GETTING THE DEAL THROUGH

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GLOBAL COMPETITION REVIEW

Telecoms and Media

An overview of regulation in 44 jurisdictions worldwide

2013

Contributing editors: Laurent Garzaniti and Natasha Good

Freshfields Bruckhaus Deringer

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Telecoms and Media 2013

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CONTENTS

Overview Laurent Garzaniti, Natasha Good and Hein Hobbelen *Freshfields Bruckhaus Deringer LLP* **3**

Acknowledgements for Verifying Content **6**

Argentina Pablo Crescimbeni and María Laura Barbosa *ZBV Abogados* **7**

Australia Angus Henderson, Capucine Hague and Tim Quadrio *Webb Henderson* **16**

Austria Bertram Burtscher and Stefan Köck *Freshfields Bruckhaus Deringer LLP* **30**

Bahrain Alexandre Sérot *Telecommunications Regulatory Authority – Bahrain* **41**

Bangladesh Daniah Khandker, Anita Ghazi Rahman, Mohibul Hassan Chowdhury and Sabrina Afroze *The Legal Circle* **49**

Belgium Laurent Garzaniti, Thomas Janssens, Hein Hobbelen and Anneleen Straetemans *Freshfields Bruckhaus Deringer LLP* **57**

Bermuda Timothy Frith *MJM Barristers & Attorneys* **70**

Brazil Ricardo Barretto Ferreira and Fabio Ferreira Kujawski *Barretto Ferreira, Kujawski e Brancher Sociedade de Advogados (BKBG)* **81**

Bulgaria Violetta Kunze and Lilia Kisseva *Djingov, Gouginski, Kyutchukov & Velichkov* **90**

Canada David Elder *Stikeman Elliott LLP* **101**

Chile Alfonso Silva and Eduardo Martin *Carey* **112**

China Mark Parsons, Yang Xun, Victoria White and Longbo Wang *Freshfields Bruckhaus Deringer LLP* **125**

Costa Rica Eduardo Calderón, Luis Ortiz, Esteban Alfaro and Andrea Sittenfeld *BLP Abogados* **143**

Dominican Republic Sharin Pablo de Roca and Yumari Torres *JJ Roca & Asociados* **148**

European Union Laurent Garzaniti, Thomas Janssens, Hein Hobbelen and Alexia Burckett St Laurent *Freshfields Bruckhaus Deringer LLP* **155**

France Jérôme Philippe and Aude-Charlotte Guyon *Freshfields Bruckhaus Deringer LLP* **181**

Germany Norbert Nolte and Sibylle Gering *Freshfields Bruckhaus Deringer LLP* **196**

Ghana Josiah Kojo Ankomah-Sey and Susan-Barbara Adjorkor Kumapley *Bentsi-Enchill, Letsa & Ankomah* **207**

Greece Dina Th Kouvelou and Nikos Th Nikolinakos *Nikolinakos-Lardas Law Firm* **215**

Hong Kong Mark Parsons, Victoria White and James Chan *Freshfields Bruckhaus Deringer* **221**

India Atul Dua, Rahul Goel and Anu Monga *Seth Dua & Associates* **239**

Indonesia Noor Meurling, Toby Grainger, Dewi Sawitri and Alwin Redfordi *Oentoeng Suria & Partners* **249**

Ireland Helen Kelly and Claire Morgan *Matheson* **257**

Italy Tommaso Salonico and Luca Ulissi *Freshfields Bruckhaus Deringer LLP* **280**

Kenya Richard Harney and Kenneth Njuguna *Coulson Harney Advocates* **293**

Macedonia Dragan Dameski and Elena Miceva *Debarliev, Dameski & Kelesoska Attorneys at Law* **301**

Malaysia Jin Nee Wong and Min Lee Boo *Wong Jin Nee & Teo* **308**

Mexico Bertha Alicia Ordaz Avilés and Octavio Lecona Morales *Greenberg Traurig SC* **319**

Moldova Sergiu Sîtnic *National Regulatory Agency for Electronic Communications and Information Technology* **328**

Netherlands Onno Brouwer, Winfred Knibbeler and Nima Lorjé *Freshfields Bruckhaus Deringer LLP* **337**

New Zealand Malcolm Webb, Edward Willis and Anisa Purbasari *Webb Henderson* **346**

Nigeria Tamuno Atekebo, Otome Okolo and Chukwuyere E Izuogu *Streamsowers & Köhn* **354**

Philippines Rose Marie M King-Dominguez and Ruben P Acebedo II *SyCip Salazar Hernandez & Gatmaitan* **362**

Poland Arwid Mednis and Artur Salbert *Wierzbowski Eversheds* **370**

Portugal Jaime Medeiros and Mónica Oliveira Costa *Coelho Ribeiro e Associados* **381**

Russia Igor Gerber and Andrey Filippenko *Freshfields Bruckhaus Deringer LLP* **392**

Singapore Chong Kin Lim and Charmian Aw *Drew & Napier LLC* **408**

South Africa Zaid Gardner *Edward Nathan Sonnenbergs* **430**

Spain Sergio Miralles Miravet, Alejandro Milá Valle and Carolina Luna Gordo *Freshfields Bruckhaus Deringer LLP* **439**

Switzerland Marcel Meinhardt, Astrid Waser and Michael Cabalzar *Lenz & Staehelin* **453**

Taiwan Robert C Lee *YangMing Partners* **462**

Thailand Sudharma Yoonaidharma *School of Law, University of the Thai Chamber of Commerce* **470**

United Kingdom Rod Carlton, Mark Sansom and Olivia Hagger *Freshfields Bruckhaus Deringer LLP* **479**

United States John Nakahata, Kent Bressie and Paul Margie *Wiltshire & Grannis LLP* **497**

Quick Reference Tables **507**

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Rose Marie M King-Dominguez and Ruben P Acebedo II

SyCip Salazar Hernandez & Gatmaitan

Communications policy

1 Policy

Summarise the regulatory framework for the telecoms and media sector. What is the policymaking procedure?

