

Telecoms and Media

An overview of regulation
in 47 jurisdictions worldwide

2010

Contributing editors: **Natasha Good and Laurent Garzaniti**



Published by
Getting the Deal Through
in association with:

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Barretto Ferreira, Kujawski, Brancher e Gonçalves
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Telecoms and Media 2010

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Telecoms and Media 2010

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
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2010

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ISSN 1471-0447

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Printed and distributed by
Encompass Print Solutions
Tel: 0870 897 3239

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Nepal

Devendra Pradhan

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Communications policy

1 Policy

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

The government of Nepal is responsible for formulating policies and procedures in the telecoms and media sectors. Likewise, a five-member statutory autonomous body, the Nepal Telecommunications Authority (the NTA), has the statutory responsibility to manage and regulate the telecoms sector in the country. The NTA also has a responsibility to provide suggestions to the government on the policy, plan and programmes to be adopted by the government for the development of the telecoms sector within the country.

In telecoms sector, the government formulated the Long-Term Policy of Information and Communication Sector 2003 (the Infocom Policy). In 2004, the government formulated a new Telecommunication Policy 2004 (the Telecoms Policy) with the main objective to make the telecoms services reliable and accessible to all people throughout the country at a reasonable cost. The Telecoms Policy, which replaced the old Telecommunication Policy 1999 (the Old Policy), opened a new era in the telecoms sector by liberalising the telecoms sector by introducing an 'open licensing regime' and making the telecoms sector open for all operators to have full competition in all kinds of telecoms services from 2004. The telecoms sector is regulated primarily under the Telecommunications Act 1997, as amended (the Telecoms Act), and the Telecommunications Regulation 1997, as amended (the Telecoms Regulation). After Nepal's accession to the WTO, the NTA prepared a proposed draft amendment to the Telecoms Act in order to comply with Nepal's specific commitments to the WTO and its Telecommunication Reference Paper which the NTA submitted to the Ministry of Information and Communications (the MoIC), but such amendments have yet to be enacted as legislation.

In the media sector, the MoIC is responsible for managing and regulating the broadcasting sector. The broadcasting sector is regulated under the Infocom Policy, the National Broadcasting Act 1993 (the NBA) and the National Broadcasting Regulation 1995 (the NBR). The MoIC has drafted a new National Broadcasting Bill (the NBB) which aims to replace the NBA. The NBB provides for formation of an autonomous regulatory body – the National Broadcasting Authority similar to the NTA in telecoms sector. However, the NBB has yet to come into force as a law.

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'?

'Telecoms' and 'media' are regulated by separate legislation as distinct categories of services. The term 'telecommunications' as defined in the Telecoms Act covers services for the conveyance or reception of voice, electronic mail, data services, video text services, signals,

sounds, etc, by wire, radio, optical or other electromagnetic systems. The Telecoms Act covers services relating to telecommunications only as such media sector is excluded from the ambit of the Telecoms Act. Services relating to the media are governed by the NBA and the NBR. There is no specific definition of the term 'media' in legislation, rather the term 'broadcasting' has been used to mean media. The term 'broadcasting' as defined in the NBA means the radio communication services to be sent through signals, sounds, images, pictures or similar methods. The term broadcasting covers all types of satellite and cable activities.

3 Broadcasting sector

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

The broadcasting sector is governed and regulated separately from the telecoms sector. The broadcasting sector is governed and regulated by the MoIC under the separate sets of legislations, the NBA and the NBR. The telecoms sector is regulated by the NTA under the Telecoms Act and Telecoms Regulation.

Telecoms regulation

4 WTO Basic Telecommunications Agreement

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

Nepal is a signatory of the WTO Basic Telecommunications Agreement and committed to it. Nepal undertook additional commitments contained in the WTO Telecommunication Reference Paper.

5 Public/private ownership

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

Prior to the formulation of the Old Policy in 1999, telecoms services were monopolised by the state-owned corporation, Nepal Doorsanchar Company Limited (commonly known as Nepal Telecom). The Telecoms Act and the Old Policy allowed private sector participation in the telecoms sector with certain limitations. In 2004, the Telecoms Policy was introduced to maintain full competition by keeping the telecoms sector open for private operators. The Telecoms Policy also aims to convert Nepal Telecom from a state-owned corporation into a private commercial entity by decreasing the government's ownership in the stocks thereof gradually.

6 Foreign ownership

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

The Telecoms Policy encourages foreign investment in the telecoms sector. However, the Telecoms Policy prohibits foreign ownership greater than 80 per cent in an entity that holds telecoms licences.

A minimum ownership of 20 per cent by Nepalese citizens is a prerequisite for an entity to obtain telecoms licences.

7 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?

The Telecoms Policy adopted liberalised policies in the telecoms sector and encourages full competition by allowing operators to enter into all sectors of telecoms services. No telecoms operator shall have an exclusive right to any telecoms service. As a part of its specific commitments to the WTO, Nepal liberalised its telecoms policy and no limitation on the number of operators exists as from January 2009 in any of the three services, namely basic telecommunications, mobile telecommunications and value-added telecommunications services.

