

Telecoms & Media 2021

Contributing editors
Alexander Brown and David Trapp



Publisher

Tom Barnes
tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent
adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between May and June 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021
No photocopying without a CLA licence.
First published 2000
Twenty-second edition
ISBN 978-1-83862-728-7

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



Telecoms & Media 2021

Contributing editors**Alexander Brown and David Trapp****Simmons & Simmons LLP**

Lexology Getting The Deal Through is delighted to publish the 22nd edition of *Telecoms & Media*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Alexander Brown and David Trapp of Simmons & Simmons LLP, for their continued assistance with this volume.



London
June 2021

Reproduced with permission from Law Business Research Ltd
This article was first published in July 2021
For further information please contact editorial@gettingthedealthrough.com

Contents

Introduction	3	Portugal	109
Alexander Brown and David Trapp Simmons & Simmons LLP		Nuno Peres Alves and Mara Rupia Lopes Morais Leitão, Galvão Teles, Soares da Silva & Associados	
Brazil	4	Russia	118
Mauricio Vedovato and Daniela Maria Rosa Nascimento Huck Otranto Camargo Advogados		Anastasia Dergacheva, Ksenia Andreeva, Anastasia Kiseleva, Kamil Sitdikov and Alena Neskoromyuk Morgan, Lewis & Bockius LLP	
China	11	Singapore	127
Jingyuan Shi, Ryo Lu and Jenny Liu Simmons & Simmons LLP		Lim Chong Kin Drew & Napier LLC	
Egypt	21	South Korea	141
Mohamed Hashish and Farida Rezk Soliman, Hashish & Partners		Ji Yeon Park, Juho Yoon and Kwang Hyun Ryoo Bae, Kim & Lee LLC	
European Union	28	Switzerland	149
Anne Baudequin, Christopher Götz and Martin Gramsch Simmons & Simmons LLP		Mario Strebhel and Fabian Koch CORE Attorneys Ltd	
Greece	46	Taiwan	158
Dina Th Kouvelou, Nikos Th Nikolinakos and Alexis N Spyropoulos Nikolinakos & Partners Law Firm		Robert C Lee and Sharon Liu Yangming Partners	
Ireland	56	Thailand	164
Helen Kelly, Simon Shinkwin and Kate McKenna Matheson		John P. Formichella, Naytiwut Jamallsawat and Onnicha Khongthon Formichella & Sritawat Attorneys at Law	
Italy	67	Turkey	172
Alessandra Bianchi Simmons & Simmons LLP		Cigdem Ayozger Ongun, Volkan Akbas and Selin Cetin SRP Legal	
Japan	76	United Arab Emirates	183
Atsushi Igarashi, Takuya Yamago, Koshi Okabe and Yukito Nagaoka TMI Associates		Raza Rizvi Simmons & Simmons LLP	
Mexico	84	United Kingdom	190
Julián Garza and Paulina Bracamontes B Nader Hayaux & Goebel		Alexander Brown and David Trapp Simmons & Simmons LLP	
Nigeria	93	United States	207
Chukwuyere E Izuogu, Otome Okolo and Tamuno Atekebo Streamsowers & Köhn		Colleen Sechrest, Kent D Bressie, Michael Nilsson and Paul Caritj Harris Wiltshire Grannis LLP	
Philippines	103		
Rose Marie M King-Dominguez, Miguel Franco T Dimayacyac and Leo Francis F Abot SyCip Salazar Hernandez & Gatmaitan			

Thailand

John P. Formichella, Naytiwut Jamallsawat and Onnicha Khongthon

Formichella & Sritawat Attorneys at Law

COMMUNICATIONS POLICY

Regulatory and institutional structure

- 1 | 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 the Organisation to Assign Radio Frequency and to Regulate Broadcasting and Telecommunications Services 2010 (the NBTC Act) and the Telecommunications Business Act 2001 (the Telecommunications Business Act). The NBTC Act establishes the National Broadcasting & Telecommunications Commission (NBTC) as an independent broadcasting and telecommunications business regulator. Subject to supervision by the NBTC, a Telecommunications Committee regulates telecoms business in compliance with the Telecommunications Business Act. The Telecommunications Business Act applies to operators of telecommunications services. 'Telecommunications service' 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 telecoms licence:

