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TRANSMIT

Quarterly update on the latest regulatory and legal developments in the communications, media and satellite industries across Europe with contributions from our offices in Brazil and China

With a section on the United States contributed by Sherman & Howard LLC

CMS - July 2014



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Welcome to TRANSMIT JULY 2014

This edition includes contributions from the United Kingdom, Czech Republic, Hungary, Italy, Spain, Switzerland, The Netherlands, Ukraine, Brazil, China, Europe and the United States.

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Communications

Ofcom consider a request by UK Broadband to extend its 3.4 GHz licence for an indefinite term

On 13 June 2014, Ofcom published a consultation document which sets out a proposal to grant an extension to the spectrum licence held by UK Broadband Ltd within the 3.4 GHz band. The consultation presents an assessment of the potential impact of this proposal within the context of Ofcom's statutory duties.

UK Broadband's request is for an indefinite extension of its existing licence beyond the current expiry date of July 2018. The licence authorises use of two 20 MHz blocks of spectrum in the frequency ranges 3480-3500 MHz and 3580-3600 MHz.

Ofcom believes granting the request would promote competition and encourage investment and innovation, in line with their statutory duties to further the interests of citizens and consumers and invites comments from stakeholders. The closing date for responses was 25 July 2014.

For more information, please go to: <http://stakeholders.ofcom.org.uk/consultations/uk-broadband-licence/>

Media

Ofcom releases a proposal to renew the co-regulatory arrangements for broadcast advertising

Under the Communications Act 2003, Ofcom has a duty to set broadcast standards in advertising and to prevent misleading, harmful or offensive advertising in licensed services. The arrangements by which Ofcom contracted out certain functions relating to the regulation of broadcast advertising content under co-regulatory arrangements to the Advertising Standards Authority are due to expire later this year.

Ofcom proposes to renew the existing arrangements with minor changes for a further ten year period and invited comments on the proposal. The closing date for responses was 30 May 2014.

For more information, please go to: <http://stakeholders.ofcom.org.uk/consultations/asa-reauthorisation/>

Ofcom releases latest data on phone, broadband and pay TV complaints

On 27 June 2014, Ofcom published the complaints made against the major providers of telecoms and pay TV services between January and March 2014 which aim to provide useful information for consumers when choosing a provider and incentivize performance improvements by operators.

The data demonstrates that the number of complaints was marginally higher across landline, broadband and mobile pay-as-you-go services whilst the complaints in the mobile pay-monthly and pay TV sectors remained at the same level as in 2013.

In the landline telephone market, TalkTalk generated the most complaints during the first quarter of 2014, with 0.28 complaints per 1,000 customers. EE generated the most for Broadband and Pay Monthly mobile at 0.42 and 0.12 complaints per 1,000 customers respectively. BT TV generated the most complaints for Pay TV at 0.25 complaints per 1,000 customers which is five times the industry average.

For more information, please go to: <http://media.ofcom.org.uk/2014/06/27/latest-phone-broadband-and-pay-tv-complaints-revealed-2/>



High Court determines that a hyperlink is a communication to the public for the purposes establishing breach of copyright

In the latest of a number of similar recent cases, *Paramount Home Entertainment and others v British Sky Broadcasting and others*, the High Court has granted injunctions under section 97A of the Copyright, Designs and Patents Act ('**CDPA**') ordering the UK's main ISPs to block access to a number of websites set up to facilitate the illegal downloading of films and TV programmes. The case contains a helpful summary of the test for engaging section 97A, and of the law relating to copyright infringement by communicating a work to the public.

Mr Justice Henderson set out the test for the application of section 97A, taken from Arnold J's decisions in *Newzbin II* and other cases. He summarised four limbs of the test as: (i) the Respondents are service providers; (ii) the users and/or the operators of the target websites infringe copyright; (iii) the users and/or the operators of the target websites use the services of the Respondents to perform (ii); and (iv) the Respondents have actual knowledge of this.

Point (ii) was the key consideration in the decision and it was discussed in detail whether the operators of the target websites communicated works to the public under section 20(2)(b) of the CDPA. Henderson J considered a number of principles established in case law and determined that, on the basis that in certain circumstances "communication to the public" covers a retransmission of works included in a terrestrial TV broadcast, the website operators were intervening in a material manner to make the copyright material available and there was no doubt that the users considered that the underlying website was making the material available to them, the operators were infringing copyright.