8 Fixed, mobile and satellite services

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

The NTA is the regulatory agency solely responsible for the management and regulation of telecoms sector in the country. Under the Telecoms Act, the NTA has the duty and authority, inter alia, to regulate and systematise telecoms services, to grant licences to operate telecoms services, to approve and regulate fees, etc.

The Telecoms Policy, which introduced an open licensing regime, provides licences for telecoms services by providing an opportunity to all operators to enter into all telecoms services. The Telecoms Policy provides two types of licences: standard licence and independent licence. A separate licence is required for the radio spectrum, numbering capacity and the right of way.

The Telecoms Policy provides guidelines for fixed and mobile services. No distinct regulation exists for fixed, mobile and satellite services. The Telecoms Policy encourages operators to provide services in rural areas and also provides additional incentives to those operators who provide services in rural areas. The government carries the principle of neutral technology that allows operators to choose any telecommunications technology of their choice in providing telecoms services. However, the government requires operators to use telecoms equipment that is recognised internationally. Operators are under the universal service obligation to provide telecoms services to all consumers upon demand.

Satellite service is regulated by the NBA and the NBR. In order to properly address the satellite and cable distribution system and related services, the MoIC implemented the fourth amendment to the NBR on 7 December 2009, which regulates satellite and cable distribution activities. The MoIC is the sole agency authorised to issue licences for satellite services.

9 Satellite facilities and submarine cables

In addition to the requirements under question 8, do other rules apply to the establishment and operation of satellite earth station facilities and the landing of submarine cables?

Permission is required from the MoIC to establish and operate satellite earth stations. An applicant must submit an application to the MoIC for permission to establish and operate a satellite earth station along with a detailed study of the financial, technical and business aspects of the project as well as details of the frequency band or earth station facility, the frequency to be used, surface means of distribution, etc. The MoIC issues permission letters specifying the details mentioned above. The fourth amendment to the NBR provides that the MoIC shall not issue its permission in the event radio frequency cannot be allocated to an applicant. The fourth amendment to the NBR also provides for detail provisions about issuance of permission

and other regulatory activities relating to establishment and operation of satellite earth station facilities, such as application process, fees payable to the MoIC, etc.

The Telecoms Act provides provisions for cable landing. Operators have a right to use public and private land to install cable or telecoms equipment. Operators are not required to pay any compensation for the use of public land. However, operators are required to pay a proper and reasonable compensation to private landowners if any loss or damage is caused by operators in the course of installation of cable or telecoms equipment. If there is any dispute between landowners and operators on the amount of compensation, the NTA has the right to make a final decision.

The existing laws are silent on the issue of landing submarine cables as Nepal is a landlocked country.

10 Radio frequency 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

Operators are also required to obtain a separate radio frequency licence from the Radio Frequency Policy Determination Committee (the Committee) to operate telecoms services in addition to licences for telecoms services described in question 8. The Committee comprises seven members headed by the minister or the minister of state for information and communication. The Committee is responsible for determining policy relating to radio frequency (RF) and fixing and allocating RF for different telecoms services. The NTA is responsible for distributing RF to telecom operators subject to RF fixed and allocated by the Committee. The NTA, which prescribes the terms of uses of RF, also has the power to enquire about and monitor the RF activities of telecoms operators. The RF licences alone cannot be traded.

11 Spectrum trading

Is licensed RF spectrum tradable?

The RF spectrum alone cannot be traded.

12 Next-generation mobile services

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

The NTA has allocated separate RF for the operation of W-CDMA-based third-generation (3G) mobile services. However, there is no specific regulation for the roll-out of 3G, 3.5G or 4G mobile services.

13 Fees

What fees are payable for each type of authorisation?

Telecoms

Telecoms operators are required to pay different types of fees and royalties to the NTA and the government as prescribed by the Telecoms Regulation. Telecoms operators are required to pay a one-time licence fee and royalty based on the gross annual income of such operators each year.

Operators for the local telephone services are required to pay 50 million rupees as the licence fee. Operators for nationwide long-distance services are required to pay 35 million rupees as the licence fee. Similarly, operators of international long-distance services are required to pay 62.5 million rupees as the licence fee. After expiry of the term of licences, operators are required to pay a renewal fee for local land line services, nationwide long-distance service and international long-distance service of 45 million rupees, 31.5 million rupees and 56.25 million rupees respectively.

Operators for the cellular mobile services are required to pay 210 million rupees as the licence fee. The NTA sets the new renewal fee

for the cellular mobile service as 20 billion rupees. The old renewal fee was 189 million rupees. However, the new renewal fee seems to be uncertain until the proposed draft Bill to amend the Telecoms Act is enacted as a law. (Please see 'Update and trends' for details.)

