

Electronic Communications

Information Paper

December 2009



“As with every aspect of our legal practice, explaining the legal framework in clear and concise terms is a fundamental characteristic of the way we work. It is only natural for a law firm striving to provide as clear, practical and efficient legal solutions as possible to have developed a working structure which allows direct addressing of the issues our Clients are faced with. Particularly during the turbulent times we live in, we are not looking to overload our Client with ‘legalese’ and charge for the mere provision of information that is publicly accessible. Instead, we aim to increase value for our services by providing our Client with our own straightforward description of the regulatory framework in every industry well before they even decide to contact us for the first time. In this way both sides benefit, as we receive an informed initial enquiry in relation to which we can accurately identify the legal issues and start working on their solution while our Client receives our immediate legal support. This is how we comprehensively deal with complex legal challenges in an increasingly competitive environment and this is how we differentiate ourselves from traditional approaches.”

Anastasios Antoniou

SENIOR PARTNER

Our Legal Services in Electronic Communications

Whatever aspect of electronic communications you work in, be it audio or video, cable or online, industrial or commercial, for public or private use, you can always rely on legal support that runs in parallel with technological advancements and developments. We offer cutting-edge, industry-focused legal support in the field of communications, ensuring all aspects are covered from commercial agreements to corporate transactions and from dispute resolution to regulatory compliance and a host of other issues.

Contact us at telecoms@antonioullc.com for more information or to discuss your legal needs.

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The EU Framework

The European Union has gradually legislated comprehensively over electronic communications. The European 'Telecommunications Package' has been designed to facilitate competition in the electronic communications sector and consists of various legal instruments which have direct effect in the Member-States of the EU. The current rules are under reform, for which a new Information Paper shall be issued as soon as such rules are in force.

The EU's current regulatory framework in force comprises of the following Community Directives:

- The Framework Directive
- The Authorisation Directive
- The Access Directive
- The Universal Service Directive
- The Privacy and Electronic Communications Directive

The Framework Directive establishes a harmonised framework for the regulation of electronic communications, networks and services. It contains horizontal provisions serving the other measures: the scope and general principles, basic definitions, general provisions on the national regulatory authorities (NRAs), the new concept of significant market power, and rules for granting certain essential resources such as radio frequencies, numbers or rights of way.

The new EU legal framework is not limited to telecommunications networks and services but covers all electronic communications networks and services. Therefore, if your organization is also engaged in providing fixed-line voice telephony, mobile and broadband communications and cable and satellite television services, you are also caught by the framework's provisions.

In the Information Society, boundaries between telephone, internet, television broadcast and mobile phone services are becoming blurred, even irrelevant. Indeed, frontiers between Member States have also lost much of their significance when it comes to these services. The regulatory approach to the different services has also had to converge. In 2002, the European Union adopted a new regulatory framework for electronic communications networks and services, covering all forms of fixed and wireless telecoms, data transmission and broadcasting. The regulation of the content carried by such services is, however, dealt with under separate rules.

In the internal market, telecoms operators and service providers have the right to set up and offer their services throughout the EU. Encouraging and enabling them to take advantage of those rights boosts the overall quality of telecoms services for consumers, and reduces the prices they have to pay for them. The EU's regulatory framework aims to promote free and fair competition, which will boost Europe's economy by supporting every area of activity which relies on telecoms, and create a strong telecoms industry in Europe. Consumers will be the ultimate beneficiaries.

CONSUMER RIGHTS Telecoms services are now a staple of everyday life, and the EU framework ensures that every citizen, no matter where they live, has the opportunity to obtain a basic telephone service capable of both voice and internet use, for a fair price. The development of electronic communications means that a wide range of operators have access to consumers' private information and/or data about them. The framework includes rules to ensure the privacy of users is properly respected. Moreover, telecoms services suffer increasingly from malicious attacks through spam, spyware and the like, and the EU has agreed measures to combat this.

OPEN MARKETS The telecoms sector is still largely dominated by incumbent operators, in most cases former monopolies. In markets recently opened to competition, they inevitably dominate the sector, and so regulators need to ensure that they do not use their position unfairly to squeeze out new competitors. Granted access, many new entrants have demonstrated that they can compete strongly in recent years, raising standards in the sector to the benefit of consumers.

RADIO WAVES We increasingly want to use wireless communications devices, whether for convenience or to keep up whilst on the move. But the radio spectrum which all such devices use to communicate is crowded. The limited number of available frequencies need to be shared out fairly between many users, ensuring no interference between devices and services. Under the framework, the EU is harmonising spectrum allocation policies between Member States. The switch to digital television broadcasting is freeing up valuable spectrum, enabling new services, such as mobile television to be developed, but coordination at EU level is critical if such services are to develop effectively.

