

# Bulgaria

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## COMMUNICATIONS POLICY

### 1 Policy

How would you summarise government and regulatory policy for the telecoms and media sector? What is the policy-making and policy-development procedure?

Bulgaria applied to join the European Union (the EU) and successfully completed the negotiations with the European Commission last year. The accession agreement is expected to be signed in April 2005 and the country is due to become a member of the EU by 1 January 2007. Bulgaria's determination to obtain full EU membership and the improved market conditions in the country have shaped the governmental and regulatory policy in telecoms and media sector.

The currently effective legislation governing the telecoms sector, implements the principles set forth in the EU 1998–2000 regulatory package and reflects the Bulgarian commitments undertaken in the pre-accession negotiations. The updated Sector Policy Statement (issued in November 2004) reconfirms Bulgaria's commitment to harmonise its legislation with EU 2002 *acquis communautaire* by 1 January 2007.

The telecoms sector is currently governed by the Council of Ministers (the government), the National Radio Frequency Spectrum Council and the Minister of Transport and Communications. The Telecommunications Law (the TL, in force as of 7 October 2003) provides for the Communications Regulatory Commission (the CRC, or the Regulator, discussed in greater detail in 34 below), which shall regulate and exercise control over the provision of telecoms services.

The objectives of regulation are set out in the TL and include, inter alia:

- further development of the telecoms market, equal treatment of telecoms operators and enhancement of competition in the market;
- guarantee of freedom and confidentiality of communications;
- protection of the interests of consumers of telecoms services;
- provision of the universal telecoms service;
- effective use of any scarce resource.

The TL further strengthens the functions and financial independence of the national Regulator in order to ensure efficient and effective control in the telecoms sector.

Broadcasting activities are regulated by the Law on Radio and Television (the LRT), which to a large extent reflects the currently effective EU legal framework.

### 2 Convergence

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

Bulgaria has yet not adopted the new regulatory framework for

electronic communications and therefore the concept of convergence of telecoms, media and IT is not implemented into the national legislation.

The TL defines telecoms as conveyance, emission, transmission, or receipt of signs, signals, written text, images, sound or messages of any type by wire, radio waves, optical or other electromagnetic medium. The LRT defines radio and television broadcasting activities as the creation of radio and television programmes for broadcasting by terrestrial transmitters, cable, satellite or by other means, in encoded or unencoded form, intended for immediate reception by an unlimited number of persons.

### 3 Broadcasting sector

Are the broadcasting sector and/or content regulated separately from telecoms?

The scope of the telecoms regulation includes broadcasting, except with respect to the content, which is governed by the LRT.

Broadcasting activities are regulated by two bodies, acting in coordination with each other: the CRC and the Council for Electronic Media (the CEM). With respect to broadcasting, the CRC is the body in charge of the technical parameters and issues the requisite telecoms licence, whereas the CEM supervises the broadcasters as to the contents and manner of broadcasting of their programmes. (See also 34 below.)

## TELECOMS REGULATION

### 4 WTO Basic Telecommunications Agreement

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

Bulgaria has committed to the WTO Basic Telecommunications Agreement. No reservations or exceptions have been made.

### 5 Public/private ownership

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

The government no longer holds any shares in the incumbent fixed line operator. Currently, all Bulgarian public telecoms operators are privately owned.

### 6 Foreign ownership

Are there any foreign ownership restrictions applicable to authorisation to provide any telecoms services?

There are no foreign ownership restrictions applicable to authorisations to provide any telecoms services.

Individual licences can be issued to entrepreneurs registered under the Bulgarian Law on Commerce, to legal entities and to diplomatic missions or other organisations having the status of

diplomatic missions. The law poses no specific ownership requirements to persons willing to register under a general licence either.

In addition, there are no restrictions as to the size of foreign participation in the capital of a Bulgarian company and, therefore, foreigners may own 100 per cent of a telecoms operator.

## 7 Operator exclusivity

Does any operator have exclusivity, and, if so, for which service(s), and for how long?

No. Telecoms services in Bulgaria have been fully liberalised since 1 January 2003. As of the same date, all exclusive rights regarding provision of telecoms services or networks have been abolished.

