

TELECOMS AND MEDIA

Bulgaria



Telecoms and Media

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Quick reference guide enabling side-by-side comparison of local insights into local regulatory framework, foreign ownership restrictions and licensing requirements; spectrum use considerations; ex ante regulatory obligations; structural / functional separation considerations; universal service obligations; number allocation and portability; customer terms and conditions; net neutrality; platform regulation; next-generation access (NGA) networks; data protection and cybersecurity issues; big data; local storage requirements; foreign programmes and local content requirements; advertising; must-carry obligations; regulation of new media content; digital switchover; media plurality; regulatory agencies, competition law, and appeals; and recent trends.

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Table of contents

COMMUNICATIONS POLICY

- Regulatory and institutional structure
- Authorisation/licensing regime
- Flexibility in spectrum use
- Ex-ante regulatory obligations
- Structural or functional separation
- Universal service obligations and financing
- Number allocation and portability
- Customer terms and conditions
- Net neutrality
- Platform regulation
- Next-Generation-Access (NGA) networks
- Data protection
- Cybersecurity
- Big data
- Data localisation
- Key trends and expected changes

MEDIA

- Regulatory and institutional structure
- Ownership restrictions
- Licensing requirements
- Foreign programmes and local content requirements
- Advertising
- Must-carry obligations
- Regulation of new media content
- Digital switchover
- Digital formats
- Media plurality
- Key trends and expected changes

REGULATORY AGENCIES AND COMPETITION LAW

- Regulatory agencies
- Appeal procedure

Competition law developments

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COMMUNICATIONS POLICY

Regulatory and institutional structure

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

The major statutory instrument setting out the regulatory framework for the provision of electronic communications networks (ECNs) and electronic communications services (ECSs) in Bulgaria is the Electronic Communications Law (ECL). The latter is complemented by a number of other statutory instruments, such as the Electronic Communication Networks and Physical Infrastructure Law (regulating the deployment and use of electronic communications networks), the General Requirements for Provision of Public Electronic Communications (detailing the rights and obligations of electronic communications providers), the Rules on the Minimum Security Requirements for Public Communications Networks and Services and the Methods of Security Risk Management (regulating security measures and incident reporting), as well as the related secondary legislation issued by the Communications Regulation Commission – the regulator in the field. These main pieces of legislation are also supported by numerous sector-specific legislative instruments such as the Personal Data Protection Law, the Technical Requirements to Products Law, the Electronic Commerce Law, the Supply of Digital Content and Digital Services and the Sale of Goods Law, the Consumer Protection Law and the Competition Protection Law. Following the amendments to the ECL that took place in March 2021 and the subsequent amendment to the pertinent secondary legislation, from 15 May 2023, Bulgarian law is, in general, harmonised with Directive (EU) 2018/1972 establishing the European Electronic Communications Code (EECC).

The government policy in the sector is implemented by the Bulgarian government (the Council of Ministers), the National Radio Frequencies Spectrum Council, the Minister of Transport and Communications and the Minister of Electronic Government. 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 (which has the primary responsibility for enforcement of fair competition rules), the Council of Electronic Media (the regulator in the area of audio-visual media services) and the Personal Data Protection Commission (which has been entrusted with the regulation and control of the processing of individuals' personal data).

After the promulgation of the Law on the Economic and Financial Relations with Entities Registered in Jurisdictions with Preferential Tax Treatment, their Controlled Entities, and their Beneficial Owners, effective from 1 January 2014, companies registered in a jurisdiction with preferential tax treatment, as well as their controlled entities, are not eligible to acquire ownership participation in electronic communications provider, if the percentage of participation confers 10 per cent or more of the voting rights, as well as to participate (directly or indirectly) in procedures for granting a permit for the provision of electronic communications networks and (or) services unless certain conditions are met.

Law stated - 11 May 2023

Authorisation/licensing regime

Describe the authorisation or licensing regime.

Following the transposition of the EECC, public ECNs and (or) ECSs (ECN/S) can be provided freely, after submission of a notification to, registration with, or issuance of a permit for use of scarce resources (eg, frequencies, the position of the geostationary orbit with the corresponding radio frequency spectrum or numbers from the National Numbering Plan) by the CRC.

No notification, registration, or issuance of a permit is required for the provision of a number of independent interpersonal communications services, for access to public ECN through a local radio network of companies, not-for-

profit organisations and end users, for which the provision of such access is not part of economic activity, but merely supplements economic activity or for public service that is not dependent on the transfer of signals via such networks. Electronic communications for own use through ECN without the use of a scarce resource are carried out freely, as well.

The notification procedure is straightforward and free of charge. It normally takes about 14 days for the CRC to review the notification and to enter the undertaking with the register of the undertakings that have notified the CRC about their intention to provide ECN/S. The rights and obligations of the electronic communications provider arise from the date of the duly filed notification and are not limited in time. Providers carrying out electronic communications under the notification regime must comply with a set of ongoing compliance obligations and requirements that depend on the type of network or services provided (eg, certain technical, reporting, procedural, data protection, retention, consumer protection, law enforcement obligations, etc). Providers operating under such authorisation have the 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 a notification to that effect to the CRC.

Provision of ECN/S upon registration is a new administrative regime concerning the use of individual rights over the spectrum designated for use after registration. The relevant spectrum, the use of which is subject to registration, the technical parameters for the operation of the networks, the related registration procedure, and the designated registry kept by the CRC are all set forth in the Rules for Use of Radio Frequency Spectrum Following Registration . The term of use of such resource under registration is up to 20 years. The registration of the entities having the right to use said spectrum is made by the CRC free of charge, following an application with the CRC information portal. The regulator carries out the registration within 20 days of the submission of the application or the correction of the identified inaccuracies and (or) incompleteness.

Where the provision of electronic communications is subject to authorisation for use of the individually allocated scarce resource electronic communications shall be carried out upon the issuance of a permit by the CRC.

The permit for use of individually allocated spectrum shall be awarded either:

- on a competitive basis, where the number of applicants exceeds the number of entities that can obtain permits for the available spectrum; or
- without an auction or tender, in a limited number of cases, including, among others:
 - where the number of applicants is lower or equal to the number of entities that may be granted a permit for the available spectrum;
 - for carrying out electronic communications through the use of analogue ECN for terrestrial analogue radio broadcasting; and
 - for carrying out electronic communications for the entity's own use.

Where the provision of ECN/S requires the use of scarce resource – numbers, the permit shall be granted without auction or tender.

