

Telecoms and Media

An overview of regulation
in 48 jurisdictions worldwide

2011

Contributing editors: Laurent Garzaniti and Natasha Good



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Cyprus

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Communications policy

1 Policy

Summarise the regulatory framework for the telecoms and media sector. What is the policymaking procedure? Has the EU regulatory framework (including the market reviews) been fully transposed into your national law, as far as currently required?

Following public consultations and public hearings, Cyprus undertook all necessary initiatives in order to complete the liberalisation process in the telecommunications sector and the harmonisation with the *acquis communautaire* during 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 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.

The regulations and the orders that 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 the 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.

2 Convergence

Has the telecoms-specific regulation been amended to take account of the convergence of telecoms, media and IT? Are there different legal definitions of 'telecoms' and 'media'?

As explained below, regulation of telecommunications and IT under Cyprus law is maintained quite separately from media and broadcasting regulation. The current legislative framework utilises different legal definitions in regard to 'telecoms' and 'media'.

3 Broadcasting sector

Is broadcasting regulated separately from telecoms? If so, how?

Regulation of telecommunications and IT under Cyprus law is maintained quite separately from media and broadcasting regulation. In regard to media and broadcasting regulation, the Cyprus Radio-Television Authority (CRTA) was established and operates as an independent regulatory body under the Radio and Television Advisory Committee. CRTA is responsible for appointing the Radio-Television Advisory Committee, which is a consulting body and reflects public opinion, the views of government services and various interested organisations and associations, and the positions of private radio and television broadcasters. The responsibilities of CRTA include the issuing and renewing of broadcasting licences for radio and television, monitoring media ownership and media content, safeguarding editorial independence and ensuring the equal treatment of individuals. The authority also has the responsibility for the implementation of the European Convention on Transfrontier Television with regard to the content of private broadcasters' programmes.

Telecoms regulation – general

4 WTO Basic Telecommunications Agreement

Has your jurisdiction committed to the WTO Basic Telecommunications Agreement and, if so, with what exceptions?

Yes. Cyprus made a commitment to the WTO Basic Telecommunications Agreement upon its accession to the European Union.

5 Public/private ownership

What proportion of any telecoms operator is owned by the state or private enterprise?

Cyta, the major telecoms operator, is a semi-government organisation and is considered to be the leading provider of integrated electronic communications services in Cyprus. Following the liberalisation of telecommunications in Cyprus, Cyta has repositioned itself as a comprehensive integrated electronic communications provider.

With the exception of the incumbent operator, the Cyprus Telecommunications Authority (CYTA), which is state owned, all of the other available operators in Cyprus are privately owned.

6 Foreign ownership

Do foreign ownership restrictions apply to authorisation to provide telecoms services?

Any person who intends to provide an electronic communications network or an electronic communications service shall notify the commissioner of their intention. This notification must be given in advance of the proceeding to provide such services. The provision of these services is not restricted to nationals of Cyprus and therefore does not exclude foreign ownership, as long as the provisions in the relevant laws are fulfilled and are adhered to in the provision of and maintenance of such services. As long as a general authorisation has been granted, any undertaking may provide electronic communications networks or services in Cyprus.

7 Fixed, mobile and satellite services

Comparatively, how are fixed, mobile and satellite services regulated? Under what conditions may public telephone services be provided?

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. Other than those situations requiring an individual right of use or general authorisation relating to the use of radio frequencies, 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.

The provision of electronic communications networks and services is unrestricted, and shall be exercised under the Act on Regulation of the Electronic Communications and Postal Services. Any restrictions on the provision of electronic communications networks and services may only be imposed on the grounds of the safeguarding of public order, public security and public health.

8 Satellite facilities and submarine cables

In addition to the requirements under question 7, do other rules apply to the establishment and operation of satellite earth station facilities and the landing of submarine cables?

Cyprus is connected to the rest of the world via a submarine fibre-optic cable network that connects Cyprus directly with the rest of the world. The Cypriot part of the fibre-optic network is owned by CYTA Global, which is a division of CYTA.

There is currently no regulation regarding such network.

9 Universal service obligations and financing

Are there any universal service obligations? How is provision of these services financed?

