

Telecoms and Media

Contributing editors

Laurent Garzaniti and Natasha Good



2016

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Telecoms and Media 2016

Contributing editors

Laurent Garzaniti and Natasha Good
Freshfields Bruckhaus Deringer LLP

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

© Law Business Research Ltd 2016
No photocopying without a CLA licence.
First published 2000 (ISSN 1471-0447)
Seventeenth edition
ISSN 2044-7183

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of April 2016, be advised that this is a developing area.

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



CONTENTS

Global overview	7	Ghana	112
Laurent Garzaniti, Natasha Good and Hein Hobbelen Freshfields Bruckhaus Deringer LLP		Porcia Lauretta Mawuena Agbo and Susan-Barbara Adjorkor Kumapley Bentsi-Enchill, Letsa & Ankomah	
Net neutrality update for the United States	10	Greece	117
Julie A Veach Harris, Wiltshire & Grannis LLP		Dina Th Kouvelou and Nikos Th Nikolinakos Nikolinakos - Lardas & Partners Law Firm	
Smart cities	12	Hong Kong	123
Angus Henderson and Daryl Cox Webb Henderson		Chuan Sun and Diane Ng Freshfields Bruckhaus Deringer	
Angola	16	India	130
António Vicente Marques AVM Advogados		Atul Dua, Gaurav Dhvaj and Arjun Uppal Seth Dua & Associates	
Australia	22	Indonesia	137
Simon Muys, Peter Waters and Adelina Widjaja Gilbert + Tobin		Agus Ahadi Deradjat, Kevin Omar Sidharta and Serafina Muryanti Ali Budiardjo, Nugroho, Reksodiputro	
Austria	30	Ireland	145
Bertram Burtscher and Gernot Fritz Freshfields Bruckhaus Deringer LLP		Helen Kelly Matheson	
Belgium	36	Italy	153
Laurent Garzaniti, Hein Hobbelen and Anneleen Straetemans Freshfields Bruckhaus Deringer LLP		Tommaso Salonicco and Luca Ulissi Freshfields Bruckhaus Deringer LLP	
Brazil	45	Japan	161
Ricardo Barretto Ferreira and Paulo Brancher Barretto Ferreira e Brancher Sociedade de Advogados (BKBG)		Chie Kasahara Atsumi & Sakai	
Bulgaria	51	Macedonia	166
Violetta Kunze and Milka Ivanova Djingov, Gouginski, Kyutchukov & Velichkov		Gjorgji Georgievski and Marko Najdenovski ODI Law Firm	
Canada	59	Mexico	173
Laurence J E Dunbar, Leslie J Milton, Scott M Prescott and Stephen P Whitehead Fasken Martineau DuMoulin LLP		Julián J Garza C and Gustavo Díaz B Nader, Hayaux & Goebel, SC	
Chile	67	Myanmar	179
Alfonso Silva and Eduardo Martin Carey		Chester Toh, Alroy Chan and Tan Jen Lee Rajah & Tann Singapore LLP	
China	75	Netherlands	185
Chuan Sun and Diane Ng Freshfields Bruckhaus Deringer		Onno Brouwer, Winfred Knibbeler and Nima Lorjé Freshfields Bruckhaus Deringer LLP	
European Union	86	New Zealand	191
Laurent Garzaniti, Thomas Janssens, Hein Hobbelen and Alexia Burckett St Laurent Freshfields Bruckhaus Deringer LLP		Jordan Cox and Alexandra Blair Webb Henderson	
France	97	Nigeria	197
Jérôme Philippe and Aude Guyon Freshfields Bruckhaus Deringer LLP		Tamuno Atekebo, Otome Okolo and Chukwuyere E Izuogu Streamsowers & Köhn	
Germany	105	Poland	204
Norbert Nolte, Theresa Ehlen and Christoph Werkmeister Freshfields Bruckhaus Deringer LLP		Eligiusz Krześniak and Piotr Chochowski Squire Patton Boggs	

