Telecoms and Media

Contributing editors

Alexander Brown and Peter Broadhurst

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GETTING THE DEAL THROUGH

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Thailand

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Communications policy

1 Regulatory and institutional structure

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

Regulatory and institutional structure

Legislation that governs the telecommunications sector includes the Act on Organization to Assign Radio Frequency and to Regulate Broadcasting and Telecommunications Services 2010 (NBTC Act 2010) and the Telecommunications Business Act 2001 (Telecommunications Business Act).

The NBTC Act 2010 establishes the National Broadcasting and Telecommunications Commission (NBTC) as an independent regulator of telecommunications and broadcasting businesses. Subject to supervision by the NBTC, a Telecommunications Committee regulates telecommunications businesses in compliance with the Telecommunications Business Act.

The Telecommunications Business Act applies to operators of telecommunications services; while 'telecommunications services' is defined as a service that sends, transmits or receives signs, letters, figures, pictures, sounds, codes or anything else made comprehensible by frequency waves, wireless, lighting, electromagnetic systems or any other systems, or other activities prescribed by law to be telecommunications services.

Thailand currently has three types of telecom licence; (i) telecommunications business operators who provide telecommunication services without operating a telecommunications network (type 1 licence); (ii) operators who provide services to a specific group of customers with or without operating telecommunications network (type 2 licence); and (iii) operators who operate a network providing services to the general public (type 3 licence).

Additionally, any operator wishing to issue telephone numbers shall obtain a separate licence from the NBTC for telecommunications numbers, subject to a Telecommunications Numbering Plan issued by the NBTC.

General obligations applicable to licensed operators are as follows:

- Universal service obligations – a licensee is required to contribute a percentage of revenue from their telecommunications services to the Telecommunications Development Fund for public interest.
- Access and interconnection of telecommunications networks – telecommunications operators who own a network must allow other operators to interconnect with and access their networks.
- Standard of telecommunications network and equipment – telecommunications network, equipment, and devices used in telecommunications services shall be inspected and certified prior to use.
- Competition - Licensed telecommunications operators shall comply with the rules and regulations prohibiting activities that are harmful to competition as published by the NBTC.
- Contract for telecommunications services – a service contract between a licensee and a user shall be subject to the Telecommunications Committee's prior approval.

Foreign ownership restriction

The Foreign Business Act 1999 regulates business where a majority of stakeholders are non-Thai (foreign business operator). Foreign businesses are required to obtain a foreign business licence from the Ministry of Commerce prior to operating in Thailand. This is a licence separate from a telecom licence and generally applies to all business sectors.

Foreign telecommunications or media businesses are subject to sector-specific rules of foreign ownership. In case of a conflict between a provision of sectoral rules and general rules, the rules that impose a stricter standard will apply.

The Telecommunications Business Act imposes various foreign ownership restrictions in accordance with the relevant type of telecommunication licence as follows:

- Type 1 licence – no ownership restrictions apply. Therefore, the operator of a Type 1 licence is only subject to the Foreign Business Act, and a foreign business licence is required;
- Type 2 licence – foreign ownership is limited to 49 per cent of total shares. Therefore, a Type 2 licence holder may only have up to 49 per cent of its shares held by non-Thai shareholders; and
- Type 3 licence – foreign ownership is limited to 49 per cent of total shares. Therefore, a Type 3 licence holder may only have up to 49 per cent of its shares held by non-Thai shareholders.

2 Authorisation/licensing regime

Describe the authorisation or licensing regime.

General qualification of telecommunication business operator

As mentioned under question 1, licences for telecommunication business are categorised into three types: Type 1, Type 2 and Type 3. The licence shall cover various services as indicated in an operator licence application.

An applicant of any telecoms law shall be a juristic person established under Thai law and shall not be bankrupt or a person who has had a telecommunications licence revoked.

In addition to the foreign shareholding restrictions for Type 2 and Type 3 licences, the number of directors that are of Thai nationality shall not be lower than 51 per cent of the entire board. Directors with the authority to sign and bind the entity shall be of Thai nationality. Once a licence is obtained, the licensee is required to pay an annual licence fee based on its annual revenue, together with the Universal Service Obligation fee.

