

THE TECHNOLOGY,  
MEDIA AND  
TELECOMMUNICATIONS  
REVIEW

NINTH EDITION

Editor  
John P Janka

THE LAWREVIEWS

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**Editor**

John P Janka

THE LAWREVIEWS

# BELGIUM

Flip Petillion, Jan Janssen, Diégo Noesen and Alexander Heirwegh<sup>1</sup>

## I OVERVIEW

Electronic communications (telecom) services and networks are regulated in Belgium based on the principle of technological neutrality. A single federal regulatory authority, the Belgian Institute for Postal services and telecommunications (BIPT) is charged with regulating and monitoring the electronic communications sector. In addition to telecommunications, radio and postal services, BIPT is also responsible for the regulation of the audiovisual media sector in the bilingual Brussels Capital Region. In Flanders, Wallonia and the German-speaking community, audiovisual media is regulated on a community level.

There is a growing trend of convergence and consolidation in the Belgian TMT markets. Network operators and content providers aim to achieve economies of scale and scope in addition to other strategic advantages through mergers, acquisitions or partnerships. In the past few years, Telenet (Liberty Global) acquired both the Belgian MNO Base (KPN) and broadcasting company De Vijver Media NV. This resulted in Telenet evolving from an ISP, telephone operator and television distributor to a telecom and broadcasting company controlling almost all levels of the TMT supply chain.

The fact that more than 60 per cent of Belgian families opt for bundled telecom and broadcasting services with the same service provider demonstrates further convergence.

On 31 July 2017, a new Act pertaining to various provisions regarding electronic communications was introduced. The Act amended several provisions on electronic communications. It clarified the competences of BIPT and introduced the possibility for BIPT to take preliminary measures. Additionally, the Electronic Communications Act was amended to implement EU Directive 2014/61/EU and to amend provisions on, *inter alia*, frequency licence obligations, network security, consumer rights, subscription payments and number blocking.

## II REGULATION

### i The regulators

#### *Sources of law*

The Act of 13 June 2005 on electronic communications (Electronic Communications Act) is the principal law applicable to the telecoms, wireless, satellite, internet and broadband industries. It regulates the operation of ECNs and the provision of ECSs on a federal level.

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The Electronic Communications Act supersedes the Act of 21 March 1991 on the reform of some economic public companies, replacing most of its provisions. The Electronic Communications Act implements the directives that underpin the European electronic communications regulatory framework.

Additionally, the internet industry is also regulated through Book XII of the Belgian Code of Economic Law (CEL), which covers the electronic economy.

Book XII of the CEL is mainly the result of the implementation of the Directive on electronic commerce.<sup>2</sup> It also covers domain name registration, electronic identification and trust services.

As opposed to the telecoms and internet industry, the broadcasting and media industry is not regulated on a federal level in Belgium. As the provision of audiovisual media services implies matters related to language and culture, regulation falls under the competences of the different communities, being the Dutch-speaking community of Flanders, the French-speaking community of Wallonia and the German-speaking community. Each community has enacted a general decree for the regulation of media and content. In Flanders, the Decree of 27 March 2009 on radio and television broadcasting regulates the provision of audiovisual media services. In Wallonia, this is regulated by the Decree of 26 March 2009 on audiovisual media services. In the German-speaking community, the Decree of 27 June 2005 on radio broadcasting and film screenings is in place. These decrees have been subsequently amended, mainly to implement the provisions of the Audiovisual Media Services Directive.<sup>3</sup> The new federal Act of 5 May 2017 on audiovisual media services in the bilingual Brussels-Capital Region regulates the provision of media services in the Brussels-Capital Region.

### ***Regulation***

The TMT industries are coordinated, regulated and monitored by different public entities, both on a federal level regarding electronic communications and on a community level regarding audiovisual media.

The telecommunications sector is regulated on a federal level pursuant to legislation adopted by the federal legislator. The competent regulatory authority for electronic communications is BIPT, which functions independently under its own statute. BIPT regulates the market by adopting decisions, opinions and studies, by monitoring compliance and imposing administrative sanctions, and by acting as an ombudsman in disputes between users and electronic communication companies. With the new Act of 31 July 2017, BIPT was given the authority to make binding administrative decisions in disputes between electronic communications operators.

BIPT is also charged with the administration and allocation of scarce resources such as the electromagnetic spectrum, RFs and numbers. It also serves as the audiovisual media regulator for the bilingual Brussels-Capital Region.

