

# ICLG

The International Comparative Legal Guide to:

## Telecoms, Media & Internet Laws & Regulations 2015

**8th Edition**

A practical cross-border insight into telecoms, media and internet laws and regulations

Published by Global Legal Group with contributions from:

Alain Bensoussan Avocats Selas

Attorneys at law Borenus Ltd

Camilleri Preziosi

Castillo y Castillo

Chajec, Don-Siemion & Zyto sp.k. – Legal Advisors (“CDZ”)

Colibri Kazakhstan

Cugia Cuomo & Associati

Davies Ward Phillips & Vineberg LLP

Dr. Norbert Wiesinger, Law Offices

Gjika & Associates Attorneys at Law

Heuking Kühn Lüer Wojtek

Hogan Lovells (CIS)

King & Wood Mallesons

Kromann Reumert

Langlet, Carpio y Asociados, S.C.

Lisa Thornton Inc

Mehmet Gün & Partners

Melchior, Micheletti & Amendoeira Advogados

Mori Hamada & Matsumoto

NautaDutilh N.V.

Olswang LLP

Pachiu and Associates

Sanchez Elia & Associates

Sébastien Fantì

Shay & Partners

Sociedade Rebelo de Sousa & Advogados Associados, RL

Squire Patton Boggs

SyCip Salazar Hernandez & Gatmaitan Law Offices

Tilleke & Gibbins

Udo Udoma & Belo-Osagie

Webb Henderson

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**Group Publisher**  
Richard Firth

**Published by**  
Global Legal Group Ltd.  
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URL: www.glgroup.co.uk

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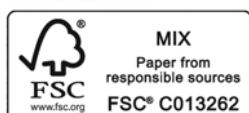
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## EDITORIAL

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Welcome to the eighth edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

Two general chapters. These chapters provide overviews of the EU regulatory framework and of the different approaches and attitudes towards mobile network consolidation in the United States and Europe.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 34 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Olswang LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

Alan Falach LL.M.  
Group Consulting Editor  
Global Legal Group  
[Alan.Falach@glgroup.co.uk](mailto:Alan.Falach@glgroup.co.uk)

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# Thailand



David Duncan



Ahmet Yesilkaya

Tilleke & Gibbins

## 1 Overview

**1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in Thailand, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.**

Thailand is going through a major transition in its regulation of the telecommunications and media industries. Several years ago, the business of electronic communications and media were the government's domain, through the use of state-owned enterprises.

Since then, Thailand has sought to provide healthy competition among different providers, but there remain numerous issues to be overcome. Such issues include defining the proper role for each of the major state-owned telecoms operators, TOT and CAT, and deciding how the existing telecoms concessions granted by those entities will be handled in the modern system of licences and permits.

As part of this process of reform, the state-owned telecoms operators now face fiscal challenges relating to the end of concession fees payable by their concessionaires. Following the auction for spectrum licences to provide 3G services, there were allegations of corruption and mismanagement, whilst others hailed the auction as a success.

At the time of writing there was a move to amend several provisions of the Frequency Allocation Act (mentioned below) to provide for the state-owned telecoms operators to receive revenue that they had been denied by law, and to adjust provisions relating to the use of revenues generated by the NBTC's telecommunications frequency auctions. These concerns have had the effect of delaying an auction for spectrum to provide 4G services. The longer-term effects remain to be seen, but the changes may provide for improved transparency.

There are currently three major private mobile carriers, AIS, DTAC and True Move, all of which vigorously compete. Landline services are provided primarily by TOT, True and TT&T.

As for media, free-to-air channels still have significant state involvement by entities such as the Mass Communications Organization of Thailand (MCOT), the Royal Thai Army, the Government Public Relations Department and the Thai Public Broadcasting Service. MCOT has contracted its channel operations to BEC-TERO, a private operator which is part of BEC World.

As for cable and satellite television, there are many operators in the Kingdom, but the primary operator is TrueVisions (formerly known as UBC).

