Telecoms and Media

Contributing editors
Laurent Garzaniti and Natasha Good

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GETTING THE DEAL THROUGH

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CONTENTS

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Communications policy

1 Regulatory and institutional structure

Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?

The major statutory regulation applicable to the operation of electronic communications networks (ECNs) and electronic communications services (ECSs) in Bulgaria stems from a number of statutory instruments, including the Constitution of the Republic of Bulgaria, the Law on Electronic Communications (LEC) (available at www.cpdp.bg/en/index.php?p=element&aid=433;), the Law on Personal Data Protection (available at www.cpdp.bg/en/index.php?p=element&aid=373;), the Law on Technical Requirements to Products, and the Law on Protection of Competition. The aforementioned primary legislative acts are supported by a number of instruments of the secondary legislation and regulations adopted by the national regulatory authority or by other competent bodies. Following an amendment to the LEC that took place in December 2011, the regulatory framework in effect is deemed to transpose in general the principles set out in EU 2009 Regulatory Package.

The governmental policy in the sector is implemented by the Council of Ministers, the National Radio Frequencies Spectrum Council and the Minister of Transport, Information Technology and Communications. The Bulgarian national regulatory authority is the Communications Regulation Commission (CRC). The CRC acts in cooperation and coordination with other authorities such as the Bulgarian Commission for Protection of Competition (CPC) (which has the primary responsibility for enforcement of fair competition rules) and the Personal Data Protection Commission (which has been entrusted with the regulation and control of the processing of individuals' personal data). (See also question 26.)

After the promulgation of the Law on the Economic and Financial Relations with Entities Registered in Jurisdictions with a Preferred Tax Regime, their Related Parties and their Ultimate Shareholders, effective as of 1 January 2014, entities registered in a jurisdiction with a preferred tax regime, as well as their related parties, are not eligible to acquire ownership participation in a mobile operator or to participate (directly or indirectly) in procedures for granting a permit for provision of services as a mobile operator, unless certain conditions are met.

2 Authorisation/licensing regime

Describe the authorisation or licensing regime.

The LEC provides that public ECNs and ECSs can be provided freely after submission of a notification to the CRC, unless individually allocated scarce resources (eg, radio frequencies, addresses, numbers from the National Numbering Plan (available at www.crc.bg/files/_en/bulgarian_NNP-en-2012.pdf), etc) are required. In the latter case, ECNs and ECSs may only be provided upon issuance by the CRC of a permit for the use of the respective individually allocated scarce resource.

The notification procedure is straightforward and free of charge, and it normally takes about 14 days for the CRC to review the notification and to register the undertaking with the register of the undertakings that have notified the CRC about their intention to provide public electronic communications. An undertaking that has filed a notification for provision of ECNs or ECSs has an obligation to comply with certain general requirements adopted by the regulator, depending on the type of network or services provided (eg, certain technical, reporting, procedural, data protection, retention, consumer protection, law enforcement obligations, etc). The rights and obligations of the ECNs or ECSs provider arise as of the date of the duly filed notification and are not limited in time. The undertaking operating under such authorisation has an obligation to inform the regulator within 14 days of any change to the data stated in the notification and may terminate the provision of electronic communications upon submission of notification to the CRC.

Where the provision of electronic communications requires the allocation of a scarce resource, electronic communications shall be carried out upon the issuance of a permit. If use of an individually allocated scarce resource – numbers – is required, the permit shall be granted without any auction or tender. The permit for use of individually allocated radio frequency spectrum shall be awarded on a competitive basis if the number of applicants exceeds the number of persons that may be granted a permit for the available radio frequencies. A permit for use of individually allocated radio frequency spectrum is awarded without auction or tender in the cases explicitly specified by law, including, among others: (i) where the number of applicants is lower or equal to the number of persons that may be granted a permit for the available spectrum; and (ii) for carrying out electronic communications through the use of analogue ECNs for terrestrial analogue radio broadcasting. A distinction in spectrum allocation for mobile, fixed and satellite usage is made in the State Policy on Planning and Allocation of the Radio Frequency Spectrum adopted by the Council of Ministers. The National Plan further allocates radio frequency bands, distinguishing between mobile, fixed and satellite usage.

A permit for the use of an individually allocated scarce resource is granted for an initial period of up to 20 years, with the possibility for extension of up to 10 more years. The permit may be modified by a decision of the CRC upon the latter's initiative on grounds provided by the LEC (including, among others, changes in the applicable laws, reasons related to the public interest and aiming at efficient use of scarce resources, protection of consumers' interests and ensuring universal service) or upon the permit holder's initiative.

Undertakings carrying out electronic communications have to pay: (i) an annual fee for the CRC's controlling activities of up to 1.2 per cent (for undertakings having an annual gross income over 100,000 leva) or zero per cent (for undertakings having an annual gross income below 100,000 leva) over the annual gross income from the provision of ECNs or ECSs, VAT not included and following deductions as provided for by the law; and (ii) a one-time fee for administrative services. In addition, undertakings using individually allocated scarce resources have to pay: (i) an annual fee for use of such resource (the amount of the annual fee for the use of an individually allocated scarce resource shall be determined on the basis of criteria set forth by the law, such as territorial coverage of the permit, term of spectrum use (in respect of radio frequencies), availability and economic value of numbers from particular number ranges (in respect of numbers), etc; and (ii) a one-time fee for granting, amendment or supplement of a permit for use of such resource.