Yes. The scope of universal service, which is to be determined by a Decision of the Commissioner, will include at least the following services:

- 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;
- directory enquiry services, and directories in a printed or an electronic form, or both;
- public pay telephones;
- special measures for disabled or socially disabled end-users;
- operator assistance services; and
- free access to emergency services, using the call number '112' or other emergency numbers.

Further, the commissioner shall determine the criteria for choosing the undertaking or undertakings that are to provide universal services. The Commission shall adopt a designation mechanism that is

efficient, objective, transparent, and non-discriminatory. The adopted designation mechanism shall ensure that the universal services are provided in a cost-efficient manner and may require that the designated undertaking or undertakings provide universal services in such a way as to provide the commissioner with the means of determining the net cost of the universal service obligation.

10 Operator exclusivity and limits on licence numbers

Are there any services granted exclusively to one operator or for which there are only a limited number of licences? If so, how long do such entitlements last?

Significant market power (SMP) obligations have been conferred by the Order Stipulating Organisations with SMP in the Telecommunications Sector of 2003. CYTA has been declared an 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.

11 Structural or functional separation

Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

Yes; accounting separation (ie, the preparation of separate sets of financial statements for different business lines) aims at providing transparency over the interaction and transaction between business lines. The requirement to prepare accounting financial statements stems from the European and Cyprus regulations, and is imposed on telecommunication organisations with SMP.

12 Number portability

Is number portability across networks possible? If so, is it obligatory?

Number portability across networks is possible and is also obligatory. From the implementation of number portability facilities until the end of December 2007, 28,527 geographic numbers and 13,556 numbers of mobile telephony (or mobile numbers) were ported.

13 Authorisation timescale

Are licences or other authorisations required? How long does the licensing authority take to grant such licences or authorisations?

The commissioner may require those undertakings that provide electronic communications networks and services pursuant to a general authorisation and those undertakings that have been granted rights of use of numbers to provide, according to the time frame and the extent of detail determined by the commissioner, the information required for the control of compliance with the conditions of the relevant general authorisation or right of use, respectively.

Under general administrative law principles, the competent authority must respond to the relevant application with a reasoned decision within 30 days from the date of the submission of the relevant request. In practice, this period is often exceeded.

14 Licence duration

What is the normal duration of licences?

The commissioner decides upon the duration of licences.

15 Fees

What fees are payable for each type of authorisation?

Any administrative charges imposed on undertakings providing a service or a network under a general authorisation or to whom a right of use has been granted shall:

- cover only the administrative costs incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and the specific obligations referred to in parts 10, 11 and 15 of the Regulation of Electronic Communications and Postal Services Law of 2004, where applicable; and
- be imposed upon the individual undertakings in an objective, transparent and proportionate manner, with a view to minimising additional administrative costs.

Administrative costs may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and Decisions of the Commissioner.

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.

16 Modification and assignment of licence

How may licences be modified? Are licences assignable or able to be pledged as security for financing purposes?

Licences are individual in nature, and cannot be subject to assignment or transfer of their rights of use, wholly or partially, without the prior written consent of the commissioner, who at his or her absolute discretion may refuse such consent.

17 Retail tariffs

Are national retail tariffs regulated? If so, which operators' tariffs are regulated and how?

Yes. The commissioner may impose appropriate regulatory obligations on undertakings identified as having SMP on a given retail market.

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.

18 Customer terms and conditions

Must customer terms and conditions be filed with, or approved by, the regulator or other body? Are customer terms and conditions subject to specific rules?

Yes; customer terms and conditions should be approved by the commissioner.

The commissioner has the power to encourage and, where appropriate, ensure adequate access and interconnection, and interoperability of services, exercising his or her responsibility in a way that promotes efficiency and sustainable competition and provides maximum benefit to end-users.

When imposing obligations on an operator to provide access to the services, the commissioner may prescribe technical or operational conditions that must be satisfied by the provider or beneficiaries (or both) of such access in accordance with Community law, where this would be necessary to ensure the normal operation of the network. Conditions that refer to the implementation of specific technical standards or specifications shall refer to those standards developed by any European organisation.

In accordance with the aforementioned, the service provider shall respect the principles of transparency and non-discrimination with regards to customer terms and conditions of individual agreements.