Internet service provider

ISP licences are categorised into three types, similar to the licence types for telecommunication business operators. An applicant shall be a legal person established under Thai law who has a full legal personality and has not previously had a licence revoked. The duration for each licence is as follows: one year for Type 1 licences, five years for Type 2 licences and 10 years for Type 3 licences.

Mobile phone service provider

International mobile telecommunication in the 2.1GHz band (3G)

The 2.1GHz band refers to spectrum range between 1920 and 1,965MHz and in parallel with 21,10–2,115MHz in which service provider must operate in accordance with the standards set out by the International

Telecommunication Union. Authorisation will be granted to an applicant by auction conducted by the NBTC.

An applicant shall be a juristic person categorised as a limited company or a public limited company established under Thai law with a majority of Thai shareholders. The winner of the auction will be licensed to use the 2.1GHz international mobile telecommunication (IMT) frequency and a type 3 licence for a duration of 15 years.

3 Flexibility in spectrum use

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

A licensee shall not use the spectrum for a purpose that differs from the purpose granted under the licence. The authority may revoke a licence if the licensee fails to comply with the licence regarding the use of spectrum.

A licence to use the spectrum is an exclusive right of the licensee. The licensee may not assign or grant another person the ability to operate on behalf of licensee, whether in whole or in part. However, a licensee may authorise a third party to rent air time, subject to the rules and regulations prescribed by the NBTC.

4 Ex-ante regulatory obligations

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

There are certain regulations that impose oversight on operators under various circumstances in the telecom markets. The NBTC has categorised such relevant markets as follows:

- Retail markets, consisting of:
  - domestic fixed-line telephone service;
  - domestic mobile telephone service;
  - international telephone service;
  - fixed-line internet service; and
  - mobile internet service.; and
- wholesale markets, consisting of:
  - international internet gateway service;
  - international telephone gateway service;
  - network interconnection for fixed call termination service;
  - network interconnection for mobile call termination service;
  - wholesale broadband access service; and
  - leased lines service.

The NBTC is authorised to categorise telecommunications operators who have significant market power (significant market power means capability of any operator that may pose a barrier to competition in the relevant markets). In this regard, the NBTC shall assess relevant markets that have barriers to competition (non-competitive markets) and identify operators that have significant market power (SMP operators) in such markets.

The relevant markets shall be deemed non-competitive markets if such markets have high market concentration (according to Herfindahl-Hirschman Index (HHI) determined by NBTC); markets have a high barrier to new entry; and/or the markets have low competition with no potential of improvement (deemed non-competitive markets).

In the event of deemed non-competitive markets, the NBTC shall categorise an operator in such market as SMP operators as follows:

- operators that have a market share (including market share of subsidiaries) from 40 per cent or above; or
- operators that have a market share from 25 per cent but under 40 per cent that the NBTC considers as having SMP, taking into account the following:
  - size of business overall;
  - control over fundamental network facilities;
  - advantage of technology (compared to other operators in the same market);
  - bargaining power;
  - access to funding resources;
  - variety of products or services;
  - economies of scale;
  - economies in production;
  - vertical integration of service businesses;
  - high volume of distribution or sale of products;
  - competency to compete in the market;
  - barrier to business growth; and
  - capability of new entry by competitors to the market.

If it is not possible to identify only one SMP operator due to market concentration, similarity of products or services, similarity of cost structure, or similarity of market share, then the NBTC may identify more than one operator in the market as an SMP operator.

SMP operators or any operators with more than 25 per cent market share in any relevant markets are forbidden from conducting the following activities:

- price discrimination;
- stipulating a fixed fee;
- stipulating service fees or product prices lower than cost to limit competition;
- stipulating conditions to force other operators to use certain services or to limit choices of services;
- unreasonably restrain from, reduce or limit provision of services or sale of products;
- stipulating unfair conditions on provision of services to other operators;
- refusal to provide necessary network or facilities to other operators;
- bundling services or products to other operators;
- concealing information necessary for use of services or provision of services;
- using information deriving from other operators to create competitive advantages;
- using techniques with the intent to limit services of other operators;
- entering into agreements or conditions with other operators or other persons with the intent to reduce or limit competition; and other activities that the NBTC may from time to time stipulate.

