

Chapter XX

BULGARIA

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I OVERVIEW

The Bulgarian TMT market remains one of the most stable sectors of the Bulgarian economy. In 2015 telecommunications constituted approximately 2.9 per cent of the GDP of the country with a volume of 2.5 billion leva (€1.3 billion).² Investments in the fixed and mobile networks have led to a well-developed telecom infrastructure. In 2016 investments in networks and equipment are expected to be around €250 million.³

Mobile telecommunications are provided by four active operators: Mobitel (the first GSM operator, owned by Telekom Austria), Telenor (the second-largest mobile operator, owned by Telenor), Vivacom (the former fixed incumbent, Bulgarian Telecommunications Company), and privately owned LTE operator, Max Telecom. The leading three operators have 2G/3G network coverage exceeding 99 per cent both of population and territory. Package services experienced a considerable growth in 2015 and are now the second-largest segment immediately after data access. In 2016 all operators claim to have launched 4G LTE services.

The Bulgarian regulatory framework distinguishes between telecommunications and postal activities on the one hand, and radio and television activities, on the other. These sectors are regulated by separate legislative acts⁴ and by different regulators.⁵ Competition law is regulated by the Competition Protection Commission (CPC). After being subject to

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2 CRC Annual Report 2015.

3 CRC Annual Report 2015, p. 10.

4 The Electronic Communications Act (ECA), the Postal Services Act (PSA), the Radio and Television Act (RTA).

5 The Communications Regulation Commission (CRC) for the telecom and postal sector; the Council for Electronic Media (CEM) for radio and television.

several infringement proceedings for breaches of EU law in the telecoms sector few years ago, including for lack of independence and effectiveness of the NRA,⁶ currently Bulgarian law follows the EU law and the 2002 and 2009 EU Telecoms Packages have been fully transposed.

The CRC has undertaken significant efforts in the past five years to improve its technical capabilities and know-how to meet the growing challenges of the sector. In particular, it has adopted consistent and predictable policy in areas such as the reduction of termination rates. Efforts have also been made to increase participation of stakeholders in the elaboration of legislation and technical documents through public consultations. On the other hand, in the media sector the CEM has maintained a more conservative and sometimes less open policy in its regulation of TV and radio services.

The TMT sector is also subject to legislation regarding consumer protection, data protection, construction, planning and development. Currently regulatory efforts are focused on simplifying rules for development of new infrastructure in line with EU policies.

The Bulgarian government acknowledges the importance of TMT for the economy, shown by its efforts to make available radio spectrum in the 700MHz and 800MHz bands, which is currently used for military and national security needs.

The TMT sector is important for the Bulgarian economy, not only because of its volume, but also as it is essential for the development of related areas such as outsourcing and IT technologies. In 2013–2015 the major trend in the TMT sector in Bulgaria was further acceleration of transition to superfast broadband, IP-based networks (fixed and mobile), convergence of fixed and mobile services, significant development of over-the-top content, increase of bundled services and machine-to-machine (M2M) communications.⁷ Consolidation of the telecoms market is ongoing (see Section VI, *infra*).

II REGULATION

i Telecoms

Governmental policy in the electronic communications sector in Bulgaria is implemented by the Council of Ministers, the National Radio Spectrum Council, and the Ministry of Transport, Information Technology and Communications.

The regulatory body exercising control over the provision of electronic communications is the CRC. The CRC is an independent specialised state body, implementing the primary and secondary legislation and general administrative acts in electronic communications, the electronic communications policy, the radio frequency planning and allocation, and postal services.

The competences of the CRC encompass, among others, granting and revocation of permits for the use of individually assigned scarce resources, definition of relevant markets for electronic communications networks and/or services and undertakings with significant market power and imposition of specific obligations to such undertakings, resolving disputes between operators and reviewing complaints by end-users.

6 <https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/Infringement%20procedures%20opened%20for%20non-communication%20of%20the%20revised%20framework.pdf>.

7 CRC Annual Report 2015, p. 6.

The CRC keeps public registers of the undertakings providing electronic communications, undertakings holding authorisations for use of an individually assigned scarce resource (spectrum, numbering) and those which are designated as undertakings with significant market power.