The universal service provider shall respect the principles of transparency and non-discrimination with respect to the prices and the relevant terms of individual agreements on prices with customers.

19 Next-generation networks

How are next-generation networks (NGN) regulated?

The European Framework for Safer Mobile Use by Younger Teenagers and Children, which is a self-regulatory initiative of the European mobile industry, puts forward recommendations to ensure that younger teenagers and children can safely access content on their mobile phones.

20 Changes to telecoms law

Are any major changes planned to the telecoms laws?

The OCECPR, during its five years of operation, has presented 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 or foreign consumer, as well as ensuring a good standard of services provided to the end-user. This is 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.

Telecoms regulation – mobile**21 Radio frequency (RF) requirements**

For wireless services, are radio frequency (RF) licences required in addition to telecoms services authorisations and are they available on a competitive or non-competitive basis? How are RF licences allocated? Do RF licences restrict the use of the licensed spectrum?

The use of radio frequency spectrum is separately regulated by the Radio Communications Laws of 2002 to 2004. The competent authority is the director of the Department of Electronic Communications of the Ministry of Communications and Works. The basic distinctions in radio communications activities entrenched in the applicable legal framework concern private mobile radio systems, public access mobile radio systems, public and private paging systems, satellite earth stations, amateur radio services, fixed radio services and other terrestrial or aeronautical or maritime stations. 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.

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

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

22 Radio spectrum

Is there a regulatory framework for the assignment of unused radio spectrum (refarming)? Do RF licences generally specify the permitted use of the licensed spectrum or can RF licences for some spectrum leave the permitted use unrestricted?

Not applicable.

23 Spectrum trading

Is licensed RF spectrum tradable?

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

24 Mobile virtual network operator (MVNO) and national roaming traffic

Are any mobile network operators expressly obliged to carry MVNO or national roaming traffic?

The commissioner may impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, eg, in situations where the commissioner considers that denial of access or unreasonable terms and conditions having similar effect would hinder the emergence of a suitable competitive market at the retail level, or would not be in the end-users' interests.

Therefore, the commissioner may require that operators provide open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services.

25 Mobile call termination

Does the originating calling party or the receiving party pay for the charges to terminate a call on mobile networks? Is call termination regulated, and, if so, how?

Where the presentation of calling-line identification is offered, the called subscriber shall be able, by a simple means and free of charge for the reasonable use of this function, to prevent the presentation of the calling-line identification of incoming calls.

Call termination is regulated by section 102 of the Regulation of Electronic Communication and Postal Services Law of 2004.

26 International mobile roaming

Are wholesale and retail charges for international mobile roaming regulated?

Yes. Under section 114 of the Regulation of Electronic Communication and Postal Services Law of 2004, the commissioner shall monitor the evolution and level of retail tariffs for the services that are available to the public and which fall within the scope of defined universal service.

27 Next-generation mobile services

Is there any regulation for the roll-out of 3G, 3.5G or 4G mobile services?

There is a growing demand for mobile media services. Within Cyprus, there is the possibility to use a 3G mobile phone, a 3G modem or a specialised 3G data card. This means that the internet is accessible via a mobile phone.

CYTA has taken action to ensure compliance with the European Framework for safer mobile use by young people. Cypriot mobile telecoms operators have adopted a code of conduct that provides minimum protective measures for safe use of content provided on mobile phones. The main aim of the said provision is related to individuals under the age of 18 to protect them from illegal or adult content that can be accessible via a mobile device. This code is in compliance with EU and national legislation.

Telecoms regulation – fixed infrastructure**28 Cable networks**

Is ownership of cable networks, in particular by telecoms operators, restricted?

Ownership of cable networks is not restricted.

29 Local loop

Is there any specific rule regarding access to the local loop or local loop unbundling? What type of local loop is covered?

Full unbundled access to the local loop (ie, the physical circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network) means the provision to a beneficiary of access to the local loop or local sub-loop of the notified operator authorising the use of the full frequency spectrum of the twisted metallic pair.

The specific rules regarding unbundled access to local loops are outlined in EC Regulation No. 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop (OJ L 336 of 30.12.2000),

30 Interconnection and access

How is interconnection regulated? Can the regulator intervene to resolve disputes between operators? Are wholesale (interconnect) prices controlled and, if so, how? Are wholesale access services regulated, and, if so, how?

