

PANORAMIC

# TELECOMS AND MEDIA

Thailand



LEXOLOGY

# Telecoms and Media

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## COMMUNICATIONS POLICY

### **Regulatory and institutional structure**

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

Legislation that governs the telecommunications sector includes the Act on the Organisation to Assign Radio Frequency and 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 and Telecommunications Commission (NBTC) as an independent broadcasting and telecommunications business regulator. Subject to supervision by the NBTC, a telecommunications committee regulates telecoms business 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 licences:

- 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 licenced operators are:

- Universal Service Obligations (USO): 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 (namely, Type 1, 2 and 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 (namely, 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 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. If there is 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.

**Law stated - 1 May 2024**

### **Authorisation/licensing regime**

#### **Describe the authorisation or licensing regime.**

##### General qualifications of telecommunications business operators

Licence categories for a telecoms business are under Types 1, 2 and 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 must pay an annual licence fee based on its annual revenue and 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 that 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 with telecommunications licences. In other words, ISP licences have been consolidated into telecommunications licences. In addition, the duration of Type 1 telecommunications 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.

**Law stated - 1 May 2024**

#### **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 spectrum use.

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.

**Law stated - 1 May 2024**

#### **Ex-ante regulatory obligations**

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

Specific regulations 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 with significant market 'power' (meaning operator capability that may pose a barrier to competition in the relevant market). Accordingly, the NBTC shall assess markets that are non-competitive and have barriers to competition and then identify the operators with significant market power (SMP).

A market shall be deemed non-competitive if it has:

- a high market concentration (according to the Herfindahl-Hirschman Index 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;



- a high volume of distribution or sale of products;
- competency to compete in the market;
- barriers to business growth; and
- the capability of new entry by competitors to the market.

If it is impossible to identify only one SMP operator because of market concentration, the similarity of products or services, the similarity of cost structure or the similarity of market share. In that case, 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 the 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 the 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 a competitive advantage;
- using techniques with the intent to limit the 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 stipulate from time to time.

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.

Law stated - 1 May 2024

### **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 for structural separation in the television sector but has not enacted regulation.

As for functional separation, a regulation requires a telecommunications business operator to separate telecoms-related business from non-telecoms-related business for accounting purposes. Therefore, 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.

Law stated - 1 May 2024

### **Universal service obligations and financing**

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

The 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 must 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 its 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.

Law stated - 1 May 2024

### **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:

- use of international access numbers with service codes;

- telecommunication numbering allocation;
- telecommunication numbering plan;
- criteria for the assignment and permission of unique 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.

**Law stated - 1 May 2024**

### **Customer terms and conditions**

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

Telecoms law imposes tariffs, service charges and specific consumer protections on telecommunications business operators. In addition, contracts with consumers for mobile phone services are governed by 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 for telecommunications services. A telecommunications business operator who wishes to charge more than the maximum rate 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.

**Law stated - 1 May 2024**

### **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. 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 must provide services non-discriminatory, 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 networks must allow other operators to interconnect 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.

**Law stated - 1 May 2024**

### **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 and user identification data in the following manner.

- Computer traffic data means data related to computer system-based communications showing sources of origin, starting points, destinations, routes, time, dates, volumes, time periods, types of services, or others related to that computer system's communications. Computer traffic data shall be retained for at least 90 days from when such data was first entered into the computer system. The official may order a service provider to retain computer traffic data for longer than 90 days, but not exceeding two years.
- User identification data, which means information about the service necessary for identifying service users. The service provider shall retain user identification data to the extent that it is required to identify the service user from the beginning of the service provision. Such user identification data must be kept for at least 90 days after such service is terminated.

Law enforcement is authorised to access that data to investigate computer crimes. The CCA imposes criminal liability on any individual who engages in activities that violate the CCA. Additionally, the content on an ISP's platform may be subject to other generally applicable laws.

In addition, the Ministry of Digital Economy and Society requires all service providers, including digital platform providers, to establish digital verification and authentication

system using technology that is consistent and in compliance with the Ministry of Digital Economy and Society (MDES) conditions and minimum reliability standards for the verification and authentication of its customers.

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

Laws concerning intellectual property may apply to specific online activities. However, if a service provider is not responsible for the control or initiation of an infringement, and such service provider used reasonable efforts to comply with law enforcement or rectify such infringement, the service provider shall not be liable for infringement occurring before the issuance of the court order or after the date of such order's expiry.

A Cyber Security Act creates a National Cyber Security Committee with 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 BE 2562 (2019) (PDPA) if such service provider obtains any personal data protection of a consumer (eg, name, email address, telephone number, cookies). Notably, 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 was 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

**Law stated - 1 May 2024**

### **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 (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 must comply.