## 8 Fixed, mobile and satellite services

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

All of these services are regulated by the TL and by Regulation No. 13 on the Types of Telecommunication Activities subject to individual licence and registration under a general licence. However, there is no clear-cut definition of fixed, mobile and satellite services.

In general, the regulation of the above services is determined according to whether they include provision of fixed-voice service or whether their provision requires usage of scarce resources (RF spectrum, position of the geostationary orbit determined for the Republic of Bulgaria under intergovernmental treaties or numbering capacity). If that is the case, the provision of any of these services shall always require an individual licence. Furthermore, only fixed-line operators can be obliged to provide universal service.

## 9 Satellite facilities and submarine cables

In addition to the requirements under question 8 above, are there any other rules applicable to the establishment and operation of satellite earth station facilities and, where applicable, the landing of submarine cables?

Under the TL, the Regulator is authorised to publish a list of types of radio equipment (i) the launching of which is prohibited, or (ii) that can be launched only on grounds of an individual licence or registration under a general licence. The list should be published after it has been approved by the Council on the National Radio Frequency Spectrum. To the best of our knowledge such a list has not been promulgated yet.

Bulgaria is a party to a number of international treaties containing provisions concerning the landing of submarine cables. These include, inter alia, (i) the UN Convention on the Continental Shelf of 1958, and (ii) the UN Convention on the Law of the Sea of 1994. General provisions are also contained in the Law on Sea Space, Internal Waterways and Harbours of the Republic of Bulgaria, which differentiates between the landing of submarine cables in the zones of internal waterways and in the zone of the continental shelf. The Republic of Bulgaria has exclusive rights and jurisdiction on the landing of submarine cables in the zone of internal waterways. In the zone of the continental shelf, submarine cables can be landed by other states, provided that they do not affect the interests of the Republic of Bulgaria related to the research, development and use of the shelf's natural resources and the protection of the marine environment. The routes of the cables are determined by an agreement between the Republic of Bulgaria and the interested state. Bulgarian legislation contains no other specific requirements concerning the landing of submarine cables, apart from certain safety regulations.

## 10 Radio frequency (RF) requirements

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

Rights of use for RFs are granted through the individual licence issued for the respective type of telecoms activity. No RF licences/permits are required in addition to the telecoms services authorisation.

As RF spectrum is a scarce resource, as a general rule, the individual licences for provision of telecoms with a specifically allocated RF are issued on a competitive basis (after holding an auction or a tender). The TL, however, contains an exhaustive list of exceptions to the aforementioned rule. Thus, individual licences granting individual rights to use RFs can be issued on a non-competitive basis, inter alia, in the event that the number of applicants for the licences is equal to, or less than, the number of operators that can be licensed for the respective free scarce resource, or in the event that a public operator needs RFs for procuring transmission environment in its network.

Currently effective Bulgarian legislation does not allow for separate spectrum trading.

## 11 Third generation (3G) services

Is there any regulation for the specific roll-out of third generation (3G) mobile services (eg in terms of licences, geographic coverage, national roaming for new entrants, etc)?

There is no specific regulation for the specific roll-out of third-generation mobile services. The 3G services shall be provided on the basis of individually assigned RF spectrum and therefore an individual licence shall be required (see also 8 above).

The CRC has recently decided to issue three UMTS licences with national coverage in two auctions scheduled for 30 March 2005 and 5 April 2005.

## 12 Fees

What fees are payable for each type of authorisation?

Fees are determined in the TL and in the Tariff for the Fees Collected by the CRC (the Tariff). The TL provides for licence fees and registration fees, which are intended to cover the administrative costs of the CRC. In addition to the above, the TL envisages fees for using scarce resources (RFs and numbering capacity).

Holders of individual licences pay licence fees. These include:

- an initial fee for the issuance of the licence;
  - an annual fee for the regulatory services provided by the Regulator in an amount up to 1.2 per cent of the gross income from the licensed activities net of VAT after deduction of the cost (if any) for outgoing traffic, for interconnection, and for providing specific access; and
  - a fee for amendment and/or supplement of the licence.
- Holders of individual licences also pay annual fees for the use of a scarce resource:
- from the RF spectrum;
  - from the position of the geostationary orbit determined for the Republic of Bulgaria under inter-governmental treaties, or
  - from the national numbering plan.