Portugal	210	Taiwan	249
Nuno Peres Alves Morais Leitão, Galvão Teles, Soares da Silva & Associados		Robert C Lee YangMing Partners	
Russia	217	Turkey	254
Igor Gerber, Andrey Filippenko and Olga Melekhina Freshfields Bruckhaus Deringer LLP		Gönenç Gürkaynak and İlay Yılmaz ELIG, Attorneys-at-Law	
Singapore	223	Ukraine	260
Chong Kin Lim, Charmian Aw and Shawn Ting Drew & Napier LLC		Volodymyr Igonin and Taisiia Asadchykh Vasil Kisil & Partners	
South Africa	237	United Kingdom	266
Ridwaan Boda, Anneke Meiring, Mpho Thulare and Mpho Manyala ENSafrica		Rod Carlton, Mark Sansom, Olivia Hagger and Matthew Sinclair-Thomson Freshfields Bruckhaus Deringer LLP	
Switzerland	243	United States	280
Marcel Meinhardt, Astrid Waser and Mario Streb Lenz & Staehelin		Kent Bressie, Paul Margie, Julie A Veach and Michael Nilsson Harris, Wiltshire & Grannis LLP	

Poland

Eligiusz Krześniak and Piotr Chochowski

Squire Patton Boggs

Communications policy

1 Regulatory and institutional structure

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

The regulatory framework for the communications sector is laid down in the Act on Telecommunications of 16 July 2004 (the Telecommunications Law) and Regulations attached to that Act. A recent major telecommunications law revision has implemented Directive 2009/140/EC and Directive 2009/136/EC.

The President of the Electronic Communications Office (UKE) is the Polish National Regulatory Authority. In theory, the Minister of Communications Performs a certain role but in fact the President of the UKE is the key regulatory authority in the telecommunications sector. The relevant minister sets up public policy by proposing new legislation though in reality the force behind those proposals is often the President of the UKE. The President of the UKE is regarded as an independent, central-level authority of government administration and the government itself cannot impose on the President of the UKE any resolution in an individual matter.

There are no longer any restrictions regarding foreign ownership.

2 Authorisation/licensing regime

Describe the authorisation or licensing regime.

Telecommunications business activities are regulated in Poland in a similar way as in other EU countries – the legislative regime is based on European directives and therefore similar to that in other EU countries. All telecommunications undertakings need to be entered in the register held by the President of the UKE. Apart from entities with a registered seat in Poland, telecommunications undertakings from a member state or a state that concluded with the European Union and its member states an agreement on the freedom to provide services that temporarily provides services in the territory of Poland should also be entered in the register. Registration is done within seven days of receiving of the application together with declaration prepared according to Telecommunications Law. The entity may commence the performance of telecommunications activities (though after having notified the President of the UKE of that in writing) if 14 days have passed from the day of the receipt of the application by the President of the UKE and the President failed to make an entry in the register within that time.

The President of the UKE also grants, modifies and withdraws exclusive frequency licences. The time limit for issuing a decision regarding the licence is six weeks from the date of the application being filed. When the issuing of the licence requires a tender, auction, contest or international agreements, the President of the UKE issues the licence within six weeks of the date when the results of a tender, auction, contest were announced or international agreements were concluded. A contest, tender or auction is organised in the absence of sufficient frequency resources. A frequency licence is granted for a determined period of time not longer than 15 years. Until recently tender was the main choice. Since 2015 the President of the UKE has also tended to use auctions.

The President of the UKE also assigns numbering, in line with national numbering plans for public networks, by means of a decision issued not later than three weeks from the application being filed.

A telecommunications entity that has obtained revenues from performing telecommunications activities higher than 4 million zlotys (in the financial year two years before a given year) must pay an annual telecommunications fee associated with the performance of tasks by administrative telecommunications bodies. The fee may not exceed 0.05 per cent of a telecommunications undertaking's annual revenues from performed telecommunications activities, obtained in the financial year two years before the year for which this fee is due. The amounts of annual fees for the right to use numbering resources and for the right to use a frequency based on a frequency licence are detailed in the Telecommunications Law and regulations to that act.