**1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet, sectors in Thailand.**

The primary legislation relevant to telecommunications, audio-visual media distribution and the internet are:

- The Radio Communication Act;
- The Telecommunications Business Operation Act;
- The Broadcasting Business Act;
- The Frequency Allocation Act; and
- The Computer Crimes Act.

There is a considerable body of administrative regulations and notifications promulgated under these laws.

**1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Thailand.**

Telecommunications, audio-visual media distribution and the internet are subject to regulation by the National Broadcasting and Telecommunications Commission (NBTC). The Ministry of Information and Communications Technology (MICT) (including the National Information Technology Committee and the National Electronics and Computer Technology Centre) also plays a significant role.

**1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in Thailand?**

In the telecommunications and internet space, Type 2 and Type 3 licences are unavailable to entities considered "foreign" (as determined according to the provisions of the Foreign Business Act), and the NBTC Notification on Prevention of Foreign Dominance. In contrast, Type 1 licences are available to both Thai and foreign entities; the NBTC Notification on Prevention of Foreign Dominance is inapplicable to them. Thus, foreign ownership and control is effectively limited to less than 50% of facilities-based telecommunications operators. Those that operate on a resale basis, however, can be wholly foreign-owned. As for media, foreign ownership and control of a broadcasting licensee are limited to 25%.

## 2 Telecoms

### General

#### 2.1 Is Thailand a member of the World Trade Organisation? Has Thailand made commitments under the GATS regarding telecommunications and has Thailand adopted and implemented the telecoms reference paper?

Thailand has been a member of the World Trade Organisation since 1 January 1995, and has made commitments under GATS regarding both value-added services and basic telecommunications.

#### 2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

The provision of electronic communications networks and services is subject to the aforementioned laws, which provide for regulation by the NBTC. The MICT (including the National Information Technology Committee and the National Electronics and Computer Technology Centre) also has a significant role in regulation. As a general matter, the sector is quite competitive, but it is more competitive in some sub-sectors than others.

#### 2.3 Who are the regulatory and competition law authorities in Thailand? How are their roles differentiated? Are they independent from the government?

The primary regulatory bodies relevant to telecommunications are the NBTC and the MICT. The NBTC has promulgated many regulations and imposed many licence conditions in order to foster competition. In parallel with this body of regulation, the Trade Competition Commission (TCC) is the general competition regulator in Thailand and has authority to enforce antitrust regulations and rules against unfair trade practices across many industries. While both the NBTC and the TCC are envisaged as independent bodies, the members of each are appointed by the government, and their functions can be moderated by the government.

#### 2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

Decisions of the NBTC can be appealed within the organisation itself, subject to the Administrative Procedure Act. Accordingly, further appeal to the Administrative Court would also be possible, depending on the circumstances.

### Licences and Authorisations

#### 2.5 What types of general and individual authorisations are used in Thailand?

Primary authorisations take the form of licences, which are categorised as Type 1, Type 2 and Type 3. Each licence can have different endorsements, authorising the provision of different services.

1. **Type 1 Licence:** Type 1 licences are granted to telecommunications operators that provide service without their own networks. These types of businesses have been

deemed appropriate to be fully liberalised. These licences can be granted upon notification by an operator that intends to operate such business.

2. **Type 2 Licence:** Type 2 licences are granted to telecommunications operators that provide service either with or without their own networks, but only when the services are intended for use by a limited group of people, or have no significant impact on competition, public interest and consumers.
3. **Type 3 Licence:** Type 3 licences are granted to telecommunications operators that provide service with their own networks, which is intended for use by the general public or which may impact competition, public interest or consumers.

#### 2.6 Please summarise the main requirements of Thailand's general authorisation.

Subject to a few narrow exceptions, individual authorisations – in the form of the licences described in question 2.5 – are required to legally engage in any telecommunications business.

#### 2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

The subject matter of each form of individual authorisation is described in question 2.5.

Type 1 licences are valid for five years, Type 2 licences are valid for 15 to 25 years for operators with their own networks or five years for those without their own networks, and Type 3 licences are granted for periods of 15 to 25 years. There is a separate renewal procedure.