This is the latest in a line of similar cases, and the outcome was unsurprising. A number of recent cases have been dealt with on paper; the reason for an oral hearing in this case was unclear, but Henderson J suggested that this might have been because at the time the hearing was ordered the decision in *Svensson* had yet to be given and it was therefore unclear whether the mere provision of a hyperlink constituted a "communication". It is now clear that a hyperlink is indeed a communication the only question being whether that communication is to a new public.

Data Protection

ICO publishes security report to identify top IT data security threats

On 12 May 2014, The Information Commissioner's Office (ICO) published a new security report highlighting eight of the most common IT security vulnerabilities that have resulted in organisations in the UK failing to keep information secure.

The flaws were identified during the ICO's investigations into data breaches caused by poor IT security practices. Many of these incidents have led to serious security breaches resulting in the ICO issuing monetary penalties totaling almost a million pounds. The ICO believe that the breaches could have been avoided if the standard industry practices highlighted in the report had been adopted.

The ICO's Group Manager for Technology, Simon Rice, has said that, "the report provides an introduction into these established industry practices that could save you the financial and reputational costs associated with a serious data breach," and refers to the expiry of support for Microsoft XP and the uncovering of the security flaw known as Heartbleed to highlight the cyber security issues affecting businesses.

For more information, please go to: http://ico.org.uk/news/latest_news/2014/~//media/documents/library/Data_Protection/Research_and_reports/protecting-personal-data-in-online-services-learning-from-the-mistakes-of-others.pdf

The UK Government announces new Cyber Essentials accreditation program

The UK Government has launched a new accreditation program aimed at small and medium sized enterprises which enables organisations to gain one of two new Cyber Essentials badges. It is backed by industry including the Federation of Small Businesses, the Confederation of Business Industry and a number of insurance organisations which are offering incentives for businesses. Central to the program are five technical controls which applicant firms must demonstrate in order to become accredited.

From 1 October 2014, the Government will require all suppliers bidding for certain sensitive and personal information handling contracts to be certified against the Cyber Essentials scheme. However, it is hoped that the accreditation will become recognised as an industry standard and will make the UK a safer place to do business online.

For more information, please go to: <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

Satellite

UK Government responds to the space growth action plan and launch of the national space security policy

On 30 April, the UK Government released two new policies which will shape the future of the UK's growing space industry.

The first is the response to the Innovation and Growth Strategy (IGS) action plan 2014-2030 of which the Government is broadly supportive. In addition to committing to improving the regulatory framework applicable to space activity and making commitments to provide stronger support for export, new measures are proposed to create and maintain new business, including by supporting SMEs based in the regions.

Actions emerging from the IGS include changes to the Outer Space Act's limit on third party liability, a review of the approach to cubesats and other small satellites, simplification of the process of obtaining satellite licenses and generally promoting a regulatory environment focused on promoting business and investment in the UK space sector.

The second policy is the National Space Security Policy which sets the approach to the UK's space security interests. It outlines measures to make the UK better prepared and more resilient to disruption to services which rely on space, protect national security and increase security and stability and promote academic and industrial pursuits in the exploitation of opportunities available in space technologies. Some of the early priorities of the policy include mapping dependency on space across government, critical infrastructure and key industrial sectors and assessing the extent of resilience in each of these fields from both a military and civilian perspective. The intention is for there to be collaboration on an international level in order to share capabilities, especially regarding issues such as space debris and near Earth objects.

For more information, please go to: <https://www.gov.uk/government/news/shaping-the-future-of-the-uk-space-sector>

Government paves way for UK spaceport

On the 15 July 2014, the UK Government announced that it is considering eight different coastal sites across the country to build Britain's first spaceport, six of which are in Scotland, one in England and one in Wales. The announcement was made at 'Space Day' at the Farnborough Air Show by Aviation Minister Robert Goodwill and Chief Executive of the UK Space Agency Dr David Parker when they revealed the findings of a report by the Civil Aviation Authority (CAA) which centered on the economic opportunities a spaceport could provide for the UK. The intention is that the spaceport will open in 2018.