- Type 1 licence, for telecommunications business operators who provide telecommunications services without operating a telecommunications network;
- Type 2 licence, for operators who provide services to a specific group of customers with or without operating a telecommunications network; and
- Type 3 licence, for operators who operate a network providing services to the general public.

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

General obligations applicable to licensed operators are as follows:

- Universal Service Obligations – the licensee is required to contribute a percentage of revenue from their telecommunications services to the Broadcasting, Television and Telecommunications Development for Public Benefits Fund;
- access and interconnection of telecommunications networks – telecommunications business operators who own a network must allow other operators to interconnect with and access their networks;
- standard of telecommunications network and equipment – telecommunications networks, equipment and devices used in telecommunications services shall be inspected and certified before use;

- competition – licensed telecommunications business operators shall comply with the rules and regulations prohibiting activities that are harmful to competition as published by the NBTC; and
- contract for telecommunications services – a service contract between a licensee and a user shall be subject to the Telecommunications Committee's prior approval.

However, the NBTC is now stricter, and it takes more time to apply for telecommunications licences (ie, Type 1, Type 2 and Type 3 licences). This additional strictness is due to a change of internal policy at the NBTC regarding such applications.

Foreign ownership restrictions

The Foreign Business Act 1999 regulates business where the majority of stakeholders are non-Thai (ie, foreign business operators). Foreign businesses must obtain a foreign business licence from the Ministry of Commerce before operating in Thailand. The foreign business licence is a licence separate from a telecoms 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 per the relevant type of telecoms licence as follows:

- Type 1 licence – no ownership restrictions apply; thus, operators with a Type 1 licence are 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 the total shares; thus, 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 – the restrictions on Type 3 licence holders, are the same as for Type 2 licence holders.

Authorisation/licensing regime

- 2 | Describe the authorisation or licensing regime.

General qualifications of telecommunications business operators

Licence categories for telecoms business are under three types: Type 1, Type 2 and Type 3. In addition, the different categories of licences shall cover various services as indicated in the operator's licence application.

The applicant shall be a juristic person established under Thai law and shall not be bankrupt or a person who has previously had a telecoms licence revoked.

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 providers

Internet service provider (ISP) licences are categorised into three types similar to telecommunications business operators. An applicant shall be a legal person (a juristic person) established under Thai law who has not previously had a licence revoked for cause. Recently, there has been a consolidation of ISP and telecommunications licences so that ISP licences were revoked and replaced as telecommunication licences. In other words, ISP licences have been consolidated into telecommunication licences. In addition, the duration of Type 1 telecommunication licences will be at least five years but not more than 25 years.

Mobile phone service providers

International mobile telecommunication in the 2.1GHz band (3G). The 2.1GHz band refers to a range of spectrum between 1,920MHz–1,965MHz and 2,110MHz–2,155MHz, which service providers are required to operate per the standards set by the International Telecommunication Union. An authorisation is granted to each applicant by auction conducted by the NBTC.

The 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 auction winner will be licensed to use the 2.1GHz international mobile telecommunications frequency, and a Type 3 licence is issued for at least five years but not more than 25 years.

Flexibility in spectrum use

3 | 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. An assignment is prohibited, whether in whole or in part. However, a licensee may authorise a third party to rent airtime, subject to the rules and regulations prescribed by the NBTC.

Ex-ante regulatory obligations

4 | 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 relevant telecommunications markets. The NBTC categorises the relevant markets as follows.

Retail markets, consisting of:

- domestic fixed-line telephone services;
- domestic mobile telephone services;
- international telephone services;
- fixed-line internet services; and
- mobile internet services.