The Belgian Data Protection Authority (previously the Commission for the Protection of Privacy) monitors compliance with privacy and data protection regulations such as the EU General Data Protection Regulation (GDPR), and presents draft legislation regarding privacy and data protection in the electronic communications sector.

The audiovisual media sector is regulated on a community level pursuant to legislation adopted by the community legislators of Flanders, Wallonia and the German-speaking

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2 Directive 2000/31/EC.

3 Directive 2010/13/EU.

community. However, media distribution and content are regulated on a federal level in the bilingual Brussels-Capital Region. In each community, a competent regulator is charged with coordinating, regulating and monitoring the audiovisual media sector. In Flanders, this is the Flemish Regulator for the Media (VRM), in Wallonia, this is the Council for the Media (CSA), and in the German-speaking community, this is the Council for the Media (Medienrat). BIPT regulates the audiovisual media industry of the Brussels-Capital Region.

In 2006, the Conference of Regulators for the electronic communications sector (CRC) was established. This overarching body brings together BIPT and the audiovisual media community regulators (VRM, CSA and Medienrat) to adopt decisions in matters of coinciding competences, such as the transmission of broadcasting signals.

The Belgian Competition Authority deals with all matters related to competition law in the TMT industries, such as cartels, abuses of dominance, mergers and state aid.

## **ii Regulated activities**

BIPT assigns user rights for RF spectrum partly or entirely used for public ECSs. Article 30 of the Electronic Communications Act provides that the allocation of frequencies may be subject to the payment of fees to ensure the optimal use of spectrum. Several royal decrees establish the terms for obtaining and exploiting spectrum licences in the respective frequency bands for different applications. This includes the amount and the timing of the payment of fees.

### ***Broadcasting and media***

Broadcasting and media are regulated at the level of the Dutch-speaking, French-speaking and German-speaking communities, save for the bilingual Brussels-Capital Region where the federal institutions remain competent.

In the Dutch-speaking community, a distinction is made between national, regional, local, network and other broadcasting organisations. All private linear radio broadcasters require authorisation from the government to use blocks of frequency or frequency channels, and a broadcasting licence from VRM. For television, the Dutch-speaking community makes a distinction between private broadcasters and regional broadcasters. Private broadcasters must simply notify VRM, whereas regional broadcasters require an actual licence from VRM. Television broadcasters will negotiate the transmission of television signals with service providers having a broadcasting licence or operating a cable network. Applications for frequency blocks and channels must be in Dutch, and must be submitted by registered letter within a set deadline. Applications are put to a comparative test. Broadcasters must pay a yearly fee for their frequency licence. Spectrum licences (and the corresponding broadcasting licences) for a specific frequency band are granted for a 15-year term, renewable once.

In the French-speaking community, radio broadcasting licences and spectrum are allocated in a tender process following periodical public requests for proposals. Licences are granted by the competent division of CSA within the three months following the final submission date for proposals. Specific provisions apply to broadcasters of school radio, digital radio and radio with a permanent cultural or education purpose, which may be offered free of charge if certain conditions are met. As for non-public television broadcasters, the French-speaking community distinguishes between private television broadcasters and local television broadcasters offering a public service. Private television broadcasters must submit a declaration form to CSA, providing, *inter alia*, background information on their ownership structure, a financial plan, and a description of the television service and the

method of transmission. Private television broadcasters must contribute to the production of audiovisual works. Local television broadcasters must obtain a licence from the government of the French-speaking community.

In the Brussels-Capital Region, since June 2017 a licence is no longer required for the provision of audiovisual media services. There is merely a duty to notify BIPT.

In the German-speaking community, private radio and television broadcasters must provide a notification to Medienrat. A licence is only needed for transmission via the frequency spectrum. Specific rules apply to network radio, local radio broadcasters, school radio and events radio. Spectrum licences are granted for a nine-year term.

### ***Electronic communications***

Access to the electronic communications market in Belgium is free. The provision of ECSs or the operation of ECNs does not require an individual licence or authorisation by the regulatory authority or the government.

A newcomer on the market can start its activities when he or she complies with the general conditions imposed by the Electronic Communications Act, which implements the provisions of the Authorisation Directive.<sup>4</sup> The general conditions relate, *inter alia*, to the interoperability of services and the interconnection of networks, financial contributions for funding the universal service, must-carry obligations, data protection, number portability and user rights.