3 Flexibility in spectrum use

Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

A frequency spectrum licence may specify conditions for the use of frequencies. Even though it is not mandatory, spectrum licences generally specify the permitted use of the frequency. The licence may also detail in particular proportionate and non-discriminating limitations on the way the frequencies covered by a frequency licence are used, which may consist of defining the type of radio networks or types of radio access technologies that may be used using these frequencies, the telecommunications service that should be provided using these frequencies, and the telecommunications service the provision of which is prohibited while using these frequencies.

An entity holding a general frequency licence may lease the frequencies covered by the licence or transfer them for use under another legal title to another entity. In this case the entity to whom a frequency licence was granted notifies the President of the UKE, and with respect to the frequencies intended for broadcasting or re-broadcasting of radio or television programmes – also the Chairman of the National Council for Broadcasting and Television (KRRIT) – of the frequencies lease or transfer for use, not later than 14 days after the date of concluding an agreement. The President of the UKE can veto such lease. In practice spectrum holders use also various ways of cooperation allowing for joint use of frequencies not triggering the obligation to notify the President of the UKE.

4 Ex-ante regulatory obligations

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

As of the end of 2015, retail markets and wholesale markets are subject to ex-ante regulation.

Retail markets are as follows:

- access to the fixed telephone network (markets 1 and 2).

(Markets indicated only with a number are markets from the Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex-ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services; markets with the 2007 indicated after the number are markets from the Commission Recommendation of 17 December 2007 on relevant product and service

markets within the electronic communications sector susceptible to ex-ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services.)

Wholesale markets are as follows:

- wholesale broadband access (market 5/2007);
- call origination on the public telephone network provided at a fixed location (market 8);
- call termination on individual public telephone networks provided at a fixed location (market 9);
- wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services (market 11);
- wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location (market 4/2007);
- wholesale terminating segments of leased lines (market 13);
- voice call termination on individual mobile networks (market 7/2007);
- broadcasting transmission services, to deliver broadcast content to end-users (market 18); and
- SMS termination.

At the end of 2014, the President of the UKE concluded consultation proceedings regarding four decisions deregulating markets 3-6 (national or local residential telephone services from a landline (market 3); international residential telephone services from a landline (market 4); national or local business telephone services from a landline (market 5) and international business telephone services from a landline (market 6)). In April 2015 the President of the UKE ruled on deregulation of markets 3-6. Earlier, in October 2014, the President of the UKE ruled on deregulation of market 5/2007 in 76 communities.

The President of the UKE performs an analysis of relevant markets within the scope of telecommunications products and services. After that analysis the President of the UKE carries out proceedings in order to define the relevant market for telecommunications products and services, to find whether in the given market there is a telecommunications undertaking with significant market power (jointly significant market power), to designate a telecommunications undertaking with significant market power, and to impose regulatory obligations on this telecommunications undertaking, to maintain, amend or withdraw regulatory obligations imposed on a telecommunications undertaking with significant market power prior to the market analysis.

The President of the UKE may impose, in particular, the following remedies:

- obligation to treat the telecommunications undertakings equally in relation to telecommunications access;
- obligation to publish or make available specific information on the provision of telecommunications access;
- obligation to run regulatory accounting;
- obligation of cost accounting;
- obligation to set cost-based fees for telecommunications access;
- obligation to prepare and submit within a specific time limit a draft telecommunications access reference offer regarding the telecommunications access; and
- functional separation.

5 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?

Regulations regarding functional separation have been implemented and there is now a legal basis for the President of the UKE to impose an obligation of functional separation. Imposing that obligation, just as imposing any obligations different from those mentioned in the Telecommunications Law, requires the approval of the European Commission.