3 Flexibility in spectrum use

Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

The permit for granting the use of an individually allocated scarce resource generally specifies the permitted use.

Bulgarian law allows the transfer of a permit or (with respect to a permit for the use of individually allocated radio frequencies) part of the rights and obligations pertaining to the permit, as well as the lease of the individually allocated radio frequencies after the prior approval of the CRC. The CRC shall issue such approval if the contemplated transfer or lease shall not negatively affect competition or lead to changes in the conditions of use of the scarce resource. Specific requirements related to the transfer of a permit are set forth in secondary legislation issued by the CRC.

4 Ex-ante regulatory obligations

Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

The LEC contains a number of specific provisions aimed at preventing operators with significant market power (SMP) from carrying out anti-competitive practices. These provisions are enforced by the CRC, whose task, among many others, is to define and periodically analyse the relevant markets for network infrastructure and communication services, in order to determine whether effective competition exists. The CRC conducts the analysis in accordance with the methods and principles of competition law (ie, effective competition is deemed to be absent if one or more undertakings has SMP in a relevant market). In line with article 16(4) of the Framework Directive, the LEC defines SMP as a position equivalent to dominance (ie, a position of economic strength vesting in a single undertaking (or a group of undertakings) the power to behave to an appreciable extent independently of competitors, users and end-users).

By the end of 2013, the CRC had completed its market analysis of all markets identified in the Second Recommendation of the European Commission on the relevant markets and had imposed preliminary measures or remedies with respect to most of them. In line with the 2014 Relevant Market Recommendation, the CRC redefined the markets and by August 2015 completed its analysis of the wholesale local access provided at a fixed location (market 3a in the Third Recommendation) adopting decision 372/2015. Earlier in April the CRC also adopted a decision (186/2015) on the market for wholesale local access provided at a fixed location. By virtue of both decisions specific measures were imposed on the Bulgarian Telecommunications Company (BTC), which was identified as an operator with SMP, including continued obligations to allow subscriber line access, physical and virtual collocation, backhaul services, and additional obligations for non-discrimination, transparency and cost-oriented pricing with a specific price ceiling for access to the copper twisted pair and collocation.

With respect to the market for wholesale voice call termination on individual mobile networks (market 2 in the Third Recommendation), in August 2015 the CRC published a draft decision for ex-ante regulation, but the adoption process has not been finalised as of January 2016. The draft follows the logic of the preceding decision 1362/2012, where the authority held that each of the three mobile network operators (Mobiltel, Telenor and BTC/Vivacom) had SMP in their respective networks, so the existing obligations for access and interconnection, transparency, non-discrimination, separate accounting, and cost-oriented pricing would remain in force.

Since 2013, the rates for mobile and fixed call termination are determined in accordance with the bottom-up long-run incremental costs (BULRIC) model. All SMP operators are obliged to notify changes in the prices of regulated services to the CRC one month prior to entry into force, and prices of temporary promotional packages must be notified at least two weeks prior to implementation. Twice a year the CRC may require SMP undertakings to prove the cost orientation of prices, allowing them one month to comply. If they fail to adjust prices or to prove the cost orientation, the authority may impose one or more of the price control mechanisms for a period not exceeding six months. However, the discussion on the actual application of the BULRIC model in the cost allocation structure of SMP operators progressed slowly and it was only lately that the CRC finally adopted a decision on this topic and by virtue of its decision No. 578 of 19 August 2014 approved the cost allocation system of BTC/Vivacom. A new review of the pricing schemes was initiated in 2015 but so far the CRC has not adopted a final decision.

In October 2015 the CRC announced that it has started to analyse the market for wholesale high-quality access provided at a fixed location (market 4 in the Third Recommendation), but a decision cannot be expected before summer 2016. Back in 2012, BTC was designated as an operator with SMP on the market for wholesale terminating segments of leased lines (up to 8Mbit/s) and obliged to provide access to and use of the respective facilities as well as additional pricing restrictions. BTC was also designated as an operator with SMP with respect to the wholesale physical network infrastructure access and wholesale broadband access markets, where additional access and transparency obligations were imposed, as well as pricing limitations. These obligations remain in force at least until the CRC completes its analysis in accordance with the new market definition.

5 Structural or functional separation

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

If the CRC determines that effective competition in a relevant market is deterred by a vertically integrated undertaking with SMP, it may order functional separation, placing the activities related to wholesale provision of access services in an independently operating company. The separated undertaking must supply wholesale access services to all operators, including to related parties, on the same terms and conditions, including prices and timescales.

It should be noted that functional separation is an extraordinary measure that has not been used to date in Bulgaria, and the law prescribes that it must be applied only where all other measures have failed and there are important and persisting competition problems or distortion in relevant markets for wholesale access. The CRC may impose this obligation after completing public consultations and subject to authorisation by the European Commission.

6 Universal service obligations and financing

Outline any universal service obligations. How is provision of these services financed?