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 undertaking 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 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.

The commissioner undertakes dispute resolution and case management either on his or her 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 or investigation by the commissioner if he or she 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 that is binding on the said provider.

Telecoms regulation – internet services**31 Internet services**

How are internet services, including voice over the internet, regulated?

Services over the internet are regulated similarly to other electronic communications services. The competent authority is the OCECPR. Other authorities may also be involved, such as the Office of the Commissioner for Personal Data Protection.

32 Internet service provision

Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers?

Yes, there are limits. The use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a subscriber or user is only allowed on the

condition that the subscriber or user concerned is provided with clear and comprehensive information, eg, the purposes of processing, and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

33 Financing of broadband and NGA networks

Is there a government financial scheme to promote broadband penetration?

The Cyprus government is devoting substantial efforts and incentives in financial schemes aiming to ensure accessibility and promotion of broadband penetration, especially in non-rural areas of the island. Recently, broadband connection was made possible in an extensive number of non-rural areas of the island. Recent studies have shown that migration to broadband is prejudiced not only due to lack of infrastructure but also because of lack of interest on behalf of the users.

Media regulation

34 Ownership restrictions

Is the ownership or control of broadcasters restricted? May foreign investors participate in broadcasting activities in your jurisdiction?

Media enterprises in Cyprus are regulated in principle by two separate legislative instruments. The Media Law of 1989 applies in regard to press media whereas the Radio and Television Stations Law of 1998 applies in regard to radio and television broadcasters.

The establishment, installation and operation of a broadcasting station are regulated by a licensing regime that aims to facilitate public interest considerations. A licence is only provided to a company or partnership or public body established under the laws of Cyprus or any other member state of the European Union. A natural person can only apply for a licence provided that this does not involve television broadcasting and only contemplates the operation of a local station with small coverage.

The ownership of a broadcasting entity is also subject to considerable restrictions. Primarily, a natural person may not control, either alone or through members of his or her immediate family, more than 25 per cent of the share capital of the broadcasting company. Also, non-EU natural persons may only be granted a special leave to own a percentage in a broadcasting entity, provided that this shall not exceed 5 per cent and provided that the total percentage of the share capital owned by non-EU persons may not exceed 25 per cent. Additional impediments are provided for persons with criminal convictions, press owners, etc. Relaxations are provided with regard to the operation of local radio stations with small coverage.

35 Cross-ownership

Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers? Is there any suggestion of change to regulation of such cross-ownership given the emergence of 'new media' platforms?

Considerable restrictions apply with regard to the cross-ownership of media companies. The major regulatory constraints are that no single company may own a share exceeding 25 per cent in a broadcasting company; more than one company may not severally own a share exceeding 74 per cent in a broadcasting company; and a natural person cannot own more than 10 per cent in a company that owns shares in a second company that is active in the broadcasting sector.

36 Licensing requirements

What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

An eligible entity must, among other matters, present evidence to the authorities that it has been duly registered, maintains a permanent and durable connection with the economy of a member state of the European Union and, for corporate entities, that it maintains a business seat within the European Union and is registered with the Cyprus registrar of companies. In addition, the applicant may not be prejudiced by any constraint in regard to its ownership, structure or collateral business.

The competent authority evaluates the application by reference to particular criteria stipulated by the Media Law provisions, including, for instance, the comprehensiveness and quality of the programme, the knowledge, experience, competence and sufficiency of personnel, technical know-how, financial stability and others.

Licence fees for a television station with full jurisdictional coverage are in the range of €51,258, for local television stations in the range of €11,960 and for radio stations with full or local coverage in the range of €5,125 and €854 respectively.

37 Foreign programmes and local content requirements

Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media are outside of this regime?

Part VII of the Media Law deals with the content of programmes. The relevant provisions do not impose any differential treatment for foreign-produced programmes, nor is there any minimum amount of local content. The relevant regulations deal with various other matters and facilitate the principles of free speech, provision of accurate news information, linguistic protection, respect to democracy and human rights, national identity and cultural heritage of the Cyprus population as well as inter-territorial broadcasting.