Licensees cannot freely transfer or sub-license the rights granted under their licences, nor can they transfer the rights and/or responsibilities to operate their networks, in part or in whole, to third parties, if such would affect the services provided. There is, however, a process by which the NBTC can consider and approve such arrangements. Note that some lines of business are reserved for Thai nationals, and thus could not be transferred to foreigners or firms that do not have a majority of Thai ownership, as this would result in breaching restrictions on foreign dominance. In addition, there are even stricter restrictions that apply to businesses operating with a wireless spectrum.

### Public and Private Works

#### 2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

These issues are addressed in the Notification of the National Telecommunications Commission Re: Criteria and Procedures for Exercising Rights of Way in Erecting Poles, Laying Ducts or Cables, and Installing any Accessories for Providing Telecommunications Services. Depending on the type of easement required, a notice may be sufficient; otherwise, it may be necessary to negotiate an agreement. The regulation takes the general approach that such agreements should maintain equality, fairness and impartiality.



## Access and Interconnection

### 2.9 How is network-to-network interconnection and access mandated?

There are several regulations on network interconnection and access. The primary regulation is the Notification of the National Telecommunications Commission Re: Telecommunications Network Access and Interconnection.

Essentially, licensees operating their own telecommunications networks must:

1. permit other licensees to interconnect with their networks;
2. permit other licensees to access their telecommunications networks as a means to access their networks;
3. provide transit services to other licensees through their telecommunications networks;
4. provide roaming services to other telecommunications service providers;
5. offer and provide unbundled network services and essential facilities of their own networks, to permit other licensees' access or interconnection with their networks; and
6. permit other licensees to access and employ technical specifications on their telecommunications network access, interfaces and protocols or necessary technology for interoperability, in order to facilitate access or interconnection with their networks.

Licensees with their own telecommunications networks, however, may refuse to permit other licensees access to their network if their existing telecommunications networks are insufficient to accommodate other licensees. In addition, access may also be refused if there are technical difficulties in access, which may cause interference in, or otherwise obstruct, the telecommunications business.

### 2.10 How are interconnection or access disputes resolved?

Parties may apply to the Dispute Resolution Committee of the NBTC. Detailed procedures are set in the Notification of the National Telecommunications Commission Re: Telecommunications Network Access and Interconnection.

### 2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

Licensees with their own telecommunications networks are required to provide Reference Access Offers and Reference Interconnection Offers, with respect to access or interconnection by other licensees.

Licensees must also prepare information on the calculation of charges for network access, interconnection and unbundled components. This information is submitted at the time of licence application, and is subject to consideration by the NBTC.

### 2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

Standards and pricing methodologies are set by the NBTC in the Notification of the National Telecommunications Commission Re: Standards for Calculation of Interconnection Charges.

### 2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

Reasonable access or interconnection charges are calculated only for each network element used in providing the given service. Other expenses not directly relating thereto are not included in the calculation. If licensees do not base their calculation of remuneration rates on costs of unbundled network access or interconnection, or if the NBTC considers the charges unreasonable or excessive, the NBTC has the authority to order such licensees to formulate steps and plans for restructuring their charges, and to submit them for the NBTC's approval, on a case-by-case basis, within a specified period of time. The NBTC has the authority to regulate each step of the procedure and/or to determine network access or interconnection charges that it deems appropriate.

### 2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

According to the Notification of the National Telecommunications Commission Re: Telecommunications Network Access and Interconnection, licensees with their own telecommunications networks must provide unbundling network elements and interconnection according to the criteria, conditions and procedures prescribed by the NBTC.

The NBTC has the authority to prescribe, by announcement, the particular network elements that it deems necessary for provision of network access and interconnection, and that licensees must make available on an unbundled basis. The regulations provide a general listing of "necessary" network elements, but the NBTC has the authority to appoint a subcommittee to deliberate in greater detail.

