

# Bulgaria



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## 1 Framework

### 1.1 Has Bulgaria implemented the revised EU regulatory framework? Summarise the key changes.

As of 1 July 2011, Bulgaria has not implemented the revised EU regulatory framework.

### 1.2 Has Bulgaria fully implemented the original EU 2003 regulatory framework? Have any proceedings been brought against Bulgaria by the European Commission and if so, for which contraventions?

The EU 2003 regulatory framework has been, in general, transposed into the currently effective Bulgarian legislation. No proceedings against Bulgaria have been brought by the European Commission before the European Court of Justice. In few cases the Commission has initiated procedures, however, they were either closed or are under monitoring status (such as the infringement proceedings initiated in 2010 requiring Bulgaria to make available radio spectrum in the 169 MHz band, as well as the one formally requesting Bulgaria to ensure all fixed phone line customers can keep their number when changing operator).

### 1.3 Please give an overview of the different laws and regulations governing the operation of electronic communications networks and the provision of electronic communication services.

In addition to the directly applicable EU law, the relevant Bulgarian legislation consists of primary legislative acts, including the Constitution of the Republic of Bulgaria, the Law on Electronic Communications (published in State Gazette issue 41 of 22 May 2007, as subsequently amended and supplemented, the “LEC”), the Law on Personal Data Protection, the Law on Electronic Commerce, the Law on Electronic Document and the Electronic Signature, the Law on Technical Requirements to Products, as well as of a number of pieces of secondary legislation, adopted by the national regulatory authority - the Communications Regulatory Commission (the “CRC”), or by other competent bodies.

### 1.4 Please describe the regulatory framework, in terms of regulatory authorities and associated agencies, e.g. national regulatory authority, premium rate regulator, spectrum allocation body, privacy regulator and national competition authority.

Bulgarian national regulatory authority is the CRC, an independent authority, vested with the specific powers to regulate and control the compliance of provision of electronic communications with the applicable law. The CRC is also the competent body to issue a permit for allocation of radio frequencies should such be required for provision of electronic communications. The primary responsibility for enforcement of the competition rules in Bulgaria falls within the competence of the Bulgarian Commission on Protection of Competition (“CPC”). The CRC and the CPC shall act in coordination and cooperation. The Bulgarian Data Protection Commission is an independent authority which protects individuals in the course of processing their personal data and upon access to their personal data, as well as exercising control over the implementation of the Law on Data Protection.

### 1.5 Which principal aspects of electronic communications regulation fall under the supervision of the national regulatory authority for electronic communications?

The CRC is vested with the powers, among others, to: (i) determine the relevant markets of electronic communications networks and/or services subject to regulation under the LEC; (ii) investigate, analyse and evaluate the level of competition on the relevant markets; and (iii) determine the SMP undertakings and impose, amend or revoke specific obligations on those undertakings. The CRC is the authority competent to issue, amend, supplement, transfer, suspend, terminate or revoke permits for use of individually allocated scarce resource. The CRC has the power to: (i) resolve disputes between undertakings, providing electronic communications; and (ii) review claims submitted by end-users in a limited number of cases envisaged in the LEC. The CRC maintains mutual cooperation with the national regulatory authorities of the other EU Member States and with the European Commission in order to procure the development of consistent regulation practices and implementation of the EU law.

**1.6 In order to be properly authorised to provide electronic communications networks and services, is a registration, declaration or notification required and if so to whom and for which purposes? What rules or conditions, if any, may be attached to a registration, declaration or notification?**

The LEC implements the principles of the Authorisation Directive (2002/20/EC) and sets out that electronic communications shall be provided freely following a submission of a notification to the CRC, unless individually allocated scarce resources are required. An undertaking that has filed with the CRC a notification for providing public electronic communications should comply with certain general requirements adopted by the CRC, depending on the type of the electronic communications network and/or service, such as: data and privacy protection obligations, law enforcement requirements, consumer protection obligations, and reporting obligations.