The CRC collaborates with the European Commission, BEREC and the regulatory bodies of EU Member States. It also acts in coordination with the CPC for the promotion of competition and interests of the citizens in the electronic communications, with the CEM, the Commission for Customer Protection and the Commission for Personal Data Protection.

The regulatory regime of the electronic communications in Bulgaria is contained primarily in the ECA, the Competition Protection Act and the Electronic Document and Electronic Signature Act.

ii Media sector

The independent body responsible for the regulation of media services in Bulgaria is the CEM. The CEM is vested with the power to supervise the broadcasting activities of media service providers. CEM grants and withdraws licences for radio and television broadcasting activity and registers radio and television programmes.

Public registers of radio and television programmes distributed through cable, satellite and electronic communication networks for terrestrial analogue and digital radio transmission and enterprises distributing Bulgarian and foreign programmes are maintained by the CEM.

The main primary legislation regulating the media sector in Bulgaria is the RTA, the ECA, the Child Protection Act, the Copyright and Related Rights Act.

iii Regulated activities

Electronic communications in Bulgaria are carried out freely, upon notification to the CRC⁸ and/or after acquiring authorisation for the use of an individually assigned scarce resource.⁹

The provision of electronic communications by means of radio equipment using radio frequency spectrum which does not need to be individually assigned is carried out upon notification and under technical rules adopted by the CRC.

An undertaking having submitted a notification the provision of public electronic communications should comply with the general requirements adopted by the CRC for the respective type of electronic communication network or service.¹⁰

Electronic communications are provided after acquiring an authorisation where individually assigned scarce resource is needed. The CRC grants authorisations for use of an individually assigned scarce resource – radiofrequency spectrum:

- a* based on a competition or tender in the event the number of candidates is greater than the number of persons to whom or which an authorisation could be granted; or
- b* without a competition or tender for the needs of state bodies, for diplomatic missions or other organisations with the same status; for provision of electronic communications for private needs; in the event the number of candidates is less than or equal to the number of persons to whom or which an authorisation can be granted;

8 Article 66 of the ECA.

9 Article 64 of the ECA.

10 Article 73 of the ECA.

for provision of electronic communications through use of existing and/or new analogue electronic communications networks for analogue terrestrial broadcasting in certain circumstances, and where a temporary authorisation is granted.

The CRC issues a permit for use of an individually determined scarce resource – numbers, without conducting a competition or a tender.

The procedure for granting of an authorisation commences with the submission of an application for use of an individually assigned scarce resource before the CRC. Upon receipt of all necessary documents, the CRC adopts a decision for granting of an authorisation for use of an individually assigned radio spectrum within six weeks, and a decision for granting of an authorisation for use of an individually assigned numbers within three weeks. The applicants pay fees regulated in the Tariff for Fees Collected by the CRC under the ECA.

The CRC may on its own initiative conduct a competition or tender for use of specific radio frequency spectrum or geostationary orbit position.¹¹

Media

Radio and television broadcasting activities for creation of programmes designed for broadcasting through electronic communication networks when an individually assigned radio spectrum is used are performed on the ground of individual licences issued by the CEM.

A licence is also required for carrying out radio and television broadcasting activities through the use of existing or new electronic communication networks of terrestrial analogue broadcasting. The licence is granted on the basis of a competitive procedure initiated upon request of an interested party or upon the CEM's initiative. The CEM coordinates with the CRC the technical parameters for broadcasting by terrestrial analogue transmitter of radio and television programme services and any other technical requirements that may be necessary. In the event that unallocated radio spectrum is available the CRC provides a draft for the use of individually assigned radio spectrum.¹² The CEM then adopts a decision to open a competitive procedure with regard to the available radio frequency spectrum.¹³

A licence is also required for carrying out radio and television broadcasting activity for launching of programmes designed to broadcast through electronic communication networks of terrestrial digital broadcasting. The procedure is initiated upon the request of an interested party, or upon CEM or CRC initiative.

The CEM issues decisions on the type and profile of the licensed Bulgarian television programmes or radio programmes that are to be broadcasted through networks of terrestrial digital broadcasting.