In compliance with the Universal Services Directive, the LEC contains provisions regarding the scope, designation of provision and financing of universal service obligations. 'Universal services' is defined as a set of services with a predetermined quality that must be offered to all end-users at an accessible price, irrespective of their location in Bulgaria. Currently the former incumbent operator BTC/Vivacom has the obligation to provide universal services.

The universal services provider must be compensated for its net costs where the provision of service represents an unfair burden for the undertaking. The existence of an unfair burden must be determined on the basis of the net costs and taking into consideration the intangible advantages for the universal services provider associated with the provision of universal services, provided that the universal services are provided at a loss or at prices below the reasonable margin of profit. The rules for calculating the net costs are drafted by the CRC.

7 Number portability

Describe the number portability regime in your jurisdiction.

Undertakings providing ECSs through numbers from the National Numbering Plan have the statutory obligation to provide for number portability, as follows: (i) in the case of fixed services, subscribers would retain their numbers, irrespective of the change of the provider of the fixed phone service or the change of the address within one and the same geographic national destination code; (ii) in the case of mobile services, the numbers would be retained at any location, irrespective of the change of the mobile operator; and (iii) in the case of non-geographic services, the numbers would be retained at any location, also irrespective of the change of the provider of non-geographic services.

In implementation of the number portability rules the CRC has issued functional specifications for number portability, containing technical conditions for carrying out the porting, rights and obligations of the operators, procedure, pricing and expenditure distribution principles. Further to the functional specifications and under the supervision of the CRC the respective groups of operators using a particular type of number (for mobile, non-geographic or geographic services) have elaborated on the number portability procedure in detail.

8 Customer terms and conditions

Are customer terms and conditions in the communications sector subject to specific rules?

Pursuant to the LEC, undertakings providing ECSs must offer those services to end-users in compliance with the principles of transparency and equal treatment with respect to the type of technology used, the categories of subscribers, the amount of traffic and the means of payment, and must not offer advantages to individual end-users or groups of end-users for the same services. Nevertheless, undertakings providing connection to public ECNs or public ECSs may use GTCs in contracts with end-users, which should be publicly available and must constitute an inseparable part of the individual contracts.

Individual agreements enter into force seven days after execution, unless the consumer has requested immediate application explicitly in writing. Within this term the consumer is entitled to withdraw from the contract without liability or the need to state any grounds. The LEC establishes minimum content requirements for GTCs, as well as for individual contracts with end-users, including those to which GTCs apply. GTCs prepared by operators providing universal services are subject to approval by the CRC, while the other operators providing public telephone services must submit the GTCs to the CRC for reference only. In addition, operators providing public ECSs must ensure free access of consumers at least to:

- GTCs (if any) applicable to the end-user contract;
- up-to-date information about prices and price packages; and
- up-to-date information about the quality of the services offered.

Implementing article 30(5) and (6) of the Universal Service Directive, the LEC requires that the initial term of contracts between end-users and ECSs providers does not exceed two years and that the undertakings offer to end-users the option to enter into a contract of up to one year. The conditions and procedures for contract termination must not hinder the ability of an end-user to change service providers. In addition, since 2012, on expiry of the original fixed term all contracts become of indefinite duration and may be terminated by customers on one month's notice.

Furthermore, the CRC may regulate retail prices of SMP operators where imposition of specific obligations is deemed insufficient. Thus where the authority has established that an undertaking has SMP in a relevant retail market, it may, for the purpose of protecting end-users and promoting effective competition, impose ex ante one or several of the following limitations:

- obligation of cost-orientated retail prices;
- price ceiling – limiting the growth of retail prices to a predetermined maximum;
- price benchmarking – obligation to align prices with those for same or similar services in comparable relevant markets of another EU member state; or
- control of individual tariffs – direct micromanagement of tariff elements.

9 Net neutrality

Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

Bulgarian law does not specifically regulate net neutrality matters.

Irrespective of the lack of statutory provisions in the context of electronic communications, a statutory power of the State Gambling Commission under the Law on Gambling (in effect from July 2012) should be mentioned. The latter is entitled to request the Sofia District Court to pass a resolution addressed to all providers of ECNs or ECSs requesting them to filter the websites of organisers of gambling games, which are not authorised under said law.

In reality, the internet service providers also prioritise certain content for the purposes of network management. Yet, irrespective of the fact that such activities could be interpreted as a breach of the net neutrality principle, the issues of net neutrality seem not to have arisen more prominently in Bulgaria and, at least from a legal law point of view, net neutrality has not been intensively discussed in the public domain.

10 Platform regulation

Is there specific legislation or regulation in place, and have there been any enforcement initiatives, relating to digital platforms?

Bulgarian law does not specifically regulate digital platforms.

11 Next-Generation-Access (NGA) networks

Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

In 2014 and 2015 the Bulgarian government passed a number of documents focusing on the NGA networks, including the National Plan Regarding Broadband Infrastructure for NGA networks (prepared mainly for utilisation of the EU resources for the 2014–2020 programme period and specifying the means, methods and terms for implementing Digital Agenda 2020) and the National Digital Agenda 2020 Programme (specifying the measures, institutions and terms for ICT development in Bulgaria and for supporting the EU trends and specific tasks). From a legal regulatory perspective, NGA networks are electronic communications networks and in accordance with the technological neutrality principle are subject to the same statutory rules as provided for the networks based on other technologies.