Furthermore, the definition of an audiovisual media service should cover mass media in their function to inform, entertain and educate the general public, and should include audiovisual commercial communication but should exclude any form of private correspondence, such as e-mails sent to a limited number of recipients. That definition should exclude all services the principal purpose of which is not the provision of programmes, ie, where any audiovisual content is merely incidental to the service and not its principal purpose. Examples include websites that contain audiovisual elements only in an ancillary manner, such as animated graphical elements, short advertising spots or information related to a product or non-audiovisual service. For these reasons, games of chance involving a stake representing a sum of money, including lotteries, betting and other forms of gambling services, as well as online games and search engines, but not broadcasts devoted to gambling or games of chance, should also be excluded from the scope of this Directive.

38 Advertising

How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

Part VII of the Media Law deals with the regulation of advertising in media broadcasting. Stations may transmit advertising with or without consideration provided that this does not conflict with the stations' general policy. Advertising must be easily recognised as discrete from the overall programme, it shall not use techniques that address the sub-consciousness, it must not be hidden and, in regard to particular broadcasting, such as news or films, it must be broadcast within stipulated time intervals. Other provisions regulate specific matters, such as political advertising.

39 Must-carry obligations

Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

The Media Law contains provisions directing a mandatory package of programmes, although the relevant provisions cannot be seen as particularly demanding. In particular, it is necessary for any television station to include informational programmes that, excluding news broadcast from 12:00 to 24:00, may not be less than 7 per cent of the weekly broadcasting time; to include cultural programmes that, excluding news, athletics, advertising or marketing broadcast from 12:00 to 24:00, may not be less than 2 per cent of the weekly broadcasting time; and to include a news report daily between 18:00 and 22:00 that in duration may not be less than five minutes and must be understandable by deaf people. The Law does not provide for any mechanism for financing the costs of such obligations.

40 Changes to the broadcasting laws

Are there any changes planned to the broadcasting laws? In particular, do the regulations relating to traditional broadcast activities also apply to broadcasting to mobile devices or are there specific rules for those services?

As has been recognised by the commission in its interpretative communication on certain aspects of the provisions on televised advertising in the 'Television without frontiers', the development of new advertising techniques and marketing innovations has created new effective opportunities for audiovisual commercial communications in traditional broadcasting services, potentially enabling them to compete better on a level playing field with on-demand innovations.

41 Regulation of new media content

Is new media content and its delivery regulated differently from traditional broadcast media? How?

No. New media is not regulated differently from traditional media. Nowadays, Cypriots can watch programmes from all over the EU on TV, the internet and mobile phones. Like other goods and services that circulate without restrictions within the EU, audiovisual media are subject to the European single market.

In order to make the European single TV market function, a minimum set of common rules are required, which are laid down in the EU's Audiovisual Media Service Directive 2010/13/EU. This Directive regulates, throughout the EU, the coordination of national legislation on all audiovisual media (both traditional broadcast and on-demand media).

42 Digital switchover

When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

Switchover from analogue to digital broadcasting is not yet required, but it is a much-anticipated development in future technical and legislative amendments on the broadcasting sector.

43 Digital formats

Does regulation restrict how broadcasters can use their spectrum (multichannelling, high definition, data services)?

Each member state may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events that are regarded by that member state as being of major importance for society in such a way as to deprive a substantial proportion of the public in that member

state of the possibility of following such events by live coverage or deferred coverage on free television.

Regulatory agencies**44 Regulatory agencies**

Which body or bodies regulate the communications sector? Is the telecoms regulator separate from the broadcasting regulator?

With regard to electronic communications, the 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. Regulation of telecommunications and IT under Cyprus law is maintained quite separately from media and broadcasting regulation. With regard to media regulation, the Cyprus Radio-Television Authority was established as an independent regulatory body under the Radio and Television Stations Law.

45 Establishment of regulatory agencies

How is each regulator established and to what extent is it independent of network operators, service providers and government?

The Council of Ministers, an executive body appointed by the elected president of Cyprus, appoints the commissioner of electronic communications and postal regulation as well as the members comprising the Cyprus Radio-Television Authority. These members cannot maintain any direct or indirect interest in any radio or television enterprise or in the Cyprus Broadcasting Corporation (CyBC).

46 Appeal procedure

How can decisions of the regulators be challenged and on what bases?