In the event of the granting of additional frequencies to public operators, an additional lump sum fee must be paid.

All operators registered under a general licence pay a registration fee determined according to the administrative cost of the registration and the preparation and issuing of the general licence.

The TL sets out the principles according to which the fees should be determined. These include non-discrimination towards operators, proportionality with respect to the administrative costs, fostering competition and the provision of new services, efficient use of scarce resources and satisfaction of the needs of society for telecoms services of good quality. The TL also specifies the criteria for determining the fees charged for use of RFs. The amount and terms of payment of fees under the TL are provided for in the Tariff.

### 13 Authorisation timescale

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

In the event that an individual licence is issued without holding an auction or tender, the CRC should decide on the application for licensing within six weeks of the submission of the application. In the event of the need for international coordination concerning the necessary RFs and RF bands, the term is prolonged for the amount time necessary for such international cooperation.

In the event that an individual licence is being issued after holding an auction or tender, the overall procedure would take approximately six to eight months. This would include the time from the initiation of the procedure by the Regulator *ex officio* or pursuant to an application from an interested party up to the actual issuance of the licence.

The CRC should register eligible applicants under a general licence within 30 days of the date of the application, provided that the applicant has presented a document certifying the payment of the applicable registration fee.

### 14 Licence duration

What is the normal duration of licences?

Individual licences are issued for up to 20 years. The term can be prolonged by the CRC pursuant to a request by the licensee if the licensee meets the requirements for applicants for the individual licence set out in the TL.

The registration under a general licence is not limited in time.

### 15 Modification/assignment of licence

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

Individual licences can be modified by a reasoned decision of the CRC:

- in the event of *force majeure*;
- for reasons related to national security or to the country's defence;
- as a result of changes in the relevant internal legislation or in decisions of international organisations that are binding on Bulgaria; or
- for reasons related to the public interest and in particular to the efficient use of scarce resources, protection of consumers, provision of the universal telecoms service, or to fostering competition on the telecoms market.

Prior to amending the licence on any of the above grounds, the CRC should notify the licensee. The licensee is entitled to respond within seven days of notification in the event that the amendment is being made on the grounds set out in the last bullet point above.

Amendments can be initiated also by the licensee. If the CRC finds the licensee's request justified, the Regulator should issue its decision for the amendment within 30 days of the date of the licensee's application.

A licence can be assigned only with the consent of the CRC.

In the event that a licence has been issued through an auction or tender, the licence is not assignable during the first two years of its effectiveness, unless the licensee has declared in advance its intention to create an SPV entirely owned by the licensee for the purpose of performing the obligations under the licence.

Bulgarian law does not contain any explicit prohibition for pledging a licence. However, in view of the aforementioned restrictions on the assignability of a licence, pledging a licence is not practically feasible. In our view the same applies to the pledge of separate rights under a licence.

### 16 Radio spectrum

Is there a regulatory framework in your country for the assignment of unused radio spectrum (so-called refarming)?

Bulgarian legislation does not provide for specific regulation for the assignment of unused radio spectrum.

### 17 Cable networks

Is there any restriction in your country regarding ownership of cable networks, in particular by telecoms operators?

There are no restrictions with respect to the ownership of cable networks by telecoms operators. However, the TL requires SMP operators of fixed public telecoms networks and of fixed-voice telephone services to provide telecoms over a cable network for broadcasting of radio and television programmes only through a separate legal entity, incorporated for that purpose.

### 18 Local loop

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

The TL defines 'unbundled access to the local loop' as the provision of a full or shared use by an SMP fixed public telephone network operator to the other operators of the twisted copper pair connecting a terminal point of the network in the premises of the subscriber with the main distribution frame of the local exchange or an equivalent facility of the fixed public telephone network.

SMP operators of public fixed telephone networks, providing fixed-voice telephone services, are obliged to provide unbundled access to the local loop upon a reasonable and technically feasible request. They may refuse provision of unbundled access only if any of the following requirements are not met by the requester:

- ensuring the security of the network in *force majeure* cases;
- preserving the integrity of the network;
- ensuring the interoperability of networks;
- procuring personal data protection.