The laws and regulations put into place in the early to mid-1990s, and which still represent the core of local telecommunications law, are pro-competition and pro-access in tenor. However, the current framework has yet to address the regulatory challenges of convergence and the newest technology, and other competition issues relevant to the industry. Policymakers need to address these challenges, in both the telecommunications and broadcasting sectors.

Both telecommunications and media are subject to nationality restrictions. While telecommunications enterprises may be partially foreign-owned, media enterprises are wholly reserved to Philippine nationals. These are limitations mandated by the Philippine Constitution, which is not easy to amend. This is a significant consideration for regulators as they ponder the blurring lines of telecoms and broadcasting, and the globalisation of entertainment and media content.

The National Telecommunications Commission (NTC) has supervision and control over telecommunications and broadcasting entities. In this connection, it has the power to promulgate guidelines, rules and regulations. The NTC is part of the Philippine government's executive branch.

2 Convergence

Has the telecoms-specific regulation been amended to take account of the convergence of telecoms, media and IT? Are there different legal definitions of 'telecoms' and 'media'?

There have been moves to amend telecommunications laws and regulations to recognise and account for convergence, but these are not in place yet.

Telecommunications and media are defined, and generally regulated, differently. For instance, only Philippine nationals or corporations wholly owned by Philippine nationals may engage in mass media, while corporations not more than 40 per cent foreign-owned may engage in telecommunications. Mass media includes radio, television and print media.

Telecommunications is defined by local law as any process that enables a telecommunications entity to relay and receive voice, data, electronic messages, written or printed matter, fixed or moving pictures, words, music or visible and audible signals or any control signals of any design and for any purpose by wire, radio or other electromagnetic, spectral, optical or technological means. On the other hand, broadcasting, the media activity most akin to telecommunications, is defined as an undertaking the object of which is to transmit over-the-air commercial radio or television messages for reception of a broad audience in a geographical area.

3 Broadcasting sector

Is broadcasting regulated separately from telecoms? If so, how?

Philippine laws generally regulate the broadcasting sector or content separately from telecommunications. However, except for content, the licensing and permitting regulations for both broadcasting and telecommunications enterprises are administered by the NTC.

Telecoms regulation – general

4 WTO Basic Telecommunications Agreement

Has your jurisdiction committed to the WTO Basic Telecommunications Agreement and, if so, with what exceptions?

The Philippines has made specific commitments on market access and nationality treatment, based on nationality restrictions on public utilities and compliance with statutory licences, which are consistent with the WTO Basic Telecommunications Agreement. In support of its commitments, it adopted principles on competition, interconnection, universal service, public availability of licensing criteria, independent regulators and allocation and use of frequencies that already form part of its regulatory framework on telecommunications.

As a general exception across all trade sectors, the Philippines provides a special visa category for traders and investors of countries with which the Philippines has concluded treaties on entry rights for traders and investors. Under this special category, the labour market test is waived and simplified entry procedures are provided.

5 Public/private ownership

What proportion of any telecoms operator is owned by the state or private enterprise?

It is national policy that telecommunications services be provided only by private enterprises. The Telecommunications Office (Telof) is the only government agency that provides telecommunications services. Telof is part of the Information and Communications Technology Office (ICTO), which is under the policy, technical and administrative supervision of the Department of Science and Technology. It provides backbone facilities and services to both the government and private sector.

Republic Act No. 7925 or the Public Telecommunications Act requires all telecommunications entities with regulated types of services to make a public offering through the stock exchanges of at least 30 per cent of its aggregate common stock within five years from commencing operations. Not all telecommunications operators have been able to comply with this requirement. The following companies are listed on the local bourse (which is the Philippine stock exchange): Philippine Long Distance Telephone Company; Globe Telecom Inc; Digital Telecommunications Phils Inc; Philippine Telegraph & Telephone Corporation; and Liberty Telecoms Holdings Inc.

6 Foreign ownership

Do foreign ownership restrictions apply to authorisation to provide telecoms services?

Nationality restrictions apply to telecommunications entities. Only Philippine nationals or corporations where the foreign ownership does not exceed 40 per cent of the corporation's capital stock may engage in telecommunications. However, there is authority for excepting mobile phone content providers under private contracts with particular companies (as opposed to the general public) from the nationality restrictions.

7 Fixed, mobile and satellite services

Comparatively, how are fixed, mobile and satellite services regulated? Under what conditions may public telephone services be provided?

