

OPENING TELECOMMUNICATIONS MARKETS: TELECOMMUNICATIONS REGULATION IN THE EU - THE AUSTRIAN CASE - IMPLICATIONS FOR CENTRAL, SOUTH AND EASTERN EUROPEAN COUNTRIES

Deregulation and privatisation have become an international phenomenon within the past few years. These topics are very popular and are discussed in public life, in politics, in economic debates as well as in university courses. Analysts and consultants are still making a lot of money by calculating forecasts, developing business strategies and market surveys.

Telecommunications liberalisation can be seen as a world-wide trend. A lot of countries could not stand the pressures of increasing competition due to excessive national debts, rather inflexible structures connected with a lack of adaptability in public enterprises. Therefore they decided to open up their markets and to abandon monopoly structures. The discussions about the extend of liberalisation has also led to modifications and amendments in the legal framework in general and in telecommunications acts in particular.

I. TELECOMMUNICATIONS REGULATION IN THE EU

Tendencies to liberalise markets in Europe exist since the early 1980ies. The process started at three corners: the terminal equipment corner, the service corner and the network corner (ONP). The main goal of all activities was fostering competition, abolish monopolies and strengthen consumer welfare.

The overall idea of the European Union is to guarantee access to a modern, affordable and efficient communications infrastructure to all Europe's citizens over which a rich and diverse range of traditional and new multimedia services will be offered. Therefore a clear and predicable regulatory environment has been established. This regulatory framework ensures liberalisation of telecommunications infrastructure and services.

The main legislative measurements can be divided in two groups: the liberalisation measurements and the harmonisation measurements. The measures to reach a fully competitive environment are mainly the liberalisation directives such as the competition directive 90/388/EEC and the rules stated concerning universal service. Harmonisation of standards and procedures shall provide an open and efficient access to an union-wide liberalised telecommunication environment. Harmonisation measures include the ONP-principle, the directive on licensing telecommunication services, numbering and other measures.

UNIVERSAL SERVICE

Maintaining and developing universal service has been of fundamental importance in the European Union and can be seen as of major importance for every country willing to open up its telecommunications market.

The idea behind universal service is offering a telecommunications system to all users (including specific social groups), reasonable and affordable charges for access and use, high quality of service and technological innovation. The core of universal service still consists of voice telephony services whilst it is – as far as the EU is concerned – widely agreed that universal service should also offer the possibility of internet access.

INTERCONNECTION AND INTEROPERABILITY

A central commercial issue in a competitive environment will be interconnection of competing telecommunications infrastructures and services. A legal framework is required stating the basic principles for interconnection. Based on this framework interconnection agreements can be concluded. An overall control by the national regulatory authority is needed especially at an initial stage.

Dispute resolution mechanisms are needed as well costing and pricing schemes for interconnection charges.

LICENSING PROCEDURES

When it comes to licensing regulation the basic question are:

- Who will be licensed
- How will licenses be granted?
- What – if so – are the reasons for a limited number of licenses?
- What conditions can be put into licenses?

In the EU several kinds of licenses are known like licenses for public telecommunication infrastructure, for leased lines, for voice telephony in fixed networks and for mobile voice telephony. Private networks – even private voice telephony networks – are generally not regulated.

ACCESS TO RIGHTS OF WAY, FREQUENCIES AND NUMBERING

In order to guarantee the successful development of a competitive market for infrastructure, access to certain basic resources must be guaranteed. This concerns

rights of way, frequencies for wireless network components, numbering and directory services.

Rights of way and sharing of ducts on an mandatory or voluntary basis is necessary to avoid bottleneck situations.

Competition in infrastructure provisioning can only be ensured if incumbent telecommunication operators are subject to the same regulatory conditions as their competitors. In other words: it must be granted that there are equal conditions for both the incumbent and the competitors and – which is of even greater importance – the incumbent must be forced to offer access to its network (mandatory sharing of facilities where necessary to remove market entrance barriers).

Access to the frequencies spectrum is and will be increasingly important in ensuring the optimum combination of fixed and wireless technologies in future networks.

Furthermore an appropriate framework ensuring access to numbers must put in place.

Access to subscriber data for network operators and service providers as well as access for subscribers to a comprehensive directory service is also of high importance. When it comes to subscriber data in subscriber databases data protection must be ensured.

CONSOLIDATION PROCESS

The deregulation of telecommunication markets is an issue that will continue to occupy Europe even in the coming years.

Today a consolidation process is in progress. About 20 existing EU directives shall be replaced by one regulation, five directives and one decision, the so called „New Regulatory Framework“.

With the New Regulatory Framework the legal framework should be simplified and the principle of technological neutrality should be given a broader basis. The new regulatory framework will be composed of a framework directive together with four specific directives covering licenses and authorisations, access and interconnection, universal service, consumer's and user's rights and telecommunications data protection.

