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In-Depth: Technology, Media and Telecommunications (formerly The Technology, Media and Telecommunications Review) provides a practical, business-focused survey of law and policy in the TMT sector across key jurisdictions worldwide. With a focus on recent trends and developments, it also offers useful insights into how this legal and policy landscape continues to evolve from year to year.

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Thailand

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Introduction

With the advancement of technology and heightened awareness concerning privacy and data security, Thailand has developed its regulatory frameworks related to its technology, media and telecommunications (TMT) industries over the past few years. This requires many business operators, including those in the telecommunication, internet-related services or media sectors to adapt their operations to align with these emerging regulations and security concerns.

One of the most significant developments in this regard is the enactment of the Personal Data Protection Act BE 2562 (2019) (PDPA), which came into full effect in June 2022. This law is designed to promote and facilitate the responsible handling of personal data, ensuring both security and compliance with international standards.

Furthermore, the TMT-related regulatory advancement is expected to persist, with numerous laws and regulations in the pipeline aimed at establishing a comprehensive legal framework. These forthcoming regulations will encompass various aspects of the TMT industry, such as movies, games, over-the-top media services, or even artificial intelligence.

Year in review

i Notable legislation

One of the more impactful legislations in 2023 is the Royal Decree governing Digital Platform Services Requiring Notification which came into effect on 21 August 2023. This Royal Decree is primarily directed at digital platforms seeking to provide services to consumers in Thailand, irrespective of the provider's location or domicile. Notably, one of the key objectives of this legislation is to require overseas digital platform providers to notify the Electronic Transactions Development Agency (ETDA) and establish a point of contact within Thailand to facilitate collaboration with Thai authorities, ensuring compliance and enforcement of local regulations.

ii Notable amalgamation between two of the top three telecommunications companies

On 1 March 2023, two major telecom players, True Corporation Public Company Limited (TRUE) and Total Access Communication Public Company Limited (DTAC), completed their amalgamation, retaining the name True Corporation. This merger solidified their position as one of the largest telecommunication service providers in Thailand.

The National Broadcasting and Telecommunications Commission (NBTC) had granted approval for the amalgamation in 2022. Subsequently, as part of the NBTC's conditions, TRUE and DTAC are required to keep their services separate for a three-year period following the merger, among other stipulations.

Regulation

i Regulators

TMT sectors in Thailand are subject to a multifaceted regulatory landscape. The regulatory authorities vary depending on the specific nature of the business operation. The key regulators are as follows.

The NBTC is the main governmental agency that oversees telecommunications, broadcasting and satellite businesses. Its purview extends to spectrum management, allocation, the supervision of radio frequency equipment and any telecommunication-supported activities. The NBTC wields a broad range of powers, including licensing, warnings, restrictions and licence revocations, as well as the imposition of sanctions. Additionally, the NBTC plays a pivotal role in shaping the regulatory framework through the enactment of relevant ancillary legislations.

While the NBTC exerts its authority over the broadcasting sector, the content of media (i.e., film and video) created by content providers falls within a controlled environment that is subject to the oversight of the Audio-Visual Committee, which operates under the auspices of the Ministry of Culture. This oversight entails censorship, the requirement for changes, and approval prior to the release of such films or videos.

The Ministry of Digital Economy and Society (MDES) holds the responsibility for shaping Thailand's digital economy trajectory. It formulates high-level policies focusing on digital transformation and the growth of the technology, telecommunications and media sectors. Collaboration with other governmental agencies is common for initiatives and policy development. The MDES also extends its authority to the realm of cybersecurity, enabling it to request access or investigate computer systems, computer traffic data, and user data in connection with criminal investigations. In certain circumstances, MDES has the authority to order the delivery of data or devices and seize computer systems when deemed necessary, subject to court authorisation.

The ETDA is a governmental agency that regulates various aspects of electronic communications and transactions. Its responsibilities encompass the development and enforcement of standards and regulations related to electronic transactions and communications. This includes oversight of digital technologies such as digital signatures and electronic identity authentication.

The Personal Data Protection Committee (PDPC) also exerts a significant influence on TMT sectors, particularly matters concerning data privacy-related issues. Its main objective is to ensure compliance with personal data protection regulations, including the PDPA.

ii Main sources of law

The main sources of legislation setting out the regulatory framework for the TMT sectors are as follows.

The Organisation to Assign Radio Frequency and to Regulate Broadcasting and Telecommunications Services Act BE 2553 (2010) (NBTC Act) establishes the powers and responsibilities of the NBTC, and provides the regulatory framework in the fields of broadcasting, telecommunications and frequency allocation and management.

