



ICLG

The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2017

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

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1 Overview

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

In Poland, the telecommunications, audio-visual distribution and internet infrastructure sectors are liberalised, well developed, and strongly competitive, with the potential for foreign investments, mergers and acquisitions. The sectors are converged, especially with regard to pay TV. In the fixed telecommunications sector, there is an incumbent operator – Orange Polska (formerly Telekomunikacja Polska (gpw.pl: OPL)) – which belongs to FT/Orange Group. The second biggest is the fixed telecommunications market challenger – Netia (gpw.pl: NET). There are also two main alternative business services and telecommunications infrastructure providers; Exatel and Emitel. TK Telekom had been acquired by Netia and GTS Poland was acquired by T-Mobile Polska. Hawe (gpw.pl: HWE) is under liquidation proceedings. The traditional fixed telecoms compete with cable TV operators, who can deliver triple and sometimes even quadruple play services. The three largest fixed telecoms providers are: UPC Polska; Multimedia Polska; and Vectra. There are also some regional operators and numerous local service providers. The cable operators that deliver TV programming and VOD compete currently with two satellite audio-visual media distributors: Cyfrowy Polsat (gpw.pl: CPS); and NC+ satellite platform – created last year as the result of the merger of Cyfra+ (owned by Canal+) and a Polish n platform. Cyfrowy Polsat also offers mobile internet services, using the infrastructure of Polkomtel – a mobile infrastructure operator belonging to the same owner.

The latter sector of Polish mobile communications is currently divided into four major players. There are three incumbent mobile operators: Polkomtel; T-Mobile Polska; and Orange Polska (which merged with PTK Centertel) from the Orange group, which are challenged by the fourth one – P4 – operating under the brand name Play. There is also one alternative mobile operator – Aero2, which acquired Mobyland and Centernet. Aero2 possess their own infrastructure and frequencies, which are in turn used to offer wholesale HSPA+/LTE data services. Aero2 is owned by Midas – an investment capital fund company that used to be at gpw.pl: MDS, but had been delisted in 2016, nevertheless is still very active in the telecoms sector.

As far as the audio-visual distribution sector is concerned, there are also traditional analogue broadcasters who switched into digital terrestrial broadcasting in July 2013. The traditional market leader in this sector is public television (contains two general FTA channels – TVP1 and TVP2), followed by two privately-owned broadcasters and their respective general channels, TVN and Polsat. The infrastructure for the broadcasting services is delivered mostly by the above-mentioned Emitel.

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

The main act relating to telecoms is the Act of 16 July 2004 Telecommunications Act with many subsequent amendments, the latest being 2013. The second important supplementing piece of legislation is the Act of 7 May 2010 on supporting the development of telecommunications services and networks, recently amended in 2012. The content regulation for the media distribution sector is contained in the Broadcasting Act of 29 December 1992 with subsequent amendments. Distant provision of services, including services delivered over the internet, are regulated in the Act of 18 July 2002 on the provision of services by electronic means with subsequent changes. Additionally, all the sectors fall under general consumer and competition regulations, as well as personal data protection laws.

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

The government bodies responsible for public policy for all the sectors are currently the Ministry of Administration and Digitisation (<https://mac.gov.pl/eng/>) as far as (a) and (c) in the question are concerned, and the Ministry of Culture and National Heritage (<http://www.mkidn.gov.pl/pages/the-ministry-of-culture-and-national-heritage.php?lang=EN>) with respect to (b). There are also regulatory bodies: the Office of Electronic Communications (<https://en.uke.gov.pl/>), responsible for telecoms, media and broadcasting infrastructure regulation; and the National Broadcasting Council (<http://www.krrit.gov.pl/en/>), responsible for broadcasting channels licensing.

An important regulatory role is also played by the Inspector General for Personal Data Protection (GIODO) (<http://www.giodo.gov.pl/168/j/en/>) and the Office of Competition and Consumer Protection (<http://uokik.gov.pl/home.php>).

