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Telecoms, Media and Internet in Poland

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Overview

1.1. General description

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 four main alternative business services and telecommunications infrastructure providers: Exatel; Emitel; TK Telekom and Hawe (gpw.pl: HWE). The traditional fixed telecoms compete with cable TV operators, who can deliver triple and sometimes even quadruple play services.

The three biggest 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 in 2014 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 that possess their own infrastructure and frequencies, which are in turn used to offer wholesale HSPA+/LTE data services. Aero2 is owned by Midas (gpw.pl: MDS) investment capital fund, which is 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. There is a new digital terrestrial multiplex with seven new channels, including three provided by the public TV, but the operation of this MUX has not started yet. The infrastructure for the broadcasting services is delivered mostly by the above-mentioned Emitel.

1.2. Legislation

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. Regulatory bodies

The government bodies responsible for public policy for all the sectors are currently the Ministry of Digitisation (<https://mc.gov.pl/en/the-areas-of-our-activity>), and the Ministry of Culture and National Heritage (<http://www.mkidn.gov.pl/pages/the-ministry-of-culture-and-national-heritage.php?lang=EN>). 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>).

2. Telecoms

General

2.1. Provision of telecoms (or electronic communications) networks and services

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. TV broadcasting requires additional content licences provided by the National Broadcasting Council

2.2. Individual authorisations subject matter, duration and transferability or tradability

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.

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.

Access and Interconnection

2.3. Obtaining interconnection and access

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.

2.4. Interconnection and access disputes

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.

2.5. Price / cost regulations for access and interconnection?

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.

2.6. Local loop unbundled access

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.

2.7. NGN/IP-based networks regulations

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

2.8. Retail price regulation

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 current pricelist before applying it.

2.9. Special rules relating to consumers

There are general rules with respect to contracts concluded by electronic means. The consumer can withdraw from such a contract within 14 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 renounce a contract for telecommunications services before services are provided and without the obligation to pay any renunciation fee. There are special mediation and arbitration proceedings with respect to consumer complaints carried out in the OEC.

Numbering

2.10. Allocating telephone numbers and network identifying codes

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.

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.

2.11. 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. Procedures for radio spectrum allocation

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 shall create 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.

3.2. Licence-exemption

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).

3.3. Spectrum fees

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.

3.4. 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.

3.5. Spectrum trading and sub-licensing

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. Distribution of Audio-Visual Media

4.1. General media sector regulation

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.

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.

4.2. Types of licences and obligations following it

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. Internet Infrastructure

5.1. ISPs liability

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.

5.2. Site / content blocking

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.

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