Bulgarian telecommunications law is technology-neutral and therefore the authorisation regimes (notification, registration, permit for use) are based on the use (or not) of a specific scarce resource, rather than based on the type of services (fixed, mobile, satellite) or a particular mobile technology (2G, 3G, 4G). 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 a scarce resource (irrespective of whether spectrum or numbers) is granted for an initial period of up to 20 years, except for the permit for use of harmonised spectrum for wireless broadband services whose initial term is not less than 15 years with the option for prolongation up to 20 years. Apart from the statutory obligations relevant to all electronic communications providers, the holders of permits for use of an allocated resource must

comply with the obligations imposed by the terms and conditions of the permit. The permits can be amended and supplemented under the request of the holder or under a CRC motion and on the grounds provided for by the law (eg, 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). The CRC may also withdraw the authorisation where the provider fails to comply with the terms of the permit, has committed systematic violations and systematically fails to pay the fees due with regard to the allocated resource, as well as in some other cases explicitly set forth in the law.

Undertakings carrying out electronic communications have to pay:

- an annual fee for the CRC's controlling activities of up to 1.2 per cent (currently 0.2 per cent for undertakings having an annual gross income over 100,000 Bulgarian leva) or zero per cent (for undertakings having an annual gross income below 100,000 Bulgarian leva) over the annual gross income from the provision of ECN/S, value added tax not included and following deductions as provided for by the law; and
- a one-off fee for administrative services.

In addition, undertakings using individually allocated scarce resources have to pay:

- 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
- a one-off fee for granting, amendment or supplement of a permit for use of such resource.

As a stimulus for technical and technological innovations, in April 2023, the Council of Ministers has updated the tariff for the fees collected by the CRC in respect of ECS activities by decreasing a number of fees for use of scarce resource and the issuance of the related permit.

Law stated - 11 May 2023

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?

Spectrum may be used freely, after registration or after obtaining a permit. Spectrum registration and spectrum permits grant individual rights for use of spectrum, and these generally specify the permitted use. Spectrum registration is not tradable or assignable.

Bulgarian law allows the transfer of a spectrum permit or part of the rights and obligations pertaining to the permit, for the full or part of the allowed territorial scope, and for the full or part of the allowed use term, as well as the lease of the individually allocated spectrum, after the prior approval of the CRC. The CRC shall issue such approval if the contemplated transfer or lease would not negatively affect competition or lead to changes in the conditions of spectrum use. Specific requirements related to the transfer of a permit are set forth in the secondary legislation adopted by the CRC.

Law stated - 11 May 2023

Ex-ante regulatory obligations

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

The ECL contains specific provisions that aim to prevent operators with significant impact on the market to engage in anticompetitive practices. These provisions are enforced by the CRC, whose task, among others, is to define and periodically analyse the relevant markets for network infrastructure and communication services with the aim to determine whether effective competition exists. The CRC conducts the analysis in accordance with the methods and principles of the competition law (namely, effective competition is deemed to be absent if one or more undertakings have significant market power (SMP) in a relevant market). In line with article 63(2) of the EECC, the ECL defines SMP as a position equivalent to dominance (namely, 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, customers and ultimately consumers).

In 2022, the CRC completed its fifth round of market analysis of the relevant markets and defined that there are no markets that should be subject to ex-ante regulation. The CRC's reasoning is that the three criteria for the definition of a market as a relevant market subject to ex-ante regulation are not satisfied with respect to any of the telecommunication markets. For clarity, the ECL similarly to the EECC outlines the following three criteria:

- high and non-transitory structural, legal or regulatory barriers for entry on the market;
- a market structure that does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers for entry; and
- competition law alone is insufficient to adequately address the identified market failure.

It should be mentioned that as a result of its fourth market analysis of the relevant markets that took place in 2020, the CRC had defined the market for wholesale call termination on individual public telephone networks provided at a fixed location (market No. 1 of 2014 Market Recommendation) and the market for wholesale voice call termination on individual mobile networks (market No. 2 of 2014 Market Recommendation) as markets that should be subject to ex-ante regulation and had imposed specific measures to be observed by each of the entities active on these market that were considered to have SMP. The measures included, among others, the obligations for the provision of access to and use of essential network elements and facilities, including the provision of internet protocol (IP)-based interconnection, transparency, non-discrimination as well as price restrictions, including cost-oriented pricing for termination of national calls and calls originating from EU or EEA countries.

Law stated - 11 May 2023

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, by requiring the activities related to the wholesale provision of access services to be placed in an independently operating company. The separated undertaking must supply wholesale

access services to all operators, including related parties, on the same terms and conditions, including prices and timescales.

The 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 and (or) distortions in the relevant markets for wholesale access. The CRC may impose this obligation after completing public consultations and subject to authorisation by the European Commission.

If an undertaking with an SMP on one or more relevant markets decides to transfer its local access network assets or a substantial part thereof to a separate legal entity under different ownership, or to establish a separate business entity that provides fully equivalent access services to retail service providers, including to its own retail divisions, the respective undertaking shall notify the CRC on this intention. The CRC shall assess the effect of the intended transaction, together with the commitments offered, where applicable, on the existing regulatory obligations imposed on this undertaking, and on the basis of this analysis, the CRC may impose, maintain, amend, or withdraw obligations and may make obligatory commitments proposed by the undertaking.

Law stated - 11 May 2023

Universal service obligations and financing

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

'Universal service' is defined as a set of services with a pre-set quality standard, which must be made available to all customers, regardless of their location in Bulgaria, at a reasonable price. Pursuant to the ECL and Ordinance No. 4 of 21 March 2023 on the conditions and procedure for the provision of the universal service under the ECL (the Ordinance), the universal service obligations include the provision of fixed-voice telecommunication services and adequate broadband internet access at a fixed location, which shall support, in any case, a set of services expressly specified under the ECL. The latter include email; search engines; basic online tools for training and education; online newspapers or news; services, related to the online purchase or ordering of books; services, related to job search and job search tools, professional networking communities, online banking and utilisation of electronic administrative services; social media and real-time communication via text messages; and voice and video calls. At the request of a user, these may be limited to the maintenance of voice communications services. It shall be noted that the Ordinance determines the conditions for the provision of and the quality parameters regarding the universal service.

The CRC is the authority with the power to impose universal service obligations on undertakings that provide fixed voice services and broadband access. Further, the CRC may oblige such undertakings to take special measures for persons with disabilities. The conditions, modalities, and means, related to the provision of universal services to persons with disabilities, are outlined under the Ordinance. The CRC shall conduct an evaluation of the need to impose universal service obligations, as well as a review of those already imposed, every three years or upon a change of market circumstances. Currently, the former incumbent operator BTC/Vivacom has the obligation to provide the universal service.