**1.7 Are any network operators or service providers subject to rules governing their operations over and above rules and conditions governing authorisations and imposing SMP obligations, for example under competition law?**

Notwithstanding the sector-specific supervision exercised by the CRC, all undertakings conducting electronic communications shall comply with the rules prohibiting anti-competitive agreements and practices and abuse of dominant position (e.g. Art. 101 and Art. 102 TFEU, and the respective mirror provisions of Bulgarian Law on Protection of Competition).

**1.8 Which (SMP) markets have been notified to the European Commission under Article 7 of the Framework Directive?**

The CRC has completed the first round of defining, analysing and evaluating the relevant markets of electronic communications. As a result, it has identified and notified to the European Commission as SMP markets susceptible to ex ante regulation the following markets: (i) retail markets 1 to 6 inclusive as defined in Recommendation 2003/311/EC; and (ii) wholesale markets 2, 3 and 7, as defined in Recommendation 2007/879/EC (representing respectively markets 8, 9 and 16, as defined in Recommendation 2003/311/EC), as well as markets 4 and 5, as defined under Recommendation 2007/879/EC and market 10, as defined in Recommendation 2003/311/EC.

## 2 Authorisation

**2.1 What types of general and individual authorisations are used in Bulgaria?**

As stated above (please see question 1.6), where individually allocated scarce resource is not needed, an operator may start providing public electronic communications as soon as it submits a notification to the CRC. In case individually allocated scarce resource is required, electronic communications networks and services may only be provided upon the issuance of a permit by the CRC allowing the use of the respective scarce resource.

**2.2 Please summarise the main requirements of Bulgaria's general authorisation.**

If an undertaking is willing to provide electronic communication services at the territory of Bulgaria where no scarce resource is not

required, such undertakings need to file a notification with the CRC. The notification process is straightforward and it is not subject to a fee.

Within 14 days of receipt of the notification, the CRC shall register the undertaking with the Registry of the undertakings that have notified the CRC about their intention to provide public electronic communications. A fee of BGN 15 (appr. Euro 7.5) is charged in case the undertaking wishes to obtain a certificate evidencing that it is registered in said Registry.

The rights and obligations of the undertaking providing public electronic communication services where no individually allocated scarce resource is required shall arise as of the date of the duly filed notification. The undertaking must inform the CRC of any changes in the data stated in the notification within 14 days as of occurrence of the change.

The general authorisation is not limited in time and an undertaking operating under such authorisation may terminate the provision of public electronic communication networks and/or services upon submission of a notification to the CRC.

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

Electronic communications shall be carried out upon issuance of a permit should an individually allocated scarce resource, i.e. radio frequencies, positions of the geostationary orbit, numbers from the National Numbering Plan and addresses, be required.

A permit for use of individually allocated scarce resource is granted for an initial period of up to 20 years, with a possibility for extension of up to 10 more years.

An undertaking that has obtained a permit for use of individually allocated scarce resources may transfer such permit or part of the rights and the obligations pertaining to the permit for use of radio frequency spectrum, only upon receipt of a prior CRC approval. The CRC shall issue such an approval if the contemplated transfer shall not negatively affect the competition or lead to changes in the conditions for use of the scarce resource. The specific requirements related to the transfer of a permit are set forth in Rules issued by CRC (promulgated in the State Gazette, issue # 29 of 18 March 2008, as subsequently amended).

## 3 Public and Private Works

**3.1 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?**

The LEC, in conjunction with the Law on the Structure of the Territory, provide for specific rules dealing with the construction of electronic communication networks and related infrastructure.

**3.2 Is there a specific planning or zoning regime that applies to the installation of telecommunications infrastructure?**

The installation of network infrastructure must be accomplished in compliance with the specific rules governing undertaking and completion of construction works. The construction process in Bulgaria goes through certain stages, the most important of which are: (i) approval of investment designs; (ii) issuance of construction permit; and (iii) issuance of an operational permit or certificate of

operation. Construction or installations developed without the relevant construction papers are considered “illegal constructions” and are subject to removal.

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### 3.3 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables (i.e. dark fibre)? Are there any proposals to mandate 'passive access' to such basic infrastructure?

