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The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2017

10th Edition

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

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EDITORIAL

Welcome to the tenth 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:

One general chapter. This chapter provides an overview of the EU's digital single market proposals.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 27 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.

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1 Overview

1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in your jurisdiction, 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's two major state telecommunications operators – CAT and TOT – formerly held monopolies on telecommunications service in Thailand. Traditionally, they provided some services themselves, and they each granted concessions to private operators. The law has made a distinct shift away from the concessions regime, and replaced it with a licensing regime administered by the National Broadcasting and Telecommunications Commission (NBTC). However, some concessions still remain.

There are currently three major private mobile carriers – AIS, DTAC and True, all of which vigorously compete. In addition, each of CAT and TOT host a number of MVNOs. Landline services are provided primarily by TOT, True and TT&T, but VoIP services are providing growing competition.

Terrestrial broadcast television has largely transitioned to digital, though some analogue broadcasters remain. As for cable and satellite television, there are several operators in the Kingdom, but the primary operator is TrueVisions. CTH is another significant operator, but it has been reported that it is facing financial difficulties and will cease operations.

There are numerous internet service providers, but network infrastructure is owned by a small number of major telecommunications operators (both state and private).

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

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

- The Radio Communication Act B.E. 2498 (as amended);
- The Telecommunications Business Operation Act B.E. 2544 (as amended);
- The Broadcasting Business Act B.E. 2551;
- The Frequency Allocation Act B.E. 2553 (as amended);
- The Computer Crimes Act B.E. 2550; and
- The Film and Video Act B.E. 2551.

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 your jurisdiction.

Telecommunications, audio-visual media distribution and the internet are subject to regulation by the 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 your jurisdiction?

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. In addition, these licensees are obligated to observe 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 not applicable 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, provided they do not require a Type 2 licence for the intended services. As for media, foreign ownership and control of a broadcasting licensee are limited to 25%.

2 Telecoms

General

2.1 Is your jurisdiction a member of the World Trade Organisation? Has your jurisdiction made commitments under the GATS regarding telecommunications and has your jurisdiction 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 telecommunications/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.

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

The Trade Competition Commission and the Committee on Prices of Goods and Services are competition and fair trading regulators of general jurisdiction. These bodies are nominally independent, but their members are appointed by the government. It should also be noted that the NBTC has also issued competition regulations specific to telecommunications.

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 your jurisdiction?

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

2.6 Please summarise the main requirements of your jurisdiction's general authorisation.

Subject to certain narrow exceptions, individual authorisations – in the form of the licences described in the response to question 2.5 – are required to lawfully 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. Licences are renewable, subject to compliance with regulators' requirements.

Licences are not transferrable.

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?

The NBTC administers regulations concerning rights of way for erecting poles, laying conduit or cables and installing equipment 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 be reflective of 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. 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 out in regulations for this purpose.

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 to be submitted at the time of a 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 in regulations administered by the NBTC. The general approach is that reasonable access or interconnection charges are to be calculated only for each network element used in providing the given service. Other expenses not directly relating thereto are not to be included in the calculation. The NBTC has the authority to order licensees to restructure their pricing, and to submit it for NBTC approval. The NBTC also has the authority to regulate each step of the procedure for access/interconnection and/or to determine network access or interconnection charges that it deems appropriate.

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

See response to question 2.12.

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?

Pursuant to regulations, licensees with their own telecommunications networks must provide unbundled network elements and permit 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.

These include:

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.

Typically, charges for unbundled elements would be as negotiated among the parties, but where agreement is not reached, the matter could be submitted to the Dispute Resolution Committee of the NBTC, or if the NBTC has set particular pricing for the relevant access/interconnection, then a party could require that such pricing be used.

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, operators of next-generation networks would be subject to regulation in the same way as operators of 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?

Regulations administered by the NBTC impose 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?

Regulations impose requirements in relation to service contracts, tariffs and service charges, as well as the protection of consumer rights in the areas of personal data, privacy and freedom of communication via telecommunications networks. Licensees are also required to establish separate call centres to receive complaints, to establish procedures for receiving and considering user complaints, and to comply with regulatory requirements in relation to handling complaints, including an escalation process in which resolution is pursued within particular deadlines.

For example, one recent NBTC notification regulates the content of the contracts for mobile phone services and requires service providers to submit sample contracts to NBTC for prior approval.

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 and the numbering plan.

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

Telephone numbers can only be allocated to telecommunications licensees, for use in their provision of telecommunications services. There are extensive regulations governing the allocation of telephone numbers to licensees. Generally, telephone numbers can only be used in providing service consistent with the numbering plan.

2.20 Are there any obligations requiring number portability?

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 Frequency Allocation Act. It provides for the NBTC to consider and grant permits for use of spectrum by tender, according to procedures, means, terms and conditions the NBTC may set.

The most recent auction was for 900 MHz frequency, which reached record bids. Winners included two of the existing private mobile operators, and one new entrant. Ultimately, the new entrant failed to pay by the deadline, thus forfeiting its right to the spectrum. Following considerable public discourse on how to proceed, the National Council for Peace and Order (NCPO) issued an order under Article 44 of the Interim Constitution requiring the NBTC to auction the forfeited spectrum. The defaulting bidder was barred from joining the auction, and the reserve price was set equal to the winning bid made by the defaulting bidder. The spectrum was ultimately won by one of the existing operators.