Wholesale markets, consisting of:

- international internet gateway services;
- international telephone gateway services;
- network interconnection for fixed call termination services;
- network interconnection for mobile call termination services;
- wholesale broadband access services; and
- leased line services.

The NBTC is authorised to identify telecommunications business operators that have 'significant market power' (meaning operator capability that may pose a barrier to competition in the relevant market). The NBTC

shall assess markets that are non-competitive, and that have barriers to competition and then identify the operators that have significant market power (SMP operators).

A market shall be deemed as non-competitive if it has: a high market concentration (according to the Herfindahl-Hirschman Index (HHI) as determined by the NBTC); a high barrier to new entry; or low competition with no potential for improvement.

If a market is deemed to be non-competitive, then the NBTC shall categorise operators in such market as SMP operators as follows:

- operators that have a market share (including the market share of its subsidiaries) of at least 40 per cent; or
- operators that have a market share from 25 per cent to 40 per cent but that the NBTC considers as having SMP, taking into account the following:
 - size of overall business;
 - control over fundamental network facilities;
 - technological advantage (compared to other operators in the same market);
 - bargaining power;
 - access to funding resources;
 - variety of products and 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;
 - barriers to business growth; and
 - capability of new entry by competitors to the market.

If it is not possible to identify only one SMP operator because of 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 the provision of services to other operators;
- refusing to provide necessary networks or facilities to other operators;
- bundling services or products to other operators;
- concealing information necessary for using or providing services;
- using information derived from other operators to create competitive advantage;
- using techniques with the intent to limit the services of other operators; and
- 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 operators or SMP operators, which may include orders to:

- perform or restrain from activities deemed harmful by the NBTC;
- keep a separate accounting system for some services;

- 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.

Structural or functional separation

- 5 | 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 telecommunications business operator to separate telecoms-related business from non-telecoms-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 telecommunications business in its accounting in addition to the aforementioned.

Universal service obligations and financing

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

The Universal Service Obligations (USO) require service providers to provide certain telecommunications services in rural areas, educational institutions, social assistance agencies, and 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 Benefits Fund.

The obligations imposed may not pose an undue financial burden on a service provider or cause discrimination among service providers. Therefore, the NBTC must notify a service provider of their obligations before submitting a licence application. The current USO fees policies issued by the NBTC charge licensees at the rate of 2.5 per cent of the net income from telecommunications services, plus 7 per cent value added tax.

Number allocation and portability

- 7 | 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:

- use of international access numbers with service codes;
- telecommunication numbering allocation;
- telecommunication numbering plan;
- criteria for the assignment and permission of special telecommunication numbers; and
- criteria for allocation and administration of telecommunication 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.

Customer terms and conditions

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

Net neutrality

- 9 | 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. 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 that 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 the network results in technical problems that may obstruct their business, or under any circumstances as prescribed by the NBTC from time to time.

Access

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

Platform regulation

- 10 | 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, as outlined below.

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

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

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.

In addition, a service provider may be considered a data controller or data processor, or both, under the Personal Data Protection Act (PDPA) if such service provider obtains any personal data protection of a consumer (eg, name, email address, telephone number, cookies). Please note that the PDPA was initially due to be fully enforced on 27 May 2020; however, based on the Royal Decree on Organisations and Businesses of which Personal Data Controllers are Exempt from Complying with the Personal Data Protection Act No. 1 and 2 (Royal Decree), the enforcement date has been postponed to 1 June 2022. The Royal Decree lists various types of business that qualify for the extension of the enforcement, including businesses in communication, telecommunication, digital, science, technology, banking, education, industrial and commercial industries, among others.

Next-Generation-Access (NGA) networks

11 | 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 (NGNs). An NBTC notification regarding the Specified Technical Standard for the connection of telecom 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.