In addition, the NBTC may issue specific measures to impose obligations or stipulate conditions on any individual SMP operators or operators, which may include orders to:

- perform or restrain from activities deemed harmful by the NBTC;
- separate accounting system for some services (see question 5);
- disclose or report information;
- change cost-calculation formulas;
- set prices or fees for certain services;
- provide services to other operators;
- separate services;
- cancel or amend terms in service agreements; and
- other measures that the NBTC may stipulate.

5 Structural or functional separation

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

There is currently no regulatory framework that requires structural separation. The NBTC has set out a framework to have structural separation in the television sector, but has not enacted regulation.

As for functional separation, there is a regulation that requires a telecommunication operator to separate telecommunication related business from non-telecommunication related business for accounting purposes. An SMP operator may be further subject to the NBTC's discretionary authority and may be requested to further separate categories of telecommunication business in its accounting in addition to the aforementioned.

6 Universal service obligations and financing

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

The Universal Service Obligation (USO) obligates service providers to provide certain types of telecommunication services in rural areas, for educational institutions, social assistance agencies, and for underprivileged citizens. These services will be funded by income allocated by the licensees through USO fees, which licensees are required to pay annually to the Broadcasting, Television and Telecommunications Development for Public Benefit Fund.

The obligations imposed may not pose an undue financial burden on a service provider or cause discrimination among service providers. The NBTC must notify a service provider of their obligations before submitting a licence application.

7 Number allocation and portability

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

The NBTC is the authority responsible for allocating numbers used for services or service areas under the following rules and regulations: (i) use of international access numbers with service codes; (ii) telecommunication numbering allocation; (iii) telecommunications numbering plan; (iv) criteria for the assignment and permission of special telecommunications numbers; and (v) criteria for allocation and administration of telecommunications numbers.

The NBTC prescribes that a service user is entitled to mobile number portability and service providers are prohibited from acting in any manner that obstructs or impedes the porting of mobile numbers to other service providers.

8 Customer terms and conditions

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

Telecoms law imposes tariffs, service charges and certain consumer protections on telecommunications operators. Contracts with consumers for mobile phone services are subject to governance by the relevant regulations and consumer protection laws.

The NBTC regulates the content of telecommunications service contracts and subjects them to be pre-approved by NBTC before becoming effective. The NBTC also issues notifications regulating rates for fees and service charges in telecommunications. A telecommunications operator that wishes to charge greater than the maximum rate determined by the NBTC, must submit a request to the NBTC for approval. Telecommunications operators are also required to establish procedures and policies to receive and address consumer complaints.

9 Net neutrality

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

There are no regulations that impose restrictions on zero-rating or bandwidth throttling. Internet service providers (ISPs) may allow access to certain services or applications free of charge and can prioritise the type or source of data they deliver.

However, as ISPs are subject to competition law, they are required to provide services on a non-discriminatory basis, allow interconnection with other ISPs, and facilitate equal access to services.

Non-discrimination: Under the Telecommunications Business Act, ISPs shall provide services on equivalence and non-discrimination principles. ISPs are also prohibited from taking any action that may monopolise, reduce, or limit competition in the ISP market.

Interconnection: Operators who own their own network must allow other operators to interconnect with and access their networks. However, operators may refuse access to their network if the use of their telecommunications network results in technical problems that may obstruct their business.

Access: ISPs shall ensure that all users have equal access to telecommunications services.

10 Platform regulation

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

The Computer Crimes Act 2017 (as amended) (CCA) requires a 'service provider' (defined as a person who provides other persons with access to the internet or the ability to communicate through a computer system) to retain computer traffic data of users for a revolving 90-day period. Law enforcement is authorised to access that data for the purposes of investigating computer crimes. The CCA imposes criminal liability on any individual that engages in activities that violate the CCA.