The initial listing includes:

1. local subscriber loops;
2. local switch and transmission equipment;
3. local trunks;
4. toll switching and transmission equipment;
5. long-distance trunks;
6. international switching and transmission equipment;
7. network interface equipment;
8. directory equipment and services; and
9. network signalling equipment.

Unless the NBTC requires otherwise, charges for unbundled elements would be as negotiated among the parties and agreed by contract, but these would need to be calculated on the basis of actual costs.

### 2.15 How are existing interconnection and access regulatory conditions to be applied to next-generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

As a general matter, next-generation networks would be subject to regulation in the same way as other telecommunications services.

## Price and Consumer Regulation

### 2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

The Notification of the National Telecommunications Commission Re: Maximum Rate of Service Fee and Advance Service Fee Collection in Telecommunications Business sets out the criteria for determining the maximum pricing for certain services.

### 2.17 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

The NBTC requires licensees to offer services in compliance with standards set by the NBTC. These standards address technical issues, service contracts, tariffs and service charges, as well as protection of consumer rights in the areas of personal data, privacy and freedom of communication via telecommunications networks. The standards are meant to provide services on a fair and equitable basis for both licensees and users.

During the implementation of these standards, the NBTC (and/or its predecessor) issued several notifications concerning the protection of service users, which have been published in the Royal Government Gazette. This includes procedures for receiving and considering user complaints, and the establishment of the Telecommunications Consumer Protection Institute and the 1200 Call Centre, which were implemented to protect the rights of consumers and to enhance their bargaining power and awareness in these areas.

In addition, the NBTC also requires that licensees establish separate call centres to receive complaints, to initiate dispute settlement procedures and to pursue solutions to user complaints at no additional charge. These centres have been established by operators providing fixed-line, mobile, internet and payphone services. Thus, service users with issues relating to false tariffs, charges inconsistent with actual usage, services inconsistent with advertisements or those who wish to terminate their contracts due to poor quality of services or “unfair” treatment can seek assistance accordingly.

Following the receipt of a complaint, there is an escalation process in which resolution is pursued within particular deadlines.

## Numbering

### 2.18 How are telephone numbers and network identifying codes allocated and by whom?

Telephone numbers and “special codes” are allocated by the NBTC, in accordance with regulations promulgated for this purpose.

### 2.19 Are there any special rules which govern the use of telephone numbers?

There are multiple regulations governing the use of telephone numbers; among these are:

1. The Notification of the NTC on Criteria for Use of International Access Numbers with Service Codes;
2. The Notification of the NTC on Additional Temporary Criteria for Telecommunication Numbering Allocation (No. 2) and Alteration in Telecommunication Numbers for Mobile Telephone Service from 9 Digits to 10 Digits;

3. The Notification of the NTC on the Telecommunications Numbering Plan;
4. The Notification of the NTC on Temporary Criteria for Telecommunication Numbering Allocation;
5. The Notification of the NTC on Criteria for the Assignment and Permission of Special Telecommunications Numbers;
6. The Notification of the NBTC on Criteria for Allocation and Administration of Telecommunications Numbers; and
7. The Notification of the NBTC on the Telecommunications Numbering plan.

### 2.20 Are there any obligations requiring number portability?

The rules for porting are addressed primarily in the Notification of the National Telecommunications Commission Re: Criteria for Mobile Number Portability. The basic approach is that service users have the right to mobile number portability, and service providers are prohibited from taking any action that obstructs or impedes the porting of mobile numbers to other service providers, though there are exceptions to accommodate technical and other issues. The relevant notifications contain significant additional detail.

## 3 Radio Spectrum

### 3.1 What authority regulates spectrum use?

The NBTC is the primary regulator of spectrum use, although the MICT is also relevant.

### 3.2 How is the use of radio spectrum authorised in Thailand? What procedures are used to allocate spectrum between candidates - i.e. spectrum auctions, comparative ‘beauty parades’, etc.?