Data protection

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

The Personal Data Protection Act BE 2562 (2019) (PDPA) was published in the Government Gazette on 27 May 2019. Therefore, the PDPA would have become effective on 27 May 2020, except for the provisions on the collection, use and disclosure of personal data that will be executed one year after publication. On 21 May 2020, however, the Thai government announced that the enforcement of the PDPA would be partially postponed to 1 June 2022, as compliance with PDPA law is complex and, therefore, costly and requires advanced training. Preparations still need to be made now for compliance with the PDPA; however, business owners (as data controllers) need to have security safeguards for personal data as required by the Ministry of Digital Economy and Society. The PDPA regulates data controllers and protects the personal information of data subjects. Therefore, all data controllers who collect or process the personal information of data subjects in Thailand will be required to comply with the PDPA by 1 June 2022 fully.

Once in full effect, the PDPA would limit what companies (under the role of a data controller) may do with people's personal data to the extent that they must inform the data subject of the purpose for the collection, use or disclosure of their personal data and obtain their consent either in writing or by electronic means. Such consent shall not be obtained

fraudulently, such as misleading the data subject about how the information will be used. The use or disclosure of personal data in a manner that differs from the purpose that was initially consented to by the data subject is prohibited unless permitted by law, or the personal data controller informs the data subject of the new purpose and obtains their amended consent. A data subject may withdraw their consent at any time unless restricted by law or any agreement that is beneficial to the data subject. If a personal data controller fails to comply with the provisions of the PDPA, then the data subject may request to have their personal data deleted, destroyed, temporarily suspended, or converted into an anonymous form.

Cybersecurity

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

The Cybersecurity Bill BE 2562 (2019) (the Cyber Act) was published on 27 May 2019 in order to enforce legal safeguards to ensure national security in cyberspace, including a cybersecurity risk assessment plan to prevent and mitigate cybersecurity threats that may affect the stability of national security and the public interest (eg, economy, healthcare, international relations, government functions).

The Cyber Act is intended to protect Thailand's national security systems from cyber-related threats and crime. The Cyber Act broadly defines 'cyber' as any information or communication from a computer network, a telecommunications network, or the internet. 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 Cyber Act. A National Cyber Security Committee created under this Cyber Act will be responsible for all national security matters connected with the government's data and computers.

Cyber threats are categorised into three levels under the Cyber Act as follows:

- non-critical – any threat that may negatively impact the performance of a government computer system;
- critical – any threat to a government computer system related to the national infrastructure, national security, the economy, healthcare, international relations, the functions of government, etc., which may cause damage or impair a government computer system; and
- crisis – any threat more significant than a critical level event, which may have a widespread impact such as causing the government to lose control of a computer system, an immediate threat to the public that could lead to mass destruction, terrorism, war, the overthrow of the government, etc.

The Thai government has yet to issue regulations as to the government's authority to inquire with private operators in the case of a non-critical level event. The responsible authority, which is established under the Cyber Act, is the National Cyber Security Committee.

Under the Cyber Act, there is language to address the government's authority in a critical level event. To determine whether or not an event is critical, an official may evaluate a threat by asking for cooperation from related parties, such as requesting access to information and facilities of private entities or requesting information from related parties that will require the prior written consent of the parties having such information. If an officer believes that there is a critical level threat, then an officer is authorised, by judicial permission, to access information and facilities of private entities, including seizure of computer systems, data and related equipment to prevent cyber threats.

Under the Cyber Act, there is language to address the government's authority in a crisis level event. In case of a crisis level threat deemed by an official as urgent and requires immediate action, an official is empowered to perform any act to the extent necessary to remove or diminish such threat without judicial permission. Officials are required to report

all information regarding such acts to a relevant court immediately after their performance.

It is only speculative at this juncture that a private party has recourse if a court finds that an official wrongly assessed a situation at a crisis level. However, one point to keep in mind is that information discovered by an official under such circumstances may be shared with other government agencies for prosecution under various laws such as banking laws, criminal laws, the Computer Crimes Act, etc.