Additionally, the content on an ISP's platform may be subject to other generally applicable laws:

E-commerce platforms (online platforms that allow for the sale and purchase of products or services) are considered a direct marketing business and accordingly regulated under the Direct Sale and Direct Marketing Act 2002.

Laws concerning intellectual property may apply to certain online activities. However, in the event that a service provider is not responsible for controlling, initiating or ordering alleged infringement, and such service provider has proceeded in compliance with a court's order to remove an infringing work or to suppress copyright infringements by other means, the Service Provider shall not be liable for alleged infringement occurring prior to the issuance of a court order as well as after the expiry of the court's order.

In addition, a Cyber Security Bill will create a National Cyber Security Committee with the authority to command operators in the private sector to implement procedures to prevent cyber threats. Failure to comply with such orders may be subject to criminal punishment.

11 Next-Generation-Access (NGA) networks

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

In Thailand, NGA networks are referred to as Next Generation Networks (NGN). An NBTC notification regarding the Specified Technical Standard for connection of telecommunication networks regulates the obligations of NGNs. The notification specifies the minimum standards for connection of the NGN with which the service provider is required to comply.

12 Data protection

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

A Personal Data Protection Bill has been approved by the Office of the Council of State but has yet to be enacted into applicable law.

Once the bill comes into effect, it will limit what companies (under the role of data administrator) may do with people's personal data to the extent that they must inform the data owner of the purposes for the collection, use or disclosure of their personal data and obtain their written consent. Such consent shall not be obtained by fraudulent means, such as by misleading the data owner of how information will be used. The use or disclosure of personal data in a manner that differs from the purpose that was originally consented to by the data owner is prohibited unless it is permitted by law, or the personal data administrator informs the data owner of the new purposes and obtains their amended consent. A data owner may withdraw his or her consent at any time unless restricted by law. If a personal data administrator fails to comply with the provisions of the act, the data owner may request to have his or her personal data deleted, destroyed, temporarily suspended or converted into an anonymous form.

13 Cybersecurity

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

The Cyber Security Bill is currently being drafted for the purpose of protecting Thailand's national security systems from cyber-related crime. It focuses on the safety of government computer systems and provides the authority for government entities and officers to carry out the provisions of the bill. As mentioned, a National Cyber Security Committee will be created if the bill is enacted into law and will be responsible for all national security matters in connection with the government's data and computers.

Until the Cyber Security Bill comes into effect, cybercrime will be prosecuted under the Computer Crime Act.

14 Big data

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

At this time there is no specific legislation for big data.

15 Data localisation

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

Currently, there is no specific law or regulation that requires data to be stored locally in Thailand.

16 Key trends and expected changes

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

The NBTC has enacted rules and procedures to grant a licence to use 1,800MHz spectrum (4G) for telecommunication.

Under such rules, the NBTC shall grant two licences as follows: 1) a licence for use of bandwidth 1710–1,725MHz along with 1,805–1,820MHz; and 2) a licence for the use of bandwidth 1,725–1,740 along with 1820–1,835MHz.

To qualify for these licences, an applicant is required to be a company established under Thai law, with majority Thai ownership. In addition an applicant is required to obtain a type 3 telecommunication licence.

A licensee's obligations regarding social responsibility and consumer protection under this type of licence are as follows:

A licensee is required to arrange for a telecommunication network to cover no less than 40 per cent of the population within four years after a licence is granted and to cover no less than 50 per cent of the population within eight years after such licence is granted. If the licensee fails to comply with this requirement without justifiable reasons, then the licensee, after the four-year or eight-year period has passed, shall be subject to a daily fine of 0.5 per cent of the highest auction price for the duration that the licensee fails to comply with such requirements.

A licensee is required to specify a service fee for voice and data services that is, on average, lower than the service fee of a mobile telephone service using 2.1GHz (3G). In this regard, a licensee is required to arrange for at least one sales promotion to increase the opportunity for a user to be able to use 4G services. A licensee is also required to control the service quality and cannot provide lower than a 3G service.