Under the ECL, the undertakings with imposed obligations to provide universal service may request to be compensated for the proven net costs when the universal service provision represents an unfair burden on the said undertakings. The existence of an unfair burden is determined on the basis of the net costs, calculated in accordance with the rules adopted by the CRC (see Rules on Calculating the Net Costs for the Provision of the Universal Service, published in State Gazette issue 32 of 8 April 2023), and the intangible advantages for the undertaking, obtained from the provision of the universal service, provided that the provision results in losses or is offered at prices below a reasonable profit margin. The compensation resources for net costs of universal service provision shall be accumulated in a universal service compensation fund, which is an entity separate from the CRC.

Law stated - 11 May 2023

Number allocation and portability

Describe the number allocation scheme and number portability regime in your jurisdiction.

Undertakings providing public ECSs through numbers from the National Numbering Plan have the statutory obligation to provide for number portability, as end users have the right, upon their request, to keep their numbers, regardless of the operator that provides the service, for:

- geographic numbers: upon change of the provider of the service and (or) change of the address within one and the same geographic national destination code; and
- non-geographic numbers: for any location.

In the 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 particular types of numbers (for mobile, non-geographic or geographic services) have adopted detailed number portability procedures.

Law stated - 11 May 2023

Customer terms and conditions

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

Pursuant to the ECL, undertakings providing ECN/S must offer those to the end users in compliance with the principles of transparency and equal treatment, considering the type of technology used, the categories of end users, 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. Following the transposition of the EECC, the information and transparency obligations of ECN/S providers with respect to their customers differentiate between end users and consumers, and the consumer-specific obligations may extend to a specific group of end users – microenterprises, small enterprises and not-for-profit organisations unless the latter have explicitly waived such protection. By way of an example, the following obligations apply:

- When providing ECS to consumers, microenterprises, small enterprises and not-for-profit organisations, providers have to make available to the customer:
 - a list of specific information as set out in article 226 of the ECL (namely, providers' identification data, characteristics of the services, minimum level of service quality, etc) on a durable media; and
 - a concise and easily understandable resume of the contract prior to its conclusion in the form provided for by Commission Implementing Regulation (EU) 2019/2243. The information provided shall become an integral part of the contract and cannot be altered unless expressly agreed otherwise.
- When providing ECS to end users (irrespective of whether consumers and irrespective of the size of the company) and the provision of the services is made subject to general terms and conditions, providers have to publish in a clear, comprehensive and easily accessible machine-readable form the information for the terms and conditions of the services (eg, contact data of the entity, description of the services, including access to emergency services, etc).
- Undertakings providing public interpersonal communications services or internet access services shall publish on their website, provide in a prominent place on their business premises, and in any other appropriate manner up-

to-date information on the general terms and conditions of the service, provider's contact details, registered office and address, phone number, email address and website; description of the services offered; and dispute resolution mechanisms, including those developed by the provider. Such information must be published in a clear, comprehensive and easily accessible machine-readable form and in a format accessible to disabled users. Further, providers must publish in the comparison tool, provided by the CRC, information about prices and tariffs for services and the quality of service to enable the end users to compare and evaluate different internet access, number-independent and number-based interpersonal communications services.

- If the internet access or interpersonal communications provider controls at least certain elements of the network directly or by virtue of a service level agreement, the company may be required to publish comprehensive, comparable, reliable, easily accessible and up-to-date information to end users on the service quality, as well as on the measures taken to ensure equality of access for users with disabilities. In addition, the CRC may require the provider to inform consumers if the quality of the services provided depends on external factors such as control of signal transmission or network connectivity.

Customer agreements enter into force seven days after execution unless the consumer has requested explicitly and in writing an immediate entry into force. Within this term, the consumer is entitled to withdraw from the contract without liability or the need to state any grounds. The ECL requires that the initial term of contracts between consumers and ECSs providers (other than providers of machine-to-machine services or the number of independent interpersonal communications services) does not exceed two years and that the undertakings offer consumers 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 a consumer to change service providers. In addition, since 2012, on expiry of the original fixed term, all end user contracts become of indefinite duration and may be terminated by the customer on one-month notice.

Law stated - 11 May 2023

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?

Regulation (EU) 2015/2120 (the Regulation) is directly applicable and mandatory in its entirety in all EU member states, including Bulgaria, without transposition in the national legislation being necessary. The Regulation identifies measures concerning open internet access. The CRC has adopted the Position on the Implementation of the Requirements of articles 3 and 4 of Regulation (EU) 2015/2120 by Providers of Internet Access to End Users (the Position). The Position takes into consideration the Guidelines adopted by BEREC to be Applied by the National Regulatory Authorities Concerning the European Net Neutrality Rules (the Guidelines).

With respect to zero-rating, the CRC has stated in its Position that it considers as admissible the applied by providers zero-rating practice where once the data cap is reached the access is blocked or the speed is slowed down for all applications for which the zero-rating is applied. The CRC shall assess the implementation of the applied zero-rating practices for every specific case and consider the relevant deliberations and criteria set out in the Guidelines.

With respect to bandwidth throttling, in principle, the CRC considers as a violation of the obligation of the providers of internet access services to equally treat all traffic agreements or practices where there is technical discrimination, which is expressed in, inter alia, blocking, slowing down, restricting, interfering with, degrading or violating or discriminating access to specific content, or one or more applications. Taking such actions by the providers of internet access services is justified only with a view to certain exceptions set out in the Regulation.

Law stated - 11 May 2023

Platform regulation

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

Bulgarian law neither defines nor contains a specific regulation of digital platforms. To the extent digital platforms provide services at a distance, by electronic means, and at the individual request of the recipient of the service, in Bulgaria, they fall under the general regulation of information society services as per the Bulgarian Electronic Commerce Law (the national transposition of the EU E-Commerce Directive). Currently, the latter law applies to online intermediary services as well. Upon entry in application with respect to all entities within the scope of Regulation (EU) 2022/2065 (the Digital Services Act) from February 2024, the few Bulgarian law rules governing online intermediary services will be superseded by the rules of the Digital Services Act.

Further statutory rules may apply in addition to the ones relevant to the information society service. As an example, where a platform provides digital content and digital services to consumers, the consumer protection rules pertinent to digital content and digital services under the Bulgarian Supply of Digital Content and Digital Services and the Sale of Goods Law will apply (the national transposition of the Digital Content Directive). The services of the video-sharing platforms, on the other hand, are regulated under the Law on Radio and Television, which has already been harmonised with the rules of Directive (EU) 2018/1808 (the Revised AVMS Directive).

Since information society services are regulated under the law of the EU member state in which the service provider is established, and as long as most of the prominent digital platforms do not domicile in Bulgaria, there are no noticeable enforcement initiatives of Bulgarian regulators or government authorities. Usually, the enforcement activities of Bulgarian authorities are limited to notice-and-takedown requests or notifying the respective regulator in the country of origin. Due to the specific political circumstances in Bulgaria – with long periods of a dysfunctional parliament and no regularly elected government to focus on a legislative agenda, the upcoming update of the legal regime governing intermediary services seems to remain unnoticed. Nevertheless, the public in Bulgaria eagerly awaits to see the changes that the application of the Digital Services Act will bring, including the potential for more active Bulgarian regulators.