**Law stated - 1 May 2024**

### **Data protection**

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

The PDPA has been fully implemented since 1 June 2022, and it is important to note that compliance with the PDPA is mandatory for all business sectors, including the TMT sector.

The implementation of the PDPA has been a contentious issue, as it has necessitated significant changes to business operations, particularly in terms of customer engagement. While the PDPA's provisions bear similarity to those of other data privacy laws in various jurisdictions, such as the EU General Data Protection Regulation, there remain certain provisions within the PDPA that require further clarification, as they are currently pending notification by the Personal Data Protection Commission (PDPC).

Most recently, guidelines have been established outlining the cross-border transfer of personal data (namely, the transfer of personal data outside of Thailand) in relation to section 28, which addresses the criteria for adequacy country, and section 29, which concerns appropriate safeguards under the PDPA. These guidelines prescribe the criteria for considering a destination country as qualified for the transfer of personal data and provide criteria for appropriate safeguards for cross-border transfers in the absence of an official list of adequacy countries from the PDPC.

Furthermore, the NBTC has recently released a Notification Re: Measures to Protect the Rights of Telecommunications Service Users Related to Personal Data, Rights to Privacy, and Liberty to Communicate through Telecommunications (NBTC Personal Data Protection Notification). This NBTC Personal Data Protection Notification repealed and replaced the existing NTC (National Telecommunications Commission, now the NBTC) Notification on data protection, which had been applicable to telecommunications business operators since 2006. While the NBTC Personal Data Protection Notification has been updated and revised to align with the PDPA, it contains provisions specific to the telecommunications business sector. These include the following.

- Special category personal data: prohibiting the collection of special category personal data, which includes race, ethnicity, political opinions, beliefs, sexual behaviour and criminal record, without the explicit consent of the user, unless it is to provide telecommunications service to a disabled person.
- Retention periods: telecom licensees are required to retain the personal data of their customers throughout the period of provision of telecom services, by retaining such information retroactively for at least a 90-day rolling basis. However, in cases where there are complaints regarding the provision of service, the telecom licensee must retain the customer's personal information until the complaint has been finalised, but not exceeding two years. Additionally, if the provision of telecom services is terminated, the telecom licensee is required to retain the customer's personal information for at least 90 days from the termination date. If necessary, the telecom licensee may retain the customer's personal information for more than 90 days, but not exceeding two years.
- Data-breach notification: telecom licensees must notify the NBTC without delay within 72 hours of becoming aware of a breach of any user's personal data, or within 24 hours if the breach is likely to result in a high risk to the rights and freedoms of the user.

**Law stated - 1 May 2024**

## | **Cybersecurity**

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

The Cybersecurity Act BE 2562 (2019) (the Cyber Act) was published on 27 May 2019 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 government entities and officers with the authority 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.

On 11 December 2021, to help determine the severity of cyber risks, the National Cyber Security Committee issued the 'Notification of the Cyber Security Committee Subject: The types of cyber threats and measures to prevent, withstand, evaluate and suppress cyber threats, 2021', to characterise and assess each cyber threat level based on a variety of parameters. To determine the cyber threat level, one must analyse events, which are the situations, repercussions, dangers or trends that may result from cyber threats in various cases, by considering the four variable factors listed below:

- the impact on the equipment or the system;
- the impact on data in the system;
- system recovery tendency; and
- the impact on customers or service users.

All four aforementioned variables should be used for evaluation when defining each level of cyber threat. If the nature of the cyber threat appears to be related to, or likely to be, a cyber threat to some extent, the highest level assessed shall be used as a criterion for determining the level of cyber threats at the moment. In addition, the critical information infrastructure, in collaboration with regulators, may evaluate additional evaluation variables and cyber threat characteristics to provide instructions on how to accurately define the level of cyber threats.

There are two central cybersecurity regulatory authorities organised by the Cyber Act, as follows.

#### National Cyber Security Committee

The National Cyber Security Committee (NCSC) comprises the Prime Minister of Thailand as the chairman and directors from the government and the private sector who hail from areas that benefit cybersecurity, such as engineering, law and information technology. The NCSC sets out general cybersecurity policies and action plans and minimum standards for computer systems used in both government agencies and critical information infrastructure (CII) entities, according to the national cybersecurity master plan.