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

Certain categories of spectrum use are licence-exempt; the conditions depend on the applicable use.

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

Spectrum is allocated by auction, with pricing determined by the auction process.

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 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 on Public Administration in a State of Emergency. 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 on Public Administration in a State of Emergency

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.

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?

Telecommunications licensees are not under a general requirement to maintain or enable interception capability. Nevertheless, regulatory framework is already in place, such that technical requirements could be imposed, if such a policy decision was made. Moreover, current law enables officials to order a telecommunications licensee (or any other person) to carry out or cooperate with interception so ordered. Such an order could be issued in respect of any form of communications.

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

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, NCPO Order 3/2558, or Section 44 of the Interim Constitution.

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

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 of this law ever being 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, order concerned persons to decrypt such data and 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.

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

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 (counted from the day following the current day), 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. The Act requires that service providers retain necessary information on each service user, as well as specified computer traffic data; the type of computer traffic data varies by type of provider and/or service. The required computer traffic data must be stored for at least 90 days from the date the data is entered into the computer system, unless extended by a competent official. A competent official may extend this beyond 90 days, but for no more than one year, in particular cases. In addition, service providers must keep user identification data such that the service user can be identified from the beginning of use of the service, and the service provider must keep this data for at least 90 days after termination of the service.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in your jurisdiction?

Distribution of television is handled pursuant to the Broadcasting Business Act, with the NBTC as the primary regulator. Other forms of audio-visual media, such as DVDs and computer games, are outside the scope of that Act, but other laws are relevant to them.

The NBTC has been particularly active in exercising its authority with respect to content and competition issues. In multiple cases, the NBTC has fined operators for the broadcast of what was regarded as inappropriate content. It has also intervened in the market to provide for free broadcast of certain sporting events.

5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

The Broadcasting Business Act provides for regulation of the content of television programmes that are broadcast. Content requirements (including advertising) vary between terrestrial broadcasting and non-frequency broadcasting (e.g., cable or IPTV), as well as between different categories of channels.

In addition, the Film and Video Act provides for content controls in respect of movies, commercials, television programmes, videos, certain videogames, karaoke and other similar content. A committee, constituted under this Act, has the authority to censor these materials, requiring changes before their release. OTT services accessible via the public internet generally operate without regulation, given that most of the providers are abroad and given enforcement challenges in respect of foreign entities. However, there have been some instances of blocking websites and/or parts of websites. The Computer Crimes Act, as well as the Emergency Decree, NCPO Order 3/2558, and the Interim Constitution each provide mechanisms for such blocking.

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

The Broadcasting Business Act and regulations promulgated thereunder establish the 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.

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

Licences are not transferable. However, a licensee may allocate time slots for programming of others, subject to further regulatory requirements.

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.

6 Internet Infrastructure

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?

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

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?

The Copyright Act B.E. 2537 (as amended) addresses the obligations of internet service providers in relation to infringing content and it provides a mechanism by which one can petition the court to request that infringing content be taken down.

Counter-infringement measures have also been considered by a committee 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.

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?

Regulations provide that 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. However, they do not go so far as to require net neutrality.

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?

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, NCPO Order 3/2558 and the Interim Constitution. As for VPN services, the provider thereof would be regulated as a service provider under the Computer Crimes Act which, as noted above, requires the retention-specified user data. Access to VPN services has been blocked on occasion, but they are generally not blocked.

6.5 How are 'voice over IP' services regulated?

VOIP services are regulated as an internet service under multiple regulatory notifications administered by the NBTC.

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David Duncan is a consultant in the Tilleke & Gibbins corporate and commercial group, specialising in technology, media, and telecommunications, antitrust/competition law and projects. In the TMT space, which comprises the largest part of his practice, David has extensive experience in structuring and negotiating IT outsourcing transactions, developing structures by which to offer new telecommunications and/or IT services in Thailand, handling TMT-related M&A transactions, advising on IT infrastructure projects and advising on regulatory implications of all the foregoing. He also has particular expertise in government contracting. His client base is foreign and domestic, and he advises new entrants to the market, as well as established operators. David is ranked in the TMT category by *Chambers Asia-Pacific*, and he has also been recognised by that and other publications for projects expertise.

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Luxsiri Supakijjanusorn is an attorney-at-law in Tilleke & Gibbins' corporate and commercial group. She has experience across a range of Southeast Asian jurisdictions, with her practice focused primarily on Thailand, Laos, and Myanmar. Luxsiri specialises in various investment and corporate matters, including outflow and inflow investment, joint venture establishment, cross-border taxation and domestic tax. She also advises on competition issues in Thailand.

With her extensive knowledge of the investment environment and regulatory landscape, Luxsiri is a contributor to the World Bank's *Doing Business* guide, and she has penned numerous articles in international journals. She holds an undergraduate degree and a Master of Laws from the University of Melbourne in Australia. Luxsiri is a member of the Lawyers Council of Thailand, and she is a qualified Notarial Services Attorney. She is also an Associate Member of the Chartered Institute of Arbitrators.

Tilleke & Gibbins

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Our TMT practice handles all aspects of work in this field and enjoys an international reputation. Our success on our clients' behalf has led to global recognition as a leading TMT practice by such surveys as *Chambers Asia-Pacific*, *The Legal 500 Asia Pacific*, *Asialaw Profiles* and others.

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