The operators that are imposed with the obligation to provide unbundled access must also provide shared use of premises and telecoms facilities.

SMP operators of public fixed telephone networks providing fixed-voice telephone services shall determine the prices of the unbundled access to the local loop by implementing the principles of transparency and cost orientation. The CRC may demand a clarification on the price formation and is entitled to issue mandatory instructions. The operators must draft a reference offer for entering into an agreement for unbundled access to the local loop. The TL set out the minimum content of such an offer. The reference offer must be approved by the CRC.

### 19 Internet

How are Internet services, including voice over the Internet (VoIP), regulated?

The provision of 'access to Internet' services is carried out on a

free-regime basis, as long as the Internet service provider uses other operators' networks and does not build and maintain its own network.

Provision of VoIP falls within the definition of voice telephony services, and therefore an individual licence is required for the provision of VoIP service.

## 20 Broadband

Is there a government financial scheme in your country to promote broadband penetration?

No.

## 21 Interconnection

How is interconnection regulated? Can the regulator intervene to resolve inter-operator disputes? Are wholesale (interconnect) prices controlled and, if so, on what basis? What are the basic interconnect tariffs?

The TL sets out that public operators providing transmission through their networks shall be vested with the rights and imposed with the obligation to provide interconnection between their networks. The law specifies that the following groups of operators fall within that category:

- operators providing telecoms services through the fixed and/or mobile public telecoms networks that are managing the facilities for access to one or more terminal points of the network using numbers of the national numbering plan;
- operators that provide leased lines services to the place of location of the user's terminal equipment, except the operators which re-rent leased lines;
- operators that carry out telecoms through telecoms networks, whose licences stipulate interconnection.

The operators shall interconnect their networks on the basis of a written agreement. The agreement must set out the technical and financial terms for interconnection as specified in details in Regulation No. 10 on the Requirements and Procedures for Interconnection. All interconnection agreements shall be filed with CRC at least three months prior to the contemplated effective date. The CRC has the powers to impose amendments to interconnection agreements, in order to ensure a sufficient level of consumer protection and effective competition.

SMP operators of fixed telephone networks providing fixed-voice telephone services and SMP operators providing leased lines services shall draft a reference interconnection offer (RIO), which needs to be approved by CRC. The minimum contents of a RIO are statutorily determined.

Only the prices for interconnection offered by operators that are required to draft a RIO are subject to regulation. Those operators have to offer cost-oriented prices and shall make separate bookkeeping for the costs incurred in relation to the interconnection. The TL also determines the price formation components. If necessary, the CRC may, inter alia, issue mandatory instructions for complying with cost orientation.

Although the CRC has no general dispute resolution powers, with respect to interconnection, the Regulator is entitled to accept claims against defaulting operators and to issue mandatory instructions against such operators.

Wholesale interconnect prices are not subject to control by the Regulator. They may be only challenged before Bulgarian Commission for Protection of Competition (the Competition Commission) on the basis of the general competition law (Law on the Protection of Competition).

## 22 Mobile call termination

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

Normally the originating party pays the charges for termination of a call on a mobile network. Calls to mobile networks are not specifically regulated and all the charges are subject to agreement between the operators.

## 23 International mobile roaming

Are charges for international mobile roaming regulated in your country?

The charges for international mobile roaming are not subject to regulation and shall be freely negotiated by the operators.

## 24 Retail tariffs

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

The CRC regulates only the retail prices for certain services provided by SMP operators on the market of fixed telephone networks and fixed-voice telephone services and the leased lines market. These include the retail prices for:

- fixed-voice telephone services;
- interconnection;
- leased lines from the range of the minimal set;
- special access;
- unbundled access to the local loop;
- shared use of premises and facilities.

The above operators calculate their prices on the basis of rules for determining the costs for provision of the services to be developed by the Regulator. One month prior to the publication of the above prices in the manner prescribed in the licence, the operator has to deliver them to the CRC. The CRC may issue mandatory instructions aimed at bringing the prices of the above operators in compliance with the cost orientation principles.

