

Bulgaria

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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 still to come with the adoption of the acts of secondary legislation provided for in the ECA and the forthcoming procedure of market review of the relevant markets.

Competence for the electronic communications sector is vested to 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).

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.

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 broadcasted programmes.

Telecoms regulation

4 WTO Basic Telecommunications Agreement

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

Yes, without exceptions.

5 Public/private ownership

What, if any, 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 private-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, etc. The state may reconstitute the golden share to BTC upon performance of the investment obligations undertaken in the privatisation contract. Further, the restriction for reselling the shares of BTC, provided in the privatisation contract, expires in June 2007, after which change of the majority shareholder is expected.

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 service or 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, where applicable, 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, ie, the Ministry of Defence, the Ministry of the Interior, the Ministry of Environment and Waters, the Ministry of Regional Development and Public Works, etc.

10 Radio frequency (RF) requirements

For wireless services (eg, mobile), are radio frequency (RF) licences or permits 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 for the provision of electronic communications services individually assigned radio spectrum is needed, 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 (Mobitel 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 licensees 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 (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 2007 fee is set at 0.4 per cent.

The one-off fee for permission to use individually assigned scarce resource shall be cost oriented – ie, 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?

As in Bulgaria the general authorisation regime applies, 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/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;
- 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 in your country 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 response to 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 in your country?

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 in your country 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 unbundling 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 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 in your country 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 inter-operator disputes? Are wholesale (interconnect) prices controlled and, if so, on what basis? 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 conformity with that obligation BTC filed its draft offer for approval by the CRC. In June 2004 CRC approved the first reference interconnection offer. In October 2005 the Supreme Administrative Court (SAC) repealed the decision. CRC adopted a new decision approving the RIO in March 2006, which was also appealed by BTC and the SAC suspended the enforcement of the decision until the final resolution of the dispute. Hence presently there is no enacted reference interconnection offer in Bulgaria.

22 Mobile call termination

In your country, 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. Currently the calls to mobile networks are not regulated and prices are subject to negotiation between the parties. After the performance of market analysis in compliance with the 2002 EU regulatory framework in electronic communications, the prices of the mobile operators designated as having significant market power shall be regulated.

23 International mobile roaming

Are charges for international mobile roaming regulated in your country?

According to Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation, the wholesale national market for international roaming on public mobile networks should be subject of analysis by the relevant national authority. Since the CRC has not started analysing relevant service markets in Bulgaria, charges for international mobile roaming are not regulated on a national level. The forthcoming final adoption of the EC Regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community will be directly apply in Bulgaria and will lead to the capping of mobile roaming charges both among mobile operators and for consumers.

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 their entry 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;
- lead to price squeeze.

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.

26 Changes to telecoms law

Are any major changes planned to the telecoms laws of your country?

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, which will lead to numerous changes in the electronic communications legislation.

27 Next generation networks

How are next generation networks (NGN) regulated?

There are no specific regulations concerning NGN.

Media regulation**28 Ownership restrictions**

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

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.

29 Cross-ownership

Are there any regulations in your country in relation to the cross-ownership of media companies, including between 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.

30 Licensing requirements

What are the licensing requirements for broadcasting in your country, 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 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, practically no TV broadcasting licenses have been recently issued.

The registration has to be performed by CEM within a 14-day term as of the application in case 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 E564 to E1,718 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 to the amount between E1,026 and E2,051.

31 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. Besides all the broadcast programmes must be in Bulgarian. It is, however, applicable only to terrestrially broadcasted programmes, as for the programmes broadcast via cable or satellite only a registration is required where solely the programme format is determined.

32 Advertising

How is broadcast media advertising regulated?

RTA provides for numerous restrictions in conformity with the Television Without Frontiers Directive and the European Con-

vention 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. Some restrictions are provided also for advertising medicines. Advertisements targeted to minors and these of 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 twelve minutes per hour and 15 per cent of the daily programme time (for commercial broadcasters).

33 Must-carry obligations

Does your country have 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 contractual basis and upon cost-orientated prices that include the ordinary level of return.

34 Changes to the broadcasting laws

Are there any changes planned to the broadcasting laws of your country? 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 in your country?

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.

35 Digital switchover

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

The ECA provides that permissions for use of scarce resource – 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. This practically means that the digital switchover should be finalised by that date. However, at present there are no particular regulations with regard to the allocation of the radio frequencies freed from this switchover.

Regulatory agencies

36 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. 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;
- 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.

37 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, 5 of whom are appointed by the parliament and four by the president. Both the ECA and the RTA provide for numerous requirements and limitations for 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, interests upon delayed payments, donations, etc.

38 Appeal procedure

How can decisions of the regulator be challenged or appealed and on what bases – merits, law, procedure?

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.

39 Competition and telecoms/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, determination of markets, estimation of the competition level on the relevant markets, etc. 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 shall be settled via an agreement concluded between 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.

40 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.

41 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 the national security and crime investigations. The data categories that have to be retained, as well as the storage and transmission of such data are subject to regulation by an ordinance that shall be adopted by the chairman of the State Agency for Information Technologies and Communications.

42 Unsolicited communications

Does legislation in your country prohibit unsolicited communications (eg, by e-mail, 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 e-mail 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 e-mails of the legal entities not wishing to receive such commercial communications. Sending unsolicited commercial communications to e-mails 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 e-mail. 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 the 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.

Competition and merger control

43 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 response to question 39, 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.

44 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 levs (approximately e7,670,000). 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.

45 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.

46 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 7-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 that should be completed within 30 days.

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 the 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.

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