The provision of public telecommunications services, including fixed, mobile and satellite services, is subject to franchise and licensing requirements. A telecoms enterprise must have a franchise granted by the Philippine Congress as well as licences applied for with, and issued by, the NTC. The principal licence issued by the NTC is a certificate of public convenience and necessity (CPCN). Applicants for both a franchise and a CPCN must prove their legal, technical and financial capability, as well as the feasibility of offering the contemplated service. They must show their compliance with the nationality restriction (that they are Philippine nationals or corporations the foreign ownership of which does not exceed 40 per cent of the corporation's capital stock). The particular parameters and specific requirements utilised by the NTC to assess an application will depend on the service being proposed. A CPCN, as well as related licences, are non-exclusive and may be amended.

In addition to a CPCN, mobile service providers must request a frequency allocation from the NTC. Telecoms companies that wish to provide domestic satellite services or operate earth stations need NTC approval to do so. Broadcast companies also need NTC approval for the lease of space segment capacity and direct-to-home TV services.

All telecoms entities are required to interconnect and access providers are required to publish their terms and conditions. Obligations to roll out local exchange services have been imposed on mobile service providers as well as international carriers. Enfranchised and certificated telecoms entities are allowed direct access to international satellite systems, subject to the satellite operator's commercial presence in the Philippines, and the jurisdiction where the operator has been established, having reciprocal terms with the Philippines.

8 Satellite facilities and submarine cables

In addition to the requirements under question 7, do other rules apply to the establishment and operation of satellite earth station facilities and the landing of submarine cables?

A telecoms entity must apply for an authority or licence to operate a satellite earth station. Prior to seeking an earth station licence, the applicant must have obtained several permits, namely a permit to purchase equipment, NTC-type approval for the equipment, and a construction permit. In all cases, only NTC-type approved or type accepted satellite earth stations terminals will be allowed for use in the country. Environmental and height clearances must also be secured to install antenna towers and other facilities.

Only duly enfranchised and licensed telecoms entities, however, are generally allowed to directly access international satellite systems. Direct access also requires that the international satellite operator has local presence and a country of domicile that observes reciprocity with the Philippines by allowing Philippine satellites to operate within its territory. Further, existing Philippine satellite operators must be unable to provide the service required by the local telecoms entity. Excepted from these conditions on direct access are local entities engaged in research development, education, health, safety and rescue.

Landing of submarine cables also triggers a number of regulatory requirements. Marine survey and cable installation works must be covered by a principal permit from the NTC, as well as various permits and approvals from the Marine Industry Authority and the local government having jurisdiction over the landing site. The commercial operation of segments of submarine cables within Philippine territory may require the operator to establish a local presence. Only duly enfranchised and licensed telecoms entities may construct, operate and maintain local cable landing stations.

9 Universal service obligations and financing

Are there any universal service obligations? How is provision of these services financed?

USO (universal service obligations) became a statutory obligation in the early 1990s for International gateway facility (IGF) and cellular mobile telephone system (CMTS) operators in the form of mandatory deployment of a required number of local exchange lines or public calling offices. These operators were expected to subsidise the costs of providing local exchange services from revenues generated from their IGF and CMTS operations. But the USO's implementation through the NTC's Service Area Scheme has generally become viewed as unsustainable due to falling revenue from international services, the weak demand for LEC in rural areas and the growth of mobile telephony. The NTC has since generally eased the USO's enforcement but has extended the USO to 3G licensees. The NTC now allows USO compliance through an equivalent number of telecentres, ie, facilities providing voice, internet or any telecommunications service, in lieu of local exchange lines or public calling offices.

10 Operator exclusivity and limits on licence numbers

Are there any services granted exclusively to one operator or for which there are only a limited number of licences? If so, how long do such entitlements last?

Philippine laws do not permit telecommunications franchises or authorisations to be exclusive in character. Radio frequency licences, however, are limited for certain services by the fixed number of assignable frequencies, the need to prevent harmful interference among operators, and by policies to promote healthier market competition. The NTC recently ordered a dominant player (Philippine Long Distance Telephone Co) to divest one of its three subsidiaries with 3G frequency licences after only one other 3G competitor (Globe Telecommunications Inc) was left. Unless recalled for non-use or violation of licence conditions, radio frequency licences last as long as the licensee's authority to operate.

11 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 no existing or proposed law or regulation to effect structural separation in the industry.

12 Number portability

Is number portability across networks possible? If so, is it obligatory?

There is no law or regulation on number portability. Neither is the service offered by operators.

13 Authorisation timescale

Are licences or other authorisations required? How long does the licensing authority take to grant such licences or authorisations?

It may take the Philippine Congress nine months to over a year to consider legislation granting a franchise. As for the NTC, licensing procedures and approvals differ between basic telecommunications and value-added services. Applications for a basic service authorisation (such as a CPCN) may take at least six months to a year to evaluate. Registrations for value-added services average five days to issue. The NTC may take at least two weeks to decide on the grant of RF assignments. The processing time for business permits and licences from other government agencies varies from three days to a few weeks where site inspections are required.

14 Licence duration

What is the normal duration of licences?

A provisional authority (issued while the evaluation of a CPCN application is ongoing to enable the operator to commence operations) is initially valid for 18 months and its term can be extended. The CPCN could have the same term as the underlying congressional franchise, which can be up to 25 years or more. Frequency assignments are coterminous with the operator's PA or CPCN. Value-added service registrations usually have a term of one to three years. Other operational permits have to be renewed annually.