Polish law does not provide basis for structural separation. The Telecommunications Law introduces information obligations on vertically integrated telecommunications undertakings with significant market power. Such undertakings, in order to ensure that all service providers providing their services to end-users, including themselves, have the possibility of offering equivalent services to end-users, must inform the President of the UKE of their intended transfer of local access network assets or a

substantial part thereof to a separate legal entity under different ownership or to a newly established entity. The notification shall be made at least six months before the planned transfer of assets. After receiving that notification, within six months, the President of the UKE conducts a coordinated analysis of the relevant markets related to the access network. Based on the analysis regulatory obligations may be imposed, maintained, amended or withdrawn. A separate legal entity or a newly established entity may be subject to telecommunications access regulatory obligations in respect of markets where it was found to have SMP.

At the moment, neither structural nor functional separation has been introduced and at this point it is not contemplated. In order to prevent remedying the telecommunications market with functional separation, Telekomunikacja Polska SA (now 'Orange Polska SA'), entered into negotiations with the UKE and has signed an agreement with the UKE on 22 October 2009, where it agreed to voluntarily perform certain actions, some of which were similar to those normally imposed as part of a functional separation.

6 Universal service obligations and financing

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

According to Telecommunications Law, universal service consists of telecommunications services, including facilities for the disabled, provided in any technology, preserving good quality and at a reasonable price.

Those services are limited to providing:

- connection of a network termination point at a fixed location;
- maintaining the subscriber line ready for providing national and international telephone calls;
- national and international telephone calls;
- nationwide directory enquiry services;
- nationwide directories; and
- telephone services by means of public payphones or other points of access capable of voice communications.

The President of the UKE assesses the availability, quality and price affordability of universal service. If any of the elements of universal service are unavailable or provided with good quality and at an affordable price, the President of the UKE announces competition for an entity designated to provide this service. In case providing those services is unprofitable, the designated entity is entitled to a subsidy, which is covered by telecommunications undertakings that have revenues from telecommunications activities higher than 4 million zlotys in the calendar year for which the subsidy is due. The percentage of contribution is set by the President of the UKE (the contribution may not be higher than 1 per cent of the annual revenue of a given undertaking).

At this moment there is no entity designated to provide universal service (until May 2011 Telekomunikacja Polska SA was designated to provide universal service).

7 Number portability

Describe the number portability regime in your jurisdiction.

A subscriber being a party to an agreement where a number from the national numbering plan is assigned to him may request, when changing service providers, to port the assigned number to an existing network of an operator in:

- a geographic area - for geographic numbers; or
- the entire country - for non-geographic numbers.

This right does not include porting numbers between fixed and mobile public telecommunications networks.

8 Customer terms and conditions

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

The relationship between the subscriber and service provider is to be regulated in the agreement for the provision of telecommunications services, in the terms and conditions for the provision of publicly available telecommunications services and in tariffs list. These documents should define in a clear, comprehensive and easily accessible form the elements that are specified in the Telecommunications Law.

An agreement for the provision of telecommunications services must be concluded in a written or electronic form by filling in a form made available on the service provider's website. Any change to the agreement concluded in a written or electronic form must be delivered in writing to the subscriber unless the subscriber requests that such information should be delivered electronically to an e-mail address indicated for this purpose by the subscriber or by similar remote communications means. Modifications to terms and conditions must be publicly announced at least one month prior to the introduction of these modifications.

The prices of telecommunications services that the service provider determines must be based on transparent, objective and non-discriminating criteria. A provider of publicly available telecommunications services submits the tariffs list to the President of the UKE at every request, within the time limit defined by the President, and upon each modification to the tariffs.

9 Net neutrality

Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

So far Poland has not followed the Dutch model and there are no specific regulations regarding net neutrality in Poland.

10 Platform regulation

Is there specific legislation or regulation in place, and have there been any enforcement initiatives, relating to digital platforms?

There are no specific regulations or any enforcement initiatives relating to digital platforms.

11 Next-Generation-Access (NGA) networks

Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

There are no specific regulations regarding obligations applicable to NGA networks.

12 Data protection

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

Yes, there is. Personal data of the user of telecommunication service is encompassed by the secrecy of telecommunications regulations, together with individual message content, transmission data, location data and data relating to call attempts between specific telecommunications networks termination points.