The CRC also regulates the prices for telecoms services rendered by operators abusing their dominant position under the meaning of the Law on Protection of the Competition.

## 25 Customer terms and conditions

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

The TL requires all public operators to file their general terms and conditions to the CRC for coordination. Under the TL, a public operator is "any person who is carrying out telecoms through a public telecoms network and/or who is carrying out telecoms through provision of telecoms services on the grounds of an individual licence or a registration under a general licence". The Regulator reviews the general terms and conditions with the purpose of ascertaining whether they are prepared in conformity with the terms of the respective individual or general licence. If the CRC finds any deviations, it is entitled to issue mandatory instructions and a time period for corrections. The general terms and conditions thus amended shall be again submitted to the CRC for coordination.

## 26 Changes to telecoms law

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

No immediate changes of major importance shall be expected. In view of Bulgaria's commitment to implement the EU 2002 *acquis communautaire* by 1 January 2007, it is anticipated that a new law on telecoms shall be passed in 2006 to reflect the new regulatory framework for electronic communications into the national legislation.



## MEDIA REGULATION

### 27 Ownership restrictions

Are there any restrictions on the ownership and control of broadcasters? Can foreign investors participate in broadcasting activities in your country?

The LRT sets out certain restrictions on ownership in broadcasters, which aim at guaranteeing the good reputation and financial viability of the broadcasters. Among others, entities carrying out advertising and security guard activities, as well as entities that are not able to prove the origin of funds, entities that are proved to be bad debtors under a specific Bulgarian piece of legislation, etc, are prohibited from holding an interest in broadcasters.

There are no restrictions on foreign investors participating in broadcasters in Bulgaria. However, a broadcaster has to be a person incorporated under the Bulgarian law and, therefore, foreign legal entities/individuals have to register a local subsidiary.

### 28 Cross-ownership

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

Broadcasters are not entitled to hold interest in other broadcasters in excess of the amount permitted by antitrust legislation. Bulgarian legislation does not provide for an absolute permitted amount and the Competition Commission shall determine it on case-by-case basis. Furthermore, a person (or its related parties) holding a licence for broadcasting activities at a local or regional level is not entitled to be licensed for the same activities at national level and vice versa.

### 29 Licensing requirements

What are the licensing requirements in order to be able to broadcast in your country, including the fees payable and the timescale for the necessary authorisations?

Depending on the means of broadcasting, broadcasters need a licence or a registration. Licences are issued for broadcasting through terrestrial radio-transmitting networks. The candidate broadcasters have to satisfy the CEM of their due incorporation and origin of funds and disclose their participation in other media companies. The licence given by the CEM is the preliminary condition for obtaining the CRC licence, and the term limits of the two licences have to be synchronised. The term of licence is 15 years and it may be extended to the maximum of 25 years. The time limit for the consideration of the set of documents depends on the exigency of the carrying out of tender for distribution of the RF resource. Thus it can vary from 22 to 34 weeks.

Registrations are necessary in order to broadcast through cable and satellite. Broadcasters are required to submit the same documents as are necessary for the issuance of licences. The CEM shall register the eligible broadcasters within 14 days as of filing of the required set of documents. Issued registrations are not limited in time.

The initial and annual licensing and registration fees collected by the CEM should be determined in a tariff adopted by the Council of Ministers of the Republic of Bulgaria. Such a tariff was adopted in May 2004, but in November 2004 the Supreme Administrative Court repealed all of its provisions determining the amounts of fees. The Supreme Administrative Court found that the Council of Ministers had failed to demonstrate compliance with the statutory requirement for cost-based determination of flat fees. The Council of Ministers has not yet adopted a new tariff for these fees and for this reason the amounts of the fees cannot be quoted.

### 30 Broadcast of foreign-produced programmes and local content requirements

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

Generally, all programmes have to be broadcast in the Bulgarian language.

Every six months, broadcasters are required to submit to the CEM a list of their foreign programmes and documents, evidencing the rights entitling them to broadcast these programmes. All broadcasters have to ensure that at least 50 per cent of the total annual programme time, excluding news and sports, radio and television games, advertising, teletext and radio-television market must be dedicated to European works, if feasible. The notion of a European work is defined in the LRT and corresponds to the definition thereof in EU law.

