



A man uses his Motorola mobile phone in Bangkok. REUTERS/Chaiwat Subprasom

#### THE BIG STORY

## Sorry, wrong number

### THAILAND'S MISGUIDED FOREIGN DOMINANCE NOTIFICATION (FDN) THREATENS TO STUNT THE GROWTH OF THE TELECOM INDUSTRY

By **RANAJIT DAM**

In most respects, the Thai telecom sector's latest foreign dominance notification (issued by the regulator NBTC in July) is not greatly different from the old one, issued in August 2011; the surprise, though, is that it is still in force at all. The old notification was issued with the expressed intention of safeguarding national security; the new one underplays that aim, and instead looks to tackle the phenomenon of foreigners controlling Thai telecom companies in disguise. At present, Thailand already has laws and regulations to prevent the foreign dominance of local businesses – the Telecommunications Business Act and the Foreign Business Act both cap the maximum foreign shareholding in telecom operators at around 49 percent – but this notification takes it even further.

The FDN, which requires local telecom operators to determine their own measures to prevent foreign dominance and submit them for the NBTC's approval, forbids eight kinds of foreign dominance. These begin with shareholding – the dominance of telcos by foreigners or their representatives through control of shares is forbidden – and then go on to include nationalities of management and operations (the FDN lists

roles from president and CEO down to purchasing manager and head of HR), and even touch on control of procurement contracts, transfer of costs, and transfer pricing with a foreigner. The wide-ranging definition of dominance makes the FDN impossible to police objectively, not to mention subjective and quite arbitrary.

Ultimately, the notification threatens to seriously undermine Thailand's third-generation spectrum auction, which is scheduled for mid-October. A country of at least 79 million mobile subscribers, Thailand has had a long, frustrating wait for 3G, but compliance to the revised FDN is a prerequisite for the auction, and only three bidders (two of which count foreign entities as stakeholders) are expected. Even one operator being challenged or affected by these revised rules would weaken the auction, if not cause it to be abandoned altogether. More importantly, it sends a disappointing message to foreign investors – who provide much of the funding, not to mention the know-how for the development of mobile telecommunications in emerging economies – and can seriously stunt the growth of one of the country's key sectors. For a forward-looking sector like telecom, Thailand has been far from forward-thinking. **LR**

#### FORUM

HOW DO YOU THINK THE FDN WILL AFFECT FOREIGN INVESTMENT?

There are many questions surrounding interpretation and enforcement. Ultimately, if it becomes impossible for foreign investors to take a controlling position in Thai telecom firms, many investors will simply look elsewhere; many investors are not interested in taking passive positions.

**DAVID DUNCAN**  
Tilleke & Gibbins



It would be a challenge for certain of the existing mobile operators with foreign ownership to comply with the restrictions in the FDN if they wish to participate in the 3G auction. It remains to be seen if the foreign owners are prepared to restructure their shareholding given that Thailand is still a relatively attractive market.

**MARK ROBINSON**  
Herbert Smith



In the future this notification will also deter newcomers, whether Thais or foreigners, from entering into Thai telecom market. This is because the telecom sector is a business which requires an immense investment fund and high technology. At present, it is still necessary for newcomers to rely on foreign funds and technology.

**DHIRAPHOL SUWANPRATEEP**  
Baker & McKenzie