There is no publicly available information about a particular government finance scheme to promote NGA broadband penetration. Pursuant to the effective programme documents – the National Strategy on Broadband Access Development in the Republic of Bulgaria and the National Operating Plan for Implementation of the Strategic Goals for Deployment of Broadband Access in the Republic of Bulgaria, issued by the Ministry of Transport, Information Technology and Communications, the following financing options would be available for operators in Bulgaria:

- the EU Structural Funds and in particular European Regional Development Fund;
- financing provided by the state budget. The Law on the State Budget of the Republic of Bulgaria for 2015 does not envisage a separate position related to financing of broadband matters; however, that does not exclude financing for investment purposes from the budget of the Ministry of Transport, Information Technology and Communications;
- direct public investment or public financing from national or local bodies;
- financing from private investors involved in various forms of public-private partnerships;
- private financing (ie, from private investors implementing their own broadband projects with their own resources, loans, etc);
- financing provided by the European Investment Bank in the form of loans; and
- financial instruments established particularly for the broadband sector (capital financing, bonds, guarantees, project bonds such as the one elaborated by the European Investment bank and the European Commission under the Europe 2020 Project Bond Initiative or other risk-sharing financial instruments).

12 Data protection

Is there a specific data protection regime applicable to the communications sector?

The Law on Data Protection does not contain specific rules regarding the communications sector.

The LEC, however, contains certain rules on data protection applicable in the communications sector. In particular, there are specific rules on interception, data retention and disclosure.

Under the LEC, operators and service providers must ensure the capacity to intercept electronic communications in real time and the capacity for 24-hour surveillance, as well as access in real time to data related to a specific call. Where such data may not be provided in real time, they must be provided to the specialised Directorate for Operational Technical Operations within the Ministry of the Interior and to the State Agency for National Security within the shortest possible period of time after termination of the call. The capacity for interception, 24-hour surveillance and access to data related to a specific call in real time shall be implemented solely according to the procedure established by the Law

on Special Surveillance Means. Under the rules of the latter piece of legislation, special surveillance means may be used only for the prevention or investigation of serious crimes, provided the necessary data cannot be collected by other means.

Requests for access to retained data may be made by certain categories of officials working at the police authorities, prosecution authorities, national security authorities and military officials. Authorisations for use are issued by the chairpersons of the regional courts and of the specialised criminal courts. The Law on Special Surveillance Means further provides for a strict procedure for the collection of evidence through the use of special surveillance and also for the use and destruction of such evidence, which aims to preserve the balance between the public interest for which such means are used and personal rights to privacy.

Further, Bulgarian legislation provides for rules on data retention and disclosure. Operators and service providers must retain for a period of six months data necessary to:

- trace and identify the source of a communication;
- identify the destination of a communication;
- identify the date, time and duration of a communication;
- identify the type of communication;
- identify users' communication equipment or what purports to be their equipment; and
- locate the identifier of used mobile phones.

Retention of additional data, including but not limited to data about the contents of the telecommunication messages, is not allowed under the rules. The listed types of data are retained and may be used for the purpose of facilitating the investigation of serious crimes and for national security purposes. At the end of the six-month period, operators and service providers must delete the respective data. They should submit to the Bulgarian Commission for Personal Data Protection monthly reports (by the 5th of the month) on the data, destroyed during the preceding month.

Requests for access to retained data may be made by certain categories of officials working at the police authorities, prosecution authorities, national security authorities and military officials. Authorisation for access is issued by the chairpersons of the regional courts or a judge authorised by the latter.

Retained data that has been accessed in accordance with the statutory rules can be retained for an additional three months on the request of the head of the body that has requested access to it and with the authorisation of the chairperson of the respective regional court or a judge authorised by the latter.

The LEC does not provide for any mechanism for reimbursement of the costs of an operator or service provider related to data retention and disclosure obligations.

13 Big data

Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

Many of the large companies in Bulgaria have already faced some of the challenges raised by big data – data protection, information security, contractual (need of contractual warranties related to personal data protection and cloud services), etc. However, apart from the definition for large-scale registries of personal data and apart from including such registries as a privacy impact assessment criterion relevant for the personal data protection rules, currently there is no specific Bulgarian legislation or regulation dealing with big data.

14 Key trends and expected changes

Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

In view of the implementation of Directive 2014/61/EU during the second half of 2015 Bulgaria started a complex process of coordinating and amending the effective rules for electronic communications networks construction both from a telecoms regulatory and a construction regulations point of view. As a result, a Bill for electronic communications networks and physical infrastructure was published for public consultation on 18 September 2015. In addition, in December 2015 the CRC started a procedure for amendment of the General Requirements on Carrying Out Public Electronic Communications – the main piece of subsidiary legislation in the area of electronic communications. The proposed amendments contemplate strengthening consumer protection levels in this area by introducing additional obligations for the ECSs providers (yearly reporting to the regulator and publishing information on the quality of the service, preparing and publishing electronic maps of the level of coverage reached, etc).