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

There are no restrictions on foreign ownership as far as the telecoms and internet sectors are concerned. However, there are some limitations of foreign ownership with respect to broadcasting content regulations. The limitations are not compulsory with respect to entities from countries belonging to the EU/EEA.

2 Telecoms

General

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

The telecoms reference paper was accepted by the Polish administration in 1996 and the following targets have been completed:

- 1) a regulatory authority is independent of all suppliers of telecommunications services and networks;
- 2) there are maintained measures that prevent and safeguard against anti-competitive practices by major operators;
- 3) major suppliers are obliged to interconnect other suppliers at any technically feasible point on a non-discriminatory, cost-oriented basis following transparent procedures and subject to dispute settlement by an independent body;
- 4) universal service programmes are administered in a transparent, non-discriminatory, and competitively neutral manner; and
- 5) the law provides allocation, assignment and use of scarce resources, including the radio spectrum, numbering blocks, and rights of way, in an objective, timely, transparent, and non-discriminatory manner.

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

Generally, in order to provide telecommunications services, operators must be entered into the register that is kept in the Office of Electronic Communications (OEC). Special licensing for operation of the telecommunications network is not necessary, except if used for general construction and environmental permitting. In order to use public numbering for voice communications, an operator must apply to the OEC. Special licensing is needed for the use of radio frequencies, but is not needed for harmonised licence-exempt bands. For mobile communications frequencies, such spectrum licence is granted after a public tender or auction procedure. Licensing for radio links (used for backhaul network) is granted separately per each link.

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

The regulatory body for telecommunications is the Office of Electronic Communications (OEC) (<https://en.uke.gov.pl/>). The

President of the OEC is responsible for telecoms, media and broadcasting infrastructure regulation. The regulatory body for competition law is the Office of Competition and Consumer Protection (OCC) (<http://uokik.gov.pl/home.php>). The latter is responsible for regulating competition across all markets and it focuses on *ex post* regulation. Conversely, the OEC has *ex ante* regulatory powers. Although both are financed from the central state budget (the OEC through the obligatory payments collected from all telecommunications operators – amounting up to 0.5% of their yearly revenues), they differ with regard to the appointment processes of their Presidents. The President of the OEC is appointed and dismissed by the Parliament, making him more independent from the government than the President of the OCC, who is appointed and dismissed by the Prime Minister.

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

The decisions of all regulatory bodies can be appealed to the courts. Depending on the type of decision appealed, the appeal is lodged either to the administrative courts – where procedural issues are considered – or to a special court for competition and consumer protection – mainly concerning regulatory fines.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in your jurisdiction?

In order to start as a telecommunications operator, you must enter into a register kept by the OEC (general authorisation). In order to use radio frequencies, you need to obtain a licence for the specific frequencies (frequency assignment) and/or in some cases, obtain specific licences (radio equipment permits) before starting the operation of the radio equipment. There is no need to obtain a frequency assignment or a radio permit in licence-exempt bands. TV broadcasting requires additional content licences provided by the National Broadcasting Council.

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

Anyone providing a public telecommunications network or a telecommunications service shall notify the OEC and shall be entered into the register. The registration shall be completed by the OEC within seven days. The application must contain a description of the telecommunications network and/or services which the applicant would like to offer, the area in which the activity will take place, and the forecast starting date. The operator may start its services after 14 days from the date when the application was lodged, except for cases when the OEC asked for formal corrections.

