

The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2009

A practical insight to cross-border Telecommunication Laws and Regulations



Published by Global Legal Group with contributions from:

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1 Framework

1.1 When did Cyprus first liberalise telecommunications networks and/or services?

Following public consultations and public hearings, Cyprus had undertaken all necessary initiatives in order to complete the liberalisation process in the telecommunications sector and the harmonisation with the *acquis communautaire* within the period of 2002 and 2003. Primarily, the procedure was instituted by the establishment of the Office of the Commissioner of Telecommunications and Postal Regulation (OCTPR) in 2002 under Act 19(I)/2002. This was followed by the issuance of legislative regulations and orders leading to full harmonisation with the applicable regulatory framework regarding telecommunications. The target of the legislative work was the carrying out of the obligations of Cyprus in connection with its accession to the European Union in May 2004 and at the same time the creation of conditions for the development and maintenance of healthy competition. The publication of six Regulations regarding the matters of licensing and administrative fees, interconnection, quality of services and public hearings, on 31 December 2002 which theoretically abolished the monopoly regime in the telecommunications sector was instrumental in providing OCTPR with the legal basis to proceed and take concrete practical regulatory measures for the attainment of the target of the liberalisation of the telecommunications market. The period January-December 2003 had been particularly significant to the development of a competitive environment in the telecommunications sector, given that decisive steps were taken towards the liberalisation of the market and the entry of new companies providing telecommunications networks and services.

1.2 Has Cyprus fully implemented the EU 2003 regulatory framework? If Cyprus has not fully implemented the new regulatory framework, have proceedings been brought against Cyprus by the European Commission and if so, for which contraventions?

The Regulations and the Orders which were enacted during 2003 were based on the European legislative framework in the Telecommunications sector, which was in force during that period. The EU regulatory framework was fully implemented in Cyprus by the enactment of the Act on Regulation of the Electronic Communications and Postal Services, Act 112(I)/2004. After enactment by Parliament on 30 April 2004, Act 19(I)/2004 was abolished, and the Office of the Commissioner of Telecommunications and Postal Regulation (OCTPR) was renamed to

Office of the Commissioner of Electronic Communications and Postal Regulation (OCECPR). Cyprus has not been summoned in any proceedings by the European Commission for any contravention of the *acquis communautaire* in the electronic communication sector.

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

The Act on Regulation of the Electronic Communications and Postal Services is the main legislative instrument governing the operation of electronic communications networks and the provision of electronic communication services. This general legislation incorporates provisions which call for the drafting of secondary legislation which will ensure the complete transposition of the *acquis communautaire* as well as deal in more detail with the implementation of the Act.

1.4 Please describe the regulatory framework, in terms of regulatory authorities and associated agencies, e.g. national competition authority (where different).

The Office of the Commissioner of Electronic Communications and Postal Regulation (OCECPR) is the national regulatory authority, entrusted by law to apply the provisions of the Act on Regulation of the Electronic Communications and Postal Services, Act 112(I)/2004. The Commissioner is appointed by the Council of Ministers for a period not exceeding 6 years and heads the Office. A Deputy Commissioner and an Advisory Committee are also appointed to assist and advise the Commissioner in the exercise of his/her duties and deal with matters referred to them for this purpose.

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

The principal aspects falling under the supervision of the Commissioner of OCECPR are highlighted in article 20 of the Act on Regulation of the Electronic Communications and Postal Services, Act 112(I)/2004, and include the following general competences:

- to apply to electronic communications; the general policy which is to be followed from time to time and which may be communicated to him by the Government;
- to ensure that terminal equipment fulfils the national and international standards and supervise such equipment;

- to prescribe and publish by Order or Decision quality standards for any public provider of electronic communications and/or postal services and/or electronic communications networks, as the case may be, and supervise and ensure that such a provider complies with the aforesaid standards, and to order the taking of corrective measures;
- to grant authorisation for the creation and/or the establishment and/or provision of electronic communications and perform all necessary acts in the efficient administration of such an authorisation scheme;
- to establish the Cyprus Numbering Plan and determine the procedure for assignment and use of numbers according to the Cyprus Numbering Plan, on the basis of objective, transparent and non-discriminatory criteria, as well as any other issue concerning the assignment of numbers and the publicity of relevant procedures;
- to regulate by Order or Decision issues related to internet domain names ending in “.cy”;
- to designate undertakings with Significant Market Power in an electronic communications market and impose remedies for the enhancement of competition, in the event that it is found that competition in that electronic communications market is not effective;
- to regulate by Order or Decision access and interconnection, consistent with the principle of proportionality, by ensuring that appropriate levels of access and interconnection are available, as well as interoperability of services being achieved, in a manner that also pursues the aims of economic efficiency, viable competition and provides maximum benefit to end users;
- to regulate by Order or Decision all consumer protection issues that refer to the electronic communications sector, to provide his services for the resolution of disputes that arise, inter alia, between electronic communications network and/or service providers and between postal services providers;
- to require technical, financial and legal information; and
- to impose administrative fines or other penalties in relation to non-compliance with the provisions of this Law and/or Orders and/or Decisions, and to prescribe by Order the level of such fines and penalties and the procedures by which they are determined.