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As a general rule, the undertakings providing public electronic communications networks shall provide access to their networks to other such undertakings on a contractual basis. The CRC may impose an obligation on SMP undertakings to provide access to their network infrastructure (and particular components therefrom), including but not limited to the cases where the refusal from the latter may impede the stable competition on the retail market or is detrimental to the interests of the end-users. For the purposes of protecting the environment, health and public security, the CRC may impose an obligation to any operator to provide shared use of ducts, towers, premises and other telecoms facilities. The Bulgarian regulator may impose such a measure only after holding a public consultation.

The Bill amending the LEC, which is being discussed by Bulgarian Parliament (please see question 13 below) envisages greater flexibility of the CRC when imposing obligations on the undertakings to provide shared use of passive infrastructure while always observing the principle of proportionality. Upon imposing said obligations the CRC may also issue instructions for proportional distribution of the costs associated with the shared use.

## 4 Access and Interconnection

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### 4.1 How is network-to-network interconnection and access mandated?

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The LEC implements the Access Directive (2002/19/EC) in the regulation of access to and interconnection of public electronic communications networks and associated facilities. Any operator that satisfies certain criteria has the right, and upon request of another qualifying operator - is obliged, to negotiate interconnection. The criteria are: (i) the operator should provide public electronic communications networks; and (ii) the operator should hold a permit granted by the CRC for the use of initially allocated numbers from the National Numbering Plan. Further, any operator that has notified the CRC of the providing of public electronic communications networks and/or services has the right to request access to the networks of other such operators, provided that the access request relates to providing of the notified electronic communications networks and/or services. Undertakings providing public electronic communications networks and/or services at the territory of another EU Member State may also request access and/or interconnection pursuant to the terms of the LEC.

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### 4.2 How are interconnection or access disputes resolved?

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The LEC follows the principle of priority of commercial negotiations over regulatory intervention. Undertakings providing public electronic communications networks have the right to freely negotiate interconnection and/or access. Still, the CRC may intervene on access and/or interconnection matters at its own initiative (when necessary) or, in case of unsuccessful commercial negotiations between undertakings, at the request of either of the negotiating parties. Upon intervention, the CRC has jurisdiction to

impose a legally binding interconnection/access obligation on the undertakings concerned. Any decision of the CRC however may be challenged before the Supreme Administrative Court.

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

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Generally, operators are not required to publish their standard interconnection contracts, but a copy of any signed interconnection contract should be provided for reference to the CRC. Operators are required to publish the prices of provided electronic communications networks and/or services on their website or at another place easily accessible to consumers.

Where an obligation for transparency in relation to interconnection and/or access is imposed on an SMP undertaking, the latter would be required to make public certain information, including, but not limited to, terms and conditions for providing access and/or interconnection, and prices. Where the SMP operator has an obligation for non-discrimination (in addition to the obligation for transparency), the CRC may require the operator to publish a reference offer which may include information about, among other matters, terms and conditions for interconnection or access, prices and price formation mechanism.

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### 4.4 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?

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In general, charges for interconnection and/or network access are not subject to price or cost regulation. However, when the CRC establishes that there is no efficient competition on the relevant market, it may impose on SMP undertakings price control, including obligations for cost-orientation of prices for interconnection and/or access. The CRC is also entitled to impose on SMP undertakings an obligation for accounting separation and, in certain circumstances, to oblige vertically integrated companies to make transparent their wholesale prices and their internal transfer prices, as well as to specify the format and the accounting methodology to be used for price determination.

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

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An obligation for accounting separation in relation to interconnection and/or access may be imposed on SPM operators. Concerning functional separation and/or legal separation, currently the Bulgarian telecoms law does not explicitly envisage the use of any of these as a remedy where SMP is identified. However, the measures of functional and legal separation are applied with respect to the separation of digital communications networks, on the one hand, and radio and TV activity, on the other. In particular, a telecoms operator holding a permit for use of an individually allocated scarce resource-radio frequency spectrum, for carrying out electronic communications through networks for terrestrial digital radio broadcasting, as well as any related party thereto, may not simultaneously be a radio and/or television operator.

