

# Bulgaria

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## COMMUNICATIONS POLICY

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### 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?

The legal framework of telecommunications and telecommunications operators in Bulgaria is set out in the Telecommunications Act of 7 October 2003 (the TA) and in related secondary legislation. The TA revoked and replaced the Telecommunications Act of 1998 with a view to harmonising Bulgarian law with the EU legal framework 1998 – 2000. Pursuant to the TA, there are three legal regimes for the provision of telecommunications services: (i) individual licensing; (ii) registration under class licence; and (iii) the free regime (no individual licensing or registration under class licence). The types of telecommunications activities subject to the above-mentioned regimes are set out generally in articles 48 and 49 of the TA. The types of the telecommunications activities subject to individual licensing or registration under a class licence are additionally detailed in secondary legislation – Regulation No. 13 of 22 December 2003 Determining the Types of Telecommunications Activities Subject to Individual Licensing and Registration under Class Licence.

A number of state bodies have powers with regard to policy-making and policy development in the telecoms sector.

The Council of Ministers (CoM) determines government policy for telecommunications by adopting a ‘sector policy’ and for radio-frequency spectrum allocation for civil and military use, as well as for joint use.

The National Radio Frequency Spectrum Council (NRFSC) at the CoM prepares the radio frequency policy, circulates it for public debate and submits it for approval to the CoM, implements the approved radio frequency policy, prepares a National Radio Frequency Allocation Plan and permits the use of specific radio frequencies.

The State Agency for Information Technologies and Communications (the SAITC) implements the sector policy and governmental policy in the telecommunications sector generally. In relation to the radio frequency spectrum allocation, the SAITC prepares the sector policy and (after circulating it for public debate) submits it for approval to the CoM. The SAITC also issues secondary legislation as provided for in the TA.

The Communications Regulatory Commission (CRC) is the national regulatory body in the telecommunications sector established in accordance with the TA. The CRC has vast powers in the sector, including responsibility for: (i) issuance of individual licences; (ii) issuance of class licences and making and deleting registrations thereunder; (iii) drafting the national numbering plan

and assigning numbers for use by telecommunications operators; (iv) preparation of drafts of secondary legislation in the telecoms sector and proposing the drafts to the competent authorities; (v) defining and determining the respective telecoms markets with the view of determining the SMP operators; (vi) administering the radio-frequency spectrum for civil purposes; and (vii) oversight of telecommunications operators for compliance with the terms of their licences, the TA and its secondary legislation, etc.

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### 2 Convergence

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

There is no specific regulation pertaining to convergence. There are separate definitions of ‘telecommunications’ and ‘radio and TV broadcasting activity’ contained, respectively in the TA and in the Radio and TV Act (the RTA). Telecommunications is defined 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 RTA 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 decoded form, intended for immediate reception by unlimited number of persons”. The convergence of telecoms, media and IT will be reflected in Bulgarian law with the implementation of the new EU regulatory framework for electronic communications. The telecommunications sector policy prescribes that this should be done by the end of 2006.

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### 3 Broadcasting sector

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

The radio and television programme content is regulated separately from telecommunications activities. Content is regulated by the RTA and the main regulatory body supervising broadcasting activity of radio and television operators and their compliance with the RTA is the Council on Electronic Media (CEM). Telecommunications are regulated by the TA and the activity of telecommunications operators is supervised by the CRC. The technical aspects of the activity of radio and television operators are also subject to the provisions of the TA.

## TELECOMS REGULATION

**4 WTO Basic Telecommunications Agreement**

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

Yes, without exceptions.

**5 Public/private ownership**

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

Until 1 January 2003, the Bulgarian Telecommunications Company (BTC) had a monopoly over the provision of fixed-voice telephone services and leased lines. BTC was fully state-owned until June 2004, when 65 per cent of its shares were privatised and acquired by the US investment fund Advent through an Austrian special purpose vehicle. The remaining 35 per cent were floating on the Bulgarian Stock Exchange in 2005. At present, the state holds only one 'golden share' in BTC granting certain special rights to the state (eg, to have nominees on the boards of BTC, to veto certain strategic decisions, etc). The golden share can be redeemed by BTC upon fulfilment of the investment commitments, which Advent undertook in the privatisation agreement of 2004.

The state does not own shares in other public telecommunications operators.

**6 Foreign ownership**

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

No, there are no such restrictions.

**7 Operator exclusivity**

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

At present no operator has exclusive rights for provision of any services. Until 1 January 2003 the BTC had a monopoly over the provision of fixed-voice telephone services and leased lines. After expiry of its monopoly the telecommunications market was liberalised.