Internet service providers are required to pay 300,000 rupees and 270,000 rupees as licence fee and renewal fee respectively. VSAT network providers are required to pay 2.5 million rupees and 2.25 million rupees as licence fee and renewal fee respectively. For radio paging services, a licence fee for nationwide service is 5 million rupees and renewal fee is 4.5 million rupees.

Operators are required to pay an additional fee as prescribed by the Committee in order to obtain RF.

In addition to the licence fee and RF fee, operators are required to pay 4 per cent of their gross income annually as a royalty. Also, operators are required to pay the rural telecommunications fee on an annual basis as fixed by the NTA for the development of the telecoms sector in rural areas.

As well as the above-mentioned prescribed licence fee, renewal fee and royalty, if there is more than one applicant requesting a licence for telecoms services and more than one applicant is found to be qualified to operate such services, the NTA may set such fees through bidding among those applicants. In such situation, the licence fee, renewal fee and royalty shall be determined according to the highest bidding, but will not be less than the fees and royalty mentioned above.

Broadcasting

Broadcasting institutions are required to pay different types of licence fees and distribution fees for licences and permission letters. The fourth amendment to the NBR, which was implemented on 7 December 2009, has made various changes in licence fees and distribution fees. The licence fee for broadcasting programmes through satellite or cable is between 5,000 rupees to 100,000 rupees. Similarly, the licence fee for broadcasting programmes by establishing frequency modulation broadcasting system is between 1,000 rupees to 2 million rupees depending upon the capacity of the broadcasting. Similarly, the licence fee for broadcasting programmes by establishing earth stations for satellite cable television is 1 million rupees. In addition to the licence fee, broadcasting institutions are also required to pay 2 per cent of their gross annual income or 10 per cent of their gross annual profit, whichever is greater, to the government of Nepal as distribution fees. Fees for renewal of licences are 10 per cent of the prescribed licence fees.

14 Authorisation timescale

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

Operators are required to obtain separate licences from the NTA for all three services – basic telecommunications, mobile telecommunications and value-added telecommunications services. The Telecoms Act sets out a timescale for the NTA to grant licences after an application for a licence is filed. If only one applicant among the applicants is found to be qualified to operate telecoms services, the NTA shall issue the licence within 120 days of submission of such application. However, if the NTA finds that more than one applicant qualifies to operate telecoms services, then the NTA shall initiate bidding for the licence fee, renewal fee and royalty among the qualified applicants, and a licence is issued to such applicant who submits the highest bid within 120 days of submission of such application.

15 Licence duration

What is the normal duration of licences?

Generally, telecoms licences are issued for an initial term of 10 years with an option to renew for three consecutive terms, each term lasting five years. The total duration of licences shall not exceed 25 years.

16 Modification and assignment of licence

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

The NTA has the authority to amend or modify telecoms licences. The NTA modifies licences either upon an application submitted by a licensee or by its own initiation. If a licensee wishes to modify the conditions of a licence, it must make an application to the NTA stating the reasons for such modification. The NTA may modify conditions of licences if it finds that such modifications are reasonable and appropriate. If the NTA determines that modifications are necessary without an application by the licensees, it shall notify the concerned licensee stating the reasons for the proposed modifications and provide such licensee with an opportunity to submit its response. The NTA reserves the right to make modifications to licences.

Telecoms licences are assignable by way of sale or transfer upon consent from the NTA. An application jointly executed by the licensee-assignor and the assignee must be submitted to the NTA stating reasons for such assignment along with the terms and conditions of such assignment. The NTA may grant approval for such assignment after the necessary examination if it determines such assignment is appropriate.

Neither the Telecoms Act nor the Telecoms Regulation imposes restrictions on pledging telecoms licences as security for financing purposes. As such, licences may be pledged as security for financing purposes in order to create a lien on the proceeds of the sale of such licences. However, there is no mechanism under the telecoms laws that would create a separate registry in order to claim and obtain priority of liens in telecoms licences.

17 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 Committee has authority to determine policies relating to RF. There is no separate regulatory framework for the assignment of spectrum. The Committee determines the assignment of spectrum on a case-by-case basis. The RF licences generally specify the permitted use of the licence spectrum. The government is in the process of formulating a regulatory framework for the assignment of radio spectrum. In February 2007, the NTA published a consultation paper for allocation of WiMax frequency. In September 2008, the NTA published a consultation paper on refarming of spectrum for strategic review of the assignment of radio spectrum. In February 2009, the NTA published a consultation paper on RF management and a study report on frequency fee adjustment and spectrum distribution methodology and the final draft on frequency fee fixation policy.

18 Cable networks

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

There is no restriction on the ownership of cable networks by telecoms operators. Cable networks are regulated by different sets of legislation, the NBA and the NBR.