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### 4.6 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks?

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Next generation networks are not subject to any specific

interconnection and access regulatory conditions, which are different from the general ones described above.

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#### **4.7 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?**

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The CRC may impose upon SMP undertakings the obligation to give third parties access to certain network elements and/or facilities, including unbundled access to the local loop, as well as other obligations related to the access and use by third parties of necessary network elements and/or facilities. Upon imposing an obligation for providing unbundled access to the local loop, the CRC also obliges the undertaking to make public a reference offer. The minimum content of the reference offer is statutory determined. The reference offer is subject to approval by the CRC, following a public consultation procedure. Executed individual contracts may not contradict the reference offer.

Concerning cable TV operators, the law does not explicitly provide any specific unbundling obligations applicable to such operators.

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#### **4.8 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?**

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Currently there are no specific regulations or proposals for regulations (including incentives) relating to next-generation access, and in particular fibre access networks.

Concerning sharing of passive infrastructure, when the CRC establishes that there is no efficient competition on the relevant market, it may impose on SMP undertakings an obligation for access to and use of needed network elements and/or facilities. Where the SMP operator has an obligation for non-discrimination (in addition to the obligation for transparency), the CRC may require the operator to publish a reference offer, which may include information about, among other matters, collocation services (such as information about the places for collocation, characteristics and technical requirements towards to the equipment that can be collocated, etc.).

## **5 Price and Consumer Regulation**

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

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Pursuant to Bulgarian law in force, undertakings carrying out public electronic communications networks and/or services shall determine prices according to the market supply and demand principle. Retail prices are subject to notification before the CRC 3 days prior to their entering into effect. Retail price controls are imposed on the former incumbent operator - Bulgarian Telecommunications Company AD, which has been identified as an SMP operator on retail markets 1 to 6 inclusive, as defined in Recommendation 2003/311/EC.

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

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Pursuant to the LEC, undertakings providing electronic

communications services shall offer those services to end-users in compliance with the principles of transparency, proportionality and equal treatment, in accordance with the type of technology used, the categories of subscribers, the amount of traffic and the way of payment, and shall not offer advantages to individual end-users or groups of end-users for the same services. When the execution of individual contracts only is not feasible in practice, operators of public telephone services may use general terms and conditions (GTC) to govern their relationships with end-users. The LEC establishes minimum content requirements for GTC, as well as for individual contracts with end-users, including those to which GTC apply. GTC prepared by operators providing universal service are subject to approval by the CRC, while operators providing public telephone services shall submit the GTC before the CRC for reference only. In addition, operators providing public electronic communications services should ensure free access of consumers at least to: (i) GTC (if any) applicable to the end-user contract; (ii) up-to-date information about prices and price packages; and (iii) up-to-date information about the quality of the services offered.

## **6 Numbering**

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### **6.1 How are telephone numbers and network identifying codes allocated and by whom?**

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Modelling the regulatory policy on the use of numbers falls within the competence of the CRC. The CRC develops a regulatory policy for use of numbers, addresses and names for carrying out electronic communications. Further, the CRC prepares and adopts the National Numbering Plan, which sets out the allocation of numbers used in the electronic communications networks for identification, routing and charging. The CRC is also competent to allow the use of numbers, as well as to revoke already-granted permits for the use of numbers.

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### **6.2 Are there any special rules which govern the use of telephone numbers?**

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Rights of use for numbers are granted on an individual basis. Rights of use for individually allocated numbers may be granted only to enterprises that carry out electronic communications through: (i) electronic communications networks for publicly available telephone services (PATS); or (ii) electronic communications networks for providing public electronic communications services, which are accessed through numbers from the National Numbering Plan.