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

There are three general types of individual licences granted by the OEC, two of which apply to frequency rights. There is a frequency assignment (called: "frequency booking"). In most cases, the frequency assignment applies to the whole territory of Poland and is technology and service-neutral, with only general compatibility criteria. The frequency assignment is also granted for up to 15 years

with a right to reassignment. If there is a scarcity of certain frequencies, the assignment is granted after a competitive tender or auction. The assignment can be transferred and/or traded. Transfer as an element of a general succession (merger, acquisition, etc.) does not need any specific regulatory authorisations. Transfer of the sole “frequency booking” or its part requires an acceptance of the OEC, but the office may disagree only in a few cases described in the Telecommunications Act. Additionally, if the assignment was granted as a result of a tender or an auction, the OCC must give its opinion with regard to the influence of the transfer – a safeguard against unfair competition.

Since the “frequency booking” does not allow the use of radio equipment, separate individual radio equipment licences are necessary for each base station. The radio equipment licences are issued for up to 10 years and they provide specific technical conditions in order to ensure the compatibility of the specific radio equipment in a declared location, depending on the frequency band the equipment will operate. The radio equipment licences can be transferred and/or traded similarly to a general frequency assignment. Additionally, the law provides a new regime called “light licensing”, which allows the use of radio equipment on the basis of a frequency assignment and a notification of the equipment to a radio equipment register. However, the practical operation of the register has not yet started.

The third individual licensing right relates to numbering, and is called a numbering assignment. The numbering for public telephony services is assigned by the OEC within three weeks from an application. If two entities apply for the same scope of numbering, a tender is carried out. The offer with the highest price wins. The numbers assigned might be shared with other operators on the basis of an agreement, and the OEC must be informed of the fact within 14 days from the day it was shared.

Public and Private Works

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

In order to facilitate investment in infrastructure, the Act of 7 May 2010 on supporting the development of telecommunications services and networks was enacted. The act simplified the use of a right of way, especially with regard to public property and access to buildings. Administrative procedures, including environmental permitting, were simplified and shortened. A central electronic database with existing telecommunications infrastructure was created in the OEC. It is based on investment reports from telecommunications operators and its purpose is to provide better information to entities interested in developing infrastructural competition. However, a recent line of judiciary decisions tightened rules for operators with respect to obtaining building permits and the process is currently longer.

Access and Interconnection

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

A public telecommunications network operator must provide and negotiate a telecommunications access offer with other public telecommunications network operators upon their request. This is done in order to allow publicly available telecommunications services and ensure interoperability of these services.

Additionally, the OEC imposes more strict regulatory obligations for operators with significant market powers (SMP) established on certain regulated markets. Regulatory duties cover unbundled access to local loop and network interconnection on different levels, as well as co-location and access to passive infrastructure.

2.10 How are interconnection or access disputes resolved?

If parties fail to conclude an interconnection agreement, each of them is entitled to bring a request to the OEC to help with the negotiations. The OEC defines a deadline for the negotiations to conclude – the negotiations can be no longer than 90 days. If parties fail to meet the deadline, the OEC may issue an administrative decision providing terms and conditions for the interconnection. Such decision substitutes an agreement or a part of it, depending on the inconclusive matters left by the parties. The decision is binding for the parties from the date of issuance, but each party is authorised to appeal the OEC decision to the courts.

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

The duty to publish reference telecommunications, access offers, prices, or other information with respect to telecommunications access, is established by the OEC for SMP operators.

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

The OEC might impose regulatory obligations with respect to wholesale prices on SMP operators. The regulatory duties include cost calculation and establishing charges for telecommunications access based on reasonable costs. The OEC is also able to set prices for telecommunications access. The law defines that if an operator has invested in new infrastructure – especially in building a next-generation network (NGN) – the OEC should establish such access prices that will allow the operator to obtain reasonable gain from the capital invested in the new network.

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

Orange Polska (formerly Telekomunikacja Polska), an incumbent SMP operator, has been functionally separated (retail from wholesale) on the basis of an administrative agreement concluded between the company and the OEC.