BROADCASTING The past decade or two has seen a revolution in television and radio broadcasting. Where once choices were restricted to a small number of channels received on a dedicated box, viewers and listeners today often have difficulty managing the wealth of channels available. Delivery routes have multiplied, and computers and even mobile phones are increasingly used to view or listen to broadcasts. EU action in this field is encouraging rapid switchover to digital television and take-up of mobile television.

Telecoms Market

The introduction of general authorisations for all types of electronic communication has greatly enhanced the ability of new and existing service providers to enter the European communications market. It has removed the bureaucratic bottleneck created by individual licensing, while establishing a series of rights and obligations for providers as well as rules on interoperability and rights of way.

The 2002 Authorisation Directive did away with the system under which Member States issued individual licences to network and service providers as a means of regulating the communications sector. That process, under which providers were required to obtain prior permission and provide proof of having fulfilled numerous conditions, created unnecessary bureaucratic bottlenecks for the free provision of communications services.

In its place, the Directive requires Member States to establish a general authorisation for all types of electronic communication services and networks, including fixed and mobile networks and services, data and voice services, broadcasting transmission networks and services, etc.

Although this general authorisation may include one or more legislative acts, Member States can no longer demand that a service provider obtain explicit administrative authorisation before starting business. Authorities may ask to be notified of a company's intention to start business, in order to keep a register, but the service provider does not have to wait for a reply to this notification, nor should they be asked to provide more information than necessary for the identification of the company.

The general authorisation system also significantly improves the transparency of the regulatory regime and avoids unnecessary and confusing duplication of conditions that are not specific to the electronic communications sector. The Directive stipulates that all relevant information on rights, conditions, procedures, charges, fees and decisions is to be published in a way that makes it easily accessible for all interested parties. Any changes should also involve prior consultation with interested parties.

RIGHTS AND OBLIGATIONS The Directive limits the type of conditions which may be included in general authorisations, in order to ensure service providers are treated in a non-discriminatory, objective, transparent and proportionate fashion by national regulatory authorities. It also ensures consumers' rights to universal service are protected and that competition within the communications market is strengthened through interconnectivity, while setting out the types of charges that can be levied on service providers.

INTEROPERABILITY The 2002 regulatory framework requires Member States to encourage the use of standards as a means of ensuring interoperability of services and freedom of choice for consumers.

RIGHTS OF WAY Because providers of communication networks need to install infrastructure such as cables, antennas and masts, often on public buildings or land, the 2002 regulatory framework requires public authorities to consider all rights of way requests without delay and in a transparent and non-discriminatory manner, in order to ease and accelerate the process of infrastructure deployment.

Broadcasting

Europe is moving towards a new era of broadcasting with the rollout of digital television and radio, and the launch of mobile TV services. The EU's regulatory environment has been designed to be conducive to innovation, investment and competition, in order to ensure a choice of high-quality broadcast services for consumers.

The Framework Directive and the Authorisation Directive set out the regime for the use of radio frequencies for electronic communications networks and services, including for broadcast purposes. The Authorisation Directive, in particular, aims to create a single European market for electronic communications by harmonising the rules for authorising the provision of services and networks. Services and networks used for the transmission of radio and television broadcast content, such as satellite broadcasting networks, terrestrial broadcasting networks or cable television networks, are subject to a general authorisation regime which aims to facilitate market access and strengthen competition. As a rule, the Directive stipulates that the allocation and assignment of radio frequencies must be based on objective, transparent, non-discriminatory and proportionate criteria.

TELEVISION AND RADIO The EU policy on television simultaneously pursues the objective of creating a single market in broadcasting while also fostering cultural pluralism and protecting existing national broadcasting markets and institutions. The 1989 Television Without Frontiers Directive set out minimum standards that, if met by any television programme, would allow it to be freely broadcast within the EU without restriction. This Directive, already modified in 1997, is expected to be modified further in early 2008. The revised regulatory framework will cover all audiovisual services, recognising the new variety of delivery routes for the content traditionally viewed only on televisions.

The rollout of digital television across Europe will further expand consumer choice, giving people access to more programmes of higher picture and sound quality as well as the possibility to benefit from interactive services. The Commission is also promoting the rollout of digital radio services through encouraging the use of standards and a favourable regulatory regime.

The Commission is encouraging countries to complete the switchover to digital broadcasting by 2012. This, in turn, will free up premium radio spectrum currently occupied by analogue services for new and innovative communication and broadcast services: the so-called 'digital dividend'.

MOBILE TV By offering consumers the possibility to watch television anywhere at any time, and allowing them to access interactive services, mobile TV could fundamentally change viewing habits, potentially generating a market of €20 billion worldwide by 2011. To assist in the deployment of mobile TV services, the Commission is encouraging a 'light-touch' regulatory environment and promoting the use of standards.