15 Fees

What fees are payable for each type of authorisation?

Permit fees and supervision fees are payable for all types of authorisations issued by the NTC. The amount or rate of the fees depends on the permit. Supervision fees usually vary with the value of the company's capital stock or equipment. RF licensees are also required to pay for spectrum user fees based on the bandwidth, extent of service area or number of radio stations.

16 Modification and assignment of licence

How may licences be modified? Are licences assignable or able to be pledged as security for financing purposes?

Licences may only be modified by, and assigned with the consent of, the issuing authority. They are personal grants of privilege and may not be pledged as security or otherwise encumbered.

17 Retail tariffs

Are national retail tariffs regulated? If so, which operators' tariffs are regulated and how?

Retail tariffs, in general, are regulated by the NTC. Telecoms entities need to submit their tariff structures to the NTC for approval. For deregulated services, however, only a notice to the NTC is required. Regulations require telecoms entities to comply with certain general pricing principles (eg, rates must be reasonable, not predatory, non-discriminatory, transparent, and the entity cannot make false and misleading claims). Pricing cannot be set below cost as to be predatory and may not exceed the ceilings of the initial tariff schedule without the NTC's approval. Fixed telephone services must be provided in accordance with certain tariff structures, and should state charge options (a charge per connection time unit or a fixed charge per local call) and options for the supply of consumer access service.

18 Customer terms and conditions

Must customer terms and conditions be filed with, or approved by, the regulator or other body? Are customer terms and conditions subject to specific rules?

The NTC regulations state that a clear and unambiguous statement of the terms and conditions on which telecommunications service will be offered, including any discounts or special conditions that will be offered, must be contained in the tariff structure submitted to the NTC for approval. Terms pertaining to the rates, conditions of access, and manner of opting-in or out must be fully disclosed to subscribers.

19 Changes to telecoms law

Are any major changes planned to the telecoms laws?

Current legislative initiatives aim to make telecommunications services more affordable by eliminating or reducing interconnection and access charges between networks, improve quality through minimum service standards and broaden access to marginalised sectors Also, legislation reorganising certain government bodies (including the NTC) has been proposed.

Telecoms regulation – mobile

20 Radio frequency (RF) requirements

For wireless services, are radio frequency (RF) licences required in addition to telecoms services authorisations and are they available on a competitive or non-competitive basis? How are RF licences allocated? Do RF licences restrict the use of the licensed spectrum?

A telecoms entity providing wireless service must obtain an RF licence from the NTC. The NTC allocates frequencies for specific services; thereafter, it assigns them to authorised service providers on a first-come first-served basis unless demand for specific frequencies exceeds availability. In the latter case, open tenders are required to be held to ensure wider access. The NTC has modified this general procedure in the case of 3G frequencies by introducing a ranking system.

21 Radio spectrum

Is there a regulatory framework for the assignment of unused radio spectrum (refarming)? Do RF licences generally specify the permitted use of the licensed spectrum or can RF licences for some spectrum leave the permitted use unrestricted?

The Public Telecommunications Act and NTC regulations require the periodic review of the radio frequency spectrum allocation and assignment. In order to optimise the use of the radio spectrum, regulations require RF to be assigned to those who will use it efficiently and effectively to meet public demand for telecommunications service. Regulations provide for the recall of RF unused for at least one year from the date of issuance of the licence. RF licences are granted according to the use permitted by the National RF Allocation Table, the service licensed to the grantee and the radio equipment to be used.

22 Spectrum trading

Is licensed RF spectrum tradable?

RF spectrum is not tradable. The NTC has exclusive authority to allocate RF spectrum to specific services and assign them to qualified entities. Unless the NTC permits otherwise, RF spectrum may only be used for the services indicated in the National Frequency Allocation Table and may not be transferred to another entity.

23 Mobile virtual network operator (MVNO) and national roaming traffic

Are any mobile network operators expressly obliged to carry MVNO or national roaming traffic?

There are no specific regulations on MVNOs or national roaming traffic. 3G operators, however, are required to negotiate roaming agreements with all 3G networks.

24 Mobile call termination

Does the originating calling party or the receiving party pay for the charges to terminate a call on mobile networks? Is call termination regulated, and, if so, how?

In the Philippines, calls to mobile networks are regulated under general interconnection rules where parties are obliged to measure calls and undertake billing and settlement of payments for outgoing subscriber calls. The parties agree on who and how much one pays for the charges to terminate a call on mobile networks.

25 International mobile roaming

Are wholesale and retail charges for international mobile roaming regulated?

Retail pricing of mobile services, including international roaming, is subject to approval by the NTC. The NTC, however, does not impose caps or ceilings on retail or wholesale access charges for international roaming. The NTC requires mobile service providers to inform subscribers or users of roaming services of the service rates, roaming charges and opt-out mechanisms by text (SMS), immediately after the subscribers or users are acknowledged by its roaming network partner.

26 Next-generation mobile services

Is there any regulation for the roll-out of 3G, 3.5G or 4G mobile services?

The NTC issued regulations allocating certain frequencies within the 850MHz and 2,100MHz frequency bands for 3G services and providing a roll-out schedule for 3G networks. In 2006, the first four 3G licences were issued to qualified mobile operators under these regulations. In 2010, the assignment of the remaining 3G licence was suspended. At the time of writing, the NTC is drafting the rules for the auction of a 3G licence surrendered in 2012.