Law stated - 11 May 2023

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?

Bulgarian law does not define and rarely uses the term 'next-generation access network'. From a legal perspective, NGA networks are electronic communications networks and, due to the technological neutrality principle, in respect of regulatory regime and construction – they are subject to the same statutory rules as provided for the networks based on other technologies. The deployment of NGA networks, and following the transposition of the EECC – of very high-capacity networks, however, is used by the CRC as one of the relevant criteria, when resolving the price control mechanisms in respect of SMP providers or on the imposition of certain interconnection or access obligations.

The covid-19 pandemic boosted the use of online services as never before and those circumstances prompted the government's financing promoting NGA network penetration. More particularly, the deployment of very high-capacity networks has been envisaged in the Recovery Plan, prepared by the Council of Ministers to provide connectivity in remote and scarcely populated areas where it would be commercially unprofitable to invest (namely, white spots). Although no further details of the funding are available yet, pursuant to the latest version of the Recovery Plan, the total planned resource is up to 632.9 million Bulgarian leva (527.3 million Bulgarian leva on account of the Recovery and

Resilience Instrument and 105.6 million Bulgarian leva national co-financing) with an execution period between 2022 and 2026.

State financing has also been envisaged in the draft Law on the State Budget of the Republic of Bulgaria for 2023, which has been proposed by the Council of Ministers, but not yet approved by the Bulgarian Parliament. The Ministry of Transport and Communications has been granted 629.94 million Bulgarian leva to fund policies in the field of communications and digital connectivity.

Law stated - 11 May 2023

Data protection

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

The data protection rules applicable in the area of electronic communications are provided for in the ECL. Such rules are specific to the sector and supersede the general rules of the data protection law.

In Bulgaria, the undertakings providing public ECN/S may collect and process customer, location, and traffic data only where such data is directly intended for the provision of ECS. The communication and the related traffic data, location data and identification data of the user should not be disclosed, unless under the statutory procedures for traffic data disclosure and interception. In the case of a personal data breach, the Bulgarian data protection authority – the Personal Data Protection Commission (PDPC), must be notified within 24 hours of becoming aware of the breach. Where the data breach might adversely affect personal data or the privacy of a customer or another individual, the customer whose data is affected must also be notified without undue delay.

In addition, specific rules in respect of data retention and data disclosure apply in the communications sector. Under the ECL, ECS 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 State Agency Technical Operations and to the State Agency for National Security within the shortest possible period 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 severe intentional crimes, provided the necessary data cannot be collected by other means.

Further, Bulgarian legislation provides mandatory retention for a period of six months of the 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 communication, is not allowed. The listed types of data are retained and may be used for the purpose of facilitating the investigation of serious crimes, for national security purposes, and for locating people in emergency situations. At the end of the six-month period, operators and service providers must delete the respective data. They should submit to PDPC monthly reports on the data, destroyed during the preceding month as well as annual statistical reports on the cases of disclosure requested by the competent authorities.

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.

Following the Court of Justice of the European Union judgment of 17 November 2022 under Case C-350/21, the traffic data retention and disclosure obligations under Bulgarian law seem to be non-compliant with the EU law. In contrast with the said judgment, Bulgarian legislation provides for:

- general and non-selective retention of traffic data, even if limiting retention in time (six months in the case of Bulgaria) and providing for certain safeguards; and
- access by the competent national authorities to lawfully retained traffic data without ensuring that the persons whose data have been accessed have been informed and without those persons having a legal remedy against unlawful access.

Law stated - 11 May 2023

Cybersecurity

Is there specific legislation or regulation in place concerning cybersecurity or network security in your jurisdiction?

Pursuant to an explicit provision of the Bulgarian Cybersecurity Law (the national transposition of the Network and Information Security Directive), electronic communications providers are explicitly excluded from the scope of the statutory cybersecurity rules, except for three very specific web-blocking obligations. This is because they are subject to much stricter network and service security obligations under sector-specific electronic communications regulations.

Under the ECL and as part of their public security obligations, electronic communications providers in Bulgaria are required to take appropriate technical and organisational measures to manage the risk posed to the security of networks and services and to ensure the appropriate level of security corresponding to the assessed risk.

Following the transposition of the EECC, the CRC has the obligation to set forth specific statutory rules on the minimum network security requirements and, the related risk management methods. In compliance with such requirement, on 7 June 2022, the regulator published the Rules on the Minimum Security Requirements for Public Communications Networks and Services and the Methods of Security Risk Management. Pursuant to the said Rules, providers of public ECS/N:

- must make an initial risk assessment, that shall be the basis for determining the level of security, including preparing a complete list of assets that, if compromised or removed, could cause a security incident to the network or service;
- irrespective of the level of security determined as per the risk assessment, depending on the type of the network and the service they must use as a minimum the technical and security measures set forth in Appendix 1 to the Rules; and
- carry out regular security audits, as well as security audits after the occurrence of an incident.

The legislator has provided for a one-year grace period for the network and service security obligations under the Rules to enter into force, and thus the above-listed obligations are applicable from 9 June 2023.

In addition, providers of public ECS/N are obliged to:

- Notify the CRC in writing of any security-related incident having a significant impact on the operation of its

network or services (no transition period in respect of the Rules for security incident reporting has been provided for). The Rules set forth qualitative and quantitative criteria for assessing the incident as significant (eg, the number of users affected by the security incident, the particular duration of the security incident, the geographical scope of the area affected by the incident, etc), as well as the standard reporting form. The reporting is done in stages – the initial report should be made within 24 hours of establishing the level of impact of the incident, while the final report should be made immediately after the completion of the actions in relation to the incident.

- Block certain web content. The web blocking obligations are part of the public security obligations of the electronic communications providers; however, they are scattered in a number of sector-specific laws, rather than codified in the ECL. More particularly blocking activities are provided for in respect of illegal gambling, financial and touristic services websites, as well as in relation to counter-terrorism activities and malicious internet traffic. The supervision in respect of such obligations is vested with the respective sector regulator – the National Revenue Agency, the Financial Supervisory Commission, the Ministry of Tourism, the Ministry of Internal Affairs, and the State Agency of National Security.

Following the entry into force of the Revised Network and Information Security Directive, it is expected that in view of its transposition, both the ECL and the Rules on the Minimum-Security Requirements for Public Communications Networks and Services and the Methods of Security Risk Management will be revised to update the electronic communications sector regulations with the new rules concerning cybersecurity.

Law stated - 11 May 2023

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?