The Telecommunications Business Act BE 2544 (2001) (TBA) is a significant piece of legislation in Thailand that governs the telecommunications sector. One of the central features of the TBA is the requirement for telecommunications service providers to obtain licences from the NBTC. The TBA outlines the types of licences available, the eligibility criteria and the application process.

The Radio Communications Act BE 2498 (1955) governs radio communications and the use of the radio frequency spectrum, and the operation of radio broadcasting services in Thailand. It also regulates the importation, use and sale of radio frequency equipment.

The Broadcasting and Television Business Act BE 2551 (2008) (BTA) governs the broadcasting and television industry. It provides a legal framework for the operation of broadcasting and television businesses, defining rules and guidelines for licensing, content regulation, and industry standards that is similar in concept to the TBA.

The Film and Video Act BE 2551 (2008) (Film and Video Act) provides a legal framework for the creation, distribution and exhibition of films and videos, outlining rules and guidelines for censorship, approval and content regulation.

The Computer-Related Crime Act BE 2560 (2017) (CCA) provides a legal framework for addressing offences committed in the digital realm and establishes rules and guidelines for investigation, prosecution and punishment of cybercrimes. The CCA also requires service providers to retain data related to computer-related crimes for a specified period to facilitate the investigation and prosecution of cybercriminals.

The PDPA regulates the collection, use and disclosure of personal data. The purpose is to protect the privacy and rights of individuals while ensuring that data processing by the data controller and data processor meets the required security standards.

The Electronic Transaction Act BE 2544 (2001) provides standards and regulations related to electronic transactions and communications. It establishes guidelines for the legal recognition of electronic records, communication, documentation and signatures, thus ensuring that electronic transactions have the same legal validity as traditional paper-based transactions. The act may also regulate certain types of digital-related services by enacting a royal decree as an ancillary legislation.

iii Regulated activities

Below are examples of regulated TMT activities in Thailand.

Telecommunications

Telecommunication activities and any related supporting activities are highly regulated under the TBA. The telecommunication business operators that fall within the scope of the TBA must obtain the licences for such operation from the NBTC. The applicant must fulfil, depending on type of activities, the qualifications and requirements as stipulated under the TBA in order for a licence to be granted.

Use of the spectrum

Use of the spectrum is governed by the NBTC Act. To use the spectrum for sound broadcasting services, television services, or telecommunication services, one must first obtain a licence under the NBTC Act. In general, the NBTC will consider and grant permits for the commercial use of the spectrum by way of auction under the rules and conditions prescribed by the NBTC. Other selection methods may be applied under limited circumstances such as where the spectrum is sufficient for use, or the spectrum will be used for public services, national security or non-profit purposes.

Media

To operate broadcasting activities, a licence must first be obtained from the NBTC according to the BTA. Certain kinds of broadcasting are only available for governmental agencies or non-profit organisations, such as public and community broadcasting. Nevertheless, commercial broadcasting is available to profit-seeking organisations.

In addition, the content of film and video is also subject to a controlled environment. Certain content is prohibited from being broadcast under the BTA, while the content creator also is subject to censorship, revision and approval under the Film and Video Act.

Platform

The digital platform services activities, which have been broadly defined, are also regulated by the Royal Decree governing Digital Platform Services Requiring Notification. It requires the digital platform service provider to notify or register the provision of digital platform services to the ETDA prior to the operation of those services and comply with several obligations thereunder.

iv Ownership restrictions

In general, the operation of businesses by foreigners is subject to the restriction of the Foreign Business Act BE 2542 (1999) (FBOA). Foreigners are prohibited from operating certain types of businesses as stipulated by such act unless a licence from the Ministry of Commerce has been obtained. All foreign business operators, which include both foreign companies and Thai companies with a foreign majority owned structure in the TMT sector are subject to the act.

Apart from the foreign ownership restrictions under the FBOA, there are also sector-specific restrictions on foreign ownership.

In the telecommunication sector, foreigners are allowed to obtain a type 1 licence under the TBA. The differences shall be explained below. However, it imposes restrictions on foreigners from obtaining type 2 and type 3 licences. It is also noteworthy that type 2 and 3 licence holders are prohibited from having shareholding structures that are considered as foreign dominance, such as a nominee shareholding arrangement or creating different classes of share with preferential voting rights to be held by foreigners.