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

Orange Polska (formerly Telekomunikacja Polska) is obliged by the OEC to offer unbundled access to its local loop to other operators on the basis of its reference telecommunications access offer – (SOR) including prices. Access to Orange Polska’s local loop is mostly used by Netia, but also by some cable TV operators (e.g. Multimedia Polska) in order to allow telephony and provide internet access services. Providing access to the infrastructure of cable TV operators

is currently being analysed by the OEC, which has such powers on the basis of amendments to the Telecommunications Act in 2013. In October 2014, the OEC deregulated broadband access obligations on bitstream access market in 76 geographical markets after analysis showed that in such areas (cities) there is effective competition.

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

As far as access obligations are concerned, the law does not differentiate NGN networks from old ones. However, according to the 2013 amendment to the Telecommunications Act, the OEC, while setting the access prices for the new infrastructure of an SMP operator – especially next-generation networks – shall take into consideration that the prices should allow the operator to obtain reasonable gain from the capital invested in the new network.

With respect to passive infrastructure, there is such an obligation to provide access to passive infrastructure. However, only the ducts owned by Orange Polska are currently regulated under its reference telecommunications access offer (SOR). The OEC is carrying out market analysis in order to define regulatory obligations regarding passive infrastructure owed by cable operators. However, as mentioned above, in October 2014, the OEC deregulated broadband access obligations on bitstream access market in 76 geographical markets after analysis showed that in such areas (cities) there is effective competition.

Price and Consumer Regulation

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

According to a regulatory decision defining the SMP position of the operator, the retail pricelists of Orange Polska are subject to acceptance by the OEC. Additionally, in line with European Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union, retail prices for roaming calls within the EU are subject to price control. Other retail prices are currently not subject to regulatory intervention, but there is a general obligation imposed for all operators to inform the OEC about an actual pricelist before publishing it.

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

There are general rules with respect to contracts concluded by electronic means. The consumer can withdraw from such a contract within 10 days after the delivery of the goods provided on the basis of the contract, or after the conclusion of the contract – if it is a service contract. The Telecommunications Act has the following special consumer regulations: clear and easy to understand communication of the terms and conditions of the contract; the term of the first contract cannot exceed 24 months; and a consumer can cancel a contract for telecommunications services before services are provided and without the obligation to pay any cancellation fee.

There are special mediation and arbitration proceedings with respect to consumer complaints carried out in the OEC.

Numbering

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

Telephone numbers are allocated by the OEC upon the request of a telecommunications operator within three weeks of an application. If two entities apply for the same scope of numbering, a tender is carried out. The offer with the highest price wins.

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

The OEC published national numbering plans for public networks and these public numbers are to be used according to the rules defined in the plans.

2.20 Are there any obligations requiring number portability?

There is a central database operated by the OEC that is used for number portability purposes and public telephony service providers must allow, free of charge, number portability for post-paid as well as pre-paid users. A subscriber can port his/her telephone number while changing operators. For fixed networks, geographical numbers can be ported only if the new location remains within the same geographical area (region). However, this limitation does not apply to non-geographical numbers and mobile networks. Also, it is impossible to port numbers between fixed and mobile networks.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

The main regulatory authority for spectrum use is the OEC. However, the government decides on the amount of yearly fees for spectrum usage (within the maximum limits set in the Telecommunications Act). The Minister of Administration and Digitization defines licence-exempt bands and equipment. The spectrum for terrestrial broadcasting (analogue and digital television, and analogue radio) is managed by the OEC in cooperation with the National Broadcasting Council.

3.2 How is the use of radio spectrum authorised in your jurisdiction? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative 'beauty parades', etc.?