19 Local loop

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

As a part of the liberalised policy in the telecoms sector, the government undertakes the responsibility for implementing the universal accessibility of telecoms systems and telecommunications networks. The Telecoms Policy provides guidelines for interconnections of telecommunications systems and telecommunications network among

operators. The Telecoms Act prescribes specific provisions for sharing the telecommunication system between telecoms operators that includes the local loop. However, there is no specific rule regarding access to the local loop or local loop unbundling. Nepal Telecom, which is using both public switched telephone network (PSTN) and wireless in local loop (WLL) technology, is the owner of much of the local loop in Nepal. WLL-based limited mobility technology is also in use.

In May 2008, the NTA promulgated a new Interconnection Guideline 2008 (the IG) replacing the old Interconnection Guideline. The IG sets forth detailed principles and procedures for interconnection of telecoms services. (See question 23.)

20 Internet services

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

Internet services include dial up, copper, wireless, cable and optical services. An operator must obtain an Internet Service Provider licence (ISP) from the NTA. The procedures for obtaining an ISP licence from the NTA are similar to other telecoms services (see question 8). For the value-added services, which include internet services, the NTA has formulated a licence procedure that outlines the details of documents to be submitted and the details of the conditions to be fulfilled to obtain an ISP licence. In June 2007, the NTA published guidelines titled Quality of Service Parameters for Internet Service to determine and fix the quality of internet services.

Internet telephony and VoIP

The NTA has classified the IP telephony services in two categories: internet telephony and voice over internet protocol (VoIP). ISPs are permitted to provide internet telephony services from a personal computer in Nepal to any personal computer within or outside Nepal and also from a personal computer to a telephone number outside Nepal without interconnecting with the public switched telephone network, the public land mobile network, or the integrated services digital network without any fee.

Similarly, telecoms operators licensed by the NTA to operate international telecommunications services are also permitted to provide VoIP services using their own VoIP gateway. Operators are permitted to provide VoIP services from Nepal to anywhere outside Nepal using public switched telephone network or public land mobile network or integrated services digital network without any fee. In October 2009, the NTA published a consultation paper on fully opening up of VoIP and internet telephony services.

21 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?

Such limits do not exist.

22 Financing of broadband and NGA networks

Is there a government financial scheme to promote broadband penetration?

Generally, the government provides no financial support nor has it formulated any scheme to promote broadband services specifically. However, a Rural Telecommunication Development Fund (the Fund) has been created under the NTA in order to develop and extend telecoms services to the rural areas of the country. The NTA may utilise the monies of the Fund by providing a grant or loan to specific operators according to the Rural Telecommunications Development Fund Management (Procedures) By-Law 2007 for the development of telecoms services including broadband in the rural area. In February 2009, the NTA published a consultation paper titled 'Framing Broadband in Nepal'.

23 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? What are the basic interconnect tariffs? Are wholesale access services regulated, and, if so, which and how?

Interconnection is regulated under the IG. The NTA is the agency that supervises interconnection activities and implements the IG. The Telecoms Policy provides guidelines for interconnections of telecommunications systems and telecommunications network among operators. The IG sets forth detailed principles and procedures for interconnection of telecoms services. The IG imposes a duty upon a dominant service provider to provide access to other operators to its telecommunications systems and telecommunications networks through interconnection agreements on non-discriminatory terms and conditions. Each dominant service provider is required to develop a reference interconnection offer prescribing the terms and conditions for interconnections and must also have it approved by the NTA. The IG prescribes for procedures of charging principles, interconnection procedures, technical considerations, dispute resolution procedures, etc.

While the IG prescribes provisions for charging principles and interconnection procedures, a dominant service provider and the applicant operator are free to negotiate terms and conditions of interconnection. If the dominant service provider and applicant operator cannot agree on terms, conditions and prices by themselves, the NTA shall make a determination based on international best practices after consulting both parties.

The IG also prescribes provisions for dispute resolution between service providers. The IG provides for separate Dispute Resolution Procedures (the Procedures), which set forth the mechanism for resolution of interconnection disputes. All disputes in connection with interconnection services must first be resolved by inter-party working groups of the operators. If the working group fails to resolve such interconnection disputes within 60 days, then such disputes shall be referred to the CEOs of the operators for settlement by mutual consultations. If the CEOs of such operators fail to mutually resolve such interconnection within 21 days, then the parties may submit such disputes to the NTA and the NTA shall make a final decision within 21 days. A decision made by the NTA in connection with interconnection disputes shall be binding upon the operators unless the decision contains a manifest error of facts or laws where a party may seek jurisdiction of courts of law against the decision of the NTA.

The IG prescribes the highest ceiling of charges that a dominant service provider is allowed to charge to applicant operators. Such charges are categorised as post charge, transmission lease charge, set-up charge and interconnection usages charge.

The IG provides that the interconnection tariffs should be established using cost-based methodology wherein all the costs of providing interconnection services should be considered.

24 Mobile virtual network operator (MVNO) traffic

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

There is no specific regulation or guideline that requires mobile network operators to expressly to carry MVNO traffic.

