC may also impose on undertakings with significant market power specific obligations, related to access or interconnection, exhaustively listed in ECA, namely: transparency, non-discrimination, accounting separation, access to and use of specific network facilities as well as price control and cost accounting obligations. When an obligation for cost-orientation of interconnection prices is imposed, the CRC may amend the prices offered, to ensure that price-squeeze is prevented.

If a transparency obligation is imposed together with a non-discrimination obligation, the CRC may oblige the respective provider to publish a reference interconnection offer (RIO) and may make amendments to it. Under the old Telecommunications Act, abolished by the ECA, providers of fixed-voice telephone services as well as providers of leased lines service enjoying a position of significant market power were obliged to publish an RIO. In June 2004 CRC approved the first reference interconnection offer of the incumbent operator BTC, which was, however, repealed by the Supreme Administrative Court (SAC). CRC adopted a new decision approving the RIO in March 2006, confirmed with a final decision of the SAC in February 2008 when the first Bulgarian RIO entered into force. According to the RIO, the regulated fees for BTC's key interconnection services, namely call termination, as of 01 March 2008, are as follows:

Type of call	Peak rate	Off-peak rate
	per minute, exclusive of VAT	per minute, exclusive of VAT
Local area	0.0165 levs (app. €0.0084)	0.0145 levs (app. €0.0074)
Single transit	0.027 levs (app. €0.014)	0.024 levs (app. €0.012)
Double transit	0.060 levs (app. €0.031)	0.053 levs (app. €0.027)
Metro area	0.0230 levs (app. €0.0118)	0.0208 levs (app. €0.0106)

#### 22 Mobile call termination

Does the originating calling party or the receiving party pay for the charges to terminate a call on mobile networks? Are calls to mobile networks regulated, and, if so, how?

The charges for call termination on mobile networks are paid by the originating calling party. With Decision No. 2, from 3 January 2008 the CRC obliged the two Bulgarian mobile operators designated as having significant market power (Mobiltel and Globul) to reduce their prices for termination of fixed-to-mobile network calls to reach gradually by July 2009 the levels of mobile-to-mobile termination fees, and namely: 0.25 levs (approximately €0.13) peak rate and 0.19 levs (€0.10) off-peak rate.

#### 23 International mobile roaming

Are charges for international mobile roaming regulated?

The charges for international mobile roaming are regulated by Regulation (EC) No. 717 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC (Text with EEA relevance), which directly applies in Bulgaria.

#### 24 Retail tariffs

Are retail tariffs regulated? If so, which operators' tariffs are regulated and how?

According to the ECA all providers of public electronic communications networks or services must present their retail prices to the CRC not later than three days before they enter into force.

The CRC may regulate the prices of providers that are subject to an obligation for cost-orientation of prices on a separate market under the ECA or a CRC decision. Such providers must publish an annual report regarding the performance of this obligation and present their prices to the CRC at least a month before their entry into force together with the price formation documents. If the presented prices do not conform to the obligations imposed, the CRC may give instructions for their amendment and may also ask such providers to prove the cost-orientation of their prices once every six months. If providers fail to amend the prices offered or to prove their cost-orientation, the CRC may determine price limits for up to six months.

The prices of the regulated providers must comply with several requirements. Their prices may not:

- be based only on the SMP position of the relevant provider;
- distort competition by offering different discounts;
- give advantages to certain end-users;
- be below the costs of providing the service; or
- lead to price squeezing.

CRC may also impose on providers the obligation to develop and apply a cost accounting system and to appoint an independent auditor, as well as to require the provider to amend the system.

**25 Customer terms and conditions**

Are customer terms and conditions required to be filed with, or approved by, the regulator or other body?

According to the ECA the providers of electronic communications services or networks shall prepare their general terms and conditions with an obligatory minimum content; the providers of telephone services must additionally send them for information to the Commission for Protection of Consumers. Only the providers of the universal service need present to the CRC for approval their general terms and conditions at least 30 days prior to the commencement of their activity. If the terms and conditions are not in compliance with the legal requirements, the CRC may ask for their amendment. In the General Requirements on Performing of Public Electronic Communications (published in State Gazette, Issue 24/ 04 March 2008, the 'General Requirements') it is further provided that providers of telephone services must send their general terms for information to the CRC as well, while for other providers of electronic communication networks and services, it is an option exercised at the undertaking's discretion.