3G licensees must observe the following milestones for rolling out their 3G network starting from the date of the award: commence installation and construction of the 3G network within a year; commence commercial operation within 30 months; and cover at least 80 per cent of provincial towns and cities, and 80 per cent of chartered cities, within five years. They must also comply with, among other things, capital and financial requirements and pay annual spectrum fees at specified rates. Further, a 3G licensee must interconnect with all 3G and all other public networks, share its 3G network and facilities with other 3G players in areas where demand does not allow more than one 3G network, and negotiate roaming agreements with other 3G networks or authorised CMTS networks.

There are no specific regulations for deploying 3.5G or 4G mobile services, but internet services are subject to minimum speed and other service performance standards.

Telecoms regulation – fixed infrastructure

27 Cable networks

Is ownership of cable networks, in particular by telecoms operators, restricted?

Cable networks may only be owned by Philippine nationals or corporations which are 100 per cent owned by Philippine nationals. Furthermore, our laws state that no single franchise shall authorise an entity to engage in both 'telecommunications and broadcasting, either through the airwaves or by cable'. Accordingly, a company would not be able to operate both a telecommunications enterprise and a cable network. However, a telecommunications company, provided it is 100 per cent Filipino-owned, may own the shares in a company operating a cable network.

28 Local loop

Is there any specific rule regarding access to the local loop or local loop unbundling? What type of local loop is covered?

All public telecommunications entities are obliged to provide, or charge for, interconnection or access to network elements on an unbundled basis so that the access seeker need not pay for network elements, components, equipment or facilities that it does not need for the service it provides, or to allow it to use or combine such elements to provide a telecoms service.

An access provider may provide, on such commercial terms and conditions that are just, reasonable and non-discriminatory, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon request by an access seeker. Unless otherwise agreed upon by the parties, access to unbundled network elements shall be linked through 'meet point' interconnection arrangements. An access provider may deny access to unbundled network elements if the requested method of access is not technically feasible. Non-compliance with the foregoing rules is punishable with administrative sanctions.

Interconnection access between interconnected local exchange carriers is free for calls originating from or terminating with wireless local loop (WLL) subscribers within a local calling area. A WLL subscriber unit may not be used outside the local calling area where the unit is registered. Local loop access is also covered by general interconnection rules that require the unbundling of accounting charges and provision of network elements. There are no specific rules yet on local loop unbundling. The NTC is currently drafting rules on dominant player obligations that include local loop unbundling in order to improve market competition.

29 Interconnection and access

How is interconnection regulated? Can the regulator intervene to resolve disputes between operators? Are wholesale (interconnect) prices controlled and, if so, how? Are wholesale access services regulated, and, if so, how?

Interconnection is mandatory. Under NTC regulations, telecoms entities are required to negotiate and execute interconnection agreements. To further promote interconnection, the NTC also requires telecoms entities to publish reference access offers as default offers to access seekers.

Where the public interest so warrants, the NTC may intervene in a negotiation to mediate a dispute between the negotiating parties. The regulator may also intervene, upon the complaint of an interested party or on its own initiative, in case of a refusal by a telecoms entity to negotiate for interconnection. In such a case, the NTC may immediately direct physical interconnection of the relevant networks under such terms and conditions it may deem proper under the circumstances.

As a general rule, interconnection charges and revenue-sharing arrangements among interconnecting carriers are pursued through bilateral negotiations between telecoms entities then submitted to the NTC. Interconnect usage charges are the network usage charges applicable to direct and indirect interconnections between networks for call origination, call termination and call transit, as the case may be. The NTC may regulate interconnection rates when necessary as in cases of anti-competitive pricing or collusion. The NTC has also cut interconnection rates in an effort to lower the price of SMS.

30 Next-generation access (NGA) networks

How are NGA networks regulated?

Our regulators have only recently regulated broadband services by imposing duties to disclose their service reliability to consumers and observe the minimum service reliability standard of 80 per cent. They have not yet come up with circulars on standardisation and transition to next-generation access networks.

Telecoms regulation – internet services

31 Internet services

How are internet services, including voice over the internet, regulated?

NTC regulations require internet service providers, including VoIP providers, to register as value-added service (VAS) providers. VAS providers need not have a congressional franchise or apply for a CPCN, but must obtain a certificate of registration from the NTC. Only Philippine nationals or corporations where the foreign ownership does not exceed 40 per cent of the corporation's capital stock can operate as VAS providers. There is authority, however, for excepting mobile phone content providers under private contracts with particular companies (as opposed to the general public) from the nationality requirements.

VoIP service is regulated as a value-added service. A VoIP service provider must comply with a minimum capital requirement and enter into appropriate agreements with network or facilities providers. A VoIP provider's interconnection with network providers is governed by NTC's interconnection regulations. Where the VoIP provider is a local exchange, inter-exchange or overseas operator, NTC requires separate books of accounts for VoIP and prohibits both cross-subsidies from utility operations and discrimination in rates or access to facilities.