Media

17 Regulatory and institutional structure

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

The Broadcasting and Television Business Act 2008 regulates the media sector in the following ways:

- Licensing requirements – certain types of businesses (ie, operation of public services and community services) are reserved for operation by government entities and non-profit organisations. Services intended for generating profit are available for operation by the private sector, subject to licensing requirements from the NBTC.
- Use of frequency spectrum – a licence from the NBTC is required to operate sound broadcasting business or television business that utilises a frequency spectrum. Licences are limited to the frequency assignments stipulated by the NBTC.
- Station management – for media businesses, a director (who must be of Thai nationality) will supervise and control programming, programme hosting and broadcasting, and ensure that their respective station is in compliance with the regulations prescribed by the NBTC.
- Prevention of monopoly – a licensee is prohibited from being a stakeholder of another company in the same category of business and from cross-holding a business in sound broadcasting and television using frequency spectrum in excess of proportions authorised by the NBTC.
- TV programmes – TV operators shall comply with must-carry rules and must-have rules issued by NBTC notifications. Under must-carry rules, free-to-air TV operators are responsible for expenses they incur in providing public broadcasting services. must-have rules impose free-to-air TV operators to broadcast seven TV programmes, namely SEA Games, ASEAN Para Games, Asian Games, Asian Para Games, Olympic Games, Paralympic Games and FIFA World Cup Final (must-have programmes). under must-have rules, other operators (which are not free-to-air TV operators) are prohibited from broadcasting such must-have programmes.
- Promotion and control of professional ethics of licensees, programme producers and mass media professionals – licensees, programme producers and mass media professionals have a duty to set ethical standards for the profession and shall apply such standards to self-regulate the industry.
- Construction of, use and connection to broadcasting network – the NBTC must approve the construction of any fundamental network. Furthermore, a network owner shall allow licensees to utilise their network in accordance with the criteria and procedures prescribed by the NBTC.

In addition to the above-mentioned law, the Film and Video Act 2008 regulates content of films, videos and their advertising media. A censorship committee of officials will review, approve or censor contents of film, video and their advertisement, as well as approve other activities relating to film and video such as production or distribution of foreign films in Thailand.

18 Ownership restrictions

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

The Foreign Business Act 1999 regulates business in which a majority of the shareholders are non-Thai (foreign business). Foreign businesses are required to obtain a licence from the Ministry of Commerce prior to operating in Thailand. This law generally applies to the majority of the business sector.

Note that foreign media businesses are subject to foreign ownership restrictions. In case of conflict between sectoral rules and general rules, the rules applying a stricter standard will prevail.

The Broadcasting Act 2008 imposes foreign ownership restrictions according to the type of broadcasting licence (eg, radio and TV) as follows:

- A licence to operate public services (where the main objective is to provide public services) – this licence is only available to government entities and certain associations, foundations, charities and educational institutions, and not to private sector operators.
- A licence to operate community services (where the objective of the business is to provide a public service that meets the needs of the community or locality receiving the services) – this licence is only available to government entities and certain associations, foundations, charities and educational institutions, and not to private sector operators.
- Licences to operate business services (where the main objective is to generate profit) are subdivided into three classes: national, regional and local. Foreign ownership is limited to 25 per cent. Therefore, the restriction under this sector-specific law applies over the general Foreign Business Act; thus, the holder of the above licence may have only up to 25 per cent of its shares held by non-Thai shareholders.

A licensed operator that intends to merge with another licensed operator shall submit a request for permission from the NBTC at least 60 days prior to execution of such transaction under the following circumstances:

- a merger that will result in either licensed operator being dissolved; or a merger that will result in both licensed operators being dissolved and a new legal entity being established;
- business transfer by which a licensed operator acquires a whole or a part of more than 25 per cent of assets of another licensed operator; or

- share acquisition by which a licensed operator acquires a whole or a part of shares in another licensed operator to take control over such licensed operator, either by:
  - direct acquisition of shares at least 25 per cent of total shares (including shares being held by persons related to the acquiring operator);
  - indirect acquisition of shares through other legal entities wherein an acquisition involves more than 50 per cent of total shares in the relevant shareholding entities; or
  - effectively taking over the controlling interest in another licensed operator either directly or indirectly through other entities, notwithstanding shares being acquired is less than 25 per cent.