Persons wishing to create radio or television programmes are subject to registration under the RTA and persons intending to provide media services upon request shall submit a notification to the CEM.

iv Ownership and market restrictions

There are no restrictions on foreign-based companies providing electronic communication services or operating electronic communication networks in Bulgaria. However, entities

11 Article 89 of the ECA.

12 Article 116 of the RTA.

13 Article 116a of the RTA.

registered in preferential tax treatment jurisdictions (mainly offshore jurisdictions, which are defined under the Corporate Income Tax Act) and persons controlled by such entities may not directly or indirectly obtain authorisations for operating public electronic communication networks under the ECA. Such entities may acquire participation in companies holding authorisations under the ECA or providing services under the ECA only if their shares do not exceed 10 per cent of the voting rights in the operator. Similar restrictions are applicable to radio and television operators.

With respect to media, pursuant to the RTA only Bulgarian, EU and EEA entities may apply for licences for radio and television broadcasting.

A restriction of note is the prohibition on an entity holding at the same time a licence as a radio and television operator and obtaining authorisation from the CRC for terrestrial digital broadcasting. This restriction aims to limit excessive vertical integration in the media market (i.e., not to allow entities producing content to also provide digital broadcasting of the content).

v Transfers of control and assignments

Transfer of authorisations

An authorisation for use of an individually assigned scarce resource, or part of rights and obligations under an authorisation, may be transferred and an individually assigned scarce resource – radiofrequency spectrum – may be leased after an authorisation by the CRC. The transfer should not distort competition in the electronic communications sector, lead to changes in the conditions for use of the individually assigned scarce resource, or lead to a change of the radio and television programme services. The CRC has adopted detailed Rules on the conditions and procedure for transfer of an authorisation for use of an individually assigned scarce resource.¹⁴

Transfer of a licence under the RTA is subject to CEM approval. It is for the CEM to liaise directly with the CRC about the respective transfer of the authorisation for use of radio spectrum for terrestrial analogue broadcasting.

Merger control

Provided that the EU Merger Regulation does not apply to a concentration, the Bulgarian national notification procedure is applicable and the authority competent to review the transaction is the CPC. The CPC carries out a preliminary investigation,¹⁵ which is concluded within 25 working days and may be extended by no more than 10 days in certain circumstances.¹⁶ The CPC would seek the opinion of the CRC on the effects on the market from the concentration.

An in-depth investigation is carried out where in the course of the preliminary investigation it has been established that the concentration raises serious doubts for the

14 Rules on the conditions and procedure for transferring an authorisation for use of an individually assigned scarce resource, promulgated in State Gazette Issue 29 from 18 March 2008 as amended from time to time, issued by the Chairman of the CRC.

15 Article 80 of the CPA.

16 Article 81 of the CPA.

creation or strengthening of a dominant position and that the effective competition would be significantly impeded. The in-depth investigation is completed within four months; in complex cases the term may be extended by a further 25 days.¹⁷

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

The Bulgarian ECA is structured as technology-neutral and does not provide a specific regulatory regime for internet services and services provided via the internet. Electronic communications, including internet and IP services can be implemented after notification and/or based on an authorisation for use of an individually assigned scarce resource.

Where no individually assigned scarce resource (e.g., radiofrequencies, positions of the geostationary orbit) is required the entity should only notify the CRC of its intentions to provide services and provide information on the types of service it will provide, the territory it will cover and the technology it will use. From the date of the notification, the operator is entitled to provide services, establish and use electronic communications networks and facilities, obtain approvals for construction, and have access to and interconnection with other networks.

ISPs are not subject to specific regulation. This has resulted in a strong development of broadband networks and internet services in Bulgaria. In 2015 there were more than 660 active ISPs on the market.

Similarly, there is no specific regulation of VoIP services in Bulgaria. VoIP services are subject to the general rules, in particular of utilisation of scarce resource – numbers – and in respect of the technical equipment required to be installed by operators to enable enforcement and security agencies to intercept or trace communications. The CRC has imposed obligations on several operators to allow interconnection of IP-based services.

ii Universal service

The EU framework on universal service has been implemented in the ECA, which defines universal service as a set of services of specified quality, which is available to all end-users regardless of their geographical location on the territory of the country, at an affordable price.¹⁸ Universal service currently covers connection at a fixed location to a public electronic communications network regardless of the technology (thus including data access), provision of public telephone services, public pay telephones and other public voice telephony ensuring access to free-of-charge emergency calls, a telephone directory, telephone information services and public telephone services for persons with disabilities.