The NCSC also has the authority to determine the levels of cybersecurity threats under the Cyber Act (namely, non-critical, critical and crisis) and the preventive and mitigative measures that should be in place for each of these levels. To enable this, the NCSC is empowered to request information and documents from and access the facilities of private entities, subject to the owner's consent, to analyse and evaluate the impact of the critical cyber threat to determine cybersecurity threat levels and appropriate preventive, mitigative measures.

#### Cyber Security Regulatory Committee

The Cyber Security Regulatory Committee (CSRC) consists of the Minister of the MDES as the chairman. Like the NCSC, it has government and private-sector directors from areas that benefit from cybersecurity. The role of the CSRC is to set out codes of practice and minimum standards for cybersecurity in public and private sectors relating to CII operators, including risk assessment and mitigation plans against cyber threats. In addition, the CSRC may order public and private-sector entities to prevent, mitigate or re-evaluate cyber threats in line with prescribed cybersecurity minimum standards.

If a critical level threat is discovered, the CSRC is empowered to perform any action to prevent or mitigate such threat. Furthermore, if judicial permission is granted, the CSRC may access information or seize computer systems, data and related equipment for a maximum of 30 days to prevent and mitigate cyber threats.

In the case of a crisis-level threat, the NCSC shall be in charge of carrying out its duties. However, for any crisis-level threat that requires an immediate response, the CSRC is authorised to perform any act warranted as necessary without judicial permission.

In addition to the two aforementioned central regulatory authorities, two other relevant authorities, including the Computer Security Coordination Center and competent regulators responsible for monitoring and acting against cyber threats and regulating minimum cybersecurity requirements for CII operators under their supervision.

**Law stated - 1 May 2024**

## | 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?

Currently, there is no specific legislation for big data. However, suppose such big data is included in the personal data. In that case, the data controller or data processor, or both, of such big data must follow the provision specified in the PDPA. For example, obtaining the data subject's prior consent, informing the purpose of collecting the data subject's personal data, informing the period of the retention period to the data subject, etc.

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

**Law stated - 1 May 2024**

## Data localisation

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

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

**Law stated - 1 May 2024**

## Key trends and expected changes

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

The NBTC, with a majority vote of four out of five members, agreed to allow the merger between AIS and 3BB, two of the largest broadband service providers in Thailand, in November 2023. AIS has 2.38 million broadband internet customers, while 3BB has 2.31 million customers. Upon completion of the merger, AIS will have 4.69 million broadband internet customers, immediately becoming the leader in the broadband market, surpassing TRUE, which has 3.8 million broadband customers. However, the NBTC indicated that certain measures would be implemented, such as maintaining the price of individual promotional items or packages, ensuring service quality, and offering the lowest-priced package for a minimum of five years from the date of merger approval.

Following the NBTC resolution to allow the merger between AIS and 3BB, the NBTC has faced criticism for allowing this merger, with accusations that it fails to maintain consumer benefits. Critics argue that the merger of limited telecommunications businesses restricts consumer choices in service usage, leading to higher costs in broadband services of approximately 9.5 per cent to 22.9 per cent. This situation would result in a loss of public

benefits and neglect the rights of citizens to have various options for service usage, fairness, equality and universal access to services.

Law stated - 1 May 2024

## MEDIA

### 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 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 and Telecommunications Commission (NBTC);
- use of the frequency spectrum: a licence from the NBTC is required to operate a sound broadcasting business or television business that utilises a frequency spectrum. Licences are limited to the frequency of 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 complies 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 over 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; and

- construction of, use and connection to the broadcasting network: the NBTC must approve the construction of an entire network. Furthermore, a network owner shall allow licensees to utilise their network per 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 and approve other activities relating to film and video, such as the production or distribution of foreign films in Thailand.

**Law stated - 1 May 2024**

### **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 all businesses 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. If there is 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 to 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 a 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.

**Law stated - 1 May 2024**

## **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 usually takes up to 60 days after submitting all the necessary documents. If approved, the applicant will be granted the right to operate under the express terms of the granted licence. In addition, 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 licences 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 specific associations, charities, foundations and educational institutions, and not 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 specific 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 to 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. 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 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 Broadcasting and Television 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 licences.

**Law stated - 1 May 2024**

### **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 broadcasting 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.

**Law stated - 1 May 2024**

### **Advertising**

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

Duration

According 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. Time limits do not restrict online advertisements. 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.

**Law stated - 1 May 2024**

### **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?**

Licensed broadcasters must 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 primary 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
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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 aged between three and five years old;
- Category Dor is for children, produced for an audience aged 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 8.30pm and 5am only;
- Category Nor 18 is suitable for an audience whose age is more than 18 years old, and must be broadcast between 10pm and 5am only; and
- Category Chor is suitable for adults only and must be broadcast between midnight and 5am only.