**26 Changes to telecoms law**

Are any major changes planned to the telecoms laws?

The ECA was adopted in May 2007 to implement the current EU legal framework of electronic communications. The ECA provides that within six months of its entry into force all the acts of secondary legislation on its implementation shall be adopted but this process has not yet been completed. The adoption of the remaining acts will lead to certain changes in the telecommunications law.

**27 Next-generation networks**

How are next-generation networks (NGN) regulated?

There are no specific regulations concerning NGN.

**28 Structural separation**

Is there a legal basis for requiring structural separation between an operator's network and service activities? Has structural separation been introduced or is it being contemplated?

Currently, there is no legal basis for possible structural separation between the operators' network and service activities.

**Media regulation****29 Ownership restrictions**

Is the ownership or control of broadcasters restricted? May foreign investors participate in broadcasting activities in your jurisdiction?

According to the Bulgarian Radio and Television Act (RTA), entities must be incorporated and registered under the Bulgarian legislation or registered to perform a commercial activity under the legislation of another EU or European Economic Area member state. Further, for the following persons it is prohibited to participate in a licensing procedure: entities deprived of the right to perform an insurance activity or entities with a capital share in them; persons that can not prove the ownership of their property in accordance with the Measures Against Money Laundering Act or entities with a capital share in them; persons that have been declared insolvent within five years prior to the licence application; and entities whose shareholders are registered as 'bad debtors' under the Data on Bad Loans Act; whose shareholders participate in the capital of entities that carry out advertising activities; whose shareholders participate in the capital of entities

providing security services; enjoying a monopoly position in the telecommunications sector; or persons that have been refused or deprived of a licence for the activity within one year prior to the licence application.

**30 Cross-ownership**

Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

Currently the Bulgarian legislation does not provide for any specific regulations on the cross-ownership of different types of media.

It is prohibited, however, for holders (or related parties) of local or regional broadcasting licences to hold a national licence for the same activity.

**31 Licensing requirements**

What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

There are two regimes for performance of broadcasting activity – individual licence and registration. An individual licence is needed for terrestrial broadcasting, whereas for other broadcasting (ie, satellite and cable) only registration is required. The competent authority in both cases is the Council for Electronic Media (CEM). However, all broadcasters wishing to perform activities through their own electronic communications network must submit a notification to the CRC or to request permission to use the radio spectrum.

The individual licence is personal and it may only be transferred with the CEM's permission and provided that the requirements placed on the initial licence holder are met by the new one. The licence term is up to 15 years but may be extended by the CEM up to a maximum of 25 years.

The licensing procedure should normally take about 10 months. However with regard to the fact that the CRC and the CEM are enjoying some joint powers in the licensing process and considering that currently the coordination between the two authorities is completely blocked awaiting the adoption of certain documents regarding the introduction of digital terrestrial television, almost no TV broadcasting licences have been issued recently.

The registration has to be performed by CEM within a 14-day term as of the application as long as all the legal requirements are met.

With regard to the fees due currently the issue is regulated by the Tariff of Fees for Radio and TV activity. The licensing and registration fee may vary from €564 to €1,718 depending on the activity (radio or TV), the broadcasting level (local, regional or national) and the number of citizens in the area covered by the licensed or registered activity. In addition there is an annual supervision fee between €1,026 and €2,051.

**32 Broadcast of foreign-produced programmes and local content requirements**

Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content?

The RTA provides certain regulations related to the content of the programmes broadcast. At least 50 per cent of the total annual programme time, except for news, sport programmes, radio and TV games and markets, advertisements and teletext, must be intended for European productions and at least 10 per cent for European productions created by foreign producers, which proportion has to be gradually achieved. All the broadcast

programmes must be in Bulgarian. It is, however, applicable only to terrestrially broadcast programmes; as for the programmes broadcast via cable or satellite, only registration is required, wherein only the programme format is determined.

### 33 Advertising

How is broadcast media advertising regulated?

RTA provides for numerous restrictions in conformity with the Television Without Frontiers Directive and the European Convention on Trans-border Television. Thus hidden advertising, advertising of tobacco products and any kind of narcotics as well as advertising based on pornography or discrimination is prohibited. There are also some restrictions on advertising medicines. Advertisements targeted at minors and those for alcoholic beverages must comply with certain requirements. Generally this activity has to comply with fair competition practices.