**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?

The provision of fixed- and mobile-voice telephone services is subject to individual licensing. The legal regime applicable to other telecommunications services depends on scarcity of resources. Operators must obtain an individual licence when operating telecommunications networks using individually-assigned scarce telecommunications resources. Operators of telecommunications networks using radio frequency spectrum for joint use and operators of public telecommunications networks not using RF must register themselves under a class licence. No licence (individual or class) is required for the provision of services via telecommunications networks for private use not using the RF spectrum. The provision of access to satellite systems requires registration under a class licence.

**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?

Establishment and operation of satellite earth station facilities can be subject to individual or class licence, depending on the type of facility, frequency and power used. Pursuant to article 209(2) of the TA, the CoM has adopted a list of radio facilities, the operation of which is subject to certain restrictions. The list contains three types of facilities: (i) facilities, the operation of which is prohibited; (ii) facilities, the operation of which requires an individual licence; and (iii) facilities, the operation of which requires registration under class licence.

Landing submarine cables is governed by the Sea Space, Internal Waterways and Harbours of the Republic of Bulgaria Act of 2000 (the Sea Act), as well as by certain international treaties, to which Bulgaria is a party, such as the UN Maritime Law Convention and the UN Continental Shelf Convention. According to the Sea Act, other states may place cables on the continental shelf of the Republic of Bulgaria if this does not affect the interests of the Republic of Bulgaria with regard to the research, development and use of the natural resources and the protection of the marine environment. The cables' route should be agreed between the Republic of Bulgaria and the interested state. There is no specific regulation concerning private entities landing submarine cables.

**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?

An individual licence is needed when the provision of a service requires the use of individually-assigned RF. When using RF for joint use to operate a public telecoms network, registration under a class licence is necessary. Operating a private telecommunications network using RF for joint use is under the free regime.

Individual licences are issued without tender or auction when no scarce telecommunications resource will be used by the licensee or if the needs of the applicants are lesser than the amount of the available scarce resource. If the licensee will use a scarce resource, individual licences are issued in a public tender or auction, with certain exceptions, exhaustively listed in the TA (eg, no tender or auction is required for granting individual licences to state bodies for use of telecommunications networks necessary for the performance of their functions; to diplomatic missions; for RF spectrum used as transmission media within the networks of public operators; for activities performed by operators using networks for private use; for telecommunications networks used by maritime and air forces for safety purposes; as well as for radio and television activities following a decision of the CEM after holding a public tender pursuant to the RTA).

Individual licences may be transferred with the prior consent of the CRC. If the individual licence has been issued through a tender or auction it cannot be transferred during the first two years of its term.

**11 Third generation services**

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

There is no specific regulation dedicated to the roll-out of third generation mobile services. The operation of UMTS is subject to individual licensing. Further, the National Plan for Allocation of the RF Spectrum adopted in June 2004 establishes the RF bands that will be used for UMTS and the terms for their liberalisation.

In May 2005, the CRC issued UMTS licences to the two then existing GSM operators and to BTC. As of March 2006, one of the GSM operators had already launched the first UMTS services (video phone services and high-speed internet – 14.4 Mbps).

**12 Fees**

What fees are payable for each type of authorisation?

Two basic types of fees are payable by telecommunications operators: (i) licence and registration fees covering the administrative costs of the CRC and (ii) fees for using a scarce resource. The exact amounts and manner of calculation of the fees are specified in the TA and in the Tariff for Fees Collected by the CRC.

The administrative fees payable by holders of individual licenses include: (i) initial (one-off) fee for issuance of the licence; (ii) annual fee for control (up to 1.2 per cent of the gross revenues from the licensed activities, excluding VAT, and after deduction of the cost (if any) for outgoing traffic, interconnection and for providing specific access); and (iii) fee for amendment or supplement of the licence. Operators registered under a class licence pay registration fees specified in the tariff.

The annual fees for the use of scarce resource are also specified in the tariff and depend on the type, power and coverage of the facilities used.

**13 Authorisation timescale**

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

The timescale for receiving the necessary authorisations for carrying out telecommunications activities depends on the type of authorisation. The CRC must respond to an application for registration under class licence within 30 days of its submission. If an individual licence is issued without auction or tender, the CRC should decide on the application for licensing within six weeks of its submission. This term may be prolonged if there is a need of international coordination with regard to RF and bands wanted. If an individual licence is being issued following an auction or tender, the entire procedure of initiation, organisation and completion of the auction or tender could take around 10 months.