In the media sector, the BTA also imposes foreign restrictions on the provision of broadcasting businesses in Thailand. A broadcasting service provider must have three-quarters of its shares held by Thai nationals, and the Thai nationals must have not less than three-quarters of managerial control power.

v Transfers of control and assignments

As a general rule under the TBA and the NBTC Act, telecommunication licences can only be transferred with the approval of the NBTC or a notification to the NBTC; the actual processes may vary depending on the transaction.

For example, there is a specific merger filing requirement from the NBTC whereby, if both the transferor and the transferee were to be telecommunication licence holders, all applicants may be required to submit a report to the NBTC at least 90 business days before the transaction, subject to various considerations under the law.

On the other hand, if the merger and acquisition was to be between affiliates of the telecommunication licence holders, the transferee would need notify the NBTC within seven days after the transaction.

It is notable that if the mergers and acquisition also involves other licences or approvals, such as a promotion by the government via the Board of Investment Promotion, both the transferor and the transferee will be required to follow the procedures under all the relevant laws.

Telecommunications and internet access

i Internet and internet protocol regulation

Under the NBTC Act and the TBA, any person who intends to operate a telecommunications business, in accordance with the nature and categories of business stipulated under relevant regulations, will require an operating licence by the NBTC. Operating licences for telecommunication businesses can be further categorised into three categories as follows:

1. Type 1 Licence: a licence granted to the telecommunications business operator who operates without its own network for telecommunications services which are deemed appropriate to be fully liberalised such as data center, cloud computing, internet, etc.;
2. Type 2 Licence: a licence granted to the telecommunications business operator who operates with or without its own network for telecommunications services intended for a limited group of people, or services with no significant impact on free and fair competition or on public interest; and
3. Type 3 Licence: a licence granted to the telecommunications business operator who operates with its own network for telecommunications services intended for the general public, or services that may cause a significant impact on free and fair competition or on the public interest, or a service that requires special consumer protection such as a mobile network.

As there is no separate regulatory structure for internet service providers, they are categorised as telecommunication business operators and are regulated with the same

regulatory structure as other telecommunication service providers. Nevertheless, the examples for telecommunication businesses that were categorised under each type of licence are as follows:

1. Type 1 Licence: data center, cloud computing, internet, etc.;
2. Type 2 Licence: VSAT, international internet gateway, etc.; and
3. Type 3 Licence: mobile network, submarine cable, dark fiber, cable landing station, etc.

ii Universal service

A Universal Service Obligation (USO) is one of the obligations of the NBTC under the relevant laws. In particular, the NBTC is empowered under the TBA to require the licence holders to make available the following telecommunications services:

1. telecommunications services in rural areas or areas where the return on investment is low, or in any locality where there is no service provider yet or where the service provider does not provide services broadly or sufficiently to meet the demand of service users therein;
2. telecommunications services for educational institutions, religious premises, medical premises and any other agencies that provide assistance to society;
3. Public telecommunications services of such characteristics or categories as stipulated by the NBTC and the facilitation of the use of public telecommunications services to low-income earners;
4. the facilitation of the use of public telecommunications services for the disabled, children, senior citizens and underprivileged in society; and
5. the facilitation of telecommunication services for the good of public and national security.

In this regard, telecommunication licence holders must allocate 2.5 per cent of their annual net income that exceeds 40 million baht to the NBTC to support the USO; however, the NBTC may allow telecommunication business operators to deduct expenses used for the purpose of USO from such sums.

iii Restrictions on the provision of service

As a general rule, the scope of business operations of the telecommunication service providers, including internet service providers, must be approved by the NBTC during the application process. Any amendments to the business plans approved by the NBTC will require a notification or approvals from the NBTC, subject to the degree of the changes.

Specifically, under the Notification of the NBTC Re: Ceiling of Service Fees and Advanced Services Fee in Telecommunication Business BE 2549 (2006), telecommunications business operators are obliged to notify the NBTC of the service fees and pricing structure of its business operator on a monthly basis, and any changes to the pricing structure

must be approved by the NBTC. The notification also stipulates that telecommunications business operators are obliged to follow the same pricing structure for all users for each service provided.

iv Privacy and data security

Cybersecurity and cybercrimes

In 2019, the Cybersecurity Act BE 2562 (2019) (CSA) was enacted with the primary objective of safeguarding computer and IT systems, particularly those critical to the nation. These encompass public entities, regulatory bodies, and entities falling under the category of Critical Information Infrastructure Organisations (CII Organisations), such as those involved in national security, and information technology and telecommunications.