Based on the Telecommunications Law, a provider of publicly available telecommunications services is entitled to process the following data concerning a user who is a natural person:

- surnames and first names;
- parents' first names;
- place and date of birth;
- address of residence and correspondence address, if different to the address of residence;
- personal number (PESEL) – in the case of a citizen of Poland;
- name, series and number of documents confirming the identity, and in the case of a foreign national who is not a citizen of a member state or of the Swiss Confederation – a passport number or a residence card number; and
- data included in documents confirming the ability to perform an obligation towards a provider of publicly available telecommunications services resulting from an agreement for the provision of telecommunications services.

A provider of publicly available telecommunications services may, with the consent of a user who is a natural person, process other data from this user in relation to the service provided (bank account number or a payment card number and email address and contact telephone numbers are given as examples of such data).

An operator of a public telecommunications network and a provider of publicly available telecommunications services must retain and store specific data regarding calls for the period of 12 months counted from the day of a call or an unsuccessful call attempt. The data encompasses data necessary to trace the network termination point, telecommunications terminal equipment, an end-user originating the call and being called and to identify the date and time of a call and its duration, as well as the type of a call and location of telecommunications terminal equipment. That data, together with specific data encompassed by the secrecy of telecommunications, must be made available to authorised entities and services, the Customs Service, the court and to the prosecutor, under the terms and observing the procedures specified in separate provisions.

13 Big data

Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

There are no specific legislation or enforcement initiatives addressing the legal challenges raised by big data.

14 Key trends and expected changes

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

The most controversial topic at the end of 2015 and the first couple of months of 2016 has been the conclusion of the auction regarding the 800MHz and 2.6MHz frequency spectrum. The auction procedure was accompanied by numerous problems and controversies. The first consultations regarding the auction were announced in August 2013. In February 2014, the auction was called off because of technical problems. The auction was re-announced on 10 October 2014 and concluded in October 2015.

The bidding procedure was initially based on simultaneous multiple-round auction (SMRA) rules. In October 2015, however, the Minister of Administration and Digitisation intervened and introduced changes to the regulation regarding the auction procedure. The bidding rules were changed after 115 days of the auction from SMRA to first-price sealed bid (FPSB), to be applied in the last round of the auction. Based on the offers submitted in that last round, the results of the auction were decided. The end of the auction was controversial and although all the participants filed applications for reservation of frequencies, three participants (T-Mobile, NetNet and Polkomtel) filed applications for invalidation of the auction. Ultimately NetNet withdrew its application for the spectrum allocation. It is expected that the five 10MHz frequency ranges in the most valuable 800MHz band will be allocated as follows: Orange Polska and T-Mobile Polska two frequency ranges each and P4 sp. z o.o. one frequency range.

Another emerging trend worth mentioning is the competence disputes between regulatory bodies in the media and telecoms market. There are three bodies regulating that sector – the President of the UKE, the President of the Competition and Consumer Protection Office (UOKIK) and the KRRIT. Disputes regarding competence are particularly visible between the telecommunications (the President of the UKE) and competition authorities (the President of the UOKIK). A future merger of the two regulators is possible (especially the UKE with the UOKIK).

Media

15 Regulatory and institutional structure

Summarise the regulatory framework for the media sector in your jurisdiction.

The regulatory framework for the media sector is laid down in the Act on Broadcasting and Television of 29 December 1992 (the Broadcasting Law), regulations to Broadcasting Law and other acts. The media sector regulatory authority is the KRRIT. In contrast to the telecommunications regulatory authority, KRRIT is multi-person governing body, a council. KRRIT often cooperates with regulatory authorities for telecommunications and competition. The President of the UKE and the KRRIT are jointly the Polish equivalent of OFCOM.