There are two types of radio spectrum authorisations: a frequency assignment; and a radio equipment licence. The frequency assignment (called: "frequency booking") establishes the right to use specified frequencies within a territory defined in the licence. In most cases, it is effective in the whole territory of Poland, but it can also be granted on a regional or even local basis. It is granted for up to 15 years with a right to reassignment. If there is a scarcity of certain frequencies, the assignment is granted after a competitive tender or auction; in an auction the decisive criterion is the amount of lump sum payment bid for the spectrum, while in a tender, the decisive criterion

is the competition. Frequency reassignment after 15 years requires an additional payment of the sum equal to the value of a similar spectrum assessed on the basis of the last competitive tender or auction for a similar spectrum. Since a “frequency booking” does not allow the use of radio equipment, separate individual radio equipment licences are necessary for each base station. The radio equipment licences are issued for up to 10 years and they provide specific technical conditions in order to ensure the compatibility of the specific equipment in a declared location, depending on the frequency band it will operate. The radio equipment licence can be used on the basis of a frequency assignment or without the assignment. In the latter case, priority is given to the entity that applied first. Additionally, the law provides a new regime called “light licensing”, which allows the use of radio equipment on the basis of a frequency assignment (frequency booking) and a subsequent notification of the OEC about the radio equipment, prior to putting it into operation. The OEC maintains a radio equipment register in order to keep data about radio devices operating without a radio equipment licence, on the sole basis of a frequency assignment.

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

The regulation of the Minister of Administration and Digitization, issued on the basis of article 144.3 of the Telecommunications Act, allows the use of certain types of equipment in specified frequency bands on a licence-exempt basis. However, technical conditions for emission characteristics defined in the regulation must be observed. If a user complies with the frequency band and the emission power (effective isotropically radiated power – EIRP), then the user is allowed to use such radio equipment without a licence. Sometimes there are additional geographical restrictions (e.g. VSATs cannot be used in the proximity of an airport). Generally, the licence-exempt regime applies to either relatively low power devices that share the band with other similar devices (e.g. 2.4GHz WiFi band) from one side, or very low power or very local equipment that share the same spectrum with other commercial radio communications services without disturbing other services due to low emission power (e.g. wireless microphones).

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

The maximum yearly fees payable for the use of the radio frequency spectrum are specified in article 185 of the Telecommunications Act. Detailed fees depend on the kind of radio communications service, the type of use, the number of frequency channels, and the geographical coverage as defined in the regulation of the Minister of Administration and Digitization. The fees are applied to either a frequency assignment or a radio equipment licence, if the latter is not based on a frequency assignment. Additionally, if a frequency assignment is the result of a tender or an auction, then the declared lump payment is to be paid at the time the assignment is granted. There is also an additional administrative one-time fee for granting a radio equipment licence – €450 per licence.

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

Except for broadcasting licences, the control of an entity holding either a frequency assignment or a radio equipment licence is not regulated. In broadcasting, a change of control of the licensee might result in the cancellation of the licence.

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

A frequency assignment can be transferred and/or traded. Transfer as an element of a general succession (merger, acquisition, etc.) does not need any specific regulatory authorisation. Transfer of the sole “frequency booking” or its parts requires an acceptance of the OEC, but the office may disagree only in the few exceptions described in the Telecommunications Act. Additionally, if the assignment was granted as a result of a tender or an auction, the OCC must give its opinion with regard to the influence of the transfer – a safeguard against unfair competition. Frequencies may be shared among operators under commercial agreements (roaming or capacity wholesale). Frequencies may also be leased, but the OEC must be informed within 14 days after concluding the agreement. If the OEC finds a risk that competition might be distorted, it may change the agreement or prohibit its performance.

4 Cyber-security, Interception, Encryption and Data Retention

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

The Act of 6 June, 1997 – the Code of Criminal Proceedings – entitles the court, on the basis of an application from a public prosecutor, to order the control and wiretapping of telephone calls (“lawful interception” – LI). The same regulations apply to other forms of communications, including SMS and email. Also, special services are entitled to LI.

Additionally, telecommunications operators must provide entitled authorities with telecommunications transmission data (“data retention”). An Act on Antiterrorist Activity has been enacted in 2016, which created new framework and put new obligations on telecommunications entities, including the obligation to register pre-paid SIM cards and verify the registration with an individual ID card as well as the right to block services (including websites) which support terrorist activities.