This legislation establishes two pivotal committees, namely the National Cybersecurity Committee (NCSC) and the Cybersecurity Regulatory Committee (CRC) to monitor cybersecurity and develop the policies and guidelines aimed at the enhancement and empowerment to address cybersecurity and cyber threats effectively. The CSA further distinguishes cyber threats into three levels to establish the different approaches for each level.

In respect of cybercrimes, CCA is one of the legislative frameworks that underscores the fundamental rights and freedoms of individuals to use, access information, or express themselves on online platforms. However, it is imperative to emphasise that the exercise of these rights and freedoms should not infringe upon or harm the rights and freedoms of others. The CCA delineates various offences pertaining to computer-related activities and prescribes corresponding criminal penalties. These offenses encompass activities such as hacking, phishing and the importation of illegal content into computer systems.

The PDPA also stands as one of the legislations that significantly help amplify awareness and, in some way, promote the implementation of cybersecurity measures as the legislation places substantial obligations on both data controllers and data processors to implement appropriate security measures to safeguard personal data. Otherwise, failure to adhere to this obligation may result in penalties, particularly in the event of a data breach arising out of non-compliance. Although the PDPA solely focuses on the extent of personal data protection, it is also one significant stride in mitigating risks and fortifying cybersecurity.

Personal data protection

Since the enactment of the PDPA, there has been an increased awareness and implementation of privacy and personal data protection in both the public and private sectors.

Following the full enforcement of the PDPA in June 2022, various sub-regulations have been introduced by both the PDPC and other regulatory bodies to facilitate practical compliance with the PDPA, such as the Bank of Thailand and the Office of the Insurance Commission.

In addition, the NBTC recently issued the NBTC Notification re: Measures to Protect the Personal Data-Related Rights, Privacy, and Freedom to Communicate via

Telecommunications of the Telecommunications Service Users, aiming to align the obligations outlined therein with the provisions of the PDPA.

Despite the objective to impose measures for maintaining privacy and data security, the PDPA acknowledges the necessity of the public interest. The PDPA provides exemptions to government authorities in the execution of their public responsibilities, allowing them to collect personal data from data controllers without adherence to certain legal obligations, such as prior notification or consent acquisition.

Furthermore, as a specific illustration pertaining to the telecommunications sector, the aforementioned NBTC Notification also includes a provision authorising the NBTC to request the disclosure of personal data from licensed business operators for the purpose of regulating telecommunications business operations.

Facilitation of monitoring or interception of communications

Despite the legal safeguards in place, certain objectives, such as those pertaining to national security, cybercrime investigations or exceptional circumstances may take precedence over individual rights, freedoms, as well as privacy and data security. Some examples are as follows.

Under the CCA, for the purposes of investigation, authorised officers may, when deemed necessary, request to view, inspect and access computer traffic data concerning communications through computer systems or other computer-related information, and they may instruct service providers to provide their user data. The CCA also authorises officers to submit requests to the court for the restriction or removal of specific computer data.

Under the CSA, in the event of, or when there is an anticipated severe cyber threat, the CRC may request the submission of documents or information from any relevant persons.

Under the Special Case Investigation Act BE 2547 (2004), the Department of Special Investigation may access computer data, devices, electronic media, information technology, etc. for the purpose of special case investigation.

Under the National Intelligence Act BE 2562 (2019), the National Intelligence Agency may use any method, including the use of electronic tools, scientific instruments, telecommunications equipment or any other technology to obtain information or documents for the purpose of national intelligence.

Protection for children

Certain laws contain provisions that cover the protection of children in the online space, such as: (1) the PDPA necessitating parental consent for the processing of minors' personal data, including their data involved in processing for online activities or services; and (2) the Children Protection Act BE 2546 (2003) provides that advertisements or dissemination of children's information via media, including online, with the intention to cause damage to children or illicitly seek advantage from them is strictly prohibited.

Spectrum policy

i Development

As part of the effort to achieve the goals of the 'Thailand 4.0' economic model which aims to transform Thailand into a digitised economy, the Spectrum Management Plan BE 2562 (2019) was enacted to improve Thailand's spectrum infrastructure and to increase the use of the spectrum by the public. The plan lays out relevant measures to achieve such a goal by introducing the use of the unlicensed spectrum and shared spectrum.

ii Flexible spectrum use

In general, the spectrum allocated to a licensee is prohibited for other usage that differs from the purpose originally allocated under the licence, and the licence to use a spectrum is exclusive and non-transferable.