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

Other than those situations requiring an individual right of use or general authorisation relating to the use of radiofrequencies, no administrative act is required on the part of the Commissioner as a precondition for the provision of electronic communications networks and services in Cyprus. Subject to the provisions of this Section, any person who intends to provide an electronic communications network or an electronic communications service shall notify the Commissioner of their intention to provide same in advance of doing so. The provision of electronic communications networks and services is not restricted, subject to the terms set by the provisions of this Law. Any undertaking may provide electronic communications networks and/or services in Cyprus subject to a general authorisation or, in exceptional circumstances, to an individual right of use relating to the use of radio frequencies or numbers, irrespective of whether they are of a commercial or non-commercial nature and irrespective of whether or not they are provided for profit. The Commissioner is responsible for the provision of any general authorisation, other than any general authorisation relating to the use of radio frequencies, and the

granting of any individual right of use relating to the use of numbers. An undertaking seeking to provide electronic communications networks and/or services pursuant to a general authorisation can commence their provision immediately following the filing of a formal notification with the Commissioner. The provision of a network and/or service pursuant to a general authorisation does not relieve the provider of obtaining the necessary local permits and other rights to install facilities from government bodies or authorities with competence to grant such rights. The grant of individual rights of use will be necessary where an applicant needs to use scarce resources such as radio frequencies or numbers, including short codes, from the Cyprus Numbering Plan. Where those individual rights of use must be restricted in number because of unavoidable scarcity of such scarce resources, such restrictions will be managed so as to ensure that the assignment of such resources occurs in an objective, transparent, non-discriminatory and proportionate manner. The grant of such individual rights of use for radio frequencies falls within the exclusive competence of the Director, acting under the powers provided in the Radiocommunications Laws of 2002 to 2004. The assignment of numbering resources falls within the exclusive competence of the Commissioner. Exclusively for reasons of public order, safety and health, the Commissioner may at any time from the submission of the applicant's registration statement, subject to the adoption of a fully and objectively justified decision, prohibit or limit the ability of a specific undertaking from providing electronic communications networks or services.

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

SMP obligations have been conferred by the Order Stipulating Organisations with SMP in the Telecommunications Sector of 2003 (A.E.1/2003, 24/04/2003). The Cyprus Telecommunications Authority (CYTA) has been declared as a SMP organisation on the following markets: voice telephony market; land public networks market; mobile telephony market; mobile telephony networks market; leased lines market; and interconnection market.

1.8 How and to what extent is content delivered over electronic communications networks regulated and by whom?

The definition of electronic communications services excludes services providing, or exercising editorial control over, content transmitted using electronic communications networks and services.

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

On 31 August 2006 the European Commission registered notifications from the OCECPR concerning the retail markets for fixed narrowband access and retail fixed call markets. On the basis of its market analysis, OCECPR designated the incumbent CYTA (also referred to as ATHK) as an undertaking having SMP on the retail access and calls markets. OCECPR proposed to impose on CYTA the following obligations in the retail access and retail calls markets: (i) provision of Carrier Selection (“CS”)/Carrier Pre-selection (“CPS”) and a Wholesale Line Rental (“WLR”) obligation with necessary access to, and the use of, specific network facilities; and (ii) non-discrimination. The Commission examined the notification; and pursuant to Article 7(5) of the Framework Directive, the authorised OCECPR to adopt the resulting draft measure.

2 Licensing

- 2.1 If a licence or other authorisation is required to install or operate electronic communications networks or provide services over them, please briefly describe the process and timescales.

This is not applicable to Cyprus.

- 2.2 What other requirements, permits or approvals must be met or obtained before networks may be installed or operated and services provided?

This is not applicable to Cyprus.

- 2.3 May licences or other authorisations be transferred and if so under what conditions?

This is not applicable to Cyprus.

- 2.4 What is the usual or typical stated duration of licences or other authorisations?

This is not applicable to Cyprus.

3 Public and Private Works

- 3.1 Are there specific legal or administrative provisions dealing with access to public and private land in order to install telecommunications infrastructure?

An undertaking operating pursuant to a general authorisation notified in accordance with the Act may apply for the necessary rights to be granted by the competent authorities including the Commissioner to install facilities on, over or under public or private property for the purposes of providing public communications networks or electronic communications networks other than those supplied to the public. The policy regulating access to public and private land for the purpose of installing telecommunications infrastructure has been codified since July 2006 and approved by the Council of Minister in August 2006 (Decision No. 64.278).