A precondition for commencing electronic communications activities is, however, a notification to BIPT. The provision or resale on own behalf or for own use of ECSs or ECNs can only start after this notification to BIPT, which is subject to the payment of a filing fee (€703). Notifications take effect from the day they are sent to BIPT and result in an obligation for ECS providers to pay a yearly administrative fee that varies significantly in relation to their yearly revenue (between €657 and €193,005). Newcomers are then granted operator status.

The right to use scarce electronic communications resources, such as RF spectrum and numbers, requires the granting of an individual licence by and the payment of fees to BIPT.

### ***Mobile and wireless telecoms***

No licence is required for the provision of mobile and wireless telecom services. Providers must, however, notify BIPT, setting out the services they intend to offer prior to the start of their activities. MNOs need a licence from BIPT to use RF bands for the provision of wireless services. Spectrum licences are generally allocated on the basis of an auction, which is usually the case for mobile communication services, or on the basis of general selection criteria. Applicants must first pay a filing fee, which serves to cover the costs of the examination of the file. Apart from this one-off licence fee, licensees must pay an annual fee for the allocation of the frequencies. This annual fee is split up into an annual management fee and an annual allocation fee.

### **iii Ownership and market access restrictions**

Since its liberalisation on 1 January 1998, the telecommunications sector in Belgium is fully open to competition: no limits on participation are in place. Electronic communications

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<sup>4</sup> Directive 2002/20/EC.

operators are only subject to general authorisation conditions and a notification duty to BIPT, based on the payment of an administrative fee. However, an operator still needs an individual licence for the use of electromagnetic spectrum, RFs and numbers.

Market entrants are generally able to enter the market without the need to significantly invest in their own network infrastructure through wholesale access and interconnection regulation.

With regard to television broadcasting, several cable network operators enjoyed a monopoly position in the respective regions of their infrastructure. In 2011, a decision by the CRC required Telenet, Brutélé, Tecteo and Numericable to open up their cable networks to competitors. After more than three years of legal proceedings, the Brussels Court of Appeal confirmed the decision by the CRC to liberalise the market by providing wholesale access to the cable networks. This allowed Orange (previously Mobistar) to start offering cable television and internet services. On 29 June 2018, the CRC maintained this access obligation after its evaluation determined that there still exists a lack of competition on the Belgian broadband and broadcasting market.

There are no restrictions on foreign ownership or investment in the TMT industries. Electronic communications operators meeting the notification and general authorisation requirements are allowed to provide their services in Belgium.

Mergers, acquisitions and joint ventures between broadcasting, media and other TMT companies are subject to the approval of the Belgian or European competition authorities.

#### **iv Transfers of control and assignments**

RF spectrum licences for public e-communication services may be transferred or leased as a whole or in part, subject to BIPT's approval. BIPT may refuse its approval if the transfer or lease were to distort competition (which may, for instance, be the case when the original licence holder acquired rights to use the spectrum free of charge), or impedes the effective and efficient use of the RF spectrum.

In the case of a transfer, the acquirer must continue to fulfil the original licence conditions. When leasing wireless licences, lessors remain responsible for compliance with the licence conditions. A prospective licensor or lessor must notify BIPT. The notification must include a copy of the transfer or lease agreement and be accompanied by an administrative fee to cover BIPT's costs for examining the request. BIPT may request additional information on the transaction within six weeks. A BIPT decision to approve or deny a transfer or lease must be given within three months following the notification or following the receipt of additional information. The termination of a temporary transfer or lease must also be notified to BIPT. Transfers, leases and their termination will be made public on BIPT's website.

A change of control of the licence holder also requires prior notification. A licence may be revoked if the change of control seriously compromises the conditions under which the licence was issued.

Regarding broadcasting, in the Dutch-speaking community, spectrum licences and the corresponding broadcasting licences are personal. They can only be transferred to a third party upon written approval from VRM. In the French-speaking community, radio broadcasting licences are non-transferable. However, CSA may authorise the merger of radio broadcasters or the exchange of RFs between broadcasters having licences in the same zone. In the German-speaking community, broadcasting licences are non-transferable.

### III TELECOMMUNICATIONS AND INTERNET ACCESS

#### i Internet and internet protocol regulation

Internet and IP-based services have generally been regulated in the same manner as traditional ECSs. Just as for ECNs (telephony), interconnection and access regulatory conditions are applied to IP-based networks.