Business Secretary Vince Cable set out in a speech that the space industry already contributes £11.3 billion a year to the economy and supports 35,000 jobs. He recognized the need for strategic investments, such as a spaceport, to support the growth of the industry to make the UK, 'the place for space.'

The Department for Transport will now consult on the criteria the CAA has identified that will make a location suitable for a spaceport. These include a 3,000 metre runway, sufficient segregated airspace to manage spaceflights safely and distance from densely populated areas to minimise impact on the public. Meteorological, environmental and economic factors will also be considered.

For more information, please go to: <https://www.gov.uk/government/news/government-paves-way-for-uk-spaceport>



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Communications

Auctions of LTE networks continue

Back in November 2013, the Czech Telecommunication Authority announced the results of the auction of frequencies for LTE mobile networks. The auctioned frequency blocks were split between Telefonica, T-Mobile and Vodafone. These three carriers agreed to pay CZK 8.5 billion between them. Frequency blocks in the most sought after category, 800 MHz, were split as follows: T-Mobile auctioned blocks A1 and A2 for CZK 2.2 billion; Telefónica acquired two auction blocks in the A2 category for CZK 2.4 billion; and Vodafone won the auction block A3 for CZK 2.7 billion. Each company also acquired four blocks in the FDD band, 2600 MHz, and part of block B2, in the 1800 MHz band.

The result of the auction has not revolutionised the telecommunications market, although the auction conditions are laid out so that the operators will be required to construct LTE coverage in the Czech Republic within 30 months, following the end of the auction.

On 17 June 2014, the Czech Telecommunication Authority announced a new proposal for an auction for frequencies that have not been sold in the tender for 800 MHz, 1800 MHz and 2600 MHz mentioned above. According to the Czech Telecommunications Authority these frequencies are very important for strengthening the signal where there is a large network load. The deadline for the submission of comments is 1 August 2014.

Network Sharing across 4G mobile networks

On 2 May 2014, the two biggest operators in Czech Republic, T-mobile and Telefonica O2, signed an Agreement facilitating sharing of 4G LTE networks. This follows an Agreement facilitating sharing of 2G and 3G networks which was signed in previous years.

According to the information available, the network sharing covers both passive and active infrastructures related to 4G mobile networks, including optical networks or optical network connections for the base stations of mobile networks, in the whole territory of Czech Republic, with the exception of Prague and Brno. The territory of the Czech Republic will be divided into two parts, where the above operators are to install their respective infrastructures, each in one part. The network sharing will allow for the distribution of construction and operating costs of mobile networks between the two operators and will lead to an automatic overall increase in efficiency and to major savings.

The Czech Telecommunication Office supports such network sharing, on the condition that it enables other providers of telecommunication technologies to join such a shared network. Vodafone filed a complaint to the Czech Competition Office expressing its desire to take part in the network sharing and has subsequently announced on its website that it has started negotiations with the other three operators participating in the network sharing arrangements.



Czech Republic is expected to have a new Act on Cyber Security

Currently, cyber security is not governed by any special Czech legislation. Following initiatives in the EU, the Czech Parliament is in the process of passing the new Act on Cyber Security (the “**Act**”). The legislation is expected to come into force on 1 January 2015.

The Act constitutes a dualistic model, with one body being a Computer Emergency Response Team (“**CERT**”) at the Governmental level which is in charge of the systems of public administration and overall coordination, and the second body called National CERT which is in charge of systems of private sector entities. There will be different requirements imposed on the public and private sector.

On an international level, the information in the field of cyber security is shared by the National CERT. Furthermore, the head of the National Security Authority (which exercises the state administration in the area of cyber security) may also recommend declarations of a state of cyber emergency. The Czech Republic has already established its CERT called National Centre for Cybernetic Security.

The Act is built on two principles and the three pillars. The first principle is to minimise interference in the rights of private operators, the second is the principle of individual responsibility for the security of the subject’s own information systems. The three pillars consist of: safety (standardisation); reporting cyber security incidents; and countermeasures, i.e. incident response.

Examples of the changes required by the Act are that systems of critical information infrastructure will be required to have their own cyber security manager, architect of cyber security, cyber security auditor, a guarantor of their assets, and an entire “committee for managing cyber security.” The complete list of major information systems will be included in a by-law accompanying the Act.