- 3.2 Do any specific rules exist which assist in securing or enforcing rights of way over public or private land, for the installation of network infrastructure?

The codified document regulating access to public and private land for the purpose of installing telecommunications infrastructure stipulates the procedures on submitting applications, collection and assessment of needs of electronic communication providers, the conduct of the required studies and the co-operation of public authorities. In addition, it regulates the time framework which must be respected by the interested persons in the relevant process.

- 3.3 Is there a specific planning or zoning regime that applies to the installation of network infrastructure?

There is no specific planning or zoning regime that applies to the installation of network infrastructure.

- 3.4 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables?

The codified document regulating access to public and private land for the purpose of installing telecommunications infrastructure stipulates detailed procedures applicable in cases where access is demanded in respect of existing infrastructure and areas under private development.

4 Access and Interconnection

- 4.1 Is network-to-network interconnection and access mandated, and what are the criteria for qualifying for the benefits of interconnection?

Where an authorised undertaking is providing an electronic communications service or network to the public, the general authorisation also gives them the right to negotiate interconnection with and where applicable obtain access to or interconnection from another undertakings authorised in Cyprus or in another Member State to provide a publicly available electronic communication network or service. In addition, the Commissioner may confer rights and impose obligations on undertakings in relation to access to, and/or interconnection of, electronic communications networks and services and associated facilities, in order to achieve the interoperability of electronic communications services and produce sustainable competition on the merits between undertakings.

- 4.2 How are interconnection or access disputes resolved? Does the national regulatory have jurisdiction to adjudicate and impose a legally binding solution?

The Commissioner undertakes dispute resolution/case management either on his own initiative or following the submission of a complaint. Customarily, the Commissioner communicates a copy of the complaint to the provider concerned and such a complaint may constitute the object of an enquiry and/or investigation by the Commissioner if he is not satisfied with the response of the provider or if the complainant gives notice in writing that the complaint has not been dealt with satisfactorily. The Commissioner may issue a decision which is binding on the said provider.

- 4.3 Are charges for interconnection and/or network access subject to price or cost regulation and, if so, how?

This is not applicable to Cyprus.

- 4.4 In the local loop are existing owners of access infrastructure required to unbundle their facilities and if so, on what terms or regulatory controls?

This is not applicable to Cyprus.

- 4.5 How are existing interconnection and access regulatory conditions to be applied to new network technologies such as so-called next generation networks or IP-based networks?

This is not applicable to Cyprus.

5 Price and Consumer Regulation

5.1 Are (i) retail or (ii) wholesale price controls imposed on any operator in relation to fixed, mobile, or other services?

In order to promote and extend available options in the electronic communications services and enhance the consumer's interests, the Commissioner on the basis of the principles of transparency and provision of timely information regulates issues pertaining to consumer protection. The relevant legislative orders were issued in 2005.

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

This is not applicable to Cyprus.

5.3 Are there any rules governing use and retention of customer call information?

This is not applicable to Cyprus.

6 Numbering

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

Where it is deemed by the Commissioner to be necessary to grant individual rights to use numbers from the Numbering Plan of the Republic of Cyprus, these rights are provided by Decision of the Commissioner following a written request according to the procedures described in a relevant Order issued by the Commissioner. The Commissioner will issue rights of use for numbers and/or a series of numbers to providers of electronic communications networks and/or services for their own use and for further allocation to their subscribers. When adopting a Decision, the Commissioner shall take into consideration international Numbering Regulations and shall ensure adequate flexibility in the Numbering Plan of the Republic of Cyprus in order to establish a Numbering Plan that may facilitate the introduction of new electronic services, the permanency of numbering arrangements and the provision to rights use of numbers in a non-discriminatory and transparent manner. The Commissioner shall ensure the publication of open, transparent and non discriminatory procedures for the provision of rights of use.

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

The Commissioner may impose one or more of the following obligations on any undertaking operating under an individual right of use for numbers: (a) designation of service for which the number shall be used, including any requirements linked to the provision of that service; (b) effective and efficient use of numbers; (c) number portability requirements; (d) obligation to provide public directory subscriber information; (e) maximum duration; (f) transfer of rights at the initiative of the right holder and conditions for such transfer; (g) usage fees; (h) any commitments which the undertaking obtaining the usage rights has made in the course of a competitive or comparative selection procedure; and (i) obligations under relevant international agreements relating to the use of numbers.

The undertaking to which a series of numbers is assigned must not discriminate against other undertakings which provide electronic communications services regarding the sequence of numbers used for access to their services. Numbers which are not used within one (1) year of the date provided for by the relevant right of use may be reassigned by the Commissioner.