However, the Electronic Communications Act imposes certain obligations on ISPs in relation to net neutrality. For example, an ISP is required to inform subscribers about traffic management procedures, download speed and volume, and legally permitted limitations to access or use of the internet access service. Apart from these transparency obligations, net neutrality requirements in Belgium are governed by the Net Neutrality Regulation.<sup>5</sup> This Regulation, which came into force on 30 April 2016, ensures that all traffic data on the internet is treated equally, without discrimination as to its source, destination, device or application. This means that, subject to specific exceptions, ISPs cannot block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services.

The regional governments of Flanders, Wallonia and Brussels are competent to enact legislation regarding internet or broadband network infrastructure and infrastructure licensing in their respective regions without pre-emption. The three regional media regulators (VRM, CSA and Medienrat) also have a shared competence with the federal BIPT in relation to the supervision of net neutrality compliance.

#### ii Universal service

The Electronic Communications Act prescribes USOs. The universal telecommunications service is composed of a geographic and social component and aims to provide a minimal set of ECSs to all end users at an affordable price.

In 2015 the Minister of the Digital Agenda, Telecom and Post introduced the Digital Belgium action plan, which establishes five long-term priorities (infrastructure, safety, government, economy and employment) for digital development in Belgium. Regarding infrastructure, a plan for ultrafast internet in Belgium has been presented that aims to achieve internet speeds of up to 1Gbps for at least half of the national connections by 2020 to facilitate the early establishment of mobile broadband technologies and to introduce a proactive 5G framework.

#### iii Restrictions on the provision of service

##### *Prices*

The European regulatory principle for the electronic communications sector provides that 'a retail market should only be subject to direct regulation if it is not effectively competitive despite the presence of appropriate wholesale regulation on each of the related upstream market(s)'. Following this principle, BIPT does not impose regulated retail tariffs on electronic communications operators.

Operators with significant market power (SMP) are subject to price regulation. At a wholesale level, mobile termination rates are regulated on the basis of a bottom-up LRIC. The same maximum tariffs apply to MNOs, full MVNOs and OTT-VoIP operators.

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<sup>5</sup> EU Regulation 2015/2120.



At a retail level, maximum tariffs apply for porting a number and for the provision of paid services via e-communication networks. In addition, operators with a turnover of more than €50 million are obliged to offer social tariffs to low income households, elderly people with a low taxable income, categories of handicapped people, etcetera.

The Net Neutrality Regulation required operators to abolish retail roaming tariffs within the European Union as of 21 June 2017. Electronic communications operators are therefore no longer allowed to charge extra roaming costs next to national tariffs for the use of mobile services within the EU. The rules are, however, subject to exceptions to prevent abuse.

### ***Access***

Regarding network-to-network interconnection, all network operators are required to negotiate interconnection agreements with every requesting operator in good faith. Good faith negotiations are evaluated on a case-by-case basis, and must at least include a response to the request by the network operator and an exchange of propositions that meet certain minimal technical and financial conditions. If the parties fail to negotiate an interconnection agreement in good faith, they can request BIPT to mediate in a voluntary conciliation procedure. BIPT will attempt to reconcile the parties within one month.

More importantly, BIPT can intervene in both access and interconnection negotiations to assure adequate access or interoperability, to promote sustainable competition and user interests, and to contribute to the development of an electronic communications single market. BIPT may also, following the market analysis procedure of Article 55 Electronic Communications Act, impose *ex ante* regulatory obligations regarding access and interconnection on operators found to have SMP status in a specific market.

### ***Content***

Net neutrality and freedom of expression are core principles. ISPs cannot block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services. However, specific content limitations apply to broadcasting and advertising (see Section V.i).

### ***Unsolicited communications***

Article VI.110-VI.115 CEL regulates the provision of unsolicited communications in accordance with the ePrivacy Directive.<sup>6</sup> The use of automatic calling systems without human intervention or faxing with the intention of direct marketing are prohibited without the prior free, specific and informed consent of the recipient of the communications. Recipients have the right to withdraw their consent at all times, without justification and at no cost. However, unsolicited communications for direct marketing purposes that use other means are allowed in the absence of clear opposition by recipients. The undertaking responsible for the unsolicited communications is, however, obligated to identify itself.

## **iv Security**

### ***Interception***

Several provisions in different legislative instruments permit judiciary and administrative authorities to intercept or obtain the disclosure of private communications.