There are certain indications that the current strategy for implementing e-government and implementing the policies in the area of electronic communications and information technologies might be restructured and that there might be a few steps forward in the area. A Bill on the Electronic Identification (502-01-81 of 5 October 2015) has been passed at first hearing by the Bulgarian parliament (it needs to pass a second hearing in order to become law). In addition, by virtue of Resolution under Protocol No. 23 from the Council of Ministers session held on 10 June 2015, the Bulgarian government has declared its intention to change the structure of the institutions responsible for implementing e-government and the policies in the area of ICT by providing for two new structural units: an E-Government State Agency (responsible for the development and maintenance of the technical infrastructure, information centres and communications network of the state administration) and a Unified System Operator State Enterprise (that will develop and integrate e-services in the area of ITC and e-government). The principles of that Resolution have been further elaborated into a Bill for amendment of the Law on e-government (502-01-96 of 23 November 2015), however such bill has not yet been voted and passed by Parliament.

Media

15 Regulatory and institutional structure

Summarise the regulatory framework for the media sector in your jurisdiction.

Under Bulgarian law content is regulated separately from transmission and therefore the rules governing the provision of media services are stipulated in a separate set of legislative acts: in the Law on Radio and Television (LRT) and the pertaining secondary legislation.

The Council on Electronic Media (CEM) is an independent state authority vested with the powers to regulate media services in Bulgaria. 'Media services' are legally defined in the LRT as audiovisual media services and radio services. (See also question 26.)

16 Ownership restrictions

Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

Pursuant to the LRT broadcasters shall be traders (individuals or legal entities) registered under Bulgarian law or legal entities registered under the legislation of another EU or European Economic Area member state. Effective as of 1 January 2014, the Law on the Economic and Financial Relations with Entities Registered in Jurisdictions with a Preferred Tax Regime, their Related Parties and their Ultimate Shareholders prohibits any entities registered in a jurisdiction having a preferred tax regime, as well as their related parties establishing or acquiring a shareholding in an entity that applies for and has been awarded with a TV or radio licence under the LRT.

In addition, certain categories of persons are prohibited from participating in licensing procedures:

- entities refused or prohibited from carrying our insurance business, as well as those in which such entities or shareholders thereof have shares;
- persons who cannot prove ownership of their property as required under the Law on Measures against Money Laundering, as well as the legal entities where such persons are shareholders;
- persons who were declared insolvent or in liquidation within a five-year term prior to submission of the licence application;
- legal entities whose shareholders were listed as bad debtors under the Law on Information Regarding Bad Loans; or
- persons who were refused or prohibited from carrying out broadcasting activities within one year prior to submission of the licence application.

Bulgarian law does not provide for special regulation in relation to the cross-ownership of media companies. The LRT does not, however, allow holders of local or regional broadcasting licences (or related parties) to be issued with a licence with national coverage for the same activity, except when such holders give up the local or regional broadcasting licence. This rule does not apply to holders of a digital terrestrial broadcasting (DTB) licence.

17 Licensing requirements

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

Broadcasting activities shall be provided either upon registration (eg, for satellite and cable, creation of programmes that shall be transmitted through ECNs for terrestrial or satellite broadcasting where such programmes are designated to be received outside the territory of the Republic of Bulgaria) or an individual licence is required for radio and TV broadcasting activities for creation of programme services intended for distribution over ECNs, where a scarce resource – radio frequency spectrum is used. The competent authority in all cases is the CEM. Non-linear services are subject to simple notification to the CEM.

Radio and TV activity for the creation of programmes that are to be transmitted through ECNs shall be carried out based on a licence to be issued by the CEM. Such licence secures that the respective programmes are transmitted by the undertaking to which the CRC has awarded a permit for use of radio frequency spectrum for carrying out electronic communications through ECNs for digital radio broadcasting. The programmes to be transmitted through ECNs for DTB shall be of the type and profile as either determined by or coordinated with the CEM. The procedure for issuance of a licence shall be initiated upon request of an interested party or by the initiative of the CEM or the CRC and may take between three and four months. The number of licences so issued is unlimited.

The programme licence granted by the CEM is personal and may only be transferred with the CEM's prior consent and subject to fulfilment by the new licence holder of the requirements existing at the time of the initial issuance of the licence. The licence is granted for a term of up to 15 years and it may be extended by the CEM upon the request of the operator; the maximum term of the licence may not exceed 25 years.

Registration is carried out through a straightforward procedure. Registration is of unlimited term.

The fees payable for carrying our broadcasting activities are calculated in accordance with the Tariff for the Fees for Radio and TV Activity. In general, the fees consist of an initial administrative fee, which covers the costs of issuing the licence or registration, and an annual fee. The latter varies depending on the type of service (radio or audiovisual), the territorial coverage (local, regional or national) and the number of citizens who may take advantage of the licensed or registered service.

18 Foreign 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? What types of media fall outside this regime?

Under the LRT, at least 50 per cent of the annual transmission time of TV broadcasters, excluding the time set aside for news, sports events, games, advertising and teletext and teleshopping, is reserved for European works, when this is practicable. It is further prescribed that at least 12 per cent of such programme time (excluding any reruns) shall be dedicated to European works of independent producers. The law does not limit the application of these requirements to particular types of TV media, and therefore the regime is applicable to any TV programming.

With respect to radio programmes, the applicable law requires only that the creation and broadcasting of European works in radio programmes be encouraged, without setting any minimum reserved for Bulgarian or European works.