Bulgarian authorities take the view that broadband services should be outside the scope of the universal service.

Nevertheless, the Bulgarian government has implemented an investment initiative to develop broadband infrastructure in rural areas and areas with low population density. As a

17 Article 84 of the CPA.

18 Article 182(1) of the ECA.

result, 24 municipal centres and 29 smaller towns and villages received broadband access.¹⁹ The state plans to provide the infrastructure to private telecommunications operators through a public concession for 13 years. Selected operators will lease the network to local internet providers and will be obliged to maintain the infrastructure.

Currently, there are no plans for subsidies for use of broadband services.

iii Restrictions on the provision of service

Undertakings providing electronic communication services should determine their prices according to demand and supply, ensuring non-discrimination of users, categories of end-users, traffic volume and other conditions related to freedom of contract. Each of the mobile network operators have been designated as having significant market power (SMP) when it comes to call termination and are subject to requirements for regulated termination prices and non-discrimination. All prices are reported to the CRC, but only the SMP operators' termination prices are subject to regulation.

An undertaking providing public electronic communications networks shall have a right and, when requested, an obligation to negotiate interconnection with other network operators.²⁰ Access and interconnection in general are freely negotiated. However the CRC has the discretion under certain conditions to impose obligation of interconnection. This applies not only to undertakings with SMP, but also when promoting efficiency, sustainable competition, efficient investment and innovation and giving the maximum benefit to end-users require it.²¹

The ECA contains certain provisions aiming to ensure net neutrality. For instance, the CRC may set minimum requirements for quality of service for the undertakings providing public electronic communications networks in order to prevent the deterioration of service and the hindering or slowing down of traffic. The providers are obliged to include in their general terms and conditions the minimum service quality levels offered across the network, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the CRC. In practice, net neutrality is not the focus of the CRC's current agenda since the development of broadband infrastructure and commercial policies of the ISPs have contributed to a well-functioning market with no reported discrimination practices.

iv Security

Undertakings providing public electronic communications services must take all measures to manage the risk posed to security of networks and services.²² In case of breach in the security systems they are obliged to report to the CRC. It is for the CRC to assess whether and how to inform other authorities, users and affected parties.²³

19 Common information for broadband access in Bulgaria: www.mtict.government.bg/upload/docs/2015-04/Bulgaria_NGA_info.pdf.

20 Article 158 of the ECA.

21 Article 160 of the ECA.

22 Article 243(1) of the ECA.

23 Article 243b of the ECA.

The undertakings are obliged not to disclose communications and traffic-related data, location data, as well as data with the potential to identify the user.²⁴ However for national security and for prevention, detection and investigation of serious crimes certain data should be kept by the service providers for six months.²⁵ In February 2015 the Constitutional Court declared the procedure for collection and access to this data as unconstitutional and currently the ECA provides that access to such data is allowed only by explicitly listed authorities, after a motivated written request and permission from a regional court. The categories of data stored are also exhaustively listed in the ECA.²⁶

Currently the government is advancing an anti-terrorist law which will allow authorities to block internet access of alleged terrorists and will provide an easier way to collect user and traffic data.

The Bulgarian legislation does not provide a sector-specific framework for protection of children when it comes to the provision of online services. Child protection is ensured by general criminal law and child protection legislation, which are not currently adapted to address the new technological developments. However, state authorities frequently hold information campaigns aiming to ensure awareness of risks and measures for online security of children. Some of the ISPs have also initiated efforts to implement self-regulatory measures aiming to protect children from cyberthreats.

IV SPECTRUM POLICY

In Bulgaria the radio spectrum is governed mainly by the ECA²⁷ and several secondary legislative acts – the State Radio Spectrum Planning and Allocation Policy,²⁸ the National Radio Spectrum Allocation Plan (both adopted by the Council of Ministers), and the Regulatory Policy for Radio Spectrum Management (adopted by the CRC). International agreements concluded by Bulgaria as well as EU law also apply, in particular when it comes to spectrum band use and international coordination.