However, as part of the 'Thailand 4.0' economic model and to support emerging telecommunication technologies, the NBTC has issued a number of notifications permitting usage of certain types of spectrums on a non-exclusive basis with no licence requirements.

iii Broadband and next-generation services spectrum use

In Thailand, as in many countries, the allocation and use of the spectrum for broadband and next-generation services are critical for advancing telecommunications and ensuring that the nation remains competitive in the digital age. The Thai government, through its regulatory authority, the NBTC, has been actively working on spectrum policies to support broadband and next-generation services, which is addressed under the NBTC's Spectrum Road Map for 2019–2023.

In support of next-generation services, the NBTC introduced a regulatory sandbox framework in 2019. Under this framework, participants can use certain spectrum in a controlled sandbox area for technology testing and development. This initiative aims to accelerate innovation and the adoption of advanced technologies in Thailand.

iv Spectrum auctions and fees

Under the NBTC Act, a use of the spectrum for sound broadcasting services, television services or telecommunication services must be assigned by way of auction under the rules and conditions prescribed by the NBTC. Other selection methods may be applied under limited circumstances.

Media

i Regulation of media distribution generally

Under the BTA, the NBTC has established a broadcasting licence system, categorised into four distinct types: (1) Network Service Licence; (2) Broadcasting Services Licence; (3) Facility Licence; and (4) Application Service Licence.

The classification of Broadcasting Services Licences depends on the method of broadcast employed, falling into two broad categories: (1) Utilising Frequency, including services of digital television; and (2) Without Utilising Frequency, including cable and satellite television that operate independently of radio frequency allocation.

The specific content requirements imposed on Broadcasting Services Licences holders vary depending on the type of the licence they hold. For licence holders under the category of 'Without Utilising Frequency', they are subject to additional content requirements as the licence holders must align their broadcast programming with the specific purposes for which their licences were granted.

With respect to content regulation across various media, including movies, advertising, television programmes, and video games, among others, the Film and Video Act plays a significant role in overseeing content control. The Audio-Visual Committee, established under this Act, possesses the authority to rate movies according to viewer age, censor content, and mandate alterations prior to release.

In 2023, there are ongoing developments related to the Bill on Movies and Games. If enacted, this bill will establish a National Committee for the Promotion of the Movie and Game Industries and a Rating Committee. These committees will present policies and measures to promote the industries and determine ratings for games to be distributed in Thailand. However, the bill has received numerous comments from industry stakeholders expressing doubts regarding the additional requirements it imposes.

While the network operators are subject to the regulations mentioned above, content providers are also responsible for ensuring that their content does not violate relevant laws, such as the Computer-Related Crime Act BE 2550 (2007) and the Copyright Act BE 2537 (1994), among others.

Over-the-top (OTT) services are not currently subject to the regulations mentioned above. However, there have been ongoing efforts by the NBTC aimed at regulating OTT platforms to level the playing field between the OTT platforms and traditional operators.

ii Internet-delivered video content

In the modern digital era, internet-delivered content has become a prominent means of information dissemination. However, the Thai Constitution affirms the fundamental right of Thai citizens to receive necessary information. This right extends to accessing information from government entities, a principle underscored by specific legislation such as the Official Information Act, BE 2540 (1997).

In the context of generally protecting consumer rights, the Consumer Protection Act, BE 2522 (1979) plays a crucial role to guarantee that consumers have the entitlement to receive accurate and comprehensive information. Specifically, consumers have the right to receive and access precise and comprehensive descriptions of product and service quality. These rights are instrumental in upholding consumer interests and ensuring that individuals have access to the information necessary to make well-informed decisions in the market.

The CCA serves as a regulatory framework aimed at addressing various harms related to computer technology generally. Its primary objectives are to take proactive measures to prevent and mitigate computer-related offenses, enhance the efficiency of investigations and law enforcement, and ultimately safeguard the interests and security of computer users.

Pursuant to the CCA, any service provider found to cooperate, consent to, or collude in specific offences, such as introducing false, distorted or forged information or data into a computer system under its control may be subject to the same penalty as imposed upon the person committing the offence.

However, if this service provider has complied with the regulation issued by the MDES to determine the processes for issuing a warning, terminating the circulation of computer data, and removing computer data from the computer system, that service provider will be exempt from criminal penalties if it can prove its compliance with such an announcement.

Outlook and conclusions

With the recent legislation and the upcoming draft regulations, it is apparent that Thailand is very active in attempting to equip itself with laws aiming to keep up with the evolving landscape of TMT related industries; however, there are still a number of issues present in the usage and interpretation of the regulations because of a lack of precedent cases.

We expect Thailand to continue its efforts and look forward to more exciting developments in TMT-related industries and corresponding changes to the regulatory regime in Thailand.

Endnotes

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