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### **6.3 How are telephone numbers made available for network use and how are such numbers activated for use by customers?**

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As numbers are considered to be scarce resource, rights of use for numbers are granted by a permit issued by the CRC. A permit for use of numbers is awarded without an auction or tender, for an initial term of up to 20 years, with a possibility for extension of up to 10 more years. Operators that have been allocated numbers for providing services through fixed, mobile terrestrial (GSM, UMTS or other), MVNO, BWA or FWA networks, may sub-allocate these numbers only for use by end users. Operators that have been allocated numbers from the "700" and "800" ranges for non-geographical services, and/or numbers from the "90" range for value-added services, and/or numbers from the "118" range for directory services, may sub-allocate these numbers to legal entities

and sole proprietors for provision by the latter entities of services through numbers from the said ranges.

#### **6.4 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile)?**

Subscribers of PATS are entitled to retain their numbers independently of the undertaking providing the service, as follows: (i) in case of fixed numbers, the numbers can be retained at a specific location, independently of the change of the provider of the fixed telephone service and/or the address within one and the same geographic national destination code; (ii) in case of mobile numbers, they can be retained at any location, irrespective of the change of the provider of the mobile telephone service; and (iii) in case of non-geographic numbers, they can be retained at any location, irrespective of the change of the provider of the respective service.

Portability of mobile numbers became effective at the beginning of 2008, of fixed numbers - in the middle of 2009, and of non-geographical numbers - in the middle of 2010.

## **7 Submarine Cables**

#### **7.1 What are the main rules governing the bringing into Bulgaria's territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?**

The main rules governing the landing of submarine cables are set forth in: (i) a number of international treaties which Bulgaria is a party to, including inter alia the UN Convention on the Continental Shelf of 1958 and the UN Convention on the Law of the Sea of 1958; and (ii) the Law on Sea Space, Internal Waterways and Harbours of the Republic of Bulgaria. Bulgaria has exclusive rights and jurisdiction on the landing of submarine cables in the internal waterways. In the zone of the continental shelf, submarine cables can be landed by other states, provided that the interests of Bulgaria related to research, development and use of the shelf's natural resources and the protection of the marine environment are not affected. The routes of the cables shall be determined by an agreement between Bulgaria and the state wishing to land the cables. Lastly, in the exclusive economic zone, all countries can freely land cables.

## **8 Radio Frequency Spectrum**

#### **8.1 Is the use of radio frequency spectrum specifically regulated and if so, by which authority?**

The use of radio frequency spectrum is regulated by the Council of Ministers (i.e. the Government), the National Radio Frequency Council and the CRC. The Council of Ministers adopts: (i) state policy on planning and allocation of the radio frequency spectrum upon proposal of the Radio Frequency Council and following a public consultation procedure; and (ii) a national plan on allocation of the radio frequency spectrum, upon proposal of the said Council and following a public consultation procedure. The CRC grants for use the radio frequencies for civil needs and has powers relating to management of the radio frequency spectrum.

#### **8.2 How is the use of radio frequency spectrum authorised in Bulgaria? What procedures are used to allocated spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?**

A permit for use of an individually allocated radio frequency spectrum is awarded on a competitive basis (after holding an auction or tender), where the number of applicants exceeds the number of persons that may be granted a permit for the available radio frequencies. A permit is awarded without a competitive procedure in a number of cases explicitly specified by law, including among others: (i) where the number of applicants is lower or equal to the number of persons that may be granted a permit for the available radio frequency spectrum; and (ii) for carrying out electronic communications through use of analogue electronic communications networks for terrestrial analogue radio broadcasting.

#### **8.3 Are distinctions made between mobile, fixed and satellite usage in the grant of spectrum rights?**

Distinction in spectrum allocation for mobile, fixed and satellite usage is made in the State Policy on Planning and Allocation of the Radio Frequency Spectrum, adopted by the Council of Ministers. The National Plan on Allocation of the Radio Frequency Spectrum adopted by the Council of Ministers further allocates radio frequency bands, distinguishing between mobile, fixed and satellite usage.