Apart from including large-scale registries of personal data as a privacy impact assessment criterion, currently, there is no specific Bulgarian legislation dealing with big data in particular. Thus, to the extent the concept of big data derives from the large volume of information and the need for its processing and management, in the absence of explicit regulation, the general statutory regime governing the type of data shall apply (eg, data protection: if big data concerns information about identifiable individuals, classified information regulations, where the data involves classified information, etc).

At the beginning of 2022, the PDPC published two non-binding information materials (one addressed to data subjects and one to controllers) clarifying some key issues in the processing of big data under Regulation (EU) 2016/679 (the General Data Protection Regulation) and the related possibility of profiling.

Law stated - 11 May 2023

Data localisation

Are there any laws or regulations that require data to be stored locally in the jurisdiction?

Bulgarian electronic communications law does not provide for the statutory obligation to store personal or traffic data locally in Bulgaria. This is unless the respective provider also qualifies as an 'organisational unit' under the Bulgarian Classified Information Protection Law (namely, state bodies, local authorities, legal entities and individuals that create, process, store or provide classified information (information that is a state or official secret, as well as the foreign classified information)). Access to this information is restricted and such organisational units have the obligation to comply with the statutory requirements for the protection of classified information, including storing classified

information 'in the organisational unit'.

Law stated - 11 May 2023

Key trends and expected changes

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

In 2021, the total volume of the electronic communications market in Bulgaria amounted to 3.148 billion Bulgarian leva (approximately €1.574), continuing the upward trend – the reported growth is 10 per cent compared to the data from 2020 (CRC 2021 Annual Report).

As at 31 December 2021, there are three active mobile operators in Bulgaria – A1 Bulgaria, Yettel Bulgaria, and BTC/Vivacom. While it is expected that the growth of mobile telephony usage will remain stable, the use of fixed-voice telephony is showing a downward trend.

In April 2021, the CRC held an auction for the issuance of three permits for the use of radio spectrum in the 3.6GHz band, with national coverage, for a period of 20 years. As a result of the auction, permits were issued to the three mobile operators participating in the auction – A1 Bulgaria, Yettel Bulgaria and BTC/Vivacom. This was an effective enabler for the launch of 5G networks in Bulgaria, which are now deployed throughout the country.

The market is dominated by the mobile network operators (MNOs), and despite the existing legal framework, no mobile virtual network operators (MVNOs) are currently operating in Bulgaria. Mobile Alternative Communications AD (MAC), a joint venture of five alternative operators, is actively campaigning for the CRC to undertake regulatory actions towards the MNOs to provide access to their networks to the potential MVNOs. As a consequence of the appeal launched by MAC against the CRC resolution approving the results of the public consultations preceding the auction for the award of the three permits for the use of the radio spectrum in the 3.6GHz band in 2021, the Bulgarian Supreme Administrative Court ruled in March 2023 that there were flaws in that procedure. MAC is vowing that such flaws can be remedied through regulatory actions that could effectively lead to the opening up of the market for the MVNOs.

The number of subscribers using fixed high-speed and ultra-high-speed access in this country is expected to increase due to the continuing migration to NGA networks. It is also foreseeable that the upward trend of IP TV will continue, with more and more undertakings expanding their portfolio of services to provide TV content based on the availability of internet access with the corresponding guarantees of the quality of service.

There is a stable tendency toward consolidation, as well as there is a trend related to structural separation. In 2021, A1 Towers spun off from A1 Bulgaria, as such separation of the telecommunication infrastructure portfolio was carried out by Yettel Bulgaria in 2020 (the demerger of CETIN Bulgaria from Telenor Bulgaria), while United Towers Bulgaria was established as a result of the carve-out of BTC/Vivacom tower assets in 2022. Another trend is the investor's interest in telecommunication infrastructure companies. Since March 2022, GIC, an international investment and infrastructure fund based in Singapore, owns 30 per cent of PPF Group, the ultimate owner of CETIN Bulgaria. Further, in April 2023, the single shareholder of United Towers Bulgaria, United Group, BV announced that it had reached an agreement to sell 100 per cent of its mobile tower infrastructure unit in Bulgaria, Croatia and Slovenia to TAWAL, a subsidiary of stc Group, Saudi Arabia.

Since the enactment of the amendments to the ECL transposing the EECC, the CRC and the respective relevant Bulgarian ministries amended or issued new legislative instruments to bring the pertinent secondary legislation in line with the amended ECL.

Law stated - 11 May 2023

MEDIA

Regulatory and institutional structure

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

Under Bulgarian law, content is regulated separately from the transmission and therefore the rules governing the provision of media services are stipulated in a separate set of legislative acts. Currently, audio-visual media services (both linear – programmes provided at a scheduled time and watched simultaneously by the audience and non-linear or on-demand services) and radio services are regulated as media services under the Law on Radio and Television (LRT) and the related subsidiary legislation. Said law also regulates the services of video-sharing platforms, although such services are explicitly excluded from the statutory definition of media services. Except for a few rules with respect to transparency of ownership and the ultimate beneficial owners set out in various laws, the content and activities of traditional print media, such as newspapers and magazines are not subject to statutory regulation.

In December 2020, the LRT was amended to transpose Directive (EU) 2018/1808 of 14 November 2018 amending Directive 2010/13/EU (AVMS Directive). Following such amendment, the long-awaited Code of Conduct on the Measures for Assessment, Designation and Limitation of Access to Programmes that are Unfavourable or Create a Risk of Physical Harm, Mental, Moral and (or) Social Development of Children (Code of Conduct), regulating child safety in media and video-sharing platform services has been enacted in January 2023.

The regulatory body in audio-visual media services is the Council on Electronic Media (CEM). It is the independent state authority vested with the powers to regulate both audio-visual media services and video-sharing platform services in Bulgaria.

Law stated - 11 May 2023

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, providers of audio-visual media services shall be traders (individuals or legal entities) registered under Bulgarian law or legal entities incorporated in another EEA member state. Effective from 1 January 2014, the Law on the Economic and Financial Relations with Entities Registered in Jurisdictions with Preferential Tax Treatment, their Controlled Entities and their Beneficial Owners prohibits any entities registered in a jurisdiction having a preferential tax treatment, as well as their controlled entities to incorporate or acquire a shareholding in an entity that applies for or has been awarded a TV or radio programme licence under the LRT, provided that the shareholding confers 10 or more per cent of the voting rights. A similar restriction applies to publishers of periodic printed media, however, not to TV and radio operators, whose programmes are not intended for distribution via electronic communications networks for digital terrestrial or analogue broadcasting, as well as to on-demand service providers.

The LRT also lists certain categories of individuals and entities who are prohibited from participating in licensing procedures based on their record as not being financially prudent or such who were refused or prohibited from carrying out broadcasting activities within one year prior to submission of the licence application.