The CRC is the main authority charged with spectrum management. Although the Council of Ministers, the Ministry of Transport, Information Technology and Communications (MTITC), Ministries of Defence and Internal Affairs, as well as other state authorities have particular powers in respective fields, the CRC coordinates the spectrum management and the overall consistency of spectrum regulation in Bulgaria.

The National Radio Spectrum Allocation Plan²⁹ is generally compliant with EU and ITU standards. However, still some bands are fragmented to accommodate military and

24 Article 245 of the ECA.

25 Article 251b. of the ECA.

26 Article 251i of the EAC.

27 Article 124(1) of the ECA: 'The radio spectrum shall be managed and effectively used avoiding harmful interference in accordance with the State Radio Spectrum Planning and Allocation Policy, the National Radio Spectrum Allocation Plan, the Regulatory Policy for Radio Spectrum Management for Civilian Needs, as well as in accordance with international agreements whereto the Republic of Bulgaria is a party.'

28 The last version of the Policy has been published in the State Gazette on 2 September 2016.

29 National Radio Spectrum Allocation Plan, published in State Gazette issue No. 60/2004, as amended time to time, last amendment State Gazette issue No. 46/2015.

national security needs. For instance, a major obstacle for the allocation of the 800MHz band to mobile networks is the utilisation of spectrum in this band by MiG-29 jet fighters;³⁰ the 2500–2690MHz band will be made available only after change of the entire equipment of the national security services. The elimination the spectrum fragmentation requires substantial infrastructure investments from the Ministries of Defence and Internal Affairs.

The rights of use for radio frequencies are based on authorisations in line with the EU Authorisation Directive.³¹ Authorisation for use of radio spectrum is granted after conduct of a competition or tender in the cases where the number of candidates is greater than the number of persons who or which are eligible to obtain an authorisation for the relevant available spectrum. Spectrum authorisations are granted against spectrum fees for periods usually up to 26 years.

The holders of spectrum authorisations may transfer or lease the permit or part of the rights and obligations under it but only after two years from the issuance of the authorisation where obtained as a result of a competition or tender, and upon prior approval by the CRC (see Section II.iii, *infra*).

i Development

In September 2016 a new State Radio Spectrum Planning and Allocation Policy was published which sets the objectives for spectrum management in Bulgaria.³²

In the short term (i.e., by 2017), the main objective is to reach higher harmonisation with EU and ITU spectrum allocation. In particular, a special focus will be gradually making available for mobile services the 800MHz band and the 3.4–3.6GHz band. Measures will be taken to consolidate the 700MHz band by assuring transition of TV channels in order to consolidate the band for future use in accordance with Decision 2016/687/EC.

Before 2019 full utilisation of the 800MHz band and inclusion of the modification of the 700MHz band in the National Spectrum Allocation Plan should be achieved. Bulgaria will also have to determine how the 470–790MHz bands will be used and should ensure sufficient spectrum for the development of 4G and 5G services. GSM-R and M2M communications are to be provided with additional spectrum, most probably by reducing the current spectrum allocated to the Ministry of Defence.

ii Flexible spectrum use

Bulgaria has adopted the technology neutrality principle³³ and authorisations issued after 2011, as a rule, do not link the allocated spectrum to a specific technology or service. Max

30 <http://parliament.bg/bills/43/602-03-4.pdf>.

31 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).

32 Decision No. 734 of 2 September 2016 for adoption of an Updated State Policy on spectrum planning and allocation of the Republic of Bulgaria, published in State Gazette issue No. 71 of 13 September 2016.

33 Article 130 of the ECA:

(1) *The right to use radio frequencies and radio frequency bands shall not be related to any restrictions in respect of the type of services provided or technologies used.*

Telecom and Bulsatcom, the fourth-largest and respectively fifth-largest mobile operators on the market, were granted technology-neutral authorisations for spectrum in the 1800MHz band.