25 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?

The general approach for a mobile call is that the originating party pays the charges to terminate a call on the mobile network. However, there is no specific set of rules regulating mobile networks nor for

call termination. Calls to mobile networks are regulated by the NTA under the Guideline for Tariff Approval for Telecommunications Services (the Tariff Guideline).

26 International mobile roaming

Are wholesale and retail charges for international mobile roaming regulated?

There is no specific set for rules regulating wholesale and retail charges for international mobile roaming. The NTA, through the Tariff Guideline, regulates international mobile roaming charges.

27 Retail tariffs

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

The Telecoms Act empowers the NTA as the regulatory agency that approves and regulates retail tariffs for telecoms operators. Retail tariffs are regulated under the Telecoms Act and the Tariff Guideline. Section 42 of the Telecoms Act provides that a proposed retail tariff must be approved by the NTA. Operators must submit tariff proposals to the NTA at least three months in advance for approval. Such retail tariffs must be proper and reasonable and also must be cost-based. Under such cost-based tariff model, operators are allowed to generate the rate of return of their investment at the maximum rate of 25 per cent. The Tariff Guideline classifies tariffs into three categories: fixed tariff; maximum tariff; and non-regulated tariff. Operators must also publish such retail tariffs in the media as directed by the NTA. The Tariff Guideline prescribes procedures and guidelines in connection with retail tariffs for telecoms services.

28 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 Telecoms Act prohibits operators from unduly discriminating between customers regarding the service charges and other terms and conditions of service. The Telecoms Act and the Tariff Guideline authorise and empower the NTA to seek clarification and information from operators on any matter relating to services including the terms and conditions of customers' services. Except for the retail tariffs (mentioned in question 27) and other than when instructed by the NTA to submit clarification and information, operators are neither specifically required to file terms and conditions of services with the regulating agency nor get them approved by the regulating agency.

29 Number portability

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

The NTA has yet to enforce a guideline regarding portability of numbers across networks. Operators are under no obligation to honour requests for number portability.

30 Universal service obligations and financing

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

Operators are under the universal service obligation to provide telecoms services to all consumers upon demand. Operators are required to invest the prescribed percentage of their total investment for the development, extension and operation of the telecoms service in the rural area. The Telecoms Policy encourages operators to provide services in rural areas and also provides additional incentives to those operators who provide services in rural areas. The NTA has created a Rural Development Fund for the development, extension and operation of telecoms service in the rural area. The NTA collects a rural

telecommunications fee from operators on an annual basis and uses the fund for the development, extension and operation of telecoms services in the rural area.

31 Changes to telecoms law

Are any major changes planned to the telecoms laws?

Yes. Under its specific commitments in its accession documents to the WTO and the Telecommunication Reference Paper, Nepal took a commitment that the limitations on the number of service providers in all types of telecoms services was to be eliminated in Nepal from January 2009. The Telecoms Policy, which was implemented in line with Nepal's commitments upon accession to the WTO, liberalised the telecoms services and opened the era of an 'open licensing regime'. Several provisions of the Telecoms Act became inconsistent with Nepal's specific commitments in its accession documents to the WTO and its Telecommunication Reference Paper. The NTA has already prepared a proposed draft amendment to the Telecoms Act in line with the specific commitments to the WTO and its Telecommunication Reference Paper and submitted it to the MoIC last year, but such amendments have yet to be enacted as legislation. Once the amendment to the Telecoms Act becomes legislation, Nepal's telecoms laws will fully comply with the telecoms sector requirements of the WTO.

32 Next-generation networks

How are next-generation networks (NGN) regulated?

Measures and legal procedures have yet to be formulated to regulate next-generation networks (NGN). The largest telecoms operator, Nepal Telecom, is considering providing NGN services in the near future.

33 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?

The Telecoms Policy adopted a liberalised policy in the telecoms sector that allows operators to provide any kind of telecoms services without restriction. There is no such requirement in the existing regulation that requires operators to do structural separation between their network and service activities. A single operator can operate both network and service activities.

Media regulation

34 Ownership restrictions

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

The Infocom Policy imposes restriction on foreign investment in the broadcasting sector. A foreigner or a foreign entity is permitted to own up to 25 per cent of the stocks of a licensee broadcasting company. While issuing permission for foreign investment in the broadcasting sector, the MoIC may impose a condition that such foreign investment be permitted only as long as the domestic operators are not capable of meeting the modern technology available in that sector. Broadcasting companies are restricted from selling or transferring their licences to any other person or entity.

Notwithstanding the restriction on foreign investment in the broadcasting sector, the NBA allows foreign broadcasting companies or communication media to get their entertaining and informative programmes broadcast through domestic broadcasting companies by purchasing specific time from them. The MoIC sets forth standards for allocating time to foreign broadcasting companies or communication media.