Radio frequency spectrum is allocated pursuant to the 2010 Frequency Allocation Act. It provides for the NBTC to consider and grant permits for use of frequency waves by tender, according to the procedures, means, terms and conditions the NBTC may set. It also states that money obtained from the tender, after deductions for certain costs and expenses, shall vest in the state.

The application to obtain a permit to use frequency waves is deemed to be an application for the operation of a telecommunications business, pursuant to the Telecommunications Business Act. When the NBTC grants a permit to use particular frequency waves, it is deemed that a telecommunications business licence is also granted. This permit would also automatically include approval to possess and use radio communication equipment to establish radio communications stations, but only as specified in the application.

### 3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

Certain categories of spectrum use are licence-exempt.

### 3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

Licence fees depend on the type of business and the type of licence held. As noted above, there are multiple types of licences. In most cases, fees are determined as a percentage of revenue of the licensed business.

### 3.5 What happens to spectrum licences if there is a change of control of the licensee?

Licensees must maintain conformity with their licence conditions in order for the licence to remain valid. In this regard, a change in control could result in breach of said conditions (e.g., if the foreign shareholding ratio was breached). Generally, a licensee must notify the NBTC in writing of a change of control, and the NBTC may instruct the licensee to take particular actions, as the NBTC deems appropriate.

### 3.6 Are spectrum licences able to be assigned, traded or sub-licensed and if so on what conditions?

Pursuant to the Frequency Allocation Act, a permit to use frequency waves for a telecommunications business is the exclusive right of the permit holder and is not transferable. The holder of a permit to use particular frequencies for a telecommunications business must operate the business itself. The permit holder cannot assign management of the business, in whole or in part, to someone else, or authorise other persons to operate the business on its behalf.

## 4 Cyber-security, Interception, Encryption and Data Retention

### 4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

In principle, Thai law protects communications from access, interception and disclosure, but provides certain exceptions for government authorities, particularly in cases that have national security implications, or cases that concern the public order or good morals of Thailand. In the normal course, these apply through the regulatory framework applicable to information technology service providers (through the Computer Crimes Act) and the regulatory framework applicable to telecommunications operators (through the Telecommunications Business Act). In addition, special powers are available to certain government officials handling certain types of cases under the Special Investigation Act, and in emergency situations, under the Emergency Decree. Each is explained below.

#### *Computer Crimes Act*

The Computer Crimes Act empowers competent officers of the MICT to send enquiry letters, summon concerned persons for interrogation and request statements, documents, computer data, computer traffic data and evidence from service providers (as defined in the Act). These officers can also order service providers to hand over certain data pertaining to users, which service providers are obligated to keep, under the law.

In addition, the officers can take further actions, but only with a court order. These include copying computer data or computer traffic data, ordering a service provider to hand over computer data, computer traffic data, or devices, examining and accessing computer systems, computer data, computer traffic data, or devices, decrypting communications, ordering a service provider to decrypt communications, ordering a service provider to assist with decryption and seizing/attaching a computer system, as necessary. Ministerial regulations promulgated under the Computer Crimes Act set out the specific requirements that each service provider is required to meet, in terms of data retention.

It is important to be aware that the Computer Crimes Act distinguishes between content data and non-content data. As a general matter, a court order is not required to access or obtain non-content data – the competent officer is already authorised to request such data from service providers or other relevant persons. While the Computer Crimes Act does not specifically use the term “intercept” when describing the authorities of the MICT with respect to these issues, such activities could be regarded as included within an officer’s authority to examine and access computer systems, computer data, computer traffic data or devices, as referenced above. While there is no court decision to offer guidance on this point, it is our view that the competent officer’s authority extends to both stored subjects and those in transmission.

As noted above, the Computer Crimes Act authorises a competent officer to decrypt encrypted computer data, to order concerned persons to decrypt it and/or to order concerned persons to cooperate with a competent officer in decrypting it, for the purposes of investigating an offence under the Act. Moreover, the Computer Crimes Act purports to apply both locally and overseas, and compliance obligations are not only applicable to certain licensees. Rather, a competent officer has the authority mentioned above to order any concerned person to decrypt data or allow access to a computer system, among the other authorities under the Act.