Broadcasters are obliged to follow certain time limits. Advertising time should not exceed six minutes per hour (for public broadcasters) or 12 minutes per hour and 15 per cent of the daily programme time (for commercial broadcasters).

### 34 Must-carry obligations

Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks, ie, 'must-carry obligations'? Is there a mechanism for financing the costs of such obligations?

Under the ECA, undertakings that provide radio and television transmitting service through cable electronic communications networks must rebroadcast the national and regional programmes of the National Radio and National Television in real time and free of charge. The rebroadcasting of National Television and the National Radio programmes via terrestrial digital transmitters is performed after a decision of the CRC and on the basis of a contract where the prices should be cost-orientated and should include the ordinary level of return. Further, BTC must rebroadcast these programmes through terrestrial analogue transmitters and ensure broadcasting quality levels. This is also performed on a contractual basis and upon cost-orientated prices that include the ordinary level of return.

### 35 Changes to the broadcasting laws

Are there any changes planned to the broadcasting laws? In particular, do the regulations relating to traditional broadcast activities also apply to broadcasting to mobile devices or are there specific regulations or laws in place or anticipated for those services?

The ECA, which entered into force on 25 May 2007, provides that within six months of its entry into force the RTA should be amended to be brought into compliance with its provisions. Further, Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities, obliges the member states to transpose its provisions in their national legislation no later than 19 December 2009.

### 36 Digital switchover

When is switchover from analogue to digital broadcasting required? How will the radio frequencies that are freed up from this switchover be reallocated?

The ECA provides that permissions for use of scarce resources such as the radio frequency spectrum for broadcasting through

terrestrial analogue television transmitters shall be issued up to 31 December 2008 until 31 December 2012 at the latest. On 31 January 2008 the Government adopted a Plan for introducing digital terrestrial television broadcasting (DVB-T), providing for complete population coverage of digitally broadcast television programmes by the end of 2015. This means that the digital switchover should be finalised by that date. However, at present there are no particular legislative rules with regard to the allocation of the radio frequencies freed from this switchover.

## Regulatory agencies

### 37 Regulatory agencies

Which body or bodies regulate the communications sector? Is the telecoms regulator separate from the broadcasting regulator?

The communication sector in Bulgaria is regulated by two separate authorities – the CRC with powers both in telecommunications and broadcasting and CEM regulating only broadcasting. The CRC's powers are specified in the ECA and detailed in the acts of secondary legislation. Among the most important of them are:

- defining the relevant markets;
- designating providers enjoying a position of significant market power in a certain market;
- imposing, amending and withdrawing specific obligations;
- assigning the provision of the universal service;
- issuing, amending, supplementing, assigning, seizing, withdrawing and refusing permission for use of individually assigned scarce resources;
- developing the national numbering plan;
- assigning and withdrawing numbers, addresses and names; and
- resolving disputes between undertakings.

With regard to the CEM, the supervising of broadcasters' general compliance with the RTA, as well as the issuing, amending, withholding and assigning of licences for performance of broadcasting activity and issuance of obligatory prescriptions to broadcaster are all under its competence. These licences relate only to the programme content. With regard to broadcasting equipment, the competent authority is the CRC.

### 38 Establishment of regulatory agencies

How is each regulator established and to what extent is it independent of network operators, service providers and government?

Both the CRC and the CEM are established as independent specialised authorities (by virtue of the ECA and the RTA, respectively). The CRC consists of five members including a chairman, one being appointed by the president, three by the parliament and one (the chairman) by the government. The CEM consists of nine members, five of whom are appointed by the parliament and four by the president. Both the ECA and the RTA provide for numerous requirements and limitations on the members of the authorities to ensure their independence and impartiality. The CRC's budget is formed exclusively of fees and other amounts payable directly to it, namely administrative fees, fees for the permissions for use of numbers from the National Numbering Plan, a certain percentage from the fees for the permissions for use of the radio spectrum and of the position of the geostationary orbit, as well as the fines imposed under the ECA, interest upon delayed payments, donations, and other sources.

**39 Appeal procedure**

How can decisions of the regulators be challenged and on what bases (merits, law, procedure etc)?