Cross-shareholding between two licensed operators shall obtain prior approval of the NBTC at least 60 days before executing such transaction.

19 Licensing requirements

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

General qualifications

An applicant must be of Thai nationality, shall not be on a probationary period restricting the applicant from using the licence, and cannot have yet exceeded three years of a licence withdrawal period. The approval process will be within 60 days after all the necessary documents are submitted. If approved, the applicant will be granted the right to operate under the express terms of the granted licence. A broadcasting schedule may be allocated to other licensed broadcasters under the condition that the broadcaster complies with the rules and regulations prescribed by the Broadcasting and Television Committee.

Sound broadcasting business or television business using frequency spectrum

There are three types of licence for this kind of operation: licence to operate public services, licence to operate community services and licence to operate business services. Requirements relating to a licence to operate public services and licence to operate community services are as specified in question 18. As for a licence to operate business services, in addition to the ownership restrictions discussed in question 18, if the operation is executed at regional and local levels, the applicant shall have at least one-third of the equity and shall have stable financial status as determined by the NBTC and any other qualifications that can guarantee the stability of operations. Additionally, the applicant shall be a state enterprise or a company established under Thai law.

The same criteria apply to licences regarding Sound Broadcasting Businesses or Television Businesses that do not utilise a frequency spectrum.

Duration and fee

The Committee will grant a seven-year duration for sound broadcasting licensees and a five-year duration for television broadcasting licensees. Licences may be renewed 90 days before expiration. Meanwhile, the licensees are obliged to pay annual fees for their respective licence.

20 Foreign programmes and local content requirements

Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

Thailand does not have regulations concerning the broadcasting of foreign-produced programmes or the proportionality between foreign and local content. Nonetheless, licensees of sound broadcasting or television businesses using frequency spectrum are required to broadcast programmes composed of news or content that is useful to the public as determined by the NBTC, as well as other required programmes at certain specific times, such as the national anthem at 8am and 6pm. Additionally, the NBTC may implement additional measures for the benefit of the disabled or underprivileged.

21 Advertising

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

Duration

Pursuant to the Broadcasting and Television Business Act 2008, an advertisement publicised through sound broadcasting or television using frequency spectrum shall not exceed 12-and-a-half minutes per hour and the total run time of advertisements for a whole day shall not exceed an average of 10 minutes per hour.

Advertisements publicised on non-frequency use spectrum may not exceed six minutes per hour and the total amount of time for advertisements in a single day shall not exceed an average of five minutes per hour. Online advertisements are not restricted by time limits. However, an operator must ensure that the duration of an advertisement does not disturb consumers under the Consumer Protection Act 1979.

Advertising content

The content of advertisements is governed by regulations relevant to the purpose of the advertisement. For example, a cosmetics advertisement would be governed by the Cosmetic Product Act 2015.

22 Must-carry obligations

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

In addition to the discussion in question 17 herein regarding TV programmes, broadcasting licensees must broadcast news and warnings to the public in the event of a disaster or emergency case as prescribed by the NBTC. Programmes affecting state security, disrupting public order, containing revolutionary material concerning the overthrow of government, or containing obscenities that are against community standards are prohibited. Licensees are obligated to examine and suspend broadcasting of programmes that have the aforementioned characteristics.

23 Regulation of new media content

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

New media content is not as rigidly regulated as traditional broadcast media since new media is relatively recent. However, the government is currently considering policies to regulate new media content.

24 Digital switchover

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

In 2011, the NBTC promulgated the First Broadcasting Master Plan (2012–2016) (the Plan) delineating that the transition to digital broadcasting transmission falls into one of seven main categories that are subject to regulation. The Plan established transition policies and plans to switch to digital television broadcasting within one year, and to switch to digital audio broadcasting transmission within two years. Commencement of digital audio broadcasting and television broadcasting was anticipated at that time to begin within four years. The authorisation to use frequency for digital television services will be granted by auction while other categories (such as community or public services) will be granted at the discretion of the NBTC.