Big data

14 | 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?

Currently, there is no specific legislation for big data. However, if such big data is included in the personal data, the data controller or data processor, or both, of such big data must follow the provision specified in the Personal Data Protection Act B.E. 2562 (2019) (PDPA). For example, obtaining the data subject's prior consent, inform the purpose of collecting data subject's personal data, inform the period of the retention period to the data subject, etc.

However, please note that the enforcement date of the PDPA has been postponed to 1 June 2022. The various types of business that are qualified for the extension of the enforcement including businesses in communication, telecommunication, digital, science, technology, banking, education, industrial and commercial industries, among others.

Data localisation

15 | 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. Nevertheless, certain industry-specific regulations require some data to be available or processed within Thailand. The banking industry, for example, is required to process debit card transaction data and make electronic payment system data available in Thailand.

Key trends and expected changes

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

The NBTC has enacted the notification regarding rules and procedures to grant a licence to use the 700 MHz, 1800 MHz, 2600MHz and 26 GHz spectrum (5G) for telecommunications. Please see the following ranges prescribed in the notification:

- 1 The range of 700 MHz spectrum is licensed in the range of 733-748 MHz and 788-803 MHz;
- 2 The range of 1800 MHz spectrum shall be licensed in the range of 1750-1785 MHz and 1845-1880 MHz;
- 3 The range of 2600 MHz spectrum shall be licensed in the range of 2500-2690 MHz; and
- 4 The range of 26 GHz spectrum shall be licensed in the range of 24.3-27.0 GHz.

Qualifications: The applicant must be a company established under Thai law, with a majority of Thai ownership. In addition, the applicant is required to obtain a Type 3 telecoms licence. The licensee's obligations regarding social responsibility and consumer protection under this type of licence are as follows:

- The licensee is required to arrange for a telecom 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 the grant of licence. 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 0.05 per cent of the highest auction price for the duration that the licensee fails to comply with the requirement.

- The licensee is required to submit its cybersecurity plan and personal data protection plan to the NBTC at least three months before the provision of services.

MEDIA

Regulatory and institutional structure

17 | 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 business (specifically, operating public services or community services) are reserved for 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 National Broadcasting & Tele-communications Commission (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 the respective station is in compliance with the regulations prescribed by the NBTC.
- Prevention of monopoly – the 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 a frequency spectrum in excess of the proportions authorised by the NBTC.
- TV programmes – TV operators shall comply with the must-carry and must-have rules issued in the NBTC's notifications. Under must-carry rules, free-to-air TV operators are responsible for expenses they incur in providing public broadcasting services. Under must-have rules, free-to-air TV operators must broadcast seven TV programmes, namely: the SEA Games, ASEAN Para Games, the Asian Games, the Asian Para Games, the Olympic Games, the Paralympic Games, and the FIFA World Cup Final; other operators that are not free-to-air TV operators are prohibited from broadcasting such must-have programmes.
- Promotion and control of the professional ethics of licensees, programme producers and mass media professionals – such 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 Broadcasting and Television Business Act 2008, the Film and Video Act 2008 regulates the content of films, videos and their advertising media. A censorship committee of officials will review, approve or censor the content of films, videos and their advertisements, as well as approve other activities relating to film and video such as the production or distribution of foreign films in Thailand.

Ownership restrictions

- 18 | 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 all business in which a majority of the shareholders are non-Thai. Foreign businesses are required to obtain a licence from the Ministry of Commerce before operating in Thailand. The act generally applies to all business sectors.