The above requirements are not applicable to programmes that are aimed only at local audiences and that are broadcast by a single operator who is not part of a national network.

19 Advertising

How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

Advertising is regulated by chapter 4 of the LRT. Chapter 4 implements the relevant rules of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities and provides for additional rules, which Directive has been repealed by Directive 2010/13/EU of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services.

The rules on media advertising cover audiovisual commercial messages and commercial messages broadcast on the radio. Bulgarian law does not differentiate between the form and media of advertising and applies to any supplier of media services, including online advertising.

20 Must-carry obligations

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

Must-carry obligations for conveying nationwide and regional programmes of the Bulgarian National Television and the Bulgarian National Radio free of charge are imposed on cable and satellite network operators.

The CRC also imposed in compliance with the LEC conveyance obligations on the undertakings providing ECNs for distribution of radio and television programme services where said networks are used by a significant number of end-users, including end-users with disabilities, as their principal means to receive radio and television programme services. The CEM is the competent body to determine through a reasoned decision the type and the profile of the licensed Bulgarian television programmes or radio programmes that shall be mandatorily transmitted over the DTB networks. Pursuant to the LRT, the number of such programmes shall not exceed two programmes for each ECN for DTB. Currently 11 commercial TV programmes have must-carry status only applicable to DTB networks.

The operators of DTB networks are obliged to transmit these programmes on the basis of cost-orientated prices set up in the contracts between the network operators and the content provider. If no agreement is reached by the TV programme provider and the respective operator of the DTB network, the prices for the transmission shall be determined by the CEM and the CRC.

In 2014 the CRC reviewed all imposed must-carry obligations and extended those on the cable and satellite network operators, as well as on NURTS Bulgaria AD, First Digital EAD and NURTS Digital EAD.

21 Regulation of new media content

Is new media content and its delivery regulated differently from traditional broadcast media? How?

No. There is no difference in the rules applicable to traditional broadcasting and those relevant to new media content.

22 Digital switchover

When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

Analogue TV broadcasting was switched off on 30 September 2013 and as of that date broadcasting of terrestrial television in Bulgaria is digital only.

The relocation of the frequencies freed up as a result of the digital switchover has been carried out based on the Plan for Implementation of Terrestrial Digital Television Broadcasting (DVB-T) in the Republic of Bulgaria, several amendments of the LEC and LRT and the Rules for the Terms and Procedure for Providing Access to Electronic Communications Services via Terrestrial Digital Broadcasting Networks and for Provision of Electronic Communication Services to Individuals with Hearing and Optical Disorders through such Networks (an instrument of the secondary legislation issued by the CRC). Owing to the intensive interest, the licences for use of the frequencies for DVB-T have been granted on the grounds of

the competitive bid procedure (so far five licences for use of DVB-T frequencies have been granted). The government is reviewing the possible future use of the 782–862MHz band for mobile wireless broadband applications (the 'digital dividend') once this band is released from current government use. During the second phase of the digital switchover the Ministry of Defence had to free up part of the 26 channels in the frequency band 470-574MHz and 574-862MHz used by the ministry. However, mainly due to financial and budgeting reasons, by the end of 2015 the freeing up of such channels for civil use has not been completed.

23 Digital formats

Does regulation restrict how broadcasters can use their spectrum (multi-channelling, high definition, data services)?

The LEC provides that the CEM shall issue licences on the basis of which radio or TV programmes shall be transmitted through ECNs for DTB (also see question 17). Such licences shall grant the right to distribution of the programmes by an undertaking to which a permit for the use of an individually assigned scarce resource (radio frequency spectrum) for carrying out electronic communications over ECNs for DTB was granted by the CRC in the territorial range indicated in the permit. The radio or TV programme services shall be broadcast by the above-described undertaking on the basis of a written contract, unless otherwise provided in law. The undertaking providing electronic communications over ECNs for DBT shall distribute licensed TV programmes whose type and profile have been determined by or coordinated with the CEM under the rules of the LRT.

The LRT prohibits an undertaking to which the CRC has awarded a permit for use of radio frequency spectrum for carrying out electronic communications through ECNs for DTB from being a Bulgarian radio and TV operator. A similar rule is set out in the LEC as well.

Therefore, undertakings with a permit for the use of an individually assigned scarce resource (radio spectrum) for carrying out electronic communications over ECNs for DTB are strictly limited to transmitting licensed radio or TV programmes.

24 Media plurality

Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

There are no specific legal rules or process for assessing media plurality by competent state bodies or for instructing companies to take steps in that regard. There is a general requirement that when deciding on whether to issue a licence for radio or TV activities the CEM evaluates, among other things, whether by issuing a licence favourable conditions for media diversity and pluralism will be created. Additionally, the LRT also prescribes that in conducting activities, the CEM shall protect, among other things, the freedom and plurality of speech and information.

25 Key trends and expected changes

Provide a summary of key emerging trends and hot topics in media regulation in your country.

The digital switchover is without a doubt the event that has most influenced the media environment in Bulgaria in the past five years. During that period the CEM regularly announced and carried out procedures for the award of licences for radio and television broadcasting activities for the creation of programme services intended for distribution over ECNs for DTB. As of 20 January 2016, 22 media services providers hold licences for digital TV broadcasting for creation and distribution of 28 TV programmes.