The commissioner of electronic communications and postal regulation, as well as the Cyprus Radio-Television Authority, are subject to review by the Supreme Court of Cyprus. A recourse has to be filed within 75 days from the date when the decision is notified to the aggrieved party.

A recourse to the Supreme Court is in the form of an administrative recourse, which essentially denotes that the Supreme Court will decide whether the decision was duly reasoned, resolved further to a due investigation of all material facts and, eventually, whether it was reasonably open to be adopted as a matter of law. Procedural defects or irregularities may also lead to invalidation of an administrative decision, for example, as a result of erroneous composition of the authority.

47 Interception and data protection

Do any special rules require operators to assist government in certain conditions to intercept telecommunications messages? Explain the interaction between interception and data protection and privacy laws.

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 radio communications 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, comprised by the Act on the Protection of Privilege of Private Communications (Act 92(I)/1996) and the recent Act on Preservation of Telecommunications Data for the Purpose of Investigating Serious Criminal Offences (Act 183(I)/2007).

Update and trends

Recently, the Cyprus Telecommunications Authority (CYTA) has decided to appeal a €3.4 million fine for violation of competition regulations to the Supreme Court.

The Committee for the Protection of Competition (CPC) fined the Authority after complaints were filed by Netsmart and Thunderworx claiming CYTA had refused to provide the necessary substructure and services in order for the two companies to become active in the local telecommunications market. The CPC ruled that this was a violation of free competition rules.

CYTA's deputy manager George Koufaris said that the semi-government organisation felt the CPC decision was wrong and had therefore decided to appeal the ruling at the Supreme Court. He added that CYTA had already paid €1.3 million – the first instalment for the fine – in December and planned to pay a further €1.9 million. The funds for the first fine, according to Koufaris, were taken from the Authority's fund for unexpected expenses, while the second would come from CYTA's supplementary budget.

CPC chairperson, DIKO's Nicolas Papadopoulos, said that any behaviour by semi-government organisations that violates the principle of competition would never be accepted: 'Competition operates for the benefit of consumers and any organisation or company that violates these basic principles must deal with the sanctions of the law.'

Another hot topic concerning telecommunications regulation is the recent declaration of unconstitutionality made by the Cyprus

Supreme Court when called upon to decide whether the disclosure of telecommunications data was lawful.

On 1 February 2011, the Cyprus Supreme Court decided that some of the provisions of Law No. 183 (I)/2007 (Retention of Telecommunication Data for Purposes of Investigation of Serious Criminal Offences Law) on the disclosure of telecommunications data are in breach of the Cyprus Constitution and its jurisprudence.

In the case brought to the Supreme Court, four people claimed that articles 4 and 5, which provide police forces access to retained data, were unlawful. The Court considered that the articles in question go beyond the provisions of the EU Directive, which does not address the issue of access to retained data. Therefore, the Court considered that it may check the constitutionality of these articles, especially in relation to article 15 (right to privacy) and article 17 (confidentiality of communications) of the Cyprus Constitution.

It is unclear how this decision will affect the Law and its application. According to a statement of police spokesperson Michalis Katsounotos to *Cyprus Mail*: 'the decision will be studied in depth by the assistant police chief and all under investigation or criminal proceedings will be identified for which a court order was secured for the disclosure of telecommunications data, so that in consultation with the Attorney-general, a decision can be taken on the further handling of them.'

48 Data retention and disclosure obligations

What are the obligations for operators and service providers to retain customer data? What are the corresponding disclosure obligations? Will they be compensated for their efforts?

Public electronic communications network and services providers shall take all necessary technical and administrative measures in order to safeguard the security of their networks and services, at a level which is commensurate with the degree of risk having regard to the cost of implementation of such security systems and the latest technical possibilities.

49 Unsolicited communications

Does regulation prohibit unsolicited communications? Are there exceptions to the prohibition?

Unsolicited communications for purposes of direct marketing are not permissible without the consent of the subscribers concerned. Such subscribers must be natural persons. The commissioner (following consultation with the commissioner for the protection of personal data) shall by Order ensure that the legitimate interests of subscribers other than natural persons, with regard to unsolicited communications, are sufficiently protected.