#### *Telecommunications Business Act*

The Telecommunications Business Act sets certain obligations with respect to telecommunications licensees. Through this regulatory framework, telecommunications licensees are obligated to comply with rules set by the NBTC. Pursuant to regulations under this Act, telecommunications licensees are obligated to retain certain data on service users, to store it according to regulations for certain periods of time, and to provide such data to the Office of the NBTC, on request, for the purpose of supervision of the telecommunications business by the NBTC and the Office of the NBTC. While there are presently no regulations requiring back doors for easy government access to communications (whether in transit or stored), there is already legal framework in place by which such requirements could be instituted.

#### *Special Investigation Act*

The Special Investigation Act generally applies to alleged criminal violations of certain laws, which are unusually complex, relevant to national interests, involve influential people or certain officials, or cases otherwise selected by the Special Case Board. With respect to data interception or access, the Special Investigation Act requires Special Case Inquiry Officials to obtain a court order prior to access and acquisition of any documents or information in transmission through various means of communications which have been or may be used to commit a Special Case Offence (as defined in the Act). Under this Act, the competent officer would need to file a petition requesting the court to issue an order authorising such access or acquisition of data.

#### *Emergency Decree*

The Emergency Decree, *inter alia*, provides for expanded investigative powers usable in the event of an emergency declaration made by the Prime Minister. This Decree gives broad powers to the Prime Minister to act in virtually any way necessary to maintain public order or otherwise maintain control in emergency situations. In such event, the Prime Minister can, among other actions, authorise a competent official to issue an order to inspect any means of communication or issue a notification prohibiting any act or instructing the doing of anything necessary for maintaining the security of the state, the safety of the country or the safety of the people (this is sufficiently broad to include interception of or access to data, as deemed necessary).



Non-compliance under any of the foregoing can result in fines, imprisonment and/or seizure of equipment, depending on the violation.

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#### **4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?**

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Telecommunications licensees are not under licence conditions to build their networks in a manner that enables interception or provides back doors. Nevertheless, regulatory framework is already in place, such that technical interception requirements could be imposed, if such a policy decision were made.

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#### **4.3 How does the state intercept communications for a particular individual?**

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In normal circumstances, with probable cause, the state may apply to the Chief Justice of the Criminal Court for an order permitting interception of communications of any individuals, whether through wiretapping or monitoring of written and/or electronic communications. Such requirements, however, may be circumvented through special procedures under some of the laws described in question 4.1 above, such as the Emergency Decree.

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#### **4.4 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.**

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Encryption can be regulated under multiple laws.

With respect to telecommunications applications, the Radio Communications Act provides for the regulation of activities relating to radio communication in Thailand. The Act prohibits any person from producing, possessing, using, importing, exporting or trading any radio communication equipment, unless such person is granted a licence by the NBTC. It provides authority for the NBTC to issue notifications to exempt particular types of radio communication equipment, or those used in certain activities, in either case, as a class or on an individual basis. To the extent any item constitutes radio communication equipment, if encryption capabilities exist in such devices, they would be subject to regulation as part of the device.

With respect to military applications, the Armaments Control Act, as amended, provides for regulation of the importation, bringing in, manufacturing and/or possession of any armament. It provides that no person shall import, bring in, manufacture, or possess armaments, except where a licence has been obtained from the Secretary of Defence. The definition of armaments can be construed quite broadly, and even includes several routine items that happen to have military applications (dual-use). As such, to the extent that encryption technology, or equipment or software which includes encryption technology, is considered an “armament”, a licence would be required to import it or otherwise bring it in to Thailand. We are, however, not aware that this law has ever been used to deny the importing/bringing-in or possession of routine equipment or software used for computer networking and/or telecommunications applications.

Also, the Computer Crimes Act authorises officials of the MICT to access computer systems to decrypt encrypted computer data, to order concerned persons to decrypt such data and to order concerned persons to cooperate with a competent official in decrypting such data for the purposes of investigating an offence relevant to the Computer Crimes Act.