16 Ownership restrictions

Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

In theory, yes, in practice, no. First of all, no restrictions apply to foreign physical persons from the EEA (European Economic Area) and to Polish companies controlled by foreign persons from the EEA or by companies having its seat there. Second, a simple corporate planning allows also companies controlled by entities from other countries than from EEA to own a broadcasting licence. Having said this, the general rule is still that broadcasting licences may be awarded to natural persons of Polish nationality who permanently reside in the territory of Poland and legal persons or partnerships having their seat in the territory of Poland.

As to companies having foreign shareholders, these may be awarded a broadcasting licence only if:

- the equity stake held by foreign persons in the company or the stake held by foreign persons in the share capital of the company does not exceed 49 per cent; and
- the company's articles of association or statutes contain a clause providing that:
 - persons of Polish nationality who permanently reside in Poland constitute a majority of persons empowered to represent the company or manage its affairs (management board members);
 - the share of votes exercised by foreign persons and subsidiaries of foreign persons does not exceed 49 per cent of votes in a meeting of shareholders of a limited liability company or the general meeting of shareholders;
 - foreign persons may not hold, directly or indirectly, a majority in excess of 49 per cent of votes in a partnership; and
 - persons of Polish nationality who permanently reside in Poland constitute a majority of members of the supervisory board of the said company.

Purchase or acquisition of shares or interest, or acquisition of rights in shares or interest in a company holding a broadcasting licence to transmit a programme service, by a foreign person, requires consent of the Chairman of the KRRIT.

As mentioned above, the above restrictions do not apply to foreign physical persons from the EEA and to Polish companies controlled by such persons or entities from the EEA.

17 Licensing requirements

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

Transmission of programme services other than those of public radio and television broadcasters require a licence to broadcast. Transmission of television programme services exclusively in information and communications technology systems does not require a licence, unless the programme service is to be retransmitted by terrestrial diffusion, satellite or cable networks. Broadcasting licences are awarded by the Chairman of the KRRIT (the decision as regards broadcasting licences on the basis of a resolution of the KRRIT).

KRRIT in the licensing procedure considers:

- the degree of compliance of the proposed programming activities with the tasks of broadcasting laid down in the Broadcasting Law,
- the applicant's ability to make the necessary investments and ensure financing of the programme service,
- the planned share of programmes produced or commissioned by the broadcaster or co-produced by the broadcaster jointly with other broadcasters, in the programme service,
- the planned share of the programmes referred to in article 15 paragraphs 1 and 3, in a television programme service, or of works referred to in article 15, paragraph 2, in a radio or television programme service,
- past compliance with regulations governing radio communications and the mass media.

The timescale for the procedure is according to general rules of administrative procedure. The broadcasting licence is awarded for 10 years. The KRRIT, acting in agreement with the Minister of Finance, determines in a regulation the amount of the fee for granting the licence and the method of calculating that fee.

18 Foreign programmes and local content requirements

Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

Television broadcasters must reserve at least 33 per cent of their quarterly transmission time for programmes originally produced in the Polish language, excluding news, advertising, teleshopping, sports events, teletext services and games. Moreover, television broadcasters must reserve at least 10 per cent of their quarterly transmission time for European works produced by independent producers, excluding news, advertising, teleshopping, sports events, teletext services, and games. Programmes produced within the period of five years before their transmission in the programme service must constitute at least 50 per cent of the time reserved for European works produced by independent producers.

Broadcasters of radio programme services, excluding programme services produced entirely in a language of a national or ethnic minority, or in a regional language must reserve at least 33 per cent of their monthly transmission time devoted to verbal-musical works for works performed in the Polish language, of which at least 60 per cent must be during the hours 5am to midnight.

The KRRIT has adopted a resolution that lessens some of restrictions on broadcasters that broadcast programmes consisting of older films.

Online media do not fall in the category of radio or television broadcasters and as such are not subject to these restrictions.

19 Advertising

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

Regulation regarding advertising laid down in Broadcasting Law provides that advertising and teleshopping must be distinguishable from editorial content. Advertising and teleshopping must be kept quite distinct from other parts of the programme service by optical, acoustic or spatial means and it must not exceed 12 minutes an hour. KRRIT determines in a regulation the manner in which advertising and teleshopping activities may be conducted in radio and television programme services.