In its decision 279 of 24 March 2015 the CPC adopted an advocacy opinion dealing with the legal framework governing the must-carry obligations. The CPC concluded that the implemented model of digital switchover in this country led to a lack of interest in digital terrestrial TV and there was not enough content to be distributed by the DTB network operators. The competition authority assumed that the strengthening of cross-platform competition among media, expected as a result of the digital switchover, has not occurred, nor have new undertakings entered this market despite the increased capacity for broadcasting of radio and TV content. According to the CPC it could be argued that the main objectives of the digitalisation, namely to use the available spectrum more efficiently, to provide better quality and programme diversity for consumers' benefit, has not been achieved as expected. The CPC further recommended that the competent state authorities (including those vested with legislative powers) review the currently must-carry rules and a better balanced solution be found in order to provide consumers with the advantages of free and paid access to radio and TV content.

A number of bills for amendment of the LRT (six so far) have been submitted to Parliament in the period 2015 until the beginning of 2016. Most of them are related to particular issues that have captured the attention of Bulgarian society in a particular moment (violence in the TV programmes, requirements for CEM members, mandatory national language of a programme, alignment of the budgeting and financial matters with other laws, etc). However, no substantial or major regulatory changes in the area of media regulation are expected to occur in 2016 and irrespective of the considerable number of bills, none of them has been voted in Parliament yet.

Regulatory agencies and competition law

26 Regulatory agencies

Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

State governance in the telecoms sector is exercised by the Council of Ministers (ie, the government), the National Radio Frequencies Spectrum Council and the Ministry of Transport, Information Technologies and Communications. The Council of Ministers adopts and updates the State Policy in the Electronic Communications Sector and the State Policy on Planning and Allocation of Radio Frequency Spectrum. The latter is drafted by the National Radio Frequencies Spectrum Council, which also maintains the National Plan for Allocation of Radio Frequency Spectrum. The Ministry of Transport, Information Technologies and Communications has general oversight over the electronic communications and information society sectors, and its powers include, among others, preparing drafts of secondary legislation acts, representing the country in international organisations, etc.

In addition, broad sector-specific competence is vested with the CRC, which is an independent state agency and a separate legal entity. The CRC is a collective body, consisting of five members, including a chairman and a deputy chairman. The CRC chairman is appointed and released from office by the Council of Ministers. The deputy chairman and two of the members are appointed and released from office by Parliament, and one CRC member is appointed and released from office by the President. The term of office of all members is five years, and a member may not serve for more than two consecutive terms of office.

The CRC has the power to regulate and monitor compliance of providers and provision of ECSs with the applicable law. Among other things, the CRC may and has to:

- determine the relevant markets of ECNs and ECSs subject to ex-ante regulation under the LEC;
- investigate, analyse and evaluate on a regular basis the level of competition on the relevant markets; and
- determine the undertakings with SMP and impose on them, amend or revoke specific obligations aiming to preserve or restore effective competition.

The CRC is also the authority competent to issue, amend, supplement, transfer, suspend, terminate or revoke permits for use of an individually allocated scarce resource. The CRC has the power to resolve disputes between undertakings providing electronic communication services and review claims submitted by end-users in specific cases envisaged in the LEC. The CRC maintains mutual cooperation with the national regulatory authorities of other EU member states and with the European Commission in order to procure the development of consistent regulatory practices and implementation of EU law.

Another public authority with specific competence in the media sector is the CEM. It is an independent state agency and a separate legal entity, comprising five members: three appointed by the Parliament and two by the President. The term of office of all CEM members is six years. The composition of the authority is renewed every two years within the Parliament's quota and every three years within the President's quota. A

member of the CEM may not serve for more than two terms of office and such terms of office may not be consecutive.

The CEM is vested with the powers to regulate media services in Bulgaria. It is charged with the following tasks and competence:

- to supervise the activities of media service providers in compliance with the LRT;
- to issue opinions on draft legislative acts and international treaties in the media services sector;
- to award individual broadcasting licences to radio and TV broadcasters for national and regional programme services, which have the right to be distributed by an undertaking that has been granted an authorisation for the use of a radio frequency spectrum for provision of electronic communications over networks for DTB with national or regional scope; and
- to keep public registers of:
  - radio and TV programme services that are distributed over cable ECNs, by satellite and over ECNs for DTB;
  - radio and TV programme services that are distributed over existing or new ECNs for analogue terrestrial broadcasting;
  - on-demand media services; and
  - undertakings that distribute Bulgarian and foreign programme services, etc.

Finally, the CPC is also competent to intervene in the telecoms and media sectors in order to monitor compliance with the Protection of Competition Act (PCA). The PCA covers all business operations in all sectors of the economy and the presence of sector-specific regulatory requirements does not prevent its application. The PCA comprises the substantive rules on restrictive horizontal and vertical agreements, abuse of dominance and monopoly, merger control, sector inquiries, compliance review of legislation and administrative acts, and unfair trading practices. The PCA also constitutes the national competition authority – the CPC – and sets out the rules for antitrust investigations, merger control, sector inquiries, enforcement and imposition of penalties for breaches of competition regulations.