Other than the general rules for concentration under the anti-trust laws (permit holders are required to declare that they do not hold shares in other radio and TV operators exceeding the acceptable threshold under the anti-trust legislation), the separate regulation of transmission and content (the LRT restricts entities to which the Communications Regulation Commission (CRC) has awarded a permit for use of digital terrestrial broadcasting (DTB) spectrum from

being a Bulgarian radio and TV operator) and the transparency of ownership and financial sources in the audio-visual media sector, 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 programme 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 DTB licence.

Law stated - 11 May 2023

Licensing requirements

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

Audio-visual media services in Bulgaria are provided under a licence, upon registration or following a notification to CEM.

Radio and TV activity involving programmes transmitted via digital terrestrial or terrestrial analogue networks are carried out based on a licence issued by CEM. Licences for programmes transmitted via terrestrial analogue networks are granted under a tender procedure initiated at the request of the interested party or CEM. In three (if no international spectrum coordination is required) to eight months (if international spectrum coordination is required) CEM coordinates the technical aspects of the broadcasting with the CRC and thereafter opens a tender (depending on the available spectrum). Based on the results of the tender, CEM resolves on the issuance of a licence for radio or television activity and a permit for the use of spectrum by the CRC for the applicant ranked first. Following the entry into force of the said resolution, CEM would issue the respective licence and the CRC the related spectrum permit.

The programmes to be transmitted through DTB networks are also licensed by CEM. Such licences entitle the operator to broadcast using the services of an entity authorised by the CRC for use of DTB spectrum. The procedure for issuance of the licence is initiated upon request of an interested party or by CEM and takes about three or four months. The number of licences so issued is unlimited.

The programme licence granted by CEM, irrespective of whether for transmission via analogue terrestrial networks or DTB networks is personal and may only be transferred with CEM's prior consent and subject to fulfilment by the new licence holder of certain statutory requirements. The licence is granted for a term of up to 20 years and may be extended by CEM upon the request of the operator.

The registration regime is applicable for programmes distributed via satellite and cable, programmes designated for audiences outside Bulgaria but transmitted through terrestrial or satellite networks on the territory of Bulgaria. The registration procedure is rather straightforward – it is initiated by an application and by law would be completed within 14 days. The registered operator has the obligation to notify CEM of any change in the conditions, place, and manner of transmission and programming time within 14 days of its occurrence.

Non-linear (on-demand) services are subject to a notification to CEM. Both the registration and the notification are of unlimited term.

The fees payable for carrying out linear audio-visual activities are calculated in accordance with the Tariff for the Fees for Radio and TV Activity. 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 TV), the territorial coverage (local, regional or national), and the number of citizens who may take advantage of the licensed or registered service. No annual fee is due for on-demand services and the operator shall pay only the administrative fee for the issuance of a certificate for entry into the public registry of on-demand services.

Law stated - 11 May 2023

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?

Only audio-visual media service providers under the jurisdiction of Bulgaria are subject to authorisation in Bulgaria. Where a foreign service provider is established in an EEA country the activity as an audio-visual media service provider might be carried out based on the freedom of reception principle. Bulgaria may not restrict the service if the provider complies with the Audio-Visual Media Services Directive in the country of origin. Where circumvention of rules occurs, the Bulgarian regulator may restrict certain content, such as incitement to hatred, which may not be banned in the provider's country of origin but violates local laws. Such restrictions must follow a statutory procedure and are only allowed under exceptional circumstances (eg, where the service openly, substantially and grossly violates public order or gives rise to a serious and grave risk of affecting public health, etc).

No quota for local Bulgarian content has been set forth under the LRT. However, the law provides for a mandatory 50 per cent share of European works calculated from the total annual broadcasting time (excluding news, sporting events, TV games, commercials, teletext and teleshopping) that is applicable to TV linear media services. It is further envisaged that at least 12 per cent of such programme time (excluding any reruns) shall be dedicated to European works of independent producers. The quota requirements are not applicable to programmes designated to the local audience and broadcasted by a single provider that is not part of a national network.

On-demand service providers on the other hand must ensure at least a 30 per cent share of European works in their catalogues, as well as the prominence of those works. The 30 per cent share of European works is based on the total number of titles in the catalogue. Such quota requirements shall not apply to providers that are micro-enterprises as per Recommendation of the European Commission of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, to providers that have an active interest of less than 1 per cent of the total audience of all on-demand services offered in Bulgaria, as well as where it would be impracticable or unduly justified by the nature or theme of the audio-visual media service.

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.

Law stated - 11 May 2023

Advertising

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

Media advertising is regulated primarily by Chapter 4 of the LRT, which implements the relevant provisions of the AVMS Directive. The rules on media advertising cover audio-visual commercial messages, commercial messages transmitted on the radio, as well as those distributed by the operators of video-sharing platforms under the jurisdiction of Bulgaria. Thus, the operators of such video-sharing platforms also have to comply with the LRT advertising requirements (mainly commercial communication to be clearly identified as such, not to incite discrimination or behaviour that endanger human health and safety, to comply with the restrictions related to advertising of alcoholic beverages, and with the prohibition on advertising of cigarettes, other tobacco and related products, including e-cigarettes and refill containers, to protect children's health and mental well-being, etc). The operators of video-sharing platforms should also introduce appropriate measures that prevent distribution of user-generated content that violates the above-identified advertising requirements.

Apart from the obligations of operators of video-sharing platforms under the jurisdiction of Bulgaria to comply with the LRT's advertising requirements, online advertising is not subject to regulation by the LRT or other codified regulation. However, there are some sector-specific regulations, such as the prohibition on advertising of tobacco and related products via information society services, the general prohibition on direct advertising of alcoholic beverages and the prohibition on online advertising of prescription medicines.

Law stated - 11 May 2023

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?

Bulgarian law sets forth two sets of must-carry obligations – for providers of radio and TV programmes distribution networks (cable and satellite) and for DTB network operators. 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 all three types of operators.

In respect of providers of radio and TV programmes distribution networks, the CRC is authorised to impose obligations for the transmission of certain radio and television programmes, if 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. These obligations must be proportional and transparent and shall be imposed only when they are required to achieve objectives of common interest. The radio and television programme services shall be designated by CEM according to the procedure established by the LRT. Providers, having such an obligation, shall determine cost-oriented prices for distribution of such radio and television programmes.

CEM is the competent body to determine through a reasoned decision the type and the profile of the licensed Bulgarian television 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 DTB network. Currently, six 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.

Law stated - 11 May 2023

Regulation of new media content

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

Following the transposition of the revised AVMS Directive, currently, the LRT also regulates the video-sharing platform services provided by video-sharing platform providers under Bulgarian jurisdiction.