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6 Directive 2002/58/EC.

The Belgian Code of Criminal Procedure (CCP) makes it possible to impose measures for the interception of communications for investigation purposes, as well as to obtain the disclosure of communications data. Interception measures are regarded as special investigation measures for which an examining magistrate needs to issue a warrant (Article 90 ter to 90 decies CCP). Warrants are subject to strict formal and justification requirements. The period for which interception measures are in place cannot exceed one month from the date of issuance of a warrant.

Electronic communications operators are obliged to cooperate with the judicial authorities in relation to investigative measures. This legal cooperation duty is laid down in the Royal Decree of 9 January 2003. It also includes the obligation for each electronic communication operator to establish a coordination unit consisting of one or more assigned persons who are permanently available to meet the cooperation obligations.

The Intelligence and Safety Services Act of 30 November 1998 gives national intelligence and safety services the authority to take interception measures and request the disclosure of certain private communications. The Act considers interception measures as exceptional measures for the collection of data, which are only possible after a specific authorisation by the Director-General of the intelligence or security services, subject to the positive advice of the supervisory administrative commission for specific and exceptional measures of investigation by intelligence and safety services.

### ***Personal data – privacy***

On 28 July 2016, the new Act of 29 May 2016 on the collection and storage of data in the electronic communications sector (Data Retention Act) came into force. The Act amended the previous version of Article 126 of the Electronic Communications Directive and added a new Article 126/1. It determines which data providers should retain, when the starting point of retention is and how long the retention is necessary. Although the new Act does not alter the data retention period of 12 months, it does provide for more guarantees for the protection of privacy and data.

Electronic communications operators are required to retain customer identification data, access and location data of devices, and communications data, with the exclusion of content data. The Data Retention Act limits the number of competent authorities that can request access to the data in a limitative way. Unrestricted access to data must be provided expeditiously and upon mere request of the listed authorities. However, access is only allowed in relation to specifically defined underlying purposes and circumstances. Electronic communications operators are required to keep the stored data confidential in all other circumstances.

Additionally, operators and service providers in the TMT sector are subject to the general principles and obligations of the General Data Protection Regulation (GDPR)<sup>7</sup> that came into force on 25 May 2018. The GDPR sets out important obligations for businesses and organisations when processing personal data of natural persons, regarding, *inter alia*, transparency, data retention, transfers and data breaches. In June 2018, a data leak under the major Belgian telecom provider Orange caused the loss of almost 15,000 Belgian customers'

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7 EU Regulation 2016/679.

personal data. Orange followed the data breach procedure laid down by the GDPR by notifying both the Belgian Data Protection Authority and BIPT within 72 hours, and the Belgian Data Protection Authority and BIPT have started an investigation.

## **IV SPECTRUM POLICY**

### **i Development**

The government attached coverage obligations to the allocation of spectrum below 1GHz. In 2016, Belgium reached an average 4G coverage among operators of 95 per cent.

In 2017, BIPT granted extensions to existing spectrum licences, coupled with capacity requirements. These capacity requirements aimed at strengthening the national broadband strategy and at deploying 5G networks. The operator in question recently relinquished its licence rights. In any event, the government has expressed its intention to support 5G initiatives and to increase mobile coverage further. 5G deployment is expected to take place in the spring of 2019.

### **ii Flexible spectrum use**

Belgium's frequency plan sets out the allocation of spectrum to specific services and uses. Although different frequency bands are reserved for specific applications, the principle of technological neutrality in Belgium allows for spectrum sharing and flexible spectrum use. For instance, new data transmission technologies, such as LTE and 4G, were introduced in the frequency bands allocated to mobile telephony. Additionally, several frequency bands are shared between both civil and military uses.

### **iii Broadband and next-generation mobile spectrum use**

As previously mentioned, the Digital Belgium action plan establishes infrastructure, safety, government, economy and employment as priorities for digital development in Belgium.

Regarding infrastructure, a plan for ultrafast internet in Belgium aims to achieve internet speeds of up to 1Gbps for at least half of the national connections by 2020, to facilitate the early establishment of mobile broadband technologies and introduce a proactive 5G framework. The auction procedure to allocate spectrum for 5G mobile broadband is planned to take place in the spring of 2019. This procedure also aims to introduce an additional fourth MNO on the Belgian mobile telephony market. These milestones are to be achieved by implementing 17 specific measures in four areas of action. The plan pursues broadband coverage for all citizens and businesses through collaboration between operators and authorities prior to the network rollout by utilising European financing instruments, stimulating Wi-Fi rollout and imposing additional licensing conditions for the allocation of mobile frequencies to stimulate mobile broadband coverage.