35 Cross-ownership

Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

The Infocom Policy imposes limits on cross-ownership in broadcasting companies and print media. A person or an entity is permitted to operate only two means of broadcasting among print media, news agency, radio and television stations. In giving such permission, the person or the entity having a licence to operate one broadcasting operation is allowed to own only up to 40 per cent ownership in the second operation.

36 Licensing requirements

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

The MoIC is responsible for issuing broadcasting licences and regulating broadcasting sectors under the NBA and the NBR. A broadcasting institution must obtain a licence or a permission letter from the MoIC to operate or broadcast programmes through satellite, cable or other means of communications.

The MoIC may issue licences to a person or an entity to broadcast programmes through satellite, cable or other means of communications or to broadcast programmes by establishing the frequency modulation broadcasting system after it is fully satisfied with the applicant's financial and technical background and business aspects of the broadcasting operation. The MoIC may issue permission letters to a person or an entity to broadcast programmes by establishing an earth station relating to satellite and cable television after it is fully satisfied about the applicant's financial and technical background and business aspects of the broadcasting operation. In 7 December 2009, the MoIC implemented the fourth amendment to the NBR in order to regulate satellite and cable distribution services including direct-to-home (DTH) services. The NBR lists a variety of fees to be paid for licences and permission letters (see question 13). In addition to fees to be paid to obtain licences or permission letters, the licensees must also pay 4 per cent of their annual gross income as a royalty.

Broadcasting licences or permission letters are not transferable by way of sale or any other means. The MoIC has the power to cancel broadcasting licences or permission letters if a licensee broadcasts any programme in contravention of the NBA and the NBR.

The MoIC may hold necessary inquiries before issuing a licence or a permission letter. The timescale for issuing licences or permission letters may vary on a case-by-case basis.

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?

The NBA and the NBR regulate the airing of foreign-produced programmes. The NBA allows foreign broadcasting companies or media companies to have their entertainment and informative programmes broadcast through domestic broadcasting companies by purchasing specific time from them. The MoIC sets forth standards for allocating time to foreign broadcasting companies or media companies.

Other than broadcasting foreign advertisements as stated in question 38, neither the NBA nor the NBR imposes any requirement that a specific amount of foreign-produced programme must be produced locally.

38 Advertising

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

The NBA and the NBR have provisions relating to advertising. The NBA does not favour broadcasting advertisements for products that

cause harm to the public health such as liquor, cigarettes, tobacco products, etc. The NBA prohibits broadcasting advertisements that are in contravention of national foreign policy and public safety. Broadcasting advertisements that promote violence or obscenity is also prohibited. The NBA imposes a duty upon licensee broadcasting companies to ensure that the advertising materials that they broadcast are not misleading.

The Infocom Policy, which sets forth a detailed working policy on advertisements, prescribes that multinational advertising companies must utilise at least 20 per cent local participation in those advertisements that they broadcast in the country. It also restricts broadcasting companies from airing advertisements more than 40 per cent of their total broadcasting time. The Infocom Policy on advertisement provides that all business and companies expend a minimum of 5 per cent of their profit in advertisements in the national media. However, the matters set forth in the working policy on advertisement of the Infocom Policy have yet to be promulgated as law; therefore, they are persuasive only and have no binding effect.

Separate legislation, the Competition Promotion and Market Protection Act 2007 (the Competition Act), imposes restrictions on broadcasting misleading advertisements. The Competition Act has defined the term 'misleading advertisement', which covers advertisements that represent false or misleading information about the quality, warranty, benefits, durability, utility, etc, of the products or services.

Online advertisements are also subject to the same regulation as mentioned above.

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?

The NBR prescribes 'must-carry obligations' for broadcasting companies. A broadcasting company that airs fewer than four channels must allocate 25 per cent of its time and a company that airs more than four channels must allocate at least one channel to broadcast programmes produced by the government broadcasting institution. In time of distress or natural calamity, all broadcasting companies must broadcast governmental information free of charge up to five minutes at a time and up to six hours a day according to the instruction of the MoIC.

There is no specific mechanism for financing the costs of such must-carry obligations.

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?

Yes. The draft of a new NBB has already been prepared and has been under consideration at the MoIC since last year. The NBB provides for the formation of an autonomous regulatory body – the National Broadcasting Authority – similar to the NTA in the telecoms sector. Upon enactment of the NBB as legislation, all responsibilities of the MoIC will be transferred to the National Broadcasting Authority, to wit: to issue broadcasting licences, fix licence fees and royalties, manage and regulate the broadcasting sector, etc. However, the NBB has yet to come into force.

Traditional broadcasting services and mobile services are regulated separately under separate laws. Broadcasting services are regulated by the MoIC under the NBA and NBR whereas mobile services are regulated by the NTA under the Telecoms Act and Telecoms Regulation. There are no specific regulations or laws that apply to broadcasting to mobile services.

41 Regulation of online content

How is the delivery of content online regulated?

The MoIC has yet to formulate a specific guideline on the delivery of content online.