Based on that, the first national roaming agreement has been concluded in Bulgaria between Mobiltel and Max Telecom, whereby Max Telecom will utilise the 2G and 3G capacity of Mobitel in those areas where Max Telecom does not have network.

iii Broadband and next-generation mobile spectrum use

The first 4G network in Bulgaria was launched in 2014 by Max Telecom, followed by Telenor, Mobiltel and Vivacom at the end of 2015 and the beginning of 2016. The effective implementation of 4G services has been slowed by the fragmentation of the 1800MHz and 900MHz bands, where no one of the companies have more than 2x15MHz blocks. Second, the authorisations for the 900MHz band were issued for GSM/UMTS networks, before the implementation of the technology neutrality principle.

The CRC has been urged by operators since 2014 to undertake refarming and allocation of additional spectrum in the 1800MHz band. This was achieved in 2016 when all five existing mobile operators were granted continuous blocks of 2x15MHz.

The options to use the 900MHz and 2.1GHz bands for extension of 4G networks are currently being assessed. Spectrum aggregation within the spectrum of a carrier (i.e., aggregation of the spectrum blocks of the carrier) and between carriers (aggregation of the spectrum of different carriers in order to reach larger blocks) may be introduced. The Bulgarian authorities are still to assess the spectrum needed to enable the development of 5G networks.

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- (2) *Restrictions of the rights to use radio frequencies and radio frequency bands in respect of the technologies used shall be admissible solely in the cases where this is necessary to:*
- 1. avoid harmful interference;*
 - 2. protect public health against the impact of electromagnetic fields;*
 - 3. ensure technical quality of service;*
 - 4. ensure maximization of radio frequency sharing;*
 - 5. safeguard efficient use of the radio spectrum;*
 - 6. ensure the fulfilment of general interest objectives respecting the principle of service neutrality.*
- (3) *Restrictions of the rights to use radio frequencies and radio frequency bands in respect of the services provided shall be admissible only with a view to fulfilling general interest objectives, above all concerning:*
- 1. safety of life;*
 - 2. the promotion of social, regional or territorial cohesion;*
 - 3. the avoidance of inefficient use of radio frequencies;*
 - 4. the promotion of cultural and linguistic diversity and media pluralism, including by the provision of radio and television broadcasting services.*
- (4) *The provision of other electronic communications services in a specific radio frequency band may be prohibited only where necessary to protect the operation of safety of life radio services. In exceptional cases, such prohibition may also be extended in order to fulfil other general interest objectives as defined in accordance with European Union law.*

iv Spectrum auctions and fees

After the refarming and additional spectrum allocation in the 1800MHz band, no immediate plans for new spectrum auctions are in place. However, in September 2016 the Bulgarian government made available for civil use 2x10MHz in the 800MHz band (the digital dividend) (811–821MHz and 852–826MHz). Should a potential investor be interested a new spectrum allocation procedure could be initiated.

Spectrum use is subject to initial and annual fees based on the amount of spectrum used. Thus for example, in 2016 the initial fee for 2x5MHz in the 1800MHz band amounted to 7 million leva (approximately €3.6 million).

V MEDIA

i Restrictions on the provision of service

Network operators and content providers are regulated separately under the Bulgarian legislation.

The RTA provides the general requirements for quality and content of the programmes, the rules for licensing and registering as a content provider and some reporting obligations for network operators, whereas the framework regarding the type of network used by the network operator is in the ECA. Frequency allocation is controlled by the CRC while content and content providers are subject to regulation by the CEM. The provisions of the RTA are aligned with the provisions of the Audiovisual Media Services Directive.³⁴

Content providers

Media providers may be public-service or commercially orientated. Public-service media providers are subject to more rigorous content restrictions than commercial providers. They should meet high standards in providing political, business, cultural, scientific, educational and other socially relevant information, coverage of national and global cultural values, ensure the protection of national interests, universal culture values, science, education and culture of all Bulgarian citizens, and encourage creation of works by Bulgarian authors.³⁵ All media providers that do not have this focus are considered commercial media providers.

Media providers are subject to licensing or to a registration procedures before CEM (see Section II, *supra*).

Media content providers and their programmes are free from and cannot be subject to political or economic interference and censorship in any form.³⁶ The RTA aims to guarantee media providers to have access to information and freedom of speech.