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#### **4.5 What call data are telecoms or internet infrastructure operators obliged to retain and for how long?**

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Pursuant to regulations issued under the Telecommunications Business Act, licensed telecommunications service providers must retain certain personal data of telecommunications users including the facts and details concerning each service user by which the service user can be identified, service usage data, telecommunication numbers and descriptions of individual usage. Licensees must keep personal data of their service users for the last three months, and in the event that the service is terminated, retain this data for three months following the date of termination of the service. “In the case of necessity”, the service provider may be required to retain the data for longer than three months after termination of service, but not for longer than two years.

The Regulations issued under the Computer Crimes Act also contain similar obligations which are applicable to service providers (as defined in that Act). Service providers include telecommunications licensees and some operators which are not telecommunications licensees.

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## **5 Distribution of Audio-Visual Media**

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#### **5.1 How is the distribution of audio-visual media regulated in Thailand?**

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Distribution of television is handled pursuant to the Broadcasting Business Act, with the NBTC as the primary regulator. Other forms of media, such as movies and computer games, are regulated under different laws.

The NBTC has been particularly active in exercising its authority with respect to content and competition issues. In multiple cases, the NBTC fined operators for the broadcast of what was regarded as inappropriate content. Also, in a case that garnered significant media coverage, the NBTC took action to provide for the free broadcast of all matches of the FIFA World Cup. A satellite operator had purchased the broadcast rights, which would have had the effect of requiring consumers to purchase the operator’s box in order to view all of the matches. Notably, the operator was planning to permit some of the matches to also be broadcast on free-to-air television. Ultimately, the NBTC took the position that such arrangement violated its must-have rule, and the NBTC paid the private satellite operator for the broadcast rights. Though some actions have not been without controversy, the regulator is widely regarded as competent and forward-thinking.

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#### **5.2 Is there a distinction between the linear and non-linear content and/or content distributed over different platforms?**

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At this stage, the distinction between linear vs. non-linear content is not relevant to the regulatory regime. For practical purposes, television – the primary audio-visual media of concern – is regulated on the basis that it is linear. In the larger picture, the NBTC has recently promulgated regulations setting technical standards and related requirements for digital receivers.

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#### **5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.**

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The Broadcasting Business Act and regulations promulgated thereunder established a framework for: (i) broadcasting network

licences; (ii) broadcasting service licences; (iii) broadcasting facilities licences; and (iv) broadcasting application service licences.

Broadcasting service licences are issued for broadcasts using frequencies (e.g., free-to-air) and not using frequencies (e.g., cable). For broadcasts using frequencies, there are multiple categories of licences for public and community broadcasting, but these are available only to government entities and certain associations, foundations, charities and educational institutions. With respect to commercial services, these can be licensed at the national, local or regional levels. Non-frequency broadcasting services are licensed separately. With respect to frequency and non-frequency commercial broadcasting licences, foreign shareholding in the licensee is limited to 25%.

Other regulatory requirements deal with the directorship of companies holding the licences, i.e., that at least 75% of the directors be Thai nationals. Analogous ownership and control restrictions apply to licensees that exist as partnerships. Broadcasting licensees are subject to several other regulatory requirements, some of which exist in law and regulations, and others that are imposed through licence conditions.

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#### 5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

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Pursuant to the Broadcasting Business Act, a permit to operate radio and television broadcasting business is the exclusive right of the permit holder and is not transferable. The holder of such permit must operate the business itself. The permit holder may, however, allocate time slots for programming of others, subject to further requirements of the NBTC.

Generally, in the event of a change of control, the licensee must notify the NBTC of such change. In the event a change in control results in the breach of any licence conditions, this may result in suspension or revocation of the licence and/or other penalties.

## 6 Internet Infrastructure

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#### 6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

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According to the Computer Crimes Act, any service provider intentionally supporting or consenting to an offence to a computer system under its control is subject to the same penalty as that imposed upon the person committing the offence.