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

The Broadcasting and Television Business Act 2008 imposes foreign ownership restrictions according to the type of broadcasting licence (eg, radio, TV, etc) 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 specific associations, charities, foundations 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 specific associations, charities, foundations and educational institutions, and not to private sector operators; and
- 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. The foreign ownership restriction under this sector-specific law applies over the general Foreign Business Act; thus, the holder of such licence may only have 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 before the execution of such transaction under the following circumstances:

- register an official corporate registration for 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;
- enter into a share acquisition agreement wherein a licensed operator acquires all or part of assets of another licensed operator; or
- enter into a share acquisition agreement by which a licensed operator acquires all or part of the shares of another licensed operator to manage, direct or control such licensed operator. Cross-shareholding between two licensed operators requires the prior approval of the NBTC at least 60 days before executing such a transaction.

Licensing requirements

- 19 | 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 normally takes up to 60 days after all the necessary documents are submitted. If approved, then 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 a frequency spectrum

There are three types of licence for this kind of operation: a licence to operate public services; a licence to operate community services; and a licence to operate business services. A licence to operate public services (where the main objective is to provide public services) is only available to government entities and certain associations, charities, foundations 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) is only available to government entities and certain associations, charities, foundations 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. The foreign ownership restriction under this sector-specific law applies over the general Foreign Business Act; as such, the holder of such licence may only have up to 25 per cent of its shares held by non-Thai shareholders. In addition to those ownership restrictions, if the operation is executed at regional and local levels, then 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 term for sound broadcasting licensees and a five-year term for television broadcasting licensees. Licences may be renewed 90 days before expiry. Meanwhile, the licensees are obliged to pay annual fees for their respective licence.

Foreign programmes and local content requirements

- 20 | 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 a 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.

Advertising

- 21 | 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 a frequency spectrum shall not exceed 12-and-a-half minutes per hour and the total runtime of advertisements for a whole day shall not exceed an average of 10 minutes per hour.

Advertisements publicised on a 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 affect 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.

Must-carry obligations

22 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?

Licensed broadcasters have an obligation to follow the requirements set out by the NBTC regulations, including requirements relating to show ratio, show categorisation, time allocation of the TV show to be broadcast and the management of advertisements. Broadcasters are categorised into two main types:

- broadcasters that use TV broadcast frequencies; and
- broadcasters that do not use TV broadcast frequencies.

Broadcasters' requirements

Licensed broadcasters are further categorised into types according to the main purpose of their broadcasting. Each type of broadcasting must include at least the following show ratios:

- public service broadcaster – 70 per cent of the shows must be for the benefit of the public, such as news reports, knowledge-related shows or documentaries;
- local service broadcaster – 70 per cent of the shows must be for the benefit of a specific local jurisdiction, such as within one district or province, and must have at least 50 per cent of the shows produced by the producers from such local jurisdiction; and
- business-oriented broadcaster – 25 per cent of the shows must be for the benefit of the public, such as news reports, knowledge-related shows or documentaries. A business-oriented broadcaster at the provincial level must have self-produced shows account for at least 50 per cent of the total shows.

Types of TV shows can be divided into six categories, and licensed broadcasters must self-rate shows and allocate shows to the proper time slot as set out by the NBTC regulations, as follows:

- Category Por is for children, produced for an audience age of between three and five years old;
- Category Dor is for children, produced for an audience age of between six and 12 years old;
- Category Tor is a general TV show, for audiences of all ages;
- Category Nor 13 is suitable for an audience whose age is more than 13 years old, and must be broadcast between 20.30 and 05.00 only;
- Category Nor 18 is suitable for an audience whose age is more than 18 years old, and must be broadcast between 22.00 and 05.00 only; and
- Category Chor is suitable for adults only, and must be broadcast between 24.00 (midnight) and 05.00 only.

In addition, broadcasters that use TV broadcast frequencies must allocate at least 60 minutes between 16.00 and 18.00 on Monday to Friday

and 07.00 and 09.00 during the weekends for shows with the purposes of developing and benefiting children. In addition, licensed broadcasters must broadcast the Thai national anthem two times per day, at 08.00 and 18.00, and they must broadcast the Royal Family's news every day from 19.00 to 20.30.