**14 Licence duration**

What is the normal duration of licences?

Registration under a class licence is not limited in time. The maximum duration of an individual licence is 20 years, though it may be prolonged at the request of the licensee.

**15 Modification/assignment of licence**

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

An individual licence may be modified by a decision of the CRC upon a motivated request of the licensee. The CRC must respond to an application for amendment of an individual licence within

a month following the request. The CRC is entitled to amend a licence ex officio on the following grounds: (i) force majeure; (ii) for reasons related to national security or defence; (iii) changes to the relevant legislation or to decisions of international organisations binding on Bulgaria; or (iv) reasons related to the public interest and in particular to the efficient use of scarce resources, protection of consumers, provision of a universal telecommunications service or stimulation of competition on the telecommunications market. Such amendments should be effected following written notification to the licensee, who is entitled to give opinion on amendments envisaged on the grounds of item (iv) above.

The holder of an individual licence may assign it to a third party with the prior consent of the CRC, which consent shall not be granted if the assignee does not meet certain legally established criteria (eg, the assignee is in bankruptcy or liquidation; has been deprived of the right to perform commercial activity; has outstanding payments to the state or to the CRC; has had its licence withdrawn by the CRC; has been penalised for carrying out telecommunications activity without a licence; has another individual licence for carrying out the same type of telecommunications activity with national, respectively local coverage or does not correspond to the requirements related to the national security or defence). If the licence has been issued through an auction or tender, it may not be assigned during the first two years (except in the cases when the licensee has announced in advance its intention to create a wholly-owned subsidiary for the purpose of performing the obligations under the licence). Registration under a class licence may not be assigned.

It is not possible to directly pledge an individual licence or a registration under a class licence. Nevertheless, this result may be achieved indirectly by pledging the shares of the licence holder, or its ongoing business.

**16 Radio spectrum**

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

A specific regulatory framework in this regard does not exist in Bulgaria. The holder of an individual licence granting the use of individually-assigned RF may assign the licence to another person with the prior consent of the CRC (see question 15). The CRC may revoke an individual licence for the use of individually-assigned RF in the event that the licensee is financially or technically incapable of performing the licensed activity.

**17 Cable networks**

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

There are no per se restrictions regarding ownership of cable networks by telecommunications operators. The general restrictions of competition law are of course applicable.

SMP operators of fixed public telecommunications networks and fixed-voice telephone services may operate a cable network for broadcasting of radio and television programmes only through a separate legal entity incorporated for this 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 TA introduced in Bulgaria requirements for 'local loop unbundling' (LLU). The TA defines specific access to a public fixed-telephone network (PFTN) as "access to points of the

PFTN different from the end points thereof, as determined by the CRC, with the purpose of providing telecommunications services” and “unbundled access to a subscriber line” as “ensuring, by an operator of a PFTN with a SMP, of individual or joint use of the twisted copper couple connecting an end point of the PFTN located in a subscriber premises with the main distributor of the base station or equivalent facility of the PFTN”.

The TA obliges operators of PFTN having significant market power (SMP) to provide specific access to the PFTN and unbundled access to the local loop upon a reasonable and technically-grounded request following the principles of non-discrimination and, in the case of LLU, transparency. Those operators may refuse to grant such access only in case of non-compliance with material requirements with regard to: (i) security of the operation of the PFTN in force majeure situations; (ii) protecting the integrity of the PFTN; (iii) ensuring interoperability of the services; and (iv) personal data protection. The CRC may resolve to temporarily waive the obligation to grant specific access where the required resources for granting such access are not available and the SMP-operator has offered other technical and commercial conditions, which are similar to the grant of the specific access.

When providing unbundled local loop access SMP-operators of PFTNs must also provide co-location availability.

SMP operators of PFTNs must set the prices for specific access and unbundled local loop access under the principles of transparency and cost-orientation and maintain separate accounting for specific access and unbundled local loop access activities.

The CRC may request from an SMP-operator of a PFTN providing unbundled local loop access a justification of its prices and may give binding instructions to the operator to make such prices cost-oriented.

SMP operators of PFTNs providing unbundled local loop access must develop a standard-form contract for the grant of such access, which is subject to approval by the CRC after a public discussion. The CRC may give binding instructions for amendments to the standard-form contract if this is necessary to ensure effective competition, satisfaction of certain standards, protection of the environment, quality of services or in the interest of users. The SMP operators providing specific or unbundled access must further submit any individual contract for the grant of access to the CRC for pre-approval at least three weeks before its entry into force. The CRC may give binding instructions for amendments to the contract.