42 Digital switchover

When is the switchover from analogue to digital broadcasting required? How will radio frequencies freed up by the switchover be reallocated?

The MoIC has yet to formulate guidelines in the area of a switchover from analogue to digital broadcasting.

Regulatory agencies**43 Regulatory agencies**

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

The MoIC is responsible for regulating the communications sector including the television, radio and satellite systems under the NBA and the NBR. The government of Nepal has full power to frame necessary rules to implement the objectives of the Telecoms Act and the NBA. The Infocom Policy envisages the establishment of an autonomous entity, the National Broadcasting Authority, to regulate the broadcasting sectors. The MoIC has published a draft of the NBB for public comment that has a provision for a regulating authority – the National Broadcasting Authority. The draft of the NBB has yet to come into force.

The broadcasting sector is regulated directly by the MoIC. However, the telecoms sector is regulated by a separate regulatory authority, the NTA, under separate set of laws, the Telecoms Act and Telecom Regulation.

44 Establishment of regulatory agencies

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

The NTA was established under the Telecoms Act as an autonomous regulatory body with the primary objective of managing and regulating the telecoms sector within the country. Though all five members, including the chairman of the NTA, are appointed by the government, the NTA is independent from the government, network operators and service providers. The NTA has the power to make necessary by-laws subject to the Telecoms Act and Telecom Regulation. The Telecoms Act and the Telecom Regulation mainly provide two types of tasks to the NTA: regulatory and quasi-judicial.

Under its regulatory authority, the NTA is the sole agency responsible for the management and regulation of the telecommunications services in the country and has the power to issue telecoms licences, approve and regulate various types of charges, etc. Under its quasi-judicial authority, the NTA has the power to adjudicate disputes between operators as well as between consumers and operators. The NTA also adjudicates cases concerning offences relating to telecoms. For this purpose, the NTA has formed a Judicial Sub-Committee consisting of two members. The NTA has also formulated a separate regulation, the Nepal Telecommunication Authority (Procedural) By-law 2003 prescribing procedures for adjudication of cases relating to telecoms.

In the broadcasting sector, the MoIC is the sole regulatory agency.

45 Appeal procedure

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

For telecoms-related decisions, a party that is affected by a decision of the NTA may file an appeal before the Appellate Committee within 35 days of the date of the decision. The Appellate Committee

is composed of three members headed by the deputy attorney general. Judicial review of the decision of the Appellate Committee is permitted to the Supreme Court through a writ of certiorari.

For media-related decisions, a party that is affected by a decision of the MoIC may file an appeal before the concerned Appellate Court within 35 days of the date of the decision. Judicial review of the decision of the Appellate Court is permitted to the Supreme Court through a petition for revision in certain circumstances with the leave of the Supreme Court.

46 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.

The Telecoms Act empowers the government to take control of the transmission system or to intercept telecommunications messages in certain circumstances. Section 19 of the Telecoms Act provides that the government has a special power to take control over the telecommunications lines and systems of any operator temporarily or to intercept the transmission of telecommunications messages or to order to tape to trace telecommunications messages if such actions are required due to a state of emergency or national security reasons. Operators are required to assist the government in the interception of telecommunications messages and in other activities stated in the Telecoms Act. Nepal has yet to enact and implement a consolidated data protection and privacy law.

47 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?

Operators and service providers are under an obligation to ensure protection of privacy and confidentiality of information relating to their customers. Under the Special Guideline for GMPCS Service (the Special Guideline), service providers for the GMPCS services are under an obligation to compulsorily retain customers' identity information, place of business or residence and their contact details before providing services to them. Section 17 of the Telecoms Act imposes an obligation to service providers to provide the NTA information or particulars and documents namely their customers' data if the NTA requests to them to do so. The service providers are not compensated for such tasks.

48 Unsolicited communications

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

Currently, there is no specific legislation that prohibits unsolicited communications. However, the Telecoms Act provides for punishment if a person misuses or engages in unauthorised use of telecommunications services or abuses or causes unnecessary harassment through telecommunications services. Nonetheless, the terms 'unsolicited communications', 'misuse' or 'un-authorised communications' have not been defined in any legislation.

Competition and merger control**49 Competition and telecoms and broadcasting regulation**

What is the scope of the general competition authority and the sectoral regulators in the telecoms and broadcasting sectors? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

There is no sector-specific competition regulation in the telecoms and broadcasting sectors. The NTA is the regulatory agency that

Update and trends

As of February 2010, the number of telephone subscribers in Nepal exceeded 7.5 million, which is almost a 45 per cent increase from last year. Despite a huge increase in the number of subscribers, the quality of the telecommunications network has become a major concern in Nepal. Despite of the enhancement in information and communication technologies globally, the quality of the telecommunication network in Nepal is comparatively poor. The Global Information Technology Report 2009-2010 published by The World Economic Forum in March 2010, ranks Nepal as the 124th nation in the world in terms of telecommunications network.