II. THE AUSTRIAN CASE

Austria being member of the EU since 1995 had to liberalise its telecommunication market according to the European guidelines. This had to happen fast regarding a liberalisation process that started in the late 1980ies. Austria had to take over a framework that was developing since nearly 10 years.

With the Austrian Telecommunication Act of 1st August 1997 a general legal environment has been established offering fair, transparent and non-discriminatory environment for competing providers.

Regulatory authorities have been established throughout Europe to ensure free and fair competition in national telecommunication markets.

Under the Telecommunications Act 1997 the Telecom-Control GmbH was established as the regulator for the Austrian telecommunications market. Furthermore an independent panel authority has been established as well, named Telecom Control Commission.

Generally saying the regulatory environment in Austria is rather complicated. Besides the two regulatory authorities founded with the Telecommunication Act there is also the Federal Ministry of Transport, Innovation and Technology and the Supreme Postal and Telecommunications Authority which is a part of the Federal Ministry of Transport, Innovation and Technology.

While regulatory operations such as issuing licences, price or interconnection regulation are carried out by Telecom-Control GmbH and Telecom Control Commission, the Supreme Postal and Telecommunications Authority is responsible for the development and implementation of telecommunications strategy lines like the fundamental political framework.

The development of quality standards is also enshrined in the Telecommunications Act. There are several implementing orders, e.g. the Universal Service Order, the Interconnection Order, the Network Access Charges Order and the Telecommunication Charges Order.

TELECOMMUNICATIONS LANDSCAPE

Since the start of the liberalisation and the creation of a competitive framework the Austrian telecommunications market has been extremely dynamic.

The regulator has issued more than 130 operating licenses for fixed networks (67 for voice telephony and 70 for leased lines). There are 4 mobile GSM licenses, two paging licenses and 6 UMTS licenses. 56 license holders are not operating their services at the moment, 21 licenses have been deleted so far.

At the moment a consolidating process can be noticed followed by some bankruptcies or take-overs.

For licensed providers of voice telephony services access to the end customer is of particular importance. Therefore interconnection and unbundling have been of key interest for the market and the regulator. Several decisions have been taken by Telecom Control Commission concerning interconnection of new entrant operator's networks with the incumbent's (TA) network.

Furthermore Telecom Control Commission stipulated that TA has to provide all other telecommunications operators access to subscriber lines, so called unbundled access to the end customer.

One of the most important steps towards a fully liberalised market is opening the network of the incumbent operator for unbundling.

The so called last mile towards the end customer is of great importance for all alternative network operators. It is widely agreed that it hardly makes sense to double the existing infrastructure. For this reason alternative network operators must be granted the right to gain full access to and use of the existing network. Carrier selection and unbundling are therefore playing the most important roles. The last mile

is the key to the end customer. Only if it is possible to connect customers to the own network a carrier becomes a real carrier able to offer a network that does more than just call forwarding.

Competition had also impacts on telephone numbers. Restructuring the numbering system, allocation of numbers for new entrant operators and number probability have been and still are topics the regulator is concerned with in Austria.

UMTS

At the end of 2000 the frequencies spectrum for 6 UMTS licenses has been auctioned. Besides the 4 existing GSM operators 2 new entrants (Hutchison and Telefonica) have been granted licenses. All of the 6 operators are building up their networks right now to offer services starting in early 2002.

III. IMPLICATIONS FOR CENTRAL, SOUTH AND EASTERN EUROPEAN COUNTRIES

POTENTIAL FUTURE OPERATORS

Given the Austrian example companies interested in becoming telecommunication providers are public utilities companies (power suppliers), railways, radio and TV (all even broadband cable network) operators and foreign telecommunication operators.

CONDITIONS FOR FAIR COMPETITION

When opening up a national monopolistic telecommunications market fair and effective competition rules are needed. This will encourage market entry of new players and foreign investors. It is of high importance that companies can plan and invest with a predictable environment whereby competition rules play a major role in providing such predictability.

KEY QUESTIONS FOR FUTURE TELECOMMUNICATION MARKETS

When thinking about a future telecommunications environment the key questions are:

- How can a higher teledensity be reached?
- What about digitalisation of the network?
- Which role does GSM play in the particular market compared to fixed voice telephony?
- Should the market be liberalised at one or in several steps?
- How can universal service be developed?
- How much does it cost and who should pay for it?
- What should be the future framework for interconnection and interoperability?
- How will telecommunication networks be licensed?
- What restrictions can legitimately be placed on licensed numbers and what conditions can be attached to licenses?
- How can a fair, competitive environment be ensured?
- How can infrastructure competition contribute to the challenge of employment?