### 31 Advertising

How is broadcast media advertising regulated?

Advertising regulation is provided in the LRT, transposing substantially the regime of the Television Without Frontiers Directive. Thus, Bulgarian law provides that advertising must be carried out in compliance with the rules of fair competition. The advertising of tobacco products, concealed advertising and subconscious influence are prohibited. There are restrictions on the advertising of alcoholic beverages and medicines. Specific provisions regulate the content of advertising for minors.

The advertising time in each separate programme cannot exceed six minutes per hour (public broadcasters) and 15 per cent of the daily programme time, or 12 minutes per hour (commercial broadcasters).

### 32 Must-carry obligations

Does your country have regulations which specify a basic package of programmes that must be carried by operators broadcasting distribution networks, ie 'must-carry obligations'? Is there a mechanism for financing the costs of such obligations?

In principle there are no must-carry obligations. Public operators are required to regularly deliver political, economic, cultural, scientific and other social information, and educational programmes, and to encourage Bulgarian art. Cable broadcasters are obliged to re-broadcast the programmes of National Bulgarian Television and Radio free of charge.

### 33 Changes to the broadcasting laws

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

No plans of the legislature or the government as to major changes to the broadcasting law have been publicly announced. Several non-governmental organisations have drafted and put out for public discussion a draft of a new broadcasting law, which, inter alia, aims at strengthening the powers of the CEM with regards to copyright protection, introducing new advertisement rules and civil representatives in the CEM.

## REGULATORY AGENCIES

### 34 Regulatory agencies

Which body or bodies are regulatory agencies for the communications sector? Is the body that regulates telecoms separate from the one that regulates broadcasting?

The regulatory body in the telecoms sector is the CRC, while broadcasting activities are regulated by both the CRC and CEM (see also 3).

The CRC is an independent specialised state authority. Its objectives include, inter alia, the implementation of sector policy, as well as the state policy towards planning and allocation of the RF spectrum; the regulation and control of telecoms activities; and the registration and control of digital signature verification services. Among others, the powers conferred on the CRC include:

- preparation of licences; granting, amending, supplementing, suspending, termination and revocation and termination of licences;
- development of a regulatory policy on and assignment of the use of numbers, addresses and names for carrying out telecoms activities;
- development of the national numbering plan;
- drafting of secondary legislation to be adopted either by the Minister of Transport and Communications or by the government;
- determining SMP operators and imposing statutorily-determined obligations on them;
- assigning the provision of the universal service;
- monitoring competition on the market.

The CRC is responsible for management of the RF spectrum through regulatory policy development and the allocation of RF to telecoms operators at national and international level.

The powers conferred on the CEM generally are the issuance of licences, supervision of compliance and issuance of mandatory instructions to the holders of the issued licences and registrations, as well as suspension or termination of the licences and registrations. This means that the CEM supervises how the broadcasters comply with the rules on advertising, intellectual property rights, depiction of significant political events and other items contained in the LRT. The CEM is the body that also supervises the compliance of broadcasters with Directive 97/36, which is incorporated in the LRT, and performs other activities connected to this and other pieces of EU and international legislation.

### 35 Establishment of regulatory agencies

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

The CRC consists of five members, with the chairperson being appointed and dismissed by the government, the vice-chairperson and two of the members by parliament, and one member being appointed and dismissed by the president of the republic. Members of the Regulator serve for five years and none of them may serve more than two consecutive terms of office.

The CEM comprises nine members, five of whom are elected by the national parliament and four appointed by the president. Members of the CEM serve for six years, whereas each separate person may not serve more than two consecutive terms of office.

The independence of the regulators is declared as a principle in the respective law and is primarily guaranteed by the requirement that members be appointed and dismissed by different state institutions. Their independence is further guaranteed by eligibility criteria for members, by limitations imposed on them during and after their service, and by mandatory disclosure of any substantial, commercial, financial or business interest that a member of the respective body and/or a member of his/her family may have in approving a particular decision by that body. In addition, pursuant to the TL, the CRC shall cover its costs out of the fees payable by the operators.