Provision of such video-sharing platform services is subject to a notification to CEM, which notification shall be accompanied by draft general terms and conditions of the service in respect of which the LRT prescribes a minimum content requirement. The notification is thereafter entered into the public registry of video-sharing platforms kept by CEM and the general terms and conditions are coordinated by the authority within 30 days of submission. The providers of video-sharing platforms have the obligation to protect:

- minors from programmes, user-generated videos and commercial communications that may impair their

physical, mental, moral and (or) social development; and

- the general public from programmes, user-generated videos and commercial communications containing incitement to violence or hatred directed against a group of individuals or a member of a group based on any discrimination criteria, as well as from content the distribution of which constitutes an activity being a crime under the Bulgarian Penal Code, such as public provocation to commit a terrorist act, child pornography, racism and xenophobia.

In addition, video-sharing platform providers have certain obligations in respect of the commercial communications they are responsible for, such as to comply with the rules of the National Ethical Rules for Advertising and Commercial Communication developed by the National Council for Self-Regulation and to be transparent about commercial communications that are declared by the users when uploading content containing such communications. They must also provide for flagging and reporting mechanisms, systems to rate the content by the uploaders or users, age verification and parental control systems, as well as to set forth in their terms and conditions for use the prohibition for users to share unlawful content.

Law stated - 11 May 2023

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 from 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 Bulgaria and several amendments to the Electronic Communications Law and the LRT. The licences for use of the frequencies for DVB-T have been granted on the grounds of the competitive bid procedure; however, from 2022, only one national and one regional multiplex operator is in service, each providing for six programmes. The 782–862MHz band has been designated for mobile wireless broadband applications (the digital dividend) once this band is released from current government use, therefore, such band cannot be used for digital broadcasting.

During the second phase of the digital switchover, the Ministry of Defence had to free up 13 of the 26 channels in the frequency bands 470–574MHz and 574–862MHz used by the ministry. In 2018, the Council of Ministers adopted a National Roadmap for the Implementation of the Republic of Bulgaria's Obligations under Resolution (EU) 2017/899 of 17 May 2017 on the use of the 470–790MHz radio frequency band in the Union. Pursuant to the Roadmap, a resource of 2x20MHz (bands 703–723MHz and 758–778MHz) should be made available. However, the minimum scarce resource required to build a fully operational LTE network is 2x10MHz for a single provider, so a resource of 2x20MHz would only be available to two mobile providers, instead of all the existing operators. Thus, the entire frequency resource used by the Ministry of Defence in the 700MHz band should be released for civilian use.

Law stated - 11 May 2023

Digital formats

Does regulation restrict how broadcasters can use their spectrum?

Bulgarian telecommunications law is technology neutral and therefore authorisation regimes are based on the use of

particularly scarce resources (spectrum), rather than based on the type of particular technology (multi-channelling, high-definition, data services). In principle, the LRT regulates only two types of permits – for programmes transmitted via digital terrestrial networks and for programmes transmitted via terrestrial analogue broadcasting networks. Only TV and radio operators transmitting programmes via terrestrial analogue broadcasting networks' own spectrum permit issued by the CRC in addition to the programme licence granted by CEM. Providers of programmes transmitted via digital terrestrial networks do not have a spectrum licence on their own. Rather, they are using the services of an entity authorised by the CRC for the use of the DTB spectrum (multiplex operators) to broadcast their programmes. Such multiplex operators have the obligation to transmit licensed TV and radio programmes of the type and profile determined by or coordinated with CEM under the rules of the LRT.

Law stated - 11 May 2023

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 processes 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, CEM shall evaluate, among others, whether by issuing a licence with favourable conditions for media diversity and pluralism will be created. Additionally, the LRT also prescribes that in exercising its functions, CEM shall protect, among others, the freedom and plurality of speech and information. Thus, in the lack of effective mechanisms, quality journalism and media independence may be affected by the lack of plurality in media owners or economic models.

Law stated - 11 May 2023

Key trends and expected changes

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

In 2022, the issues attracting the attention of the media regulator in Bulgaria were very similar to those at the EU level. In its 2022 Annual Report, CEM outlines that the war in Ukraine determined the focus of the regulator in respect of the audio and audio-visual content provided by media service providers. The specific focus of the regulator was to detect misinformation. The covid-19 pandemic also played a role in CEM observation activities in 2022.

The protection of children, as a vulnerable audience, remained a priority of the regulator. CEM has executed focused monitoring of television programmes to detect the absence or presence of adverse content. News, the reporting of violence among children, was also subject to focused monitoring by the regulator.

In the 2022 Annual Report, CEM outlines that the RLT cannot cover the dynamic changes in the sphere of media services provision and calls for the approval of legislative changes to overcome deficits that have already been accumulated.

On 12 January 2023, CEM adopted a Code of Conduct on Measures to Assess, Flag, and Restrict Access to Programmes that are harmful or pose a risk of harm to the physical, mental, moral and (or) social development of children (the Code of Conduct). The Code of Conduct was prepared jointly with the Association of Bulgarian Broadcasters, Bulgarian National Television and Bulgarian National Radio.

Bulgaria has not yet transposed the two directives at the heart of the European Union's copyright reform, Directive (EU)

2019/789 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC and Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. The draft legislation for the transposition of the two EU directives was published for public consultations in September 2021 and is currently submitted for discussion and adoption by the Bulgarian parliament.

Law stated - 11 May 2023

REGULATORY AGENCIES AND COMPETITION LAW

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 telecom sector is exercised by the Council of Ministers (namely, the government), the National Radio Frequencies Spectrum Council and the Ministry of Transport 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 the 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 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 regulatory competence is vested with the Communications Regulation Commission (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. However, each member of the CRC should be appointed after a competitive selection procedure. 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 the compliance of providers and the provision of electronic communications services (ECSs) and of electronic communications networks (ECNs) with the applicable law. Among others, the CRC has to:

- determine the relevant markets of ECNs and ECSs subject to ex-ante regulation under the Electronic Communications Law (ECL);
- investigate, analyse and evaluate on a regular basis the level of competition in the relevant markets; and
- determine the undertakings with significant market power (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 ECSs and review claims submitted by end users in specific cases envisaged in the ECL. The CRC maintains mutual cooperation with the national regulatory authorities of other EU member states and with the European

Commission to procure the development of consistent regulatory practices and implementation of the EU law.

Another public authority with specific competence in the media sector is the Council on Electronic Media (CEM). It is an independent state agency and a separate legal entity, comprising five members: three appointed by parliament and two by the President. The term of office for 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 CEM may not serve for more than two terms of office and such terms of office may not be consecutive.