Competition and merger control

50 Competition and telecoms and broadcasting regulation

What is the scope of the general competition authority and the sectoral regulators in the telecoms, broadcasting and new media sectors? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation? Are there special rules for this sector and how do competition regulators handle the interaction of old and new media?

The administrative body that is entrusted with the regulation of competition in Cyprus is the Commission for the Protection of Competition (CPC). In regard to telecoms and broadcasting sectors, the CPC shall apply any regulation of the specific sector (eg, restrictions to the acquisition of any interest in a broadcasting entity by a non-EU citizen in cases of concentrations) as well as the general competition framework applying in Cyprus. There is no particular or special

procedure applicable in regard to competition law issues involving the telecoms and broadcasting sectors.

Both new and old media are regulated by Directive 2010/13/EU (the Audiovisual Service Directive).

51 Competition law in the telecoms and broadcasting sectors

Are anti-competitive practices in these sectors controlled by regulation or general competition law? Which regulator controls these practices?

The administrative body that is entrusted with the regulation of competition in Cyprus is the CPC.

52 Jurisdictional thresholds for review

What are the jurisdictional thresholds and substantive tests for regulatory or competition law review of telecoms sector mergers, acquisitions and joint ventures? Do these differ for transactions in the broadcasting and new media sectors?

A concentration is subject to notification if the aggregate turnover (worldwide) achieved by at least two of the participating enterprises exceeds, in relation to each one of them, €3,417,203, and at least one of the participating enterprises engages in commercial activities within Cyprus and at least €3,417,203 out of the aggregate turnover of all the participating enterprises relates to the disposal of goods or the supply of services within Cyprus. The aggregate turnover is calculated by reference to the preceding financial year and relates to the ordinary activities of each of the enterprises after deducting discounts on sales, VAT and other taxes directly related to turnover.

The substantive test is whether the concentration would result or may be expected to result in a substantial lessening of competition. The CPC would take into account the structure of the affected markets, the market position of the participating enterprises, the economic power of all the participating enterprises, the alternative sources of supply of the relevant products or services in the affected markets and the substitutes, if any, for those products or services, the supply and demand trends for all the products and services in the affected market, the barriers, if any, to entry in the affected markets and the interests of the intermediate and final consumers of the relevant products or services.

Apart from restrictions to the acquisition of any interest in a broadcasting entity, no special rules apply in regard to the

compatibility of concentrations related to the broadcasting sector with the competition laws.

53 Merger control authorities

Which regulatory or competition authorities are responsible for the review of mergers, acquisitions and joint ventures in the telecoms, broadcasting and new media sectors?

In relation to mergers, acquisitions and joint ventures in the telecoms and broadcasting sectors, the CPC is the administrative body that is responsible for the regulation of such activities and for ensuring that the relevant rules and regulations are complied with. The CPC covers the control of mergers and acquisition between different enterprises and follows the laws and regulations of the European Union on matters of competition and transparency.

Further, the director-general for the information society and media of the European Commission and the competition director are responsible for the review of mergers, acquisitions and joint ventures in the new media sector.

54 Procedure and timescale

What are the procedures and associated timescales for review and approval of telecoms and broadcasting mergers, acquisitions and joint ventures?

If the thresholds are met, notification is compulsory and the notification must be filed within seven days from the date of conclusion of the relevant agreement or the publication of the relevant offer, or the purchase, exchange or acquisition of a controlling interest, whichever of these events occurs first.

Upon notification and provided that all the necessary information is collected, the administrative back office of the CPC, also known as the Competition Service, conducts a preliminary investigation of the notified concentration and submits its findings to the CPC for a decision as to whether the concentration is capable of being declared compatible or not with the requisites of the competitive market. The CPC may either resolve that the issue does not justify any further investigation (for example, because concentration does not fall within the ambit of the law or it does not raise serious doubts as to its compatibility with the competitive market) or initiate a full investigation. This decision is taken within 30 calendar days from the date that a notification is filed, although this time frame may be extended by a further period of 14 days. If no decision is reached within the 30-day period (as may be extended) then the concentration is considered as declared compatible with the requirements of the compatible market.

A full investigation must be completed within four months from the date of the notification. Any request for additional information or clarifications will suspend this time frame until such information or clarifications are provided.



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