Further the CRC may investigate disputes related to the grant of specific or unbundled local loop access and give binding instructions on the dispute.

## 19 Internet

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

The provision of fixed-voice telephone services (including VoIP) is subject to individual licensing. The transmission of data over a public telecommunications network without using a scarce resource (radio frequencies or numbering capacity) is subject to registration under a class licence. The provision of access to the internet is under the free regime.

## 20 Broadband

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

There is no government financial scheme to promote broadband penetration. The Governmental Policy for Planning and Distribution of the RF Spectrum adopted by the CoM on 2 February

2006 provides, in the long term, for a possibility for release of RF bands above 862 MHz for broadband digital land mobile radio networks.

## 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?

Network interconnection is regulated by chapter 7, section I of the TA. Pursuant to this, telecommunications operators, which provide through their networks transmission capacity, have the right and the obligation to interconnect their networks. In particular, operators that must interconnect are: (i) operators providing telecommunications services through public fixed and mobile networks and which administer the facilities allowing access to end points of the network using numbers from the National Numbering Plan; (ii) operators providing leased lines to a subscriber's terminal device, in the licences of which interconnection is required and (iii) other operators, the licences of which provide an obligation for interconnection.

The terms of interconnection are set out in special secondary legislation – a regulation adopted by the Ministry of Transport and Communications (MTC) – Regulation No. 10 of 29 June 2004 on the Terms and Procedure for Interconnection of Telecommunications Networks. When interconnecting, operators must ensure: (i) the security of the network's operation in force majeure situations; (ii) the network's integrity; (iii) interoperability of the services; and (iv) personal data protection. Operators may refuse to interconnect if any of these obligations is not satisfied.

Telecommunications operators that provide voice telephone services (fixed or mobile) must provide those services in a manner ensuring that such services can be used by end-users of other networks connected to their networks.

When interconnecting, telecommunications operators that have SMP must: (i) follow the principle of non-discrimination; (ii) ensure access to information and specifications necessary for the interconnection and (iii) protect the commercial secrets of the other operators.

SMP operators providing fixed-voice telephone services and leased lines must set their prices for interconnection following the principles of transparency, non-discrimination and cost-orientation. Those operators must further keep separate accounting for the costs related to interconnection and must implement a system to determine the costs of interconnection for each separate point of interconnection. Such systems are subject to approval by the CRC. The CRC may further request from SMP-operators to justify the prices for interconnection and may issue binding instructions for price changes to make them cost-oriented. Telecommunications operators providing fixed-voice telephone services and leased lines that have SMP on those markets must adopt a standard form of interconnection agreement, which is subject to approval by the CRC after a public discussion. The CRC may oblige the SMP-operator to amend certain provisions of its standard form of interconnection agreement to ensure effective competition, technical conditions, tariffs, satisfaction of standards, protection of the environment, quality and consumer protection. Each individual interconnection agreement of the SMP-operators, as well as of the operators that provide transmission capacity through their networks, is subject to approval by the CRC prior to its execution. The CRC may give binding instructions for amendments to the contract and may further investigate disputes related to interconnection.

**22 Mobile call termination**

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

The originating calling party pays for the charges to terminate a call on mobile networks. The prices of calls to or from mobile networks are not specifically regulated by the existing legislation. A general obligation exists for all public telecommunications operators to publish their prices, as before being published the prices have to be presented to the CRC.

**23 International mobile roaming**

Are charges for international mobile roaming regulated in your country?

Charges for international mobile roaming are not regulated in Bulgaria. They are subject to agreements between the operators.

**24 Retail tariffs**

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

The CRC regulates the retail tariffs for the following services provided by SMP-operators on the markets of fixed telephone networks, fixed voice telephone services and leased lines: (i) fixed-voice telephone services; (ii) interconnection; (iii) provision of the minimum package of leased lines services; (iv) specific access; (v) unbundled access to the local loop; and (vi) collocation.

Those prices should be cost-based and the operators should calculate them in accordance with a cost-determination system approved by the CRC. The TA contains certain requirements and restrictions with regard to the prices and the manner of their formation. The prices are subject to publication in the manner prescribed in the licence, whereas one month before the publication the operator has to present them to the CRC. The CRC may amend the cost-determination system or oblige the operators to bring the prices in line with the legal requirements.

The CRC also regulates prices of telecommunications services rendered by operators abusing a dominant position within the meaning of the Protection of the Competition Act.