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

Yes, the obligation to enable lawful interception applies to all forms of communications, including telephone calls, VoIP calls and emails (if technically possible).

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

Acting upon an application from a public prosecutor, the court can order a lawful interception of certain communications. The order is executed by police investigators with the help of telecommunications operators. Lawful interception can be ordered for a maximum period of three months, with the possibility of prolonging it – once – for an additional three months. In urgent cases, the public prosecutor can order the LI, but must seek the court’s acceptance within three days.

The acceptance must be granted within a maximum period of five days. The same regulations apply to other forms of communications, including SMS and email.

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

The use of encryption is not legally prohibited. The law does not provide any generally addressed obligation to provide private encryption keys to the state. However, the use of encryption by a telecommunications service provider in its network, for safety or integrity of the network, does not release the operator from the provision of lawful interception capabilities and retention duties.

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

Telecommunications operators are obliged to retain, at their own cost, transmission data, including: 1) an identification of a network termination point, an end user, and a terminal initiating communication; 2) an identification of a network termination point, an end user, and a terminal to which the communications is addressed; 3) a date, the hour, and the communication period; and 4) a geographical location of an end user's radio equipment. The data shall be kept for 12 months.

5 Distribution of Audio-Visual Media

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

Broadcasting radio or TV channels over-the-air or in a cable TV network requires a channel licence issued by the National Board for Broadcasting and Television. Television channels broadcast exclusively over the internet or similar networks require only a prior registration. Radio stations broadcast exclusively over the internet or similar networks, as well as audio content delivered on demand, do not require a licence or registration. Although audio-visual media services on demand do not require registration, they have certain obligations with respect to their content and reporting duties.

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

The general obligations with respect to content regulation are similar for both platforms and are based on civil and press law. They focus on the protection of personal interests and protection against personal delicts. Other content regulations differ and are stronger with respect to linear audio-visual services than for other audio-visual services. On demand audio-visual services are regulated similarly to linear audio-visual services with respect to advertisement, minority protection, etc. Other non-linear audio-visual services are not specifically regulated.

In addition, linear channels broadcast over-the-air terrestrially require a licence provided together with a frequency assignment or a digital multiplex attribution for a licensed channel, which are

difficult to obtain due to radio spectrum scarcity. Over-the-air broadcasters are selected in "beauty contests". Linear satellite and cable TV network broadcasting licences are much easier to obtain. Television channels linearly broadcast over the internet require registration, but radio programmes distributed over the internet do not. On demand/non-linear media content is regulated with respect to some content issues (e.g. advertisements), but no licensing or registration regime is imposed.

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

Broadcasters having licences for the terrestrial broadcasting of a television or a radio channel have various content obligations, depending on the type of programme (general audience programming, special thematic channels, nationwide, regional or local). At least 33% of the total time of the channel programming shall be filled with auditions produced in the Polish language, excluding news, adverts, teleshopping, sports, and games. In radio, the obligation applies to songs performed in the Polish language; however, the time for tracks by new (debuting) artists are counted as double. Licensed broadcasters must pay a one-time payment for the licence. All linear media distributors (licensed and registered) are obliged to observe limitations with respect to advertising and product placement. Additionally, they must adhere to rules protecting children and minorities.

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

In broadcasting, any change of control of the licensee might result in the cancellation of the licence, unless a prior acceptance by the National Broadcasting Council is granted.

6 Internet Infrastructure

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

Telecommunications operators and ISPs are not responsible for the content carried over their networks. Terms and conditions of services provided by the operators and ISPs provide the right to cancel provision of the services in the case of a breach of law and regulations by a user.

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

Telecommunications operators and ISPs are not obliged to directly assist content owners with potential civil claims against an electronic service user, but they are obliged to provide user information to the police when there is a suspicion that the law was broken.