25 Digital formats

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

There are no measures restricting how broadcasters can use their spectrum except a licensee is obligated to comply with the rules and regulations of the particular licence they have been granted.

26 Media plurality

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

To evaluate the efficiency of market competition, a principle known as the HHI is applied to assess market concentration. The assessment will result in the squared sum total of market share for each licensee. If the value of HHI reflects that market concentration is high, then that will be taken by the NBTC to mean that market competition is inefficient. The NBTC may then rule out specific precautionary measures to prevent any licensee that has a significant market power from monopolising, restricting or hindering competition, or misusing market power. If such precautionary measures are imposed on a licensee that has dominant market power, such licensee may object and the NBTC may hold a public hearing on such objection. Likewise, measures set forth by the NBTC are subject to adjustments at its discretion.

27 Key trends and expected changes

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

The legislative assembly has been reviewing regulation proposals on digital developments. The First Broadcasting Master Plan, mentioned in question 23, is now in the Simulcast Period, operating analogue and digital systems at the same time. Some television broadcasting operators have yet to switch to digital television broadcasting because the dates of termination for their concession contracts vary. Therefore, during this period, the government is attempting to draft out a Spectrum Roadmap to systemise frequency allocation of digital television.

Recently a proposal known as over-the-top services (OTT) is under review by the NBTC. Under this proposal, the scope of what constitutes broadcasting will be determined. OTT operators have been informed that they must register themselves with the NBTC and will be governed by specific rules and regulations regardless of nationality. In addition to licensing requirements, foreign operators may be required to have a local office and an authorised executive in Thailand for tax purposes.

Regulatory agencies and competition law

28 Regulatory agencies

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

Telecommunications and media sectors are regulated by the NBTC, which is an independent organisation established by the NBTC Act 2010. Under the supervision of the NBTC, a Telecommunications Committee regulates telecommunications businesses and the Broadcasting Committee regulates media businesses.

On 24 March 2017, an amendment to the draft Trade Competition Act 2017 (the Amended Act), which is general law governing trade competition, was approved by the National Legislative Assembly. Under the Amended Act, the trade competition authority relinquishes its authority to regulate specific sectors including telecommunication and broadcasting businesses. In other words, once the Amended Act becomes effective, telecommunications and broadcasting sectors that are regulated by specific legislation on trade competition will be exempted from complying with general competition laws and only subject to sectoral regulations on competition.

29 Appeal procedure

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

A broadcasting or telecommunications operator has the right to appeal orders or decisions of the NBTC to the Broadcasting Committee (if the order involves broadcasting business) or to the Telecommunications Committee (if the order involves telecommunications business) within 15 days of receiving an order.

If the order or decision is upheld, the appellant will have a right to further appeal to the Administrative Court within 90 days from the date on which the appellant has received notice of an appeal decision whether it is posted or delivered to address of the appellant.

Challenges to the NBTC are limited to having cause in one of the following:

- the issuance of an order or decision without or beyond the scope of powers and duties granted to the regulatory body;
- the issuance of an order or decision inconsistent with the law, process or procedure;
- the issuance of an order or decision in bad faith;
- abuse of discretion; or
- discrimination.

30 Competition law developments

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

Antitrust is generally regulated by the Trade Competition Act 1999 under governance of the Office on Trade Competition Commission (OTCC); the NBTC is authorised to regulate antitrust specifically in the telecommunications and broadcasting sectors. Both the OTCC and NBTC have not been materially active in exercising regulatory power over the communications and media sectors with regard to antitrust issues this past year.

However, the draft Amended Act has recently been approved by the National Legislative Assembly and is expected to become effective by September 2017. The Amended Act will relinquish the OTCC of its authority to regulate specific business sectors, including telecommunications and broadcasting, which will be solely regulated by the NBTC.

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