General rules regarding unfair competition in advertising and misleading the consumers are given in the Act on Preventing Unfair Competition. Advertising of specific products (alcohol, tobacco, etc) is subject to limitations detailed in sector provisions.

Online advertising is, as a rule, subject to the same restrictions.

20 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?

The Broadcasting Law imposes an obligation on an operator that retransmits a programme service, with the exception of an entity that retransmits a programme service by digital terrestrial diffusion in multiplex, to retransmit the programmes services of public television 'Telewizja Polska I', 'Telewizja Polska II' and one regional television programme service transmitted by Telewizja Polska SA as well as programme services of Polsat SA, TVN SA, Polskie Media SA, Telewizja Puls Sp z.o.o. A broadcaster that transmits the programme service detailed above may not refuse the consent for the retransmission of this programme service, and may not make such consent conditional upon payment of any remuneration.

A broadcaster that transmits the programme service detailed above makes this programme accessible free of charge on an application of the operator retransmitting the programme service, within 14 days from submission of the application.

21 Regulation of new media content

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

There are specific regulations regarding new media content in Polish law. Some of those are in provisions regarding broadcasting, telecommunications or press regulations. The Polish legislator also implemented specific regulation – the Act on Rendering Electronic Services. As a rule, according to this, the regulation service provider providing data transmission or enabling access to the telecommunications network is not liable for the content of that data if it does not modify that data.

22 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 last transmitter of terrestrial analogue television was switched off on 23 July 2013. Radio frequency spectrum that became available after the switchover will be allocated to digital television, mobile television and mobile services.

23 Digital formats

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

The conditions for the use of spectrum may be specified in the frequency license or the radio licence. Both licences are issued by the President of the UKE in the form of an administrative decision.

24 Media plurality

Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

No specific regulation regarding media plurality is provided, however, the concept is generally accepted. Regulatory authorities, in particular the KRRIT and the President of the UOKIK (competition authority), are guarding media plurality.

25 Key trends and expected changes

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

Hot topics in coming months will be continuation of the allocation of the spectrum from the digital dividend, freed by the switchover from analogue to digital television. Another hot topic will be possible changes in public media considered by the government, which wants to increase the public mission element provided by public media and state control over public media, and for that purpose wishes to implement amendments to media regulations.

Regulatory agencies and competition law

26 Regulatory agencies

Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

The telecommunications and media sectors have separate regulatory authorities and the antitrust regulator is separate from these. The President of the UKE is regulating telecoms sector, the KRRIT is competent for the media sector and the competition regulation is done by the President of the UOKIK. Finally, personal data protection is guarded by a separate central administration body – the General Inspectorate for the Protection of Personal Data (GIODO).

The competences regarding given sector are allotted to each authority, though in certain cases the issues fall into the scope of two or more regulators. In such a case a procedure for consultations is provided in the

regulations. The decision is issued by one of the authorities; however, before issuing it that authority needs to consult on the matter (ie, obtain the opinion of) the other authority. After obtaining the opinion, the competent authority issues decision independently, though taking into consideration the opinion delivered.

In recent years, power clearly shifted from the KRRIT to the President of the UKE. While in the late 90s the KRRIT was one of the more powerful regulators and its actions and plans were closely watched and commented. Its role now is fairly limited. This is due to, among other things, the fact that the broadcasting business is fairly stable, with a few powerful players controlling the broadcasting market. At the same time the KRRIT does not have authorisation to regulate online streaming and other forms of new media.

The President of the UKE, by contrast, is a powerful regulator with a relatively clear vision on how to regulate the telecommunications market.

The competence disputes between the authorities are settled by the President of the Council of Ministers. The jurisdiction of a given authority in the matter decided in a form of decision is fundamental for the validity of the decision. According to administrative procedure, if the decision is issued in violation of jurisdiction regulations, the administrative body declares it invalid.