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

Telecommunications operators and ISPs can differentiate different types of traffic in order to properly manage a network and counteract network congestion. They can also impose different limitations, but they must be clearly communicated in an offer.

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

Telecommunications operators and ISPs can undertake any proportionate and reasonable means in order to ensure the safety and integrity of a network, services or information transmitted.

This may include elimination of transmitted information, and/or the limitation of provided services at a network termination point that sends information which endangers network safety and/or services. It may also include elimination of transmitted information, and/or the cancellation of provided services at a network termination point that sends information which endangers network safety and/or services. Any such means must be reported to the OEC. There are no special regulations regarding consumer VPN's and generally the consumer VPN services are not blocked in any way.

6.5 How are 'voice over IP' services regulated?

There are no existing special regulations regarding "voice over IP" services. However, if such services are marketed as voice-call services, the user must be informed about all limitations, especially with respect to limitations of location services for the purposes of emergency calls.

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Andrzej Abramczuk is a partner and head of the TMT department.

Andrzej specialises in advising telecommunications and media companies, and has broad experience in drafting and negotiating inter-operator agreements, lease agreements for properties and other services necessary for telco activities, and agreements with vendors of the equipment and infrastructure necessary to build telecommunications networks. He also represents TMT companies in proceedings before regulatory authorities.

Among other projects, Andrzej recently advised: Aero2 on the process of purchasing a passive infrastructure in order to build a telecommunications network; Polkomtel on drafting and negotiating agreements with vendors of the equipment and infrastructure necessary to build a telecommunications network; and on the formal process of preparing for the first public auction of radio frequencies (800 MHz and 2,600 MHz). In addition, he provided advice for the buyer in the purchase of Polkomtel by a company from the capital group controlled by Zygmun Solorz-Żak; the transaction was valued at PLN 18.1 billion (approximately EUR 4.2 billion).

Andrzej also advised Sferia in a settlement regarding an improper reservation decision for the 850 MHz band; and Midas on the process of acquisition of mobile operators in Poland, the negotiation of a loan agreement and the drawing up of related security documents for up to EUR 50 million to finance the development of passive infrastructure for a telecommunications network.

Andrzej is a Member of the Council of the Chamber of Commerce for Electronics and Telecommunications (KIGEIT) and a Vice-Chairman of the Council of the Polish Chamber of Information Technology and Telecommunications (PIIT). He serves as an arbitrator at the Standing Arbitration Consumer Court at the Office of Electronic Communications.

Andrzej is recommended by *Chambers Europe 2015* in the field of TMT.

**Mariusz Busiło**

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Mariusz Busiło is an attorney-at-law and senior associate in the TMT department.

Mariusz has over 15 years of experience in advising public administration and private entities. He advises on regulatory and commercial aspects of telecommunications and media law, competition law, copyright law and internet law.

He has participated in a broad array of legislative work, such as drafting laws and regulations related to telecommunications, media and the information and communication technologies sectors, and is experienced in cross-border projects, having contributed to the work of the European Conference of Postal and Telecommunications Administrations (CEPT), the European Commission working groups and the International Telecommunication Union.

Recently, he was a member of a team advising: Aero2 on the process of purchasing a passive infrastructure in order to build a telecommunications network; Polkomtel on drafting and negotiating agreements with vendors of the equipment and infrastructure necessary to build a telecommunications network; and on the formal process of preparing for the first public auction for radio frequencies (800 MHz and 2,600 MHz). He also represented a leading Polish media company in regulatory proceedings before the regulatory authorities and advised the Turkish telecommunications regulatory authority.

Mariusz implemented a number of projects in the central public administration, working in particular for the Polish Office of Electronic Communications, where he was responsible for legal and procedural aspects of managing the radio frequency spectrum for six years. Currently he is a member of Supervisory Board in Exatel.

Mariusz is recommended by *The Legal 500 EMEA 2015* in the field of TMT.



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