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

The Commission is the authorised administrator of the Numbering Plan of the Republic of Cyprus (NPRC) and maintains the competence to provide rights of use to network or service providers for their own use or further distribution to their subscribers, on the basis of local general regulations as well as international guidelines on number allocation. The principles underlying the relevant framework are the adequacy and flexibility of the NPRC, the facilitation of introducing new electronic services, the permanency of numbering arrangements, the absence of discrimination and the presence of transparency in number allocation. The NPRC in force was published on the 24th of April 2003 as an Annex to the Numbering (Telecommunications) Regulation of 2003.

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

The Commissioner issues Orders and/or Decisions in order to impose or define retail prices (such as special or common retail prices) between providers for the porting of a number in a manner that ensures the prevention of any distortion of competition.

7 Fees

7.1 What fees and levies are payable and to whom with respect to the grant of a licence or other authorisation for the installation or use of network infrastructure or the provision of communication services?

The applicable fee is assessed as a percentage on the total of gross annual turnover from electronic communications activities, after deduction of any approved national or European subsidy and VAT.

8 Submarine Cables

8.1 What are the main rules governing the bringing into Cyprus territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?

This is not applicable to Cyprus.

9 Radio Frequency Spectrum

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

The use of radio frequency spectrum is separately regulated by the Radiocommunications Laws of 2002 to 2004. The competent authority is the Director of the Department of Electronic Communications of the Ministry of Communications and Works.

9.2 In the grant of spectrum rights are distinctions made between mobile, fixed and satellite usage?

The basic distinctions in radiocommunications activities entrenched in the applicable legal framework concern private mobile radio (PMR) systems, public access mobile radio (PAMR) systems, public and private paging systems, satellite earth stations, amateur radio services, fixed radio services and other terrestrial or aeronautical or maritime stations.

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

This is not applicable to Cyprus.

9.4 How is the use of radio frequency spectrum authorised in Cyprus? Do the procedures available include spectrum auctions and comparative selection of candidates?

The use of radio frequencies in Cyprus is subject to the grant of an individual right of use or a general authorisation. The procedures available include spectrum auctions and comparative selection of candidates.

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

The broad categories of license-exempt use include radio and television stations who have been authorised in accordance with the Radio and Television Stations Laws as well as use by public servants which is made for purposes related to national or public safety, defence or state activities.

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

The calculation of fees related to authorisation and other related issues is governed by detailed provisions which can be found within the Regulations on Radio Communications (Fees) of 2004 (K.A.N.464/2004).

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

Spectrum licences can be traded or sub-licensed. The relevant procedure and conditions is regulated by the Regulations on Radio Communications (Competition and Negotiation) of 2002 (K.A.N.382/2002), as amended.

10 Interception

10.1 What are the essential rules applicable to the interception of messages, traffic data and other call records? Which rules apply to the retention of such call data, and over which period(s)?

The Director of the Department of Electronic Communications of the Ministry of Communications and Works may authorise any person to monitor, use or disclose records only for the limited purpose of verifying any contravention of the relevant Radiocommunications Laws or in order to ensure security and integrity in communications

and communications systems. In respect of the content of such communication, the matter is regulated by a separate legislative framework, comprising by the Act on the Protection of Privilege of Private Communications (Act 92(I)/1996) and the recent Act on Preservation of Tele-communications Data for the Purpose of Investigating Serious Criminal Offences (Act 183(I)/2007).

11 The Internet

11.1 Are services over the Internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the Internet at a wholesale and/or retail level?

Services over the Internet are regulated similarly to other electronic communications services. The competent authority is the OCECPR.

11.2 Are there any rules to prevent, restrict or otherwise govern Internet or email communications, in particular, marketing and advertising communications?

The competent authority is the OCECPR but also other authorities may be involved, such as the Office of the Commissioner for Personal Data Protection.

12 USO

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

The OCECPR ensures the provision of universal services to all end users in the territory of Cyprus, which constitutes the minimum package of services under article 108 of the Act on Regulation of the Electronic Communications and Postal Services, Act 112(I)/2004, as amended from time to time. These services include connection at a fixed location to the public telephone network and access to publicly available telephone services at a fixed location, provided that the relevant request is considered to be reasonable. They also include directory enquiry services, and directories in a printed or/and an electronic form, public pay telephones, special measures for disabled or socially disabled end users, operator assistance services, free access to emergency services, using the call number "112" or other emergency numbers. The provision of these services is an obligation of CYTA, which has been appointed as the universal service provider on the basis of a respective Decision made by the Commissioner.

13 Foreign Ownership Rules

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

This is not applicable to Cyprus.

14 Future Plans

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

The OCECPR, during its five years of operation, has presented a

creative and multifaceted work. This work has been based on three main axes, these being the harmonisation of the Cyprus Legislation with the European laws, the development of a healthy and balanced competitive environment without distortions and the protection of the Cypriot residential or business consumer, secured mainly through the universal service and the users rights. Future changes are expected to cover issues related to the gradual shift towards services that incorporate voice, data and video.



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