**25 Customer terms and conditions**

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

Public telecommunications operators providing fixed- and mobile-telephone services must adopt general terms. Other public telecommunications operators must adopt general terms in the event that it is not practically possible to enter into individual agreements with all customers or if their individual or class licences so provide. Public telecommunications operators must file their general terms for approval with the CRC. The CRC must respond to the filing within 14 days. It may give a mandatory instruction to the operator to amend its general terms in the event they are not compliant with the terms of its licence. Operators are obliged to publish their general terms within seven days of their approval by the CRC.

**26 Changes to telecoms law**

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

The draft Electronic Communications Act (ECA), which aims to transpose the new package of the five EU Directives in the field of electronic communications to Bulgarian law is being prepared, but has not yet been brought to parliament (although the

telecommunications sector policy prescribes that the law should become effective by the end of 2006). It introduces two regimes of electronic communications, corresponding to the 'general authorisation' regime under the Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (the Authorisation Directive):

- A free regime, on the basis of general terms published by the CRC and after the submission of a notification to the CRC. When the provision of electronic communications requires the use of a scarce telecommunications resource, the resource will be assigned to the operator on the basis of an individual permit.
- A free regime when no scarce resource is used and when the electronic communications are carried on through electronic networks for own needs or when the electronic communications are carried on through radio facilities, networks of radio facilities and terminal devices using radio frequency that is not individually assigned, for own needs.

**27 Next generation networks**

How are next generation networks (NGN) regulated?

There is no specific regulation concerning next generation networks.

**MEDIA REGULATION****28 Ownership restrictions**

Are there any restrictions on the ownership and control of broadcasters?

Can foreign investors participate in broadcasting activities in your country?

Foreign investors may participate in broadcasting activities in Bulgaria via a local entity. There are no restrictions with regard to the ownership of such entity, ie, it can be entirely owned by a foreign investor.

The RTA, which regulates broadcasting activity, prohibits the following individuals or legal entities from performing broadcasting activity: (i) legal entities that have been refused an insurance licence or have had their insurance licence revoked for non-compliance with the insurance legislation; (ii) legal entities controlled by legal entities or shareholders of legal entities under item (i); (iii) persons with funds of unclear origin under the money laundering legislation; (iv) legal entities controlled by individuals or legal entities under item (iii); (v) persons that have been declared insolvent in the last five years before their application for a radio or television licence or persons or entities that are in insolvency or liquidation proceedings at the date of the application; (vi) 'bad debtors' as per a list under the Data on Bad Loans Act; (vii) legal entities, the shareholders of which hold shares in legal entities whose registered scope of business includes 'security services', or entities engaged in such services; (viii) legal entities, the shareholders of which hold shares in legal entities whose registered scope of business includes 'advertising activity', or entities engaged in such activity; (ix) telecommunications operators that enjoy a monopoly on the market (currently there are none) and (x) persons that have been refused a programme (content creation) licence for the same type of activity or had their licence revoked during the year preceding the application.

As evident from the above, most of the above restrictions are clear and publicly justified (including on the basis of certain historical factors in the development of the market economy in the country in the last 15 years). The only restriction that involves a degree of ambiguity is restriction (viii) related to advertising

activity to the extent the term has no legal definition and the exact purpose of this restriction is not quite clear, especially since under Bulgarian law the registered scope of business of a company does not preclude the company from engaging in any other business activity.

### 29 Cross-ownership

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

There are no express legal restrictions on a radio broadcaster owning a television channel or vice versa.

The TA prohibits the issuance of a national or regional telecommunications licence to a person that already holds, respectively, a regional or a national licence for the same type of telecommunications activity or to an affiliate thereof.

Further, note the restriction of the RTA mentioned in question 28 related to advertising activity. The RTA does not specify any minimum percentage of shareholding in such entity that triggers the restriction, which may lead to the extreme conclusion that holding even one share in such an entity is prohibited by the RTA.

As mentioned in question 28, there is no legal definition of "advertising activity", which creates ambiguity as to the interpretation of this legal restriction with respect to companies other than advertising agencies, which clearly fall within the scope of the restriction. In particular, it is uncertain if this restriction should prohibit cross-ownership of radio, TV and newspapers. In practice, there are cases of media cross-ownership in Bulgaria and the regulator has not taken a negative view on those.

### 30 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?

Terrestrial radio or television broadcasting requires two types of licences: (i) a licence to create radio or television content (programme licence) and (ii) a licence to beam radio or television signal, (broadcasting licence).