Internet access providers must inform subscribers of their minimum connection speed and service rates, and maintain service availability above the minimum connection speed 80 per cent of the time for every month of subscription. Telecommunications network providers must provide 99 per cent network availability, system accessibility of 80 per cent for dial-up access and 99 per cent for leased-line access, service activation time from date of request for activation of one working day for dial-up access and 30 days for leased-line access, and bandwidth throughput (a committed information rate that must be delivered to customers) at 98.5 per cent.

32 Internet service provision

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 rules on data discrimination or net neutrality. However, ISPs are subject to prohibitions against illegal interception and content-related offences online under the Cybercrime Prevention Act, and may be ordered to restrict or block access to computer data (although this law is the subject of petitions filed before the local Supreme Court asking that it be declared unconstitutional). ISPs are prohibited under the Anti-Child Pornography Act from knowingly transmitting any form of child pornography and are obliged to install available technology, programs or software to ensure that access to or transmission of any form of child pornography will be blocked or filtered.

33 Financing of basic broadband and NGA networks

Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

Broadband operators that establish new telecommunications infrastructure in the provinces, particularly in rural areas, as endorsed by the NTC, and using at least fibre-optic technology, may be given special investment incentives such as tax holidays, deductions on labour expenses, duty exemption for imported capital equipment, spare parts and accessories, tax and duty-free importation of consigned equipment and employment of foreign nationals.

Media regulation

34 Ownership restrictions

Is the ownership or control of broadcasters restricted? May foreign investors participate in broadcasting activities in your jurisdiction?

Only Philippine nationals or corporations, partnerships or associations wholly owned by Philippine nationals may engage in broadcasting.

35 Cross-ownership

Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers? Is there any suggestion of change to regulation of such cross-ownership given the emergence of 'new media' platforms?

There are no cross-ownership restrictions except that our laws state that no single franchise shall authorise an entity to engage in both 'telecommunications and broadcasting, either through the airwaves or by cable'. Accordingly, a company would not be able to operate both a telecommunications enterprise and a cable network. However, a telecommunications company, provided it is 100 per cent Filipino-owned, may own the shares in a company operating a cable network. The emergence of 'new media' has not prompted moves to regulate cross-ownership.

36 Licensing requirements

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

The key licences for a broadcasting entity would be a congressional franchise and a certificate of public convenience (CPC) from the NTC. A congressional franchise is in the form of a law and is enacted in the same way as other laws. If proposed legislation for the grant of a franchise is unopposed, it may take at least nine months to a year for the legislation to be passed. No fees are payable. CATV service providers, on the other hand, need only obtain a certificate of authority (CA) from the NTC.

It may take the NTC six months to a year from the time an application is filed, to issue a CPC or a CA. The filing fee is 300 pesos per city or municipality included in the proposed service area, with nationwide coverage totalling 1,507 cities and municipalities.

For both broadcast and CATV services, the processing of construction permits, inspection fees, radio station licences and licence fees averages three days from payment of nominal fees.

37 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 are outside of this regime?

There are no rules requiring television broadcasters to include a minimum amount of local content in their programming. However, the Broadcast Code of the Philippines (which was formulated by the local organisation of broadcasters and adopted by the NTC) provides that the airing of programmes in a foreign language other than English must take into account the broader interests of the public in the scheduling and presentation of the programmes. Also, stations broadcasting such programmes are mandated to keep a record of the broadcasts for not less than six months. In respect of radio programming, the NTC requires all radio stations to broadcast a minimum of four original Philippine musical compositions in every hour. There are no similar regulations for online or other media.

38 Advertising

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

Only Philippine nationals or corporations, where at least 70 per cent of the capital stock of which is owned by Philippine nationals, may engage in advertising, including online advertising, directed at the Philippine market or using Philippine mass media. Advertising companies do not need to obtain a special licence or register with any regulatory body specifically supervising the advertising industry and there is no such governmental body. Instead, local companies and other participants in the industry have formed an organisation called the Advertising Board of the Philippines or AdBoard. It is essentially a self-regulating body.

Advertising content is principally regulated by the provisions of the Broadcast Code of the Philippines, Consumer Code of the Philippines as well as various special laws and regulations, such as the regulations issued on tobacco advertisements and those issued by the Bureau of Food and Drugs. AdBoard also has issued a Code of Ethics, and is guided by its Advertising Content Regulation Manual of Procedures and Standards of Trade Practices and Conduct (TPC) Manual. These seek to regulate both advertising content and the behaviour of participants in the advertising industry.

39 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?

Local rules require a cable TV system operating in a community that is within particular field intensity contours of an authorised TV broadcast station or stations to carry the TV signals of these stations. A cable television system operating in a community may carry, or upon request by a relevant station licensee or permittee, shall carry the television broadcast signals from certain broadcast stations such as non-commercial educational TV stations. The cable company's retransmission of broadcast signals without charge does not infringe the intellectual property rights of the broadcasting station. In addition to the signals that such cable TV system is required to carry, an access channel should be provided for the use of certain entities (such as the national government and socio-civic organisations) for free, as a public service feature of the television cable system.

40 Changes to the broadcasting laws

Are there any changes planned to the broadcasting laws? In particular, do the regulations relating to traditional broadcast activities also apply to broadcasting to mobile devices or are there specific rules for those services?

There are no pending changes to the broadcasting laws, but there is a pending bill to classify and regulate cable TV services differently from broadcast or other similar media, require closed captions and grant fiscal incentives for educational programmes for children.