#### **8.4 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?**

The installation and operation of satellite earth stations is subject to the general authorisation rules set forth in the LEC. Electronic communications through networks using radio frequencies from the fixed and mobile satellite radio service (namely, a satellite network for data transmission, a satellite network for transmission and/or broadcasting of radio and TV programmes or other satellite networks) may be carried out after submission of a notification to the CRC, and where an individually allocated radio frequency band is needed - after obtaining a permit by the CRC.

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

The use of spectrum which does not need to be individually allocated is permit-exempt when carrying out electronic communications for one's own needs.

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

The following fees are payable for the use of individually allocated radio frequency spectrum: (i) a one-time fee for awarding a permit for spectrum use; and (ii) an annual fee for spectrum use, determined on the basis of a number of criteria provided for the law, including territorial coverage of the permit, term of spectrum use, etc.

#### **8.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?**

Bulgarian law allows the transfer of a permit for use of radio

frequency spectrum, or some of the rights and obligations thereunder, after the prior approval by the CRC (see also question 2.3 above).

## 9 Data Retention and Interception

### 9.1 Are operators obliged to retain any call data? If so who is obliged to retain what and for how long? How are data protection (privacy rules) applicable specifically to telecommunications implemented in Bulgaria?

Undertakings providing public electronic communications networks and/or services are obliged to retain for a period of 12 months certain types of data set forth by the law for the purposes of detecting and investigating severe and computer crimes, and tracking down of individuals. Access to such retained data may be provided only to certain authorities defined by the law and following authorisation by the court.

Operators may collect, process and use customer data (including traffic data, location data, and data necessary for the purposes of subscriber billing), as long as such data shall be used directly for the purposes of providing communications services. The Personal Data Protection Commission exercises supervision over the electronic communications operators with respect to compliance with the data retention and call interception rules. On the other hand, the Parliament is authorised to exercise parliamentary control and supervision over the procedures for access to the retained and intercepted data.

### 9.2 Are operators obliged to maintain call interception (wire-tap) capabilities?

The LEC prohibits surveillance, interception or storage of communications designated for third parties without the explicit consent of the sender and the receiver, subject to a few exceptions provided by the law. Thus, for reasons of national security and public order, the LEC obliges operators of public electronic communications networks and/or services to ensure a possibility for interception of communications in real time, continuous surveillance of communications and access in real time to data relating to a particular call. To this effect, the operators are required to put into operation and maintain at their expense appropriate interception interfaces.

### 9.3 What is the process for authorities obtaining access to retained call data and/or intercepting calls? Who can obtain access and what controls are in place?

Access to retained call data, discussed under question 9.1 above, may be provided only to certain authorities defined by the law and following authorisation by the court. The possibilities for interception, continuous supervision and access to data relating to a particular call in real time can be realised in practice only pursuant to the procedure of the Law on Special Intelligence Means, i.e. only following: (i) a written court permission granted upon request of any of the authorities explicitly set forth in the law; and (ii) a written order for use of special intelligence means issued by the Minister of Interior. The intercepted communications may be received only by a specialised directorate to the Ministry of Interior and the National Security State Agency.

## 10 The Internet

### 10.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (i.e. peering or transit) and/or retail (i.e. broadband access) level? Are internet service providers subject to telecommunications regulation?

Bulgarian law does not provide for specific regulation of internet access and data transmission services, therefore the general authorisation regime regarding provision of electronic communication services under the LEC shall apply. Through its Decision # 1677/ 21 December 2010 though, the CRC has imposed obligations on the providers of broadband internet (listed in Appendix 1 to the Decision) to provide certain information as per Appendix 2 to the same Decision.

### 10.2 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?

Bulgarian law fully implements the Electronic Commerce Directive (2000/31/EC) and provided that the requirements set forth in such directive are met, the providers of information society services are exempted from the liability for providing access or transmitting data, when performing caching, linking or hosting services.