A programme licence is issued by the CEM in accordance with the RTA and a broadcasting licence is issued by the CRC under the TA.

Although broadcasting licences are issued formally by the CRC, the actual decision of whether to issue a broadcasting licence is taken by the CEM. Both licences are issued within a single tender procedure organised by the CEM and coordinated with the CRC. The procedure may be initiated at a request of an applicant or at the CEM's initiative. A tender process takes between six and 10 months.

No licence is required for radio or television operators broadcasting via other means (eg, via cable or satellite). Such operators are subject to registration only. The CEM may refuse to register as a radio or television operator a person whose programme project, concept, profile or scheme does not comply with the RTA. The CEM has to respond to a request for registration within 14 days following its submission.

In 2004 the CoM adopted a tariff of the fees payable by radio and TV operators for issuance and maintenance of programme licences and registrations under the RTA, but its provisions establishing the fees for that were revoked by the Supreme Administrative Court. Thus, at present there is no act regulating the fees payable by radio and television operators for programme licences or registrations under the RTA.

### 31 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?

There are no specific regulations concerning the broadcast of foreign-produced programmes. Operators retransmitting foreign-produced programmes are obliged once every six months to provide an updated list of the foreign programmes broadcast, as well as documents evidencing the right to broadcast them (copyrights, etc) to the CEM.

The requirements for programme content are normally set out in the individual programme licence (eg, minimum percentage of news, current affairs, educational and cultural programmes, own productions, etc). Content requirements apply only to programmes broadcast terrestrially. For programmes broadcast via cable or satellite, which require only a registration, these do not apply as the registration only specifies the programme format.

The RTA contains certain general requirements for the content of radio and television programmes:

- at least 50 per cent of the total annual programme time (excluding news and sports, radio and TV games, advertising and radio- and TV-shopping) must be dedicated to European productions, whenever practically possible;
- at least 10 per cent of the total annual programme time (excluding news and sports, radio and TV games, advertising and radio- and television-shopping) must be dedicated to European productions created by external producers. This ratio has to be achieved step by step by allocation of sufficient funds for new productions (distributed not later than five years after being created).

These requirements do not apply to programmes designated for local audiences, which are distributed by operators that are not part of a national network.

### 32 Advertising

How is broadcast media advertising regulated?

The RTA regulates radio and television advertising, following closely the provisions of the European Convention on Transfrontier Television. The following restrictions are worth noting:

- advertising tobacco products is prohibited;
- the advertising of alcoholic beverages must comply with certain rules (it may not target minors and no one associated with the consumption of alcoholic beverages in the advertising should seem to be a minor; must not link the consumption of alcohol to physical performance or driving; must not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal problems; must not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light; etc);
- advertising targeted at minors must comply with certain legal requirements;
- advertisement of drugs, medicines and medical treatment that are only available on medical prescription in Bulgaria is not allowed;
- tele-shopping for medicines and medical treatment is not allowed;
- advertising must be clearly distinguishable as such and recognisably separate from other items of the programme by optical or acoustic means. In principle, advertising and tele-shopping spots must be transmitted in blocks;

- advertising may not use subliminal techniques or be surreptitious;
- advertising must not feature persons participating in the government or regularly presenting news and current affairs programmes.

No more than 15 per cent of a broadcaster's daily programming time (ie, 12 minutes per hour) may be dedicated to commercials and radio and television spots. The restriction of 12 minutes per hour does not include programmes dedicated exclusively to radio and tele-shopping. The total number of radio- and television-shopping windows may not exceed 8 per day and their total duration cannot exceed 3 hours per day (this restriction, however, does not cover specialised radio- and television shopping channels). Each radio- and TV-shopping window must have a minimum duration of 15 minutes.

For the purposes of the above restrictions, advertising must not include announcements made by the broadcaster in connection with its own programme and ancillary products directly derived from that programme, as well as announcements in the public interest and charity appeals broadcast free of charge.

Advertising must not be inserted in any broadcast of a national celebration or religious service. News and current affairs programmes, documentaries and children's programmes must not be interrupted by advertising.

Sponsorship is also regulated. Political parties or organisations, as well as religious organisations may not sponsor any programmes. Further, programmes may not be sponsored by persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising of which are prohibited. Sponsorship of news (excluding sports) and current affairs programmes containing analyses or comments, or whose topic is similar to the activity of the sponsor, is not allowed.

### 33 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?

Cable operators must include in the package of programmes distributed by them and broadcast free of charge the national and regional programmes of the Bulgarian National Television and the Bulgarian National Radio. There is no legally established mechanism for financing the costs of such obligations.