Media services must not incite hatred and particularly based on race, sex, religion or nationality. Programmes and content should be provided only after copyrights and neighbouring rights have been settled in advance. Content of media services should be in the Bulgarian language with exceptions such as programmes designated for persons with a

34 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

35 Article 6(2) of the RTA.

36 Article 5 of the RTA.

mother tongue different than Bulgarian. At least 50 per cent of the total annual transmission time of the television programme services, excluding the time allocated for news and sports programmes, TV games and advertising, must be reserved, where practically possible, for European works and at least 12 per cent of that transmission time should be reserved for European works created by producers independent from the broadcasters.³⁷

Programmes that may be harmful for children's health or development, unless they are coded, should be broadcasted in the late evening and night and be marked as inappropriate for children.³⁸

The RTA provides strict rules for the content, duration and placement of advertisement on TV and radio. Commercials may not harm human dignity; include or promote any discrimination; or encourage behaviour harmful to health or safety, or grossly harmful to the protection of the environment.³⁹ Advertising tobacco and tobacco products is prohibited in any form, as well as any form of advertising with pornographic or violent content. There are also requirements related to the advertisement of alcoholic beverages and medicines. TV and radio commercials may not be directly targeted to children.⁴⁰

Product placement in news, religious programmes and in public-service media is prohibited. Product placement may only take place if viewers are clearly informed of the existence of a product placement and the product is not promoted excessively.⁴¹

Media content providers are liable for the content of their programmes.⁴²

Network operators

Network operators should notify the CRC of their intention to provide public electronic services. They are registered in the registry of the CRC. Operators may also need authorisation for individually assigned scarce resources (see Section II, *supra*).

Network operators that intend to distribute TV or radio programmes are recorded in a registry maintained by CEM.⁴³ They should also provide CEM every six months with an updated list of the programme services distributed and documents related to:

- a* distribution rights for the programme services; and
- b* distribution rights for the works, phonograms and recordings of audiovisual works included in their programme services.

Network operators are not liable for the content of the programmes they distribute and do not have content-related obligations unlike the media content providers.

37 Article 19a(1) and (2) of the RTA.

38 Article 17(3), item 1 and 2 of the RTA.

39 Article 75(5) of the RTA.

40 Article 75(9) of the RTA.

41 Article 84(1) of the RTA.

42 Article 17(1) of the RTA.

43 Article 125j(1), item 5 of the RTA.

ii Internet-delivered video content

IPTV services in Bulgaria still count for a relatively small part of the market, even though the revenues from IPTV in Bulgaria increased by 50 per cent in 2015.⁴⁴ However the total revenues from IPTV are still around 1 per cent of the total revenues from TV distribution.⁴⁵

There are no specific rules targeting consumers who cannot afford internet access. Internet service providers are constantly improving the quality of their service, adopting new technologies and increasing speeds. This is a market-driven trend without particular administrative incentives.

With the improvement of the mobile internet services provided by the telecom operators there is also an increase in terms of internet video distribution. Live television, time-shifted programming and VOD are also becoming more and more available, and popular.

VI THE YEAR IN REVIEW

There were no major legislative amendments or policy shifts during 2015 and 2016. Amendments were introduced to the ECA regarding the financial sanctions for breach of the EU international roaming regulations and the obligations of telecom operators to ensure storage of traffic data.

The CRC, however, was particularly active in 2015 and it rendered a number of decisions with significant impact on the market. The CRC adopted its new Regulatory Policy for Radio Spectrum Management, which will be the basis for further development of the National Spectrum Allocation Plan and will address the challenges of 4G and 5G implementation in Bulgaria. It also initiated the process for additional spectrum allocation and refarming in the 1800MHz band to allow for 4G LTE implementation (see Section IV, *supra*).

On another note, the CRC for the first time considered in detail network sharing and national roaming. This process led to the conclusion of the first national roaming agreement in Bulgaria.

The regulatory activity of the CRC did not proceed without dispute. Twelve decisions of the CRC were subject to legal challenge. Of particular interest were appeals by mobile operators against explicit and tacit refusals of the CRC to allocate additional 2x5MHz spectrum blocks in the 1800MHz band. After reaching the Supreme Administrative Court the CRC consulted with the mobile operators and allocated the requested additional spectrum.