Currently, broadcasting to mobile devices is not regulated. However, the NTC has yet to draft rules for mobile TV and internet TV. The current regulatory framework applies broadcast laws and regulations on such types of services in respect of certain aspects, although if the service is made available through a telecommunications network and to mobile devices, it is treated as a telecommunications service. The convergence in technologies has prompted initiatives in the legislature to enact a convergence law.

41 Regulation of new media content

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

Except for special laws against content-related offences online under the Cybercrime Prevention Act and the Anti-Child Pornography Act, there are no general regulations expressly governing new media content. There are, however, existing regulations on transmission of new media. Generally, entities engaged in the delivery of content, information, applications, programmes and e-mails online may be considered value-added services (VAS) providers. VAS providers need to be Philippine nationals or corporations the foreign ownership of which does not exceed 40 per cent of the corporation's capital stock. VAS providers do not need to obtain a congressional franchise or a CPCN, but must register with the NTC.

42 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?

The NTC is set to switch from analogue to digital TV by 11.59pm on 31 December 2015 and has chosen the integrated services digital broadcast-terrestrial (ISDB-T) standard as the sole standard in the delivery of DTT services in the country. Its technical working group has yet to release the implementing rules for the migration and the necessary frequency planning this year.

43 Digital formats

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

No. Regulation on digital broadcasts is so far limited to digital FM radio broadcasts and it only prescribes a separation band for stations within the same service area and that the digital and analogue signals be transmitted over the same frequency.

Regulatory agencies

44 Regulatory agencies

Which body or bodies regulate the communications sector? Is the telecoms regulator separate from the broadcasting regulator?

The NTC is the government body that principally regulates the telecommunications and broadcasting industries. The Information and Communications Technology Office, Department of Trade and Industry, and the National Privacy Commission are mandated to issue relevant regulations to communications services providers.

Content provision, however, is mainly regulated by the Movie and Television Review and Classification Board (MTRCB) and the Optical Media Board (OMB). The National Council for Children's Television issues special regulations. Local broadcasters have formed a self-regulatory body called the Kapisanan ng Mga Brodkasters ng Pilipinas (KBP), which has issued certain programme standards for television and radio.

45 Establishment of regulatory agencies

How is each regulator established and to what extent is it independent of network operators, service providers and government?

The NTC and MTRCB are government agencies, established by statute. They are independent of network operators although the NTC regularly conducts public hearings on proposed rules and regulations, to which it invites operators and other concerned parties. Also, in respect of broadcasting, the NTC generally has recognised or even adopted programme standards established by the KBP.

46 Appeal procedure

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

Decisions of the NTC issued in the exercise of its quasi-judicial powers may be brought to the Court of Appeals for review either through a petition for review or a petition for certiorari. The former may be taken based on questions of law, facts or mixed questions of law and facts, while the latter may be taken based on a claim of grave abuse of discretion on the part of the regulator whose decision is being challenged. Both are taken by filing verified petitions, with proof of service of a copy on the adverse party and on the regulator whose decision is challenged, and payment of docket and other fees.

Data retention, interception and use

47 Interception and data protection

Do any special rules require operators to assist government in certain conditions to intercept telecommunications messages? Explain the interaction between interception and data protection and privacy laws.

Interception of communications, under Philippine law, is generally viewed as a violation of a citizen's constitutional right to privacy of communication and correspondence. It is illegal unless authorised by a lawful order of the court, or when public safety or order require otherwise. Data or any evidence obtained in violation of this right is inadmissible for any purpose or in any proceeding. This basic framework is reflected in statutes authorising the interception of messages. The Cybercrime Prevention Act prohibits interception by technical means without right to any non-public transmission. Law enforcement authorities, with due cause, are authorised to collect or record traffic data in real time. But collection of non-traffic data requires a court warrant. The Data Privacy Act punishes the unlawful access of personal information by breaking into data systems in any way. The Anti-Wiretapping Law allows court-authorised police recording of communication or spoken word in cases involving crimes against national security, public order and kidnapping. The Human Security Law allows court-authorised police surveillance of telecommunications messages to or from suspected terrorists. Operators are expected not to unjustifiably refuse such types of interceptions. Both laws require the recordings to be deposited with the authorising court. Unless its interception is duly authorised, the operator may suffer the penalties of imprisonment, fines and pecuniary damages while the data becomes inadmissible as evidence in any investigation or hearing. The Anti-Child Pornography Act requires ISPs and internet hosts to notify the police authorities when a violation is being committed using its server or facility, and preserve evidence of such violation. But the law does not authorise an ISP to monitor any user, subscriber or customer, or the content of its communication.

48 Data retention and disclosure obligations

What are the obligations for operators and service providers to retain customer data? What are the corresponding disclosure obligations? Will they be compensated for their efforts?

The Data Privacy Act generally requires retention of personal information only for so long as necessary for the fulfilment of the purposes for which the data were obtained, or as provided by law. The statute also recognises certain rights of data subjects including the right to be advised of the personal information that a controller will process, purposes and recipients of the information. A data subject has a right to data portability.