Measures will also be adopted to reduce the costs of building ultrafast networks. These measures include the coordination of roadworks and distribution of costs between the different network operators involved, the use of existing infrastructure, facilitating the assignment of licences and assuring the fibre readiness of new building projects.

### **iv Spectrum auctions and fees**

The assignment of spectrum varies depending on the frequency and its intended use. The conditions for obtaining spectrum licences, as well as its permitted use, are laid down in

royal decrees. For mobile services, BIPT generally assigns spectrum using both auctions and comparative selection processes. Auctions have been favoured for the assignment of spectrum for more recent mobile applications. For example, an auction was used in 2001 and 2011 for the assignment of spectrum for the provision of 3G services, and in 2010, 2011, 2013 and 2015 for the assignment of spectrum destined for 4G services. New spectrum auctions are expected in the spring of 2019 for the development of a 5G network framework in Belgium.

## **V MEDIA**

### **i Restrictions on the provision of service**

While freedom of expression is a core principle, specific limitations apply to broadcasting and advertising. These limitations only apply to content providers and not to network operators, who are regulated according to the principles of net neutrality. However, this is expected to change, as the EU Directive pertaining to audiovisual media services is currently under review and amendments are expected in the near future.

Broadcasting content limitations are set by the different language communities. The communities have similar rules to protect minors, banning the linear broadcasting of content that could seriously affect the physical, mental or moral development of minors. Television programmes including pornographic scenes or gratuitous violence may be distributed via non-linear services only, provided that adequate measures are in place (such as technical measures or the timing of broadcasting) to prevent access by minors.

Public television broadcasters and private linear television broadcasters (with the exception of regional and teleshopping broadcasters) must strive to reserve the majority of their transmission time that is not dedicated to news, sports, game shows, advertising, teletext or teleshopping to European productions. A considerable portion must be used for productions in the local language of the community in question.

Both federal and community rules apply to advertising. Federal legislation prohibits the advertising of tobacco products, regulates the advertising of alcohol, medicines and medical treatments, and online advertising, and prohibits unfair commercial practices. Similar limits apply to advertising and product placement across the different language communities.

### **ii Internet-delivered video content**

An increasing number of consumers are shifting from linear audiovisual media services to on-demand content, resulting in traditional broadcasters and content providers losing considerable market shares to new OTT internet-based providers, such as Netflix. OTT (on demand) audiovisual content providers have no licensing requirements and are free to deliver their services over the internet without restriction. In accordance with the principles of net neutrality, ISPs cannot block, slow down, alter, restrict, interfere with, degrade or discriminate between specific content, applications or services delivered over their networks. As a result, ISPs are not compensated for the transmission of audiovisual content over their networks.

Under the current framework, on-demand audiovisual content providers only have to comply with general obligations related to transparency, public policy and health, the protection of minors, sponsorship and product placement, and the promotion of European works. They are not required to comply with the more stringent obligations applicable to television broadcasters.

Future regulation of OTT services is still uncertain. The proposed European Electronic Communications Code (ECC) will bring OTT communication services (such as Whatsapp) under the electronic communications regulatory framework. By amending the definition of ECSs to include interpersonal communications services, the scope of the electronic communications framework will be extended to functionally equivalent services. The same is expected to happen for OTT audiovisual content providers, whose regulatory obligations will be more aligned with traditional broadcasters to guarantee a more level playing field.

## **VI THE YEAR IN REVIEW**

### **i Policy and decisions**

2018 did not bring any major legislative changes in the Belgian TMT sector. With regard to technology, the government has launched consultations and initiatives with regard to important innovations such as artificial intelligence and blockchain.

With regard to telecommunications, the Minister of the Digital Agenda, Telecom and Post recently launched a consultation regarding the allocation of frequency spectrum licences for MNOs. Part of existing frequencies in the 2G and 3G frequency bands will be automatically assigned to existing operators, while the remaining part will be auctioned. The auction procedure also aims to assign spectrum in the new 700MHz and the 3,400–3,800MHz frequency bands, which will be used to establish 5G mobile broadband on the Belgian territory. This auction procedure will take place in the spring of 2019. Most importantly, the Minister plans to seize this opportunity to introduce a fourth MNO on the Belgian market. By expanding the number of MNOs from three to four, he aims to ensure additional investments, stronger price competition and lower prices for consumers.