The principle responsibility for enforcement of the competition rules in Bulgaria falls to the CPC. The latter is an independent, specialised state agency, composed of seven members elected by Parliament. The tenure for the chairperson is six years, while the members are elected for a term of five years.

The CRC and the CPC must act in coordination and cooperation. Mergers and joint ventures in the telecoms and media sectors that meet the relevant national thresholds are reviewed separately by the CPC and the CRC, each applying its special statutes. In theory the CRC should have exclusive jurisdiction to monitor compliance with the LEC and to regulate SMP, but in practice abuse of SMP may fall within the purview of the PCA and thus should be also investigated and sanctioned by the CPC.

There are some mechanisms aiming to ensure consistency in the application of the different regimes and to avoid conflicting exercise of jurisdiction. First, there is a cooperation agreement between the CPC and CRC, whereunder the regulators inform one another of the draft decisions they intend to take and assist each other in the course of their investigations. Second, the LEC contains specific provisions regarding cooperation between the CRC and CPC, especially with respect to ex-ante market review. The CRC is obliged to consult the CPC when adopting a methodology for the terms and procedure of relevant markets definition, analysis and assessment, and criteria for designating undertakings with SMP (the currently effective version adopted by CRC decision No. 2076 of 23 October 2012, promulgated in State Gazette No. 89 of 13 November 2012, in force as of 13 November 2012).

27 Appeal procedure

How can decisions of the regulators be challenged and on what bases?

The decisions of all national regulators – whether sector-specific, such as the CRC or CEM, or general, such as the CPC – qualify as administrative acts (general or individual) and are subject to appeal before the Supreme Administrative Court (SAC) pursuant to the rules and procedures set forth in the Administrative Procedure Code. The grounds on which a general or individual administrative act can be challenged are as follows:

- lack of competency of the issuing authority;
- failure to comply with the form envisaged by the law;
- material violation of the administrative procedure rules;
- non-compliance with substantive legal rules; and
- non-compliance with the purposes of the law.

The SAC reviews the appeal in a panel of three justices (a chamber) and can affirm the respective regulator's decision, affirm and revise in part the administrative decision (eg, revise the amount of the sanctions imposed) or quash the decision and remand the case to the authority for de novo proceedings.

The decision of an SAC chamber is subject to further appeal on points of law before an SAC panel of five justices (a grand chamber). The grand chamber focuses primarily on the quality of preceding judicial review, but it would also analyse the underlying administrative act. If it quashes the judgment of the chamber, it must decide the case on the merits, unless a manifest breach of procedural rules was committed or additional facts need to be established, for which written evidence is not sufficient. In the latter case proceedings must be remanded back to the administrative authority. The decision of the grand chamber is final and is not subject to further appeal.

28 Competition law in the communications and media sectors

Describe the key merger and antitrust decisions in the communications and media sectors adopted over the past year by your antitrust authority.

The most important merger in the telecoms sector in 2015 was the acquisition of BTC by Viva Telecom (Luxembourg) SA, allegedly a subsidiary of VTB Capital, which was cleared by the CPC at the end of 2015. Earlier, in June, the CPC also authorised the re-entry of BTC in the broadcasting sector with the acquisition of NURTS – the leading provider of radio and television broadcasting and signal transmission infrastructure in Bulgaria. This transaction was frozen for several months due to a Phase II investigation

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open in December 2014, at the end of which the authority concluded that the access requirements imposed on NURTS by the CRC would suffice to secure effective competition in the collocation segment, while non-discrimination obligations would ensure that the BTC could not attempt to increase its share in cable TV services by leveraging the dominant position of NURTS on the upstream terrestrial signal transmission market.

During the same year Mobiltel acquired Blizoo Cable Bulgaria, the holding company for the largest cable TV operator in Bulgaria, thus becoming the proprietor of second largest TV network (in number of subscribers), overtaken only by Bulsatcom. There were also several corporate reorganizations of a lower scale, including the acquisition of Channel 3 by Nova Bulgarian Media Group – the largest traditional media holding in Bulgaria.

There were no significant antitrust investigations in the telecoms and media sectors during 2015. The only decision of note concerns a case saga that started in 2011 with a complaint of East Telecommunications Company alleging that BTC was abusing its dominant position on the market for call termination on its individual network by unjustified termination of the interconnection agreement. Back in 2011 the CPC issued a decision dismissing the case, holding that there was no abusive refusal to deal. However, on appeal the SAC quashed this decision noting that the CPC has committed procedural violations by focusing only on one type of abuse and failing to analyse others, including in particular imposition of unfair terms and discrimination. In its second take on the case the CPC concluded that certain clauses in the interconnection agreement addressing measures against artificially generated traffic were used by the BTC to sever the agreement without sufficient justification. As a result, the CPC imposed a fine on BTC in the amount of 3,746,530 leva for discriminatory treatment in violation of article 21(1) of the PCA.

Getting the Deal Through

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Construction
Copyright
Corporate Governance
Corporate Immigration
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Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
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Gas Regulation
Government Investigations
Healthcare Enforcement & Litigation
Initial Public Offerings
Insurance & Reinsurance
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Pharmaceutical Antitrust
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Private Antitrust Litigation
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Public Procurement
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Restructuring & Insolvency
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