Licensed broadcasters must submit to the NBTC overall broadcast schedules, show ratio and plans of the TV shows, including the categorisation and time allocation of the show using the application form provided by the NBTC at least 15 days prior to the initial operation. After the first year, licensed broadcasters must submit their planned broadcast schedule with the aforementioned information at least once a year to the NBTC for its approval at least 15 days prior to the broadcasting. If the NBTC finds that the broadcaster is not following the regulations with regard to its categorisation and time allocation, then the NBTC shall issue a warning letter asking the broadcaster to revise the schedules and plans of its TV shows prior to broadcasting. Any change to the approved schedules and plans must be submitted to the NBTC at least seven days prior to broadcasting. There is no mechanism for financing the costs of the abovementioned obligations.

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.

Regulation of new media content

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

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

Digital switchover

24 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 2012, the NBTC promulgated the First Broadcasting Master Plan (2012–2016) 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.

Policies and plans to switch over from analogue to digital television broadcasting have been completed within the expected period, which was within 2015. Currently, digital television is being widely broadcasted in Thailand. For digital audio broadcasting (at the frequency spectrum of 174–230MHz), it is now being tested in several provinces throughout Thailand in accordance with the policies and plans issued by the NBTC.

Digital formats

25 | Does regulation restrict how broadcasters can use their spectrum?

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.

Media plurality

26 | 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, 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 roll 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 precautionary measures are imposed on a licensee that has dominant market power, then such licensee may object and the NBTC may hold a public hearing on the objection. Likewise, measures set forth by the NBTC are subject to adjustments at its discretion.

Key trends and expected changes

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

A proposal known as over-the-top services (OTT) is also under review by the NBTC. Under this proposal, the scope of what constitutes broadcasting will be determined. Recently OTT operators were informed that they had to register themselves with the NBTC and that they would be governed by specific rules and regulations regardless of nationality; however, the attempt was heavily criticised by the public and OTT operators as well as by technology-related NGOs, and the NBTC consequently withdrew its requests to OTT operators. No further updates have been issued regarding this matter since such withdrawal by the NBTC.

In addition to licensing requirements, foreign operators may be required to have a local office and an authorised executive in Thailand for tax purposes. Further, the telecommunications business is subject to excise tax in addition to corporate income tax. As a result, an excise tax is imposed on telecommunications operators. Under the current applicable Ministerial Regulation, as published on 16 September 2017, the excise tax rate for telecommunications business is zero per cent.

REGULATORY AGENCIES AND COMPETITION LAW

Regulatory agencies

28 | 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?

The media and telecom sectors are regulated by the National Broadcasting & Tele-communications Commission (NBTC), which is an independent organisation established by the NBTC Act. Under the supervision of the NBTC, a Broadcasting Committee regulates media businesses and a Telecommunications Committee regulates telecommunications businesses.

Under the Trade Competition Act 2017, which became effective in October 2017, the trade competition authority relinquished its authority to regulate specific sectors including broadcasting and telecommunications businesses. In other words, since the Trade Competition Act 2017 became effective, the broadcasting and telecom sectors that used to be regulated by specific legislation on trade competition have been exempted from complying with general competition laws and are only subject to sectoral regulations on competition.

Appeal procedure

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

A broadcasting or telecoms 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 telecoms business) within 15 days of receiving an order or decision.

If the order or decision is upheld, then the appellant has the right to further appeal to the Administrative Court within 90 days from the date on which the appellant received notice of the appeal decision.

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.

Competition law developments

30 | 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 under the governance of the Office on Trade Competition Commission (OTCC); the NBTC is authorised to regulate antitrust specifically in the broadcasting and telecommunications sectors. Further, the Trade Competition Act relinquishes the OTCC of its authority to regulate specific business sectors, including broadcasting and telecommunications, which will be solely regulated by the NBTC.

Coronavirus

31 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

There is no emergency legislation or relief programmes and other initiatives specific to the telecommunication and media in Thailand.

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)