### 34 Changes to the broadcasting laws

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

Three different Bills of Amendment of the RTA are being reviewed by parliament. No major changes of the broadcasting law are contained in these bills.

## REGULATORY AGENCIES

### 35 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?

There are two separate state bodies regulating telecoms and broadcasting (content).

The CRC is the regulatory body in the telecommunications

sector established in accordance with the TA. With regard to its powers see question 1.

The CEM is an independent specialised public body regulating radio and television content and supervising the activity of radio and television operators for compliance with their programme licences and the provisions of the RTA related to the performance of radio and television activity. The CEM's proclaimed aims are to protect the freedom of speech and the independence of radio and television operators. The CEM is responsible for organising and carrying out tenders for issuance of licences for radio and television activity (whenever a scarce telecommunications resource is being used), as well as for registration of radio and television operators distributing their programmes in ways other than terrestrially (cable, satellite, etc).

The other bodies that have a direct role in the regulation of the telecommunications sector in Bulgaria are described in question 1.

### 36 Establishment of regulatory agencies

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

Both the CEM and the CRC are independent specialised public bodies.

The CRC is constituted of five members with a five-year term of office. Three of the members are elected by parliament, one (the chairman) by the CoM and one by the president of the Republic of Bulgaria. The term and the manner of appointment of the CRC's members aim to ensure independence from the executive branch of the government. The members of the CRC may not be shareholders, partners, directors or consultants of any commercial companies or non-profit organisations in the telecoms sector or otherwise be employed or paid except as professors.

The CEM consists of nine members, five of which are nominated by parliament and four – by the president of the Republic of Bulgaria, each one with a six-year term of office. There are a number of restrictions and requirements in the RTA with regard to the CEM members, which aim to ensure their independence from the government and operators.

### 37 Appeal procedure

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

Decisions adopted by the CRC or CEM are subject to appeal before the Supreme Administrative Court, three-member panel. There are five grounds for appeal: lack of competence, failure to meet legally required formalities, material breach of procedural rules, contradiction with substantive legal provisions and inconsistency with the purpose of the law. The decisions of the Supreme Administrative Court, three-member panel, may be appealed before a five-member panel of the same court whose decision is final and not subject to further appeal.

In addition, the chairpersons of the CRC and CEM may issue penal acts imposing administrative sanctions under the TA and the RTA respectively. Such acts are subject to appeal in front of the competent regional court. The decision of the regional court may be appealed before the district court, which acts as a final instance.

**38 Competition and telecoms/broadcasting regulation**

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

The Commission on Protection of the Competition (the CPC) is the competent body for applying the general competition rules.

The CRC has certain specific powers with regard to competition protection in the telecommunications sector. Such powers, however, are quite limited and exhaustively described in the law, so in practice there could be no conflicting exercise of jurisdiction between the two authorities. The CRC is responsible for: (i) the preparation (together with the CPC) of methodology for determining SMP operators (which is ultimately adopted by the CoM), determining the SMP operators and imposing certain obligations prescribed by law on them; (ii) imposing obligations on telecommunications operators to amend their type offers for agreements for interconnection or unbundled access to the fixed-telephone network with regard to conditions aimed at ensuring effective competition; (iii) issuing mandatory instructions to telecommunications operators to amend the terms of contracts on interconnection or on access to the fixed-telephone network with the purpose of ensuring effective competition; and (iv) regulating the prices of telecommunications services, which must be presented to the regulatory bodies in the cases of abuse of dominant position in the meaning of the Protection of the Competition Act (the PCA). In addition, the CRC regulates prices of fixed-voice telephony, interconnection, leased lines from the minimum package, specific access, unbundled access to the local loop and joint use of premises or equipment, as determined by SMP operators of fixed telephone networks or providing fixed-voice telephony and leased line services.

The CEM has no specific powers to regulate competition in the media sector. The RTA states that an applicant for a radio or a television licence must declare that it does not hold any shares in a radio or television operator above the percentage allowed under the anti-monopoly legislation of Bulgaria. This provision of the RTA is, however, imprecise since the anti-monopoly legislation of Bulgaria does not contain a per-se restriction of any percentage and the merger control provisions of the anti-monopoly legislation are considered on a case-by-case basis.