The decisions of both regulators are subject to control by a three-member panel of the Supreme Administrative Court (SAC) as they are considered administrative acts. The bases for challenging are: lack of competence, material breach of the procedure and non-compliance with law, with the objectives of the act or with the material legal formalities. The decisions of this panel may be appealed before a five-member panel of the same court, whose ruling is final.

Further, the chairmen of the CRC and CEM may impose sanctions, which are subject to two-instance control – by the district and the administrative courts.

**40 Competition and telecoms and broadcasting regulation**

To the extent that there are separate national regulatory bodies for the telecoms and broadcasting sectors responsible for sector-specific regulation and a national competition authority responsible for general competition rules, what is the respective scope of their jurisdiction in the telecoms and broadcasting sectors? Are there any mechanisms under national law to avoid conflicting exercise of jurisdiction by the authorities? Is there a specific mechanism to ensure the consistent application of competition and sector-specific regulation?

The authority competent for competition matters is the Commission for Protection of Competition (CPC). However, the CRC also enjoys certain powers with regard to competition protection in the communications sector, such as designation of undertakings with significant market power and determination of markets, estimation of the competition level on the relevant markets. According to the ECA, the CPC and the CRC must cooperate by way of consultations, exchange of information and opinions as well as joined work groups. The details are settled in the Rules for Cooperation and Coordination between CPC and CRC adopted jointly by the two commissions. Notwithstanding the above there is practically no legislative mechanism for avoiding conflict between these authorities in exercising their powers in the field of competition.

**41 Interception**

Do any special rules require operators to assist government under certain conditions in the interception of telecommunications messages?

Generally, listening, tapping, storage or other kinds of interception or surveillance of communications is prohibited except in cases where law provides to the contrary. However, providers of electronic communication networks or services must ensure the possibility for interception of electronic communications in real time, for continuous surveillance, as well as real time access to data, related to a certain call. The providers must also ensure on their own behalf the interception of electronic communications by providing interfaces for the needs of the national security and public policy.

**42 Data retention obligations**

What are the obligations for operators and service providers to retain the data of its customers? Will they be compensated for their efforts?

In accordance with Directive 2006/24/EC, the Bulgarian ECA imposes certain data retention obligations on providers of electronic communications services and networks. According to the ECA all the providers must retain certain categories of traffic data for a period of 12 months for the needs of national secu-

urity and crime investigations. The data categories that have to be retained, as well as the storage and transmission of such data are regulated by the Ordinance on the Data Categories and the Order for its Keeping and Providing by the Undertakings Providing Electronic Communication Networks and/or Services for the Needs of the National Security and Crimes Investigations (promulgated in State Gazette No. 9/29 January 2008, 'the Ordinance'). The Ordinance requires the retention of six data categories, and namely:

- data necessary to trace and identify the connection;
- data necessary to identify the destination of the connection;
- data necessary to identify the date, time and duration of the connection;
- data necessary to identify the type of the connection;
- data necessary to identify the subscriber's terminal equipment or what purports to be their equipment; and
- data necessary to identify the location of the mobile communication equipment.

The Ordinance provides for an obligation for provision to the respective authorities of passive technical access to the retained data through a computer terminal for the needs of the operational investigation, while for the needs of national security the access is effected through a written request. Further, upon a written request the data is handed over to the judicial authorities for the needs of the penal procedure.

**43 Unsolicited communications**

Does the legislation prohibit unsolicited communications (eg, by email, SMS)? Are there exceptions to the prohibition?

Currently the issue is regulated mainly by the Electronic Commerce Act. According to this act a service provider that sends unsolicited commercial communications via email without the prior consent of the recipient must ensure in any event that unsolicited commercial communications are clearly and unambiguously identifiable as such. The Electronic Commerce Act makes the Consumer Protection Commission responsible for keeping an electronic register with emails of the legal entities not wishing to receive such commercial communications. Sending unsolicited commercial communications to emails entered in that register is prohibited.

Contrary to the opt-out regime that is provided with regard to legal entities, under the Electronic Commerce Act sending unsolicited commercial communications to natural persons without their prior consent is prohibited, meaning the opt-in regime applies.