CEM is vested with the power to regulate media services and services provided by video-sharing platforms under Bulgarian jurisdiction. It is charged with the following tasks and competence:

- to supervise the activities of media service providers and operators of video-sharing platforms for compliance with the Law on Radio and Television;
- 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 the provision of electronic communications over networks for digital terrestrial broadcasting (DTB) with national or regional scope; and
- to keep public registers of:
 - radio and TV programme services that are distributed over cable electronic communications networks (ECNs) 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; and
 - on-demand media services;
- undertakings that distribute Bulgarian and foreign programme services; and
- video-sharing platform providers under the jurisdiction of Bulgaria.

Finally, the Commission on Protection of Competition (CPC) is also competent to intervene in the telecoms and media sectors 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, unfair trading practices, and unfair trading practices in the agricultural and food supply chain. 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 principal responsibility for enforcement of the competition rules in Bulgaria falls to the CPC. The latter is an independent, specialist state agency, composed of seven members elected by parliament. The tenure for all members is seven years. The tenure of the current panel of the CPC expires in July 2023 and it is expected within this period that parliament elects new members of the CPC.

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 by the CPC. The CRC is competent to review and authorise the transfer of a permit for the use of an individually allocated scarce resource or one or more of the rights and obligations related to such permit applying its special statutes. In theory, the CRC should have exclusive jurisdiction to monitor compliance with the ECL 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 the conflicting exercise of jurisdiction. First, there is a cooperation agreement between the CPC and CRC, where, under the

regulators, they inform one another of the draft decisions they intend to take and assist each other in the course of their investigations. Second, the ECL contains specific provisions regarding cooperation between the CRC and the 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 from 13 November 2012, last amended as per State Gazette issue No. 2 of 7 January 2022).

Law stated - 11 May 2023

Appeal procedure

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

The decisions of the national regulators (namely, the CRC, CEM and the CPC) qualify as administrative acts (general or individual) and are subject to appeal before Administrative Court Sofia-district (ACSD) 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 formal requirements set out by law;
- a material violation of the administrative procedure rules;
- non-compliance with substantive legal rules; and
- non-compliance with the purposes of the law.

The ACSD reviews the appeal in a panel of one judge 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 return the case to the authority for de novo proceedings.

The judgment of ACSD is subject to further appeal on points of law before the Supreme Administrative Court (SAC) acting in a panel of three justices (a chamber). The chamber focuses primarily on the quality of the preceding judicial review, but it would also analyse the underlying administrative act. If it quashes the judgment of the first instance court, 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 first instance court. SAC judgment is final and is not subject to further appeal.

Law stated - 11 May 2023

Competition law developments

Describe the main competition law trends and key merger and antitrust decisions in the communications and media sectors in your jurisdiction over the past year.

The major mergers and acquisitions that took place in the telecoms and media sectors in recent years was the acquisition of the former incumbent BTC/Vivacom by United Group, a leading multi-play telecoms and media provider in South East Europe that took place in 2020. United Group is a majority-owned subsidiary of BC Partners, a leading alternative investment firm with assets under management across the private equity, private debt, and real estate segments. Soon after this acquisition, United Group also acquired Nova Broadcasting Group EOOD, one of the two largest media groups in Bulgaria that include a TV and radio services operator, internet operator, newspaper and

magazine publishers, etc. United Group continued its expansion in Bulgaria by acquiring a couple of national and local newspaper publishers. After these three significant deals, United Group started an expansion of BTC's operations and during 2021 BTC/Vivacom acquired several local Internet and TV operators with a presence in different regions of the country. All transactions were unconditionally cleared by the CPC on the basis of finding that none of the transactions led to a combined national share of BTC on the market for the retail provision of fixed broadband data transfer services and the market for TV broadcasting in excess of 40 per cent. All clearance decisions (three in total) were appealed by one of BTC/Vivacom's competitors on the Bulgarian market – Yettel Bulgaria. After long court proceedings and several appeals, two of the clearance decisions issued by the CPC were confirmed by the Supreme Administrative Court, and one was returned to the CPC for a new evaluation. The reasoning of the court with respect to the latter case was that the CPC did not take into account all evidence and statements collected during the merger proceedings and did not initiate an in-depth investigation, although, on the basis of the collected information, it should have done so (pursuant to the PCA, the authority should initiate an in-depth investigation in the case a proposed transaction creates serious concerns that if it is implemented the effective competition on the relevant market shall be significantly impeded). It should be mentioned that one of the motives of the court was that BTC/Vivacom notified several acquisitions within a short period, but the CPC evaluated each one of them in isolation without taking into account the combined effect of all transactions on the relevant markets. As of the date hereof, all transactions are implemented (due to the preliminary implementation granted by the CPC). It should be noted that, at the beginning of 2022, BTC notified one more acquisition of regional internet and TV operator, but after a long Phase I investigation, and having in mind the above-identified court proceedings, the CPC started Phase II investigation. Both in-depth investigations are still pending.

Also, in December 2022, the CPC, on the basis of complaints filed by A1 Bulgaria and Yettel Bulgaria, started an investigation for unnotified concentration with respect to the acquisition of Bulsatcom EAD, one of the biggest TV operators in Bulgaria. This company was acquired in September 2022 by a Bulgarian natural person (via a special-purpose vehicle). Pursuant to the publicly available information, the complainants allege that there is evidence (a disclosure in United Group's financial statement that the respective natural person has received a loan from United Group for the purpose of acquiring Bulsatcom EAD) that this natural person is related to BTC/Vivacom. The complainants allege that through this acquisition, BTC/Vivacom has achieved indirect control over the strategic business behaviour of Bulsatcom EAD. An additional argument of the complainant is that under the conditions of the loan agreement, BTC/Vivacom and the natural person have agreed for Bulsatcom to transfer to BTC its optical and mobile networks. This transfer was already publicly announced and now it is subject to merger clearance by the CPC. The CPC's investigation is still pending.

There were no significant antitrust investigations in the telecoms and media sectors in recent years.

Law stated - 11 May 2023

Jurisdictions

	Australia	Quay Law Partners
	Brazil	Azevedo Sette Advogados
	Bulgaria	Djingov, Gouginski, Kyutchukov & Velichkov
	Egypt	Soliman, Hashish & Partners
	European Union	Simmons & Simmons
	Greece	Nikolinakos & Partners Law Firm
	Ireland	Matheson LLP
	Italy	Simmons & Simmons
	Japan	TMI Associates
	Malta	GVZH Advocates
	Mexico	Nader Hayaux & Goebel
	Nigeria	Streamsowers & Köhn
	Singapore	Drew & Napier LLC
	South Korea	Bae, Kim & Lee LLC
	Switzerland	CORE Attorneys Ltd
	Taiwan	Yangming Partners
	Thailand	Formichella & Sritawat Attorneys at Law
	United Arab Emirates	Simmons & Simmons
	United Kingdom	Simmons & Simmons