27 Appeal procedure

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

Proceedings before the President of the UKE are governed by the Code of Administrative Procedure. According to that regulation if a party to proceedings wants to appeal the President of the UKE's decision, first it should apply to him or her to reconsider the matter. After obtaining the decision following the reconsideration (second decision), the appeal should be filed with Voivodship Administrative Court. After the Voivodship Administrative Court issues its judgment, the party may file a cassation appeal with the Supreme Administrative Court within 30 days of obtaining the judgment.

However, Telecommunications Law provides for a different procedure for specific decisions. The following decisions are subject to appeal to the District Court of Warsaw – the Court for Competition and Consumer Protection:

- on ascertaining significant market power;
- on the imposition, withdrawal, amendment or cancellation of regulatory obligations;
- on the imposition of penalties;
- regarding detailed regulatory conditions or removal of irregularities found as a result of inspection executed by the President of the UKE;
- issued in disputes, excluding decisions on an exclusive frequency licence following a tender, auction or contest and the decision finding the tender, auction or contest unresolved; and
- detailed in the Act of 7 May 2010 on supporting the development of telecommunications networks and services.

Proceedings concerning appeals and complaints regarding those decisions are governed by the Code of Civil Procedure (as opposed to the procedure before administrative courts mentioned above, where the Act on Proceedings before Administrative Courts is applied). Second instance after the district court is the appellate court.

Proceedings before the KRRIT are also governed by the Code of Administrative Procedure. However, specific decisions of the Chairman of the KRRIT detailed in the Broadcasting Law (mostly regarding imposed fines and other penalties) may be appealed against to the District Court in Warsaw – Commercial Court. The provisions of the Code of Civil Procedure relating to counteracting monopolistic practices will apply in such cases.

Decisions of the President of the UOKIK (issued in an administrative procedure) may be appealed to the District Court of Warsaw – the Court for Competition and Consumer Protection. As to proceedings before the GIODO, these are regulated by the Code of Administrative Procedure. After application for reconsideration of the matter, the party may appeal to the Voivodship Administrative Court and the Supreme Administrative Court after that.

28 Competition law in the communications and media sectors

Describe the key merger and antitrust decisions in the communications and media sectors adopted over the past year by your antitrust authority.

On 21 January 2015, the President of the UOKIK approved a concentration consisting of establishing a common entity under the name of BuyIn SA (with its seat in Brussels) by Orange SA (with its seat in Paris) and Deutsche Telekom AG (with its seat in Bonn).

On 6 February 2015, the President of the UOKIK approved a concentration consisting of Onet.pl SA (with its seat in Cracow) taking control over Nasza Klasa sp. z o.o. (with its seat in Wrocław).

On 2 July 2015, the President of the UOKIK approved a concentration consisting of Netia SA (with its seat in Warsaw) taking control of TK Telekom sp. z o.o. (with its seat in Warsaw).

SQUIRE 
PATTON BOGGS

Eligiusz Krześniak
Piotr Chochowski

eligiusz.krzesniak@squirepb.com
piotr.chochowski@squirepb.com

Rondo ONZ 1
00-124 Warsaw
Poland

Tel: +48 22 395 5500
Fax: +48 22 395 5501
www.squirepattonboggs.com

Getting the Deal Through

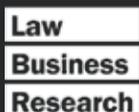
Acquisition Finance
Advertising & Marketing
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Arbitration
Asset Recovery
Aviation Finance & Leasing
Banking Regulation
Cartel Regulation
Class Actions
Construction
Copyright
Corporate Governance
Corporate Immigration
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Executive Compensation & Employee Benefits
Foreign Investment Review
Franchise
Fund Management
Gas Regulation
Government Investigations
Healthcare Enforcement & Litigation
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Labour & Employment
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Client
Private Equity
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Restructuring & Insolvency
Right of Publicity
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally



Online

www.gettingthedealthrough.com



Telecoms and Media
ISSN 2044-7183



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



Official Partner of the Latin American
Corporate Counsel Association



Strategic Research Sponsor of the
ABA Section of International Law