Pursuant to the publicly available court practice, Bulgarian courts have never opined on cases related to mere conduit defence. The sole case, where to some extent the defendant has referred to the rules transposing the directive in this respect, was based on the wrong statement that the exemption from liability for providing access or transmitting data, when performing hosting services, repeals the provision of Bulgarian the Law on Copyright and Neighbouring Rights that sets for the obligation for payment of remuneration for each type of use of the copyright, including transmission by the means of telecommunications networks. Taking into account such statement, the court did not interpret nor apply the mere conduit defence but only resolved that the statement is irrelevant as the exemption from liability does not repeal the provisions of the Law on Copyright and Neighbouring Rights.

### 10.3 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?

There are no such general obligations. Providers of information society services are not obliged to monitor the information that they store, transmit or make accessible while providing their services, or to investigate facts or circumstances indicating performance of unlawful activities.

### 10.4 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?

There is no explicit regulation of the issue. Bearing in mind that the 2009 amendments to the EU regulatory framework have not been transposed yet into the national law, it could reasonably be expected

that when transposed, these amendments, and in particular transparency, non-discrimination, information and quality of service requirements, will much contribute to preserving the openness and neutrality of the internet in this country.

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### 10.5 How are 'voice over IP' services regulated?

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Depending on the technology employed, VoIP services are either not regulated (such as in "Skype" type of services) or considered to be data transmission services. In the latter case they are subject to simple notification to the CRC. With respect to allocation of numbers, please refer to our comments to questions 6.1 and 6.2 above.

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### 10.6 Are there any rules to prevent, restrict or otherwise govern internet or email communications, in particular, marketing and advertising communications?

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Any communication aimed at direct marketing shall be allowed only following the prior consent of the consumer, provided that such consent may be withdrawn at any time. The law prohibits distribution of communications for marketing purposes (even if all the above requirements are met) if the sender may not be identified or the sender's address is invalid and thus the end-user may not deliver his/her refusal to receive such communications.

## 11 USO

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### 11.1 Is there a concept of universal service obligation; if so how is this defined, regulated and funded?

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Universal service (US) is defined as a set of services with a pre-determined quality that shall be offered to all end-users at an accessible price, irrespective of their location in Bulgaria. The scope of the USO includes among others: (i) connection to the public telephone network and access to the publicly available telephone services; (ii) access to public pay phones; (iii) provision

of directory services; (iv) placing of emergency free of charge calls to the respective national numbers and to "112"; and (v) access to public telephone services by disabled persons, etc.

The CRC shall determine one or more undertakings to provide all or part of the services pertaining to the scope of the USO. Currently only BTC is imposed with the obligation to provide universal service.

Prices of the universal service and universal services packages are to be determined pursuant to a methodology adopted by the Council of Ministers, and are subject to approval by the CRC. The undertakings, to which a USO has been imposed, shall be compensated for their net expenses, associated with that service through the Fund for Compensation of the USO. The undertakings providing public telephone services which have a gross annual income above BGN 100,000 shall make contributions to that Fund.

## 12 Foreign Ownership Rules

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### 12.1 Are there any rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite or other wireless operations?

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There are no legal restrictions regarding direct or indirect ownership in undertakings providing electronic communications in Bulgaria.

## 13 Future Plans

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### 13.1 Are there any imminent and significant changes to the legal and regulatory regime for electronic communications?

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Bulgaria is still due to implement the revised EU regulatory framework. A bill amending and supplementing the LEC has been drafted by the Government and submitted to the Parliament on 7 June 2011.

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Violetta Kunze graduated at University of Sofia, the Faculty of Law with LL.M., in 1996 and continued her education in the Academy of American and International Law, Dallas, Texas (Diploma, 1998). Violetta joined Djingov, Gouginski, Kyutchukov & Velichkov in 1997 and became a Partner in the firm in 2003. She was also an Intern with the World Bank/IFC Representative Office in Frankfurt am Main (2003) and a Seconded at an international law firm in Frankfurt am Main (2004). Violetta is admitted to Sofia Bar as well as to the Bar in Berlin, Germany. Violetta heads the Telecom & Media practice area group in the firm and in addition she has an extensive experience in the privatisation, M&A, corporate and commercial law. Violetta has advised major international and local telecommunications operators and service providers on a broad spectrum of telecom regulatory matters in Bulgaria.

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