National Regulation

The Community legal framework discussed imposes upon Member States to guarantee the independence of national regulatory authorities (NRAs) by ensuring that they are legally distinct from and independent of all organisations providing electronic communications networks, equipment or services. Within this context, effective mechanisms on a national level must allow any user or provider of electronic communications networks or services the right of appeal to an independent appeal body in the event of any disputes with an NRA.

Member States must ensure that national regulatory authorities exercise their powers impartially and transparently. They must also ensure that the NRAs make arrangements for consultation of the interested parties if they intend to take measures which could have a significant impact on the market.

The Cypriot national regulatory authority is the Office of the Commissioner of Electronic Communications and Postal Services Regulation (OCECPR).

To promote competition in the provision of electronic communications networks and services, the NRAs are tasked with:

- ensuring that users derive maximum benefit in terms of choice, price and quality;
- encouraging investment in infrastructure and promoting innovation;
- encouraging efficient use and management of radio frequencies and numbering resources.

The NRAs must also contribute to development of the internal market by:

- encouraging the establishment and development of trans-European networks and the interoperability of pan-European services;
- ensuring that there is no discrimination in the treatment of providers of electronic communications networks and services;
- cooperating with each other and with the European Commission to ensure the development of consistent regulatory practice and application of the new regulatory framework for the telecommunications sector.

Lastly, the NRAs must promote European public interests by:

- ensuring that all citizens have access to a universal service, as specified in the “Universal Service” Directive;
- ensuring the availability of simple and inexpensive dispute resolution procedures;
- contributing to ensuring a high level of protection of personal data and privacy (the Privacy and Electronic Communications Directive);

MANAGEMENT OF RADIO FREQUENCIES The national regulatory authorities manage the radio frequencies for electronic communication services. Such radio frequencies must be allocated and assigned on the basis of

objective, transparent, non-discriminatory and proportionate criteria. Beyond that, any undertaking intending to transfer rights to use radio frequencies must notify the national regulatory authority responsible for spectrum assignment. NRAs must ensure that competition is not distorted as a result of any such transaction.

NUMBERING, NAMING AND ADDRESSING Member States must ensure that NRAs control the assignment of all national numbering resources and the management of the national numbering plans. Adequate numbers must be provided for all electronic communications services. To this end, the national regulatory authorities must establish objective, transparent and non-discriminatory procedures for assigning national numbering resources.

RIGHTS OF WAY The purpose of granting rights of way is to allow an undertaking to install facilities on, over or under public or private properties. When a competent authority considers an application for the granting of rights of way it must act on the basis of transparent procedures, applied without discrimination and without delay.

CO-LOCATION AND FACILITY SHARING In certain cases, Member States may impose the sharing of facilities or property on an undertaking operating an electronic communications network. This type of decision is used when there is limited access to resources due to the need to protect the environment, health or public safety.

CYBERCRIME The main offences covered by existing European and national legislation are:

- privacy offences: illegal collection, storage, modification, disclosure or dissemination of personal data;
- content-related offences: the dissemination of pornography, in particular child pornography, racist statements and information inciting violence;
- economic crimes, unauthorised access and sabotage: offences relating to unauthorised access to systems (e.g. hacking, computer sabotage and distribution of viruses, computer espionage, computer forgery, and computer fraud);
- intellectual property offences: violations of the legal protection of computer programs and databases, copyright and related rights.

Our Services

Whatever your role in electronic communications, your success depends on how well you manage risks that abound in changing regulatory and compliance matters, and how you structure alliances and acquisitions, deal with new business models and protect your intellectual property.

Our legal services cover the following range of issues in the Electronic Communications sector:

- Regulatory matters, including disputes and all aspects of licensing, authorizations and permits to provide electronic communications services
- Mergers and acquisitions, including due diligence, purchase and sale agreements, registration statements and offering memoranda, international joint venture and teaming agreements
- Disputes, including settlement negotiations for matters related to commercial contracts, regulatory issues, fraud, corporate governance and compliance and investigations
- Competition issues, including preparation of analyses on the requirements and risks in current and potential markets and ways to deal with them
- Data protection, including call intercept, encryption online, itemized billing and storage of traffic data
- Rights of use, including numbering, frequencies and Internet addresses
- Commercial contracts, including counsel and assistance in negotiating contracts related to network build, mobile virtual network operations, outsourcing, equipment and software supply and service provision
- Access and interconnection issues
- Users rights and universal service obligations, including such issues as quality of service, obligation to contract, directory services and regulation of retail tariff issues.

Read our Information Paper on Electronic Communications for a brief overview of the legislative framework.

Contact us at telecoms@antonioullc.com to discuss your legal challenges in electronic communications.