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#### 6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

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Counter-infringement measures have been considered by a committee that has been established by the MICT. Specifically, the committee has proposed adding the word "copies" to Section 9 of the Computer Crimes Act so as to expand the section to cover the crime of copying IP owners' data on websites, which would thus provide for the application of penalties stated in that section of the Act. The committee has also advocated an amendment to Section 20 of the Act to provide for the blocking of infringing websites. The Committee indicated that it would also like to see the Act amended to clearly state that the officers charged with enforcing the Computer Crimes Act also have the power to block the distribution of computer data relevant to such offences. At the time of writing, however, no such amendments have been made.

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#### 6.3 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any 'net neutrality' requirements?

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According to the Notification of the National Telecommunications Commission Re: Criteria and Procedures for Internet Service Licence Applications, licensees are under general obligations to operate their telecommunications network services and provide services to service users and interconnection users on a non-discriminatory basis.

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#### 6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?

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Pursuant to the Computer Crimes Act, following the issuance of a court order, a competent official under the Computer Crimes Act may block particular websites or other content, or order ISPs to do so. Blocking of websites or content is also possible under the Emergency Decree. In addition, there is a widely reported "informal" process by which ISPs are asked to block certain content and/or websites; this process is used more frequently.

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#### 6.5 How are 'voice over IP' services regulated?

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VOIP services are regulated as an internet service under multiple regulatory notifications. Among these are the Notification of the National Telecommunications Commission Re: Provision of Voice over Internet Protocol (VoIP) Service Using Telephone Numbers, the Notification of the National Telecommunications Commission Re: Voice over Internet Protocol (VoIP) Service and the Notification of the National Telecommunications Commission Re: Service Standard for Voice over Internet Protocol (or Internet Telephony).

**David Duncan**

Tilleke & Gibbins  
Supalai Grand Tower, 26th Floor  
1011 Rama 3 Road, Chongnonsi, Yannawa  
Bangkok 10120  
Thailand

Tel: +66 2653 5538  
Fax: +66 2653 5678  
Email: david.d@tilleke.com  
URL: www.tilleke.com

David Duncan is a consultant in the Tilleke & Gibbins corporate and commercial group, specialising in complex international transactions. He focuses on new economy business sectors, including technology, media, and communications, but works with a full spectrum of clients in other industries as well. A significant component of David's practice consists of competition law and trade remedies, on which he has advised a number of specialty manufacturers and vendors.

The 2012 edition of *Chambers Asia-Pacific* notes that David is a key member of the Tilleke & Gibbins projects team, while *Asialaw Profiles 2013* lists him as a recommended lawyer for energy and natural resources. His work in this area includes a full range of energy matters (oil and gas, as well as renewable energy), infrastructure projects, and environmental regulatory issues.

**Ahmet Yesilkaya**

Tilleke & Gibbins  
Supalai Grand Tower, 26th Floor  
1011 Rama 3 Road, Chongnonsi, Yannawa  
Bangkok 10120  
Thailand

Tel: +66 2653 5535  
Fax: +66 2653 5678  
Email: ahmet.y@tilleke.com  
URL: www.tilleke.com

Ahmet Yesilkaya is a consultant with the Tilleke & Gibbins corporate and commercial group in Bangkok. He deals with a wide range of clients in international commercial transactions, from reviewing and drafting complex commercial agreements to providing advice on real estate matters, corporate structuring and investment.

Ahmet also advises on the implications of relevant laws on contemplated transactions, particularly anti-competition laws, data protection laws and direct sales and direct marketing laws. Residing and working in Thailand since 2004, he is in charge of Tilleke & Gibbins' German Desk and the contact person for German-speaking clients, as well as one of the firm's representatives to the German-Thai Chamber of Commerce. Ahmet is a licensed German Attorney-at-Law (*Rechtsanwalt*), registered with the Berlin Bar Association and admitted to the Berlin courts. He speaks English, German, Turkish and basic Thai.

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59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

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