In order to enhance the quality of service, the MoIC is determined to invite an international telecom operator as a strategic partner to Nepal Telecom, a state-owned corporation, which is the largest telecom operator in Nepal and has almost 5 million subscribers out of a total of 7.5 million. The MoIC had formed a high-level taskforce to study and evaluate the option of inviting a foreign strategic partner for Nepal Telecom. The taskforce has already submitted its report to the MoIC suggesting to invite an international telecom operator as a strategic partner to the Nepal Telecom by providing equity participation up to 30 per cent. The MoIC has yet to make a decision in this aspect. However, it is inevitable for Nepal Telecom to have an international credible telecom operator as its strategic partner to enhance the telecom services in Nepal. Even the second largest cellular mobile company, Spice Nepal, which has the Nordic telecom company, TeliaSonera as its strategic equity partner, is suffering from the quality problem.

Another burning issue is that the NTA has prepared a draft of the amendment to the existing Telecoms Act (known as Telecommunications (First Amendment) Bill) and submitted it to the MoIC last year. The draft Bill is considered to be highly controversial in one aspect – the provision of the renewal fee of cellular mobile licences, which contains a provision that cellular mobile operators shall be required to pay the renewal fees as agreed by them in their previous licences for cellular mobile service. In September 2004, the NTA issued a licence to Spice Nepal for cellular mobile service upon its bid to pay a renewal fee in the amount of 20 billion rupees after 10 years. However, the threshold issue is that neither Nepal Telecom nor Spice Nepal, who are the only two operators of cellular mobile service, seem to be able to pay such a large renewal fee for the cellular mobile service. To pay the proposed renewal fee, an operator for the cellular mobile service must generate at least 4 billion rupees yearly net profit. However, even the largest telecom provider, Nepal Telecom, has not been able to generate 4 billion rupees yearly net profit from its cellular mobile services. The situation is in turmoil not only among the telecoms operators but also among the public. As a result, it seems that no other operator would be able to enter the cellular mobile service market and eventually the existing operators for cellular mobile service will have to increase the tariff dramatically in order to keep their licences, and consumers will have to pay a higher tariff for their cellular mobile services.

is responsible for ensuring general competition in the telecoms sector as envisaged by the Telecoms Policy and the Telecoms Act. The NTA is responsible under the Telecoms Act for making necessary arrangements for coordination and healthy competition among telecommunications service providers. The NTA is responsible for all competition activities relating to telecoms services, namely licensing, fixing fees and tariffs, protecting the rights and interests of consumers, implementing standards and ensuring the quality of telecoms services, etc. Likewise, the MoIC is responsible for ensuring general competition in the broadcasting sector.

Other competition-related activities such as mergers and acquisitions, abuse of dominant position and other types of anti-competition activities are regulated by the Competition Promotion and Market Protection Board (the Competition Board) under the Competition Act. The Competition Board has wide powers to impose certain civil penalties for anti-competition offences.

The scope of jurisdiction of the NTA and the Competition Board are separated by the Telecoms Act and the Competition Act. Therefore, no conflict in executing of jurisdictions by the NTA and the Competition Board is expected.

50 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?

There is no sector-specific competition regulation in telecoms and broadcasting sectors. The NTA is the regulatory agency which is responsible to ensure general competition among telecoms providers. Likewise, the MoIC is responsible to ensure general competition in broadcasting sector.

Other competition-related activities such as mergers and acquisitions, abuse of dominant position and other types of anti-competition activities are regulated by the Competition Board under the Competition Act, which is the general competition law (see question 49).

51 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 sector?

The general competition law, namely the Competition Act applies for the review of mergers, acquisitions and joint ventures in telecoms and broadcasting sectors. The Competition Act restricts on mergers

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or acquisitions that are designed solely to create a monopoly in the market or to encourage restrictive practices in the market. A merger or an acquisition that results in a greater than 40 per cent share in the relevant market for the production or distribution of a product or service in the country is presumed to create a monopoly in the relevant market.

52 Merger control authorities

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

In the telecoms sector, the authorities responsible for the review of mergers, acquisitions and joint ventures are the NTA and the Office of the Company Registrar, not the Competition Board. In the broadcasting sector, the authorities responsible for the review of mergers, acquisitions and joint ventures are the MoIC and the Office of the Company Registrar. In both the telecoms and broadcasting sectors,

mergers or acquisitions involving foreign investment approval must also be obtained from the Department of Industries or the Industrial Promotion Board. Additionally, if the company is a publicly listed company, then approval from the Security Exchange Board is also required.

53 Procedure and timescale

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

Various legislation is applicable in mergers, acquisitions and joint ventures in the telecoms and broadcasting sectors, namely: the Telecoms Act, Companies Act, Securities Act, the NBA, the Foreign Investment and Technology Transfer Act, etc. Each authority mentioned in question 52 may take 30 days to review and approve mergers and acquisitions in the telecoms and broadcasting sectors.

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