**39 Interception**

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

Pursuant to the TA, public telecommunications operators must ensure the possibility for interception and access in real time as well as for uninterrupted surveillance by providing at their own expense one or more interception interfaces to the ministry of the Interior. The type and quantity of the relevant interfaces have to be agreed between the operator and the Ministry in accordance with a procedure set out in a special regulation of the minister of the interior, and then must be presented to the CRC for incorporation in the individual licence of the operator. Furthermore, operators must ensure the possibility for transmission of intercepted telecommunications through fixed or commutation connections to the Ministry of the Interior.

**40 Data retention obligations**

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

Public telecommunications operators may collect, process and use personal data and data regarding end-users, whenever this is necessary for the provision of the respective telecommunications services. The information that telecommunications operators may collect is exhaustively listed in the TA and operators may not require from their customers any different data. It includes: (i) information required for the provision of telecommunications services, including traffic data (eg, numbers of the calling and called end-users, start time and end time of the call, type of service used, etc) and (ii) information necessary for billing and payment (eg, name and address of the subscriber, volume of transmitted data, due price, etc).

A public operator who has collected and processed traffic data for the purposes of call processing must, after termination of the call or the connection, delete the data and make it anonymous. Public operators keep data necessary for billing and payment after termination of the call or the connection and until expiry of the respective period during which the data related to the billing can be demanded, disputed or payment could be made. The duration of this period is provided for in the operator's general terms.

**41 Unsolicited communications**

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

At present, legal restrictions exist only with respect to operators of telephone (fixed or mobile) networks. Such operators may generate or provide their networks for generation of calls designated for direct advertising only with the express written consent of their subscribers.

The new Consumer Protection Act, which will enter into force on 10 June 2006, will prohibit unsolicited communications for advertising purposes via automated telephone systems, fax or e-mail, while other means of communication might be used in all cases when the customer has not declared his express objection to such use.

**COMPETITION AND MERGER CONTROL****42 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 control such practices?

Anti-competitive practices in the telecoms and broadcasting sectors are controlled by the PCA. The act substantially follows the provisions of the relevant EU regulation. The PCA also applies to undertakings established outside Bulgaria to the extent their activity affects competition in Bulgaria. The PCA regulates the protection against: (i) agreements, decisions or concerted practices of competitors (cartels), (ii) abuse of monopoly or dominant position, (iii) concentration of business activities, (iv) unfair competition and (v) any other activity, which could prevent, restrict or impede competition. By virtue of the PCA, a special governmental agency entrusted with the control for compliance with the provisions of the PCA has been established – the CPC. It is an independent specialised state body, consisting of seven members, nominated by parliament.



The CRC has also certain specific, but limited, powers with regard to the competition in the telecommunications sector – see question 38.

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

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

There are no specific statutory requirements or thresholds established with regard to transactions in the telecommunications sector. Pursuant to the PCA, undertakings with certain turnover must notify the CPC in advance about a contemplated concentration of their business activity (eg, merger, change of control, etc) requesting permission. The CPC may prohibit the concentration if it leads to the creation or strengthening of dominant position as a result of which effective competition will be significantly impeded in the relevant market. On the other hand, the CPC may clear the concentration even where it creates or strengthens a dominant position when the concentration aims at modernisation of production and the economy as a whole, improving market structures, attracting investment, creation of employment, better satisfaction of the consumers' interests and when overall its positive effects outweigh its anti-competitive influences on the relevant market.

According to the PCA, a concentration must be notified to the CPC if the aggregate turnover of the participants in the concentration for the previous year exceeded 15 million levs on the relevant market in the country.

#### **44 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 authority competent for the review of mergers, acquisitions and joint ventures in the telecommunications and broadcasting sectors is the CPC (see question 42).

#### **45 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?

If the legally established threshold for the transaction is exceeded, the CPC must be notified about the contemplated merger, acquisition or joint venture. When the notification is complete the chairman of the CPC appoints a reporting member, as well as a working group. According to the law, the review should take up to one month (however, the CPC's interpretation is that this includes only the time necessary for the working group to complete their report). After the report of the working group is completed it is submitted to the reporting member along with a draft decision. If the reporting member agrees with the report he or she initiates scheduling of the hearing on the filing (normally two weeks after the report is complete). The review period is instructive and therefore if serious issues come up, it may be extended in practice. The clearance decision is dated as of the date of the hearing and usually is released a few days later, after payment of the clearance fee.

The decisions of the CPC are subject to appeal in front of the Supreme Administrative Court, three-member panel, within 14 days of being communicated to the respective party. The decisions of the three-member panel of the Supreme Administrative Court are subject to appeal in front of the Supreme Administrative Court, five-member panel, whose decision is final.

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