After an extensive evaluation of the Belgian broadband and broadcasting markets, the CRC decided on 29 June 2018 to adopt a series of measures to further encourage competition. These measures include maintaining wholesale access obligations for the cable networks of Proximus, Telenet, Brut  l   and Nethys (including optical fibre), the decrease of wholesale tariffs and incentivising investment in underpopulated areas.

### **ii Consolidation**

On 4 February 2016, the European Commission decided to clear the previously announced acquisition of BASE Company by Telenet (Liberty Global). The acquisition was subject to several conditions, one of which was the establishment of a new MVNO, Medialaan, which was already active as a broadcaster in Belgium. In February 2018, the acquisition became final as Telenet paid the remainder of the takeover sum. In 2015, Telenet was allowed to acquire a stake in broadcaster De Vijver Media NV. The acquisition was subject to conditions, such as the conclusion of carriage agreements. In March 2018, Liberty Global reached an agreement with the remaining shareholders to acquire the full ownership of De Vijver Media NV. However, this acquisition is still subject to the authorisation of the competent competition authorities. Similarly, in June 2018, Liberty Global further expressed its desire for expansion by presenting a non-binding offer to acquire the Brussels' cable operator Brut  l  . This further indicates the tendency for consolidation under the major players in the Belgian TMT market.

## **VII CONCLUSIONS AND OUTLOOK**

The growing trend of consolidation and convergence has prompted Belgian regulators and competition authorities to introduce or maintain measures to ensure competition on the electronic communications and broadcasting market. Especially on a wholesale level, access obligations and other measures are likely to remain in place to ensure competition. For the Belgian mobile telephony market, the introduction of a fourth MNO in 2019 will result in consumer choice and positive retail price changes.

The increased use of OTT services has led BIPT to support the imposition of a more level playing field by extending the scope of application of the electronic communications regulatory framework to OTT service providers. With the introduction of the ECC in the near future, the European legislator will adjust the current regulatory framework to the digital paradigm shift by including interpersonal communications services under the definition of ECSs. This trend of extending the scope of the regulatory framework to functionally equivalent services can also be expected for on-demand audiovisual services. Changes in Belgian legislation are expected because of the implementation of the ECC and the amended Audiovisual Media Services Directive. As the government has been in place since 11 October 2014, we do not expect major legislative changes to happen in Belgium before the elections of 2019.

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Flip Petillion is a leading domestic and international litigator and arbitrator.

Flip has been handling court litigations and arbitrations for 30 years in matters related to different industries. He has built an outstanding reputation through his special focus on intellectual property rights, information, communication, technology and media.

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Flip created Petillion, a boutique firm focusing on dispute resolution. The firm acts in Belgian courts and before the European Court of Justice and the European General Court.

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Jan Janssen is a senior dispute resolution lawyer with a keen interest in complex regulatory matters and technology. He specialises in commercial and international arbitration with a focus on intellectual property, information technology and the liberalisation of sectors.

Jan's practice primarily involves complex civil litigation and commercial arbitration in a variety of industries, including fashion, media, postal services, technology and telecommunications.

Jan also provides contractual advice and assists clients in protecting, managing and enforcing their intellectual property rights both in an online and offline environment. He assists and represents clients in transactional matters, such as distribution, agency, licensing, technology transfer, software development, outsourcing and service level agreements.

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Diégo Noesen is a member of the intellectual property, information technology and media team. He is a senior dispute resolution lawyer focusing on European and domestic litigation with an emphasis on intellectual property. Diégo's practice involves complex civil litigation in a variety of industries and sectors, including media and entertainment, fashion, automotive, technology and telecommunications.

Diégo also provides transactional advice and assists clients in protecting, managing and enforcing their intellectual property rights. He has particular expertise in brand and copyright protection, and domain names.

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Alexander obtained a master's degree in law at Ghent University, *magna cum laude*. He also obtained an LLM in intellectual property and ICT law at Leuven University, *magna cum laude*. During his studies, Alexander focused on European and IT law at Charles University in Prague, Czech Republic, while taking part in the Erasmus exchange programme.

Alexander has particular expertise in online brand and copyright protection, and domain names. He has participated in various online trademark and copyright infringement cases and domain name disputes.

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