### 36 Appeal procedure

*How can decisions of the regulator(s) be challenged or appealed and on what basis – merits, law and/or procedure?*

Decisions rendered by both the CRC and CEM are subject to appeal only before the Supreme Administrative Court under the procedure of the Law on the Supreme Administrative Court. The Supreme Administrative Court resolves the cases in a three-member panel, and the decisions of such panel are subject to appeal before the five-member panel of the same court. There are five grounds for challenging: lack of power of the body issuing the decision, failure to meet the requirements of form and/or procedure, contradiction to the substantive provisions of the law and failure to pursue the purpose of the law.

The chairperson of the CRC and the chairperson of the CEM are separately entitled to issue penal rulings for the imposition of administrative sanctions under the TL or under LTR, respectively. Penal rulings are subject to appeal before the regional court where the offence has been conducted; the judgement thus rendered may be appealed before the district court, whereas the judgement of the latter court may be brought before the Supreme Administrative Court acting as a court of cassation.

### 37 Competition and telecoms/audio-visual regulation

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

The Competition Commission is responsible for the implementation of the general competition rules, while the CRC is only vested with certain sector-specific powers designed to foster competition in the telecoms market. The prevention of a conflicting exercise of jurisdiction is achieved through the precise definition of the powers of those two authorities and in the principle of cooperation in cases of overlapping competence. As a last resort, a decision rendered by either the CRC or the Competition Commission may be challenged before the Supreme Administrative Court on the grounds of being issued outside the competence of the respective authority.

### 38 Interception

*Are there any special rules requiring operators to assist government under certain conditions in the interception of telecoms messages?*

Pursuant to the TL, telecoms operators must provide the opportunity for interception of telecoms in real time, as well as the opportunity for continuous monitoring and access to data related to a specific call in real time. The terms under which these opportunities should be provided by telecoms operators are provided for in the Law on the Special Means of Investigation. Telecoms operators are obliged to provide, at their own expense, one or more intercepting interfaces from which the intercepted messages can be transmitted to the Ministry of Internal Affairs. Interception should be carried out in a way so as to prevent illegal intervention and to ensure that the information related to the interception is preserved. The intercepted communications are received only by a specialised unit within the Ministry of Internal Affairs.

The individual licences of public telecoms operators must set forth the terms of interception of telecoms related to national security and the public order.

**39 Unsolicited communications**

Is there any legislation in your country prohibiting unsolicited communications (eg by e-mail, SMS)? Are there any exceptions to the prohibition?

Bulgarian legislation does not contain a general prohibition of unsolicited communications. The TL restricts the use of telecoms networks for direct advertisement by requiring the explicit written consent of the subscribers for receiving calls or facsimile messages designated as direct advertisement.

**COMPETITION AND MERGER CONTROL****40 Competition law in the telecoms and broadcasting sectors**

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

Anti-competitive practices in the telecoms and broadcasting sectors are controlled by the general competition law (Law on the Protection of Competition) and the Competition Commission is the responsible body. However, the CRC and, to a certain extent, the CEM, are also vested with sector-specific powers designated to foster competition on the relevant market.

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

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

The Law on Protection of Competition sets out a single jurisdictional threshold, which applies to concentrations in the telecoms and broadcasting sectors as well. A concentration (including mergers, acquisition of control and/or establishment of a joint venture) is subject to notification and competition law review by the Competition Commission if the aggregate turnover of the participants accrued on the respective product market(s) in the territory of Bulgaria during the year preceding the concentration exceeds BGN15 million (approximately €7.7 million). Control, within the meaning of the Law on Protection of Competition, may be acquired by way of obtaining legal rights, entering into contracts, or in any other way which either separately or jointly, and having in mind concentrations of fact or law provides for the exercise of decisive

influence over an undertaking, in particular by:

- acquisition of title of, or right to use, all or part of the assets of an undertaking;
- acquisition of rights or contracts, which confer decisive influence with regard to the composition, the exercise of voting rights or the decisions of the organs of an undertaking.