In addition, broadcasters that use TV broadcasting frequencies must allocate at least 60 minutes between 4pm and 6pm on Monday to Friday and 7am and 9am during the weekends for shows to develop and benefit children. In addition, licensed broadcasters must broadcast the Thai national anthem twice a day – at 8am and 6pm – and they must broadcast the Royal Family's news every day from 7pm to 8.30pm.

Licensed broadcasters must submit to the NBTC overall broadcast schedules, show ratio and plans of TV shows, including the categorisation and time allocation of the show using the application form provided by the NBTC at least 15 days before 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 before the broadcasting. If the NBTC finds that the broadcaster is not following the regulations concerning 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 before broadcasting. Any change to the approved schedules and plans must be submitted to the NBTC at least seven days before broadcasting. There is no mechanism for financing the costs of the abovementioned obligations.

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

**Law stated - 1 May 2024**

## **Regulation of new media content**

### **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.

**Law stated - 1 May 2024**

## **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 2012, 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 subject to regulation. The Plan established transition policies and planned to switch to digital television broadcasting within one year and 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 2015. Currently, digital television is being widely broadcasted in Thailand. In addition, Digital audio broadcasting (at frequency spectrum 174–230MHz) is now being tested in several provinces throughout Thailand per the policies and plans issued by the NBTC.

**Law stated - 1 May 2024**

## **Digital formats**

### **Does regulation restrict how broadcasters can use their spectrum?**

No measures restrict how broadcasters can use their spectrum, except a licensee is obligated to comply with the rules and regulations of the respective licence they have been granted.

**Law stated - 1 May 2024**

## **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, the Herfindahl-Hirschman Index (HHI) is applied to assess market concentration. The assessment will result in the squared total 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 with significant market power from monopolising, restricting, hindering competition or misusing market power. If precautionary measures are imposed on a licensee with dominant market power, 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.

**Law stated - 1 May 2024**

### **Key trends and expected changes**

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

The Draft Film and Game Act (Draft FGA) was revealed during public hearings by the Department of Cultural Promotion in April 2023. This draft legislation places a strong emphasis on overseeing and controlling the content of films and games, including their advertisement media. The key aspects of the Draft FGA are outlined as follows:

- **Content Rating:** Films and games intended for release or distribution in Thailand must undergo a content rating process to determine the suitability for the age of audiences. This content rating can be carried out either through self-rating by the creator or by a Content Rating Committee of the Department of Cultural Promotion, Ministry of Culture (CRC). If self-rating, the creator must be registered with a central rating authority.
- Films and games undergoing self-rating must not include content that is contrary to public order or good morals or may affect the security and dignity of Thailand. Additionally, it should not affect international affairs or contain content prohibited within Thailand.
- Export of films and games created in Thailand to other countries requires permission from the CRC.
- **Advertisement of films and games:** Advertising for films and games must be approved by the CRC. If advertisements of films and games are found to contain content that is harmful to the stability or dignity of Thailand, regardless of whether they have been classified or not, they may be subject to legal action related to computer-related offences.

This Draft FGA reflects ongoing efforts by government agencies to regulate film and game content. The classification of content is seen as a means to prevent potentially harmful material from reaching society. However, the release of the Draft FGA has drawn criticism, with concerns that it could potentially stifle creativity and entertainment value in film and game content in the future. Currently, after seeking public feedback, government agencies are carefully considering how to strike a balance in the legislation to ensure effective control without suppressing the creative aspects of films and games.

## REGULATORY AGENCIES AND COMPETITION LAW

### 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?

The National Broadcasting and Telecommunications Commission (NBTC) regulates the media and telecom sectors, an independent organisation established by the Act on the Organisation to Assign Radio Frequency and Regulate Broadcasting and Telecommunications Services 2010. 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.

Law stated - 1 May 2024

### Appeal procedure

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 a broadcasting business) or to the Telecommunications Committee (if the order involves a 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 the appellant received notice of the appeal decision.

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

- the issuance of an order or decision without expressed basis, or not within the authority of a 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.

Law stated - 1 May 2024

### **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.

The Trade Competition Act generally regulates antitrust under the Office of Trade Competition Commission (OTCC); the NBTC is authorised to regulate antitrust specifically in the broadcasting and telecommunications sectors. Furthermore, the Trade Competition Act relinquishes the OTCC of its authority to regulate specific business sectors, including broadcasting and telecommunications, which the NBTC will solely regulate.

Law stated - 1 May 2024