The Consumer Protection Act also regulates unsolicited communications, providing that prior consent by the consumer is needed where the provider uses automatic system operating without human intervention, fax or email. It is also provided that other means for distant communication might be used by the provider for sending communications only if the consumer did not explicitly ask not to receive such communications.

Further regulation, related to direct marketing as a whole, is provided in the ECA whereby direct marketing performed without the prior consent of the consumer is generally prohibited. However, provided that certain requirements are met, such prior consent is not needed but the consumer should be provided an option to reject receiving any direct marketing communications.

**Update and trends**

The drafting of secondary legislation implementing the ECA is still in process. The telecom regulation is still incomplete and certain rights and obligations of the undertakings are still unclear. Further, with the adoption of the Methods on the Conditions and Order for Designation, Analysis and

Evaluation of the Relevant Markets and the Criteria for SMP Designation in March 2008, the market review process is expected to commence shortly. Another major change is related to the obligation for review of the media regulations, imposed by the new Directive 2007/65/EC.

**Competition and merger control****44 Competition law in the telecoms and broadcasting sectors**

Are anti-competitive practices in these sectors controlled by regulation or general competition law? Which regulator or competition authority controls these practices?

Anti-competitive practices in these sectors are not regulated by the ECA but by the general competition law, namely the Competition Protection Act (CPA).

As pointed out in question 40, the CRC enjoys some competition powers. Further according to the ECA, the CRC and CPC have a cooperation obligation. However, for matters such as anti-competitive practices in the telecommunications and broadcasting sectors the competent authority is still the CPC.

**45 Regulatory thresholds for the review of telecoms and broadcasting mergers, acquisitions and joint ventures**

What are the jurisdictional thresholds and substantive tests for regulatory or competition law review of telecoms sector mergers, acquisitions and joint ventures? Do these differ for transactions in the broadcasting sector?

Under the Bulgarian legislation the CPC is competent with regard to competition matters, and for mergers, acquisitions and joint ventures review in the telecommunications and broadcasting sector. According to the CPA the undertakings must inform the CPC in advance of their intention to perform a concentration, should the total turnover of the undertakings participating in the concentration on the territory of Bulgaria for the preceding year exceed 15 million leva (approximately €7.67 million). By the date of submission of the notification the parties should be aware of the parameters of the planned transaction since the permission is issued on the basis of the information provided by the undertakings.

**46 Regulatory authorities for the review of telecoms and broadcasting mergers, acquisitions and joint ventures**

Which regulatory or competition authorities are responsible for the review of mergers, acquisitions and joint ventures in the telecoms and broadcasting sectors?

After Bulgaria's accession to the European Union on 1 January 2007 the provisions of Council Regulation (EC) 139/2004 on the control of concentrations between undertakings are to be directly applicable. Regulation 139/2004 shall apply for notifications to the European Commission in the cases specified therein.

Provided that the concentration does not meet the Community dimension's criteria as set forth in Regulation 139/2004, the Bulgarian national notification procedure shall apply. Besides the CPA, the procedure is described in the acts adopted or approved by the CPC on the application of the provisions of the PCA – Guidelines for Application of Chapter VI of the PCA and Methods for investigation and definition of the market status of the undertakings on the relevant market.

**47 Procedure and timescale for the review of telecoms and broadcasting mergers, acquisitions and joint ventures**

What are the procedures and associated timescales for review and approval of telecoms and broadcasting mergers, acquisitions and joint ventures?

The notification contains a request for permission of the concentration and should be submitted by all the undertakings participating in it (for mergers and joint ventures) or by the undertaking that acquires control (for acquisitions). Until such permission is gained no actions related to the concentration are allowed.

After submission of the notification, the CPC examines whether all the required information is provided. If the information is incomplete a seven-day term is given to the applicant to provide complete information. After submission of the complete notification, the CPC commences the procedure for assessment of the concentration, which should be completed within 30 days.

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As an exception to the general rule, the CPC may decide that an in-depth investigation procedure should be initiated where there are serious concerns that the concentration may lead to the establishment or strengthening of the dominant position of the participants and thus competition may be prevented, restricted or distorted. This decision is promulgated in State Gazette and the in-depth investigation should be completed within three months of the promulgation.

After completion of the investigation, the participating undertakings may acquaint themselves with the file. An open hearing is conducted in the presence of the participating undertakings, after which the CPC adopts its decision.