A merger, an acquisition or a joint venture in the telecoms sector shall also fall within the controlling powers of the CRC if those transactions include transfer of shares from the equity of a licensed public telecoms operator or a transfer of the individual licence. Transfer of shares or admission of new shareholders that does not lead to a change of control over the management of a licensed public operator is subject only to a prior written notification to the CRC, whereas, in the event of a change of control, the prior approval of the CRC must be sought. According to the TL, "a control over the management of a company" is in place when a person:

- owns, including through a subsidiary or by virtue of an agreement, more than half plus one of the votes at the shareholders' meeting of a company;
- may directly or indirectly appoint more than half of the members of the managing body of a company; or
- may in any other way exercise a decisive influence on decision making with respect to the telecoms activities of a company.

When a merger or a formation of a joint venture in the telecoms sector requires transfer of the individual licence, such a transfer shall be subject to the prior approval of the CRC. Similarly, the CEM shall also consent to the transfer of an individual media licence. The above consents are not automatic and the transferee has to meet certain requirements as set forth in the TL and in the LRT, respectively.

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

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

The primary responsibility for the enforcement of the Law on Protection of Competition is vested to the Competition Commission. The CRC and the CEM, respectively, shall intervene only if any of the regulatory consents under 41 above is required.

*continued on next page*

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

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

With respect to the competition clearance, filing a pre-merger notification is mandatory when the merger control threshold (see 41 above) has been met. Upon filing, the Competition Commission checks the completeness of the notification and makes its formal registration. Within one month of the formal registration of the notification, the Commission has to undertake and complete an initial assessment of the proposed concentration.

The decision should be rendered at a public hearing following the completion of the initial review. Parties to the proceedings must be notified of the hearing upon completion of the review and at least two weeks in advance of its date. Normally, the public hearing takes place no earlier than six weeks after receipt of the notification. The delivery of the decision may take place either

on the day of the public hearing or within a few days.

When the proposed concentration raises serious concerns that it will create or strengthen an existing dominant position, and that the effective competition in the relevant market will be impeded, restricted or otherwise limited, the Competition Commission may decide to initiate a full (second phase) investigation into the transaction. The Competition Commission will then have an additional three-month period to complete the investigation and to render a final decision.

The notification or the request for approval of a transfer of shares or a transfer of the individual telecoms licence (see also 41) should be submitted to the CRC well in advance of the occurrence of the contemplated transfer. The TL does not prescribe the time periods within which the CRC should respond to requests for permission. The LRT also does not envisage a term within which the CEM has to resolve on the transfer of an individual media licence.



Bulgaria				
Regulatory agencies and responsibilities	Broadcasting and telecoms service licences, type and duration	Treatment of Internet services	Licence fees	Tariff and other regulation of dominant companies
<ul style="list-style-type: none"> <li>■ Council for Electronic Media (CEM) – regulates and controls broadcasting activities.</li> <li>■ Communications Regulatory Commission (CRC) – controls and regulates telecoms services; implements the state policy on planning and allocation of RF spectrum; supervises the technical parameters with respect to broadcasting; registers and controls digital signature verification services.</li> </ul>	<ul style="list-style-type: none"> <li>■ Broadcasting – (i) licence, 15 years, may be extended to the maximum of 25 years (broadcasting through terrestrial radio-transmitting networks); (ii) registration, not limited in time (broadcasting through cable and satellite).</li> <li>■ Telecoms services – (i) without licensing or registration; (ii) registration under a general licence, not limited in time (using RF spectrum for common use; without using scarce resource; access to satellite systems); (iii) individual licence, up to 20 years, may be prolonged by the Regulator; (using an individually allocated scarce resource; fixed-voice telephone service and/or universal service; leased lines).</li> </ul>	<p>Provision of ‘access to Internet’ services are carried out on a free-regime basis, as long as the Internet service provider uses other operators’ networks and does not build and maintain its own network.</p>	<p>Fees collected for issuance of broadcasting licenses and registrations are still expected to be adopted.</p> <p>License fees and registration fees that vary according to specific the telecoms service. Fees for using scarce resource. Licence fees include initial fee, annual fee and fee for amendment and/or supplement of the licence. If the individual licence is awarded as a result of an auction, the initial fee is the winning offer.</p>	<p>Only the retail prices for certain services provided by operators with a significant market power on the markets of fixed telephone networks and fixed-voice telephone services and leased lines are regulated.</p>