NTC regulations require telecommunications entities to retain call data records on voice calls and similar records for non-voice traffic. Records indicating traffic data on the origin, destination, date, time and duration of communications are to be retained within certain specified periods. They are not compensated for these efforts. The NTC and a complaining consumer shall be allowed access to or provided hard copies of these records upon a formal written request, and only in connection with a complaint filed and pending with the NTC. The records shall not be made available to any other person or party without a court order or a written consent from the subscriber concerned.

All terms and conditions shall be disclosed to the consumer. Operators and service providers shall treat any data provided by the consumer as confidential and shall not use it for purposes not authorised by the consumer. Upon subscription, they shall inform the consumer of his right to privacy and the manner by which his data will be protected.

49 Unsolicited communications

Does regulation prohibit unsolicited communications? Are there exceptions to the prohibition?

Unsolicited commercial communication with the use of computer systems is generally prohibited under the Cybercrime Prevention Act, unless:

- there is prior affirmative consent from the recipient; or
- the primary intent of the communication is for service and/or administrative announcements from the sender to its existing users, subscribers or customers; or
- the following conditions are present:
  - the commercial electronic communication contains a simple, valid and reliable way for the recipient to reject receipt of further commercial electronic messages (opt-out) from the same source;
  - the commercial electronic communication does not purposely disguise the source of the electronic message; and
  - the commercial electronic communication does not purposely include misleading information in any part of the message in order to induce the recipients to read the message.

Also, unsolicited text messages are prohibited under NTC regulations. The exceptions are when the mobile phone user consented, subscribed or opted-into receiving such messages, and the content providers sending the messages have been previously registered with the NTC. Promotions through text message by registered content providers are allowed provided that the promotions have been approved by the Department of Trade and Industry, and subject to the mobile phone user consenting or opting to the receiving of the same. Public safety text messages from the government may be sent through mobile operators before or during emergencies such as typhoons, earthquakes, floods and other similar emergencies.

Competition and merger control

50 Competition and telecoms and broadcasting regulation

What is the scope of the general competition authority and the sectoral regulators in the telecoms, broadcasting and new media sectors? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation? Are there special rules for this sector and how do competition regulators handle the interaction of old and new media?

The Department of Justice (DOJ) is designated by executive fiat as the national competition authority with the power to enforce competition policies and laws, and to investigate all violations of competition law and prosecute violators to prevent, restrain and punish monopolisation, cartels and combinations in restraint of trade. There is no specific mechanism, however, to harmonise either the jurisdictions of the DOJ and the NTC or the general competition law and regulations specific to telecommunications or media.

51 Competition law in the telecoms and broadcasting sectors

Are anti-competitive practices in these sectors controlled by regulation or general competition law? Which regulator controls these practices?

Our general competition law is set out in the Revised Penal Code. The relevant provisions prohibit combinations in restraint of trade. These have general application and any person (including a telecommunications entity or a broadcasting entity) committing any of the prohibited acts could be prosecuted and charged before the regular courts. The NTC regulations applicable to telecommunications entities also seek to prevent anti-competitive behaviour by enforcing fair pricing and reasonable interconnection.

52 Jurisdictional thresholds for review

What are the jurisdictional thresholds and substantive tests for regulatory or competition law review of telecoms sector mergers, acquisitions and joint ventures? Do these differ for transactions in the broadcasting and new media sector?

Legislative franchises for both telecommunications and broadcasting entities typically require prior congressional approval where the controlling interest in the grantee is transferred, whether as a whole or in parts and whether simultaneously or contemporaneously, to another. In respect of telecommunications entities, the Public Service Act requires NTC approval for the sale of capital stock if the result of that sale in itself or in connection with another previous sale, shall be to vest in the transferee more than 40 per cent of the subscribed capital stock. NTC approval is also required for mergers. There has yet to be a defined sector for or regulations unique to new media.

Update and trends

The Philippine legislature has yet to enact an antitrust law or create an antitrust body that will help encourage healthy competition. There have been attempts in both the NTC and Congress to issue more robust antitrust rules, but movement has been minimal.

The government is moving towards broader regulation of online activities, beginning with the recent enactment of the Data Privacy Act and Cybercrime Prevention Act. The latter law, however, has been suspended indefinitely by the Supreme Court due to questionable provisions that appear to infringe the rights to free expression online and due process of law.

The Supreme Court has signalled a trend towards a stricter and more conservative interpretation of nationality restrictions with a recent landmark decision in a case involving ownership of a public telecommunications company.

In connection with the mandated migration to digital broadcasting by 2015, the NTC has endorsed the adoption of Japan's integrated service digital broadcasting-terrestrial (ISDB-T) standard by TV broadcasting operators.

53 Merger control authorities

Which regulatory or competition authorities are responsible for the review of mergers, acquisitions and joint ventures in the telecoms, broadcasting and new media sectors?

The NTC and the Securities and Exchange Commission are the regulatory authorities responsible for reviewing and approving mergers.

The NTC also reviews acquisitions and joint ventures insofar as they trigger approval requirements under the Public Service Act. The DOJ may review these combinations in trade as the designated competition authority.

54 Procedure and timescale

What are the procedures and associated timescales for review and approval of telecoms and broadcasting mergers, acquisitions and joint ventures?

Generally, the NTC conducts a proceeding similar to a court hearing in approving major changes in ownership of public telecommunications companies. The company files an application and pays a filing fee. Any interested party may oppose this application. The proceeding may take up to three to four months.

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