Another interesting case in 2016 was a complaint filed by Max Telecom against Telenor before the CPC alleging that Telenor unfairly advertised its new 4G services without spectrum capacity for such services. The case is currently pending.

The launch of 4G services was the most important event in 2015. The first 4G network in Bulgaria was launched in 2014 by Max Telecom, followed by Telenor, Mobiltel and Vivacom at the end of 2015 and the beginning of 2016. Additionally, the first national roaming agreement was concluded in Bulgaria between Mobiltel and Max Telecom, whereby Max Telecom will utilise the 2G and 3G capacity of Mobiltel in those areas where Max Telecom does not have network.

44 Annual report of the CRC for 2015, section I, p. 31.

45 Annual report of the CRC for 2015, section I, p. 32.

There were several significant transactions in the TMT sector within the review period. EQT sold cable operator Blizoo to Mobiltel for €140 million. In August 2016, a transaction for the sale of ownership over Vivacom, the incumbent fixed and mobile operator, to a consortium supported by VTB, was completed. There is currently a dispute in the English courts concerning this acquisition.

The past year was also marked by the granting of two authorisations for positions on the geostationary orbit for launching of telecom satellites. The most advanced is the intended launch by Bulsatcom of the first SEE dedicated telecom satellite expected to take place – in the beginning of 2017.

VII CONCLUSIONS AND OUTLOOK

2015 and 2016 have been particularly dynamic for the TMT sector in Bulgaria. They brought a technological breakthrough in mobile services, significant growth of broadband services and the emergence of new operators. Consolidation on the market is expected to continue particularly in relation to internet broadband access. This market is still highly fragmented with more than 600 registered ISPs.

Another market that should be watched is IPTV. After years of having a relatively small market share IPTV has experienced considerable growth in 2015 and 2016. This sector is very dynamic and expected to bring new added value for end-users.

Last but not least, the Bulgarian Council of Ministers undertook the implementation of Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks and a new draft bill has been submitted to Parliament and is expected to be adopted by the end of 2016. This will be further facilitate the rollout of broadband networks and infrastructure.

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Anna Rizova is the managing partner of Wolf Theiss in Bulgaria and one of the most renowned legal and business advisers in the country. She has had leading and unique roles in Bulgaria's landmark transactions.

As general counsel of Bulgaria's first mobile operator, Anna was responsible for all legal and regulatory affairs. As head of competition at Bulgaria Telecom, Anna led the fixed and mobile group through market liberalisation following the privatisation and implementation in Bulgaria of European law for network access in the sector. Before joining Wolf Theiss, Anna was the youngest country managing partner in the DLA Piper global network.

Anna leads a wide range of complex and important transactions and regulatory matters for large international companies. Her mandates include advice on network access rights and infrastructure-services competition under Bulgarian and EU law, essential facility access, regulatory and commercial issues for conclusion of commercial agreements between operators including national roaming agreements, regulatory intervention and advice on spectrum dominance. She regularly advises multinational operators and companies on IT, data protection, compliance and regulatory matters and in proceedings before the NRA and the Competition Authority.

OLEG TEMNIKOV

Wolf Theiss

Oleg Temnikov is a senior associate in Wolf Theiss' Sofia office and is part of the regulatory, projects and dispute practice groups. He graduated in international economic law from Université Paris 1 Panthéon-Sorbonne and is admitted to Sofia Bar. Prior to joining Wolf Theiss, Oleg was part of the team at the Paris office of a US law firm.

Oleg has wide experience in different areas of law, including regulation, telecoms, EU law and competition, energy law, litigation and arbitration as well as international investment law. With his in-depth knowledge of the regulatory framework in Bulgaria, Oleg regularly advises domestic and international clients on highly complex and sector-specific matters in the telecoms and energy sectors. In particular in the telecoms sector, Oleg has acted for clients in relation to national roaming arrangements, spectrum management and allocation matters, unfair competition and drafting of contractual arrangements among operators and contractos. Oleg has an extensive experience in representing clients in administrative disputes before Bulgarian courts in relation to appeals against decisions of sectorial regulators, such as the Communications Regulation Commission and the Energy and Water Regulatory

Commission. His dispute resolution experience also includes a number of highly complex cross-border disputes and arbitrations, as well as domestic litigation before commercial and civil courts.