Hungary



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Communications

Launch of Hungarian National Mobile System Payment

After several delays, the 'National Mobile Payment System' has been successfully launched as of 1 July 2014. Users can now buy parking tickets and pay for road user charges, including both vignettes and electronic toll (which was launched as of 1st July 2013) via their mobile devices. A state-owned company (Nemzeti Mobilfizetési Zártkörűen Működő Részvénytársaság) has been established to implement and operate the system.

Parking tickets can be purchased exclusively from specified vendors: the three major mobile network operators and three other private companies. Previously, mobile payment services for parking tickets were provided by different entities, but EME Zrt controlled a considerable market share and benefitted from exclusivity for mobile payment of parking tickets in Budapest.

There are plans that this mobile payment system will later be used for electronic tickets in public transport and for the payment of fees of administrative procedures and other public services.

Tender for mobile broadband

Following the draft tender published in 2013 (discussed in the previous edition of Transmit), the Hungarian Infocommunications Authority ('**Authority**') published a revised draft at the end of April, and carried out another round of consultation. The final tender document was published on 22 May 2014 and participants were given until 16 June 2014 to apply. The frequency ranges affected were the same as in the 2013 draft

(800, 900, 1800, 2600 MHz and 26 GHz), with nine frequency packages offered for one-off prices of between the HUF equivalent of 107 million euro and 645,000 euro. The period of use offered by the Authority is 15 years. The winner will be decided based on the price offered and the roll-out and coverage undertakings.

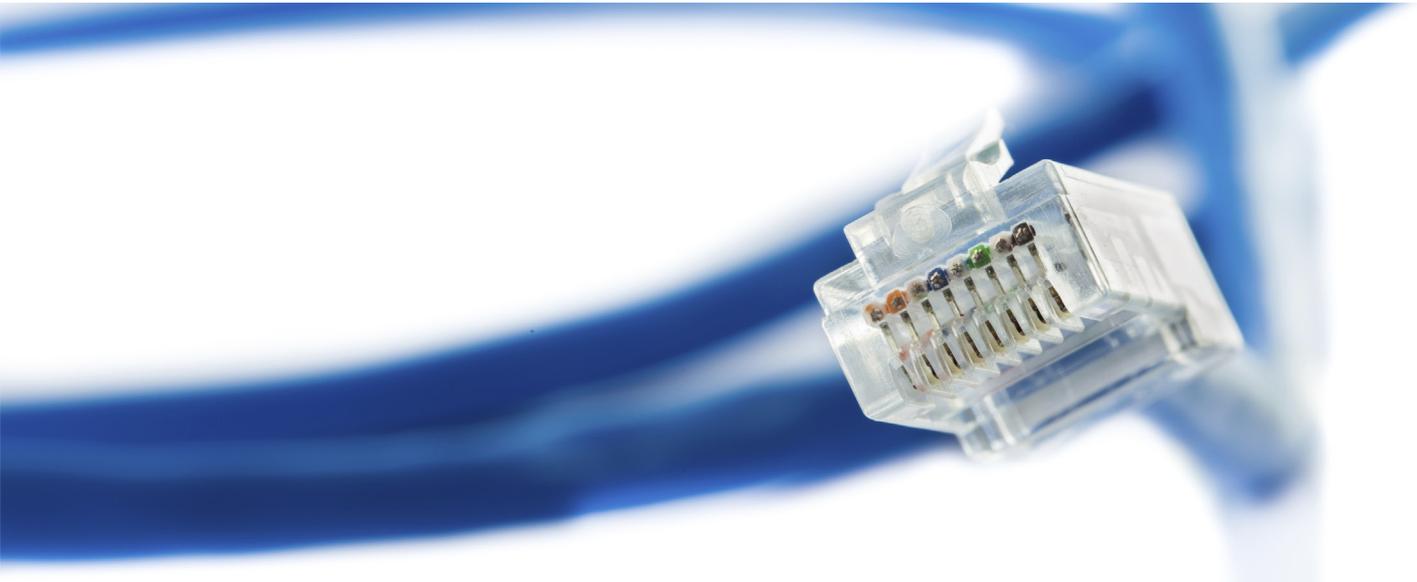
Tests for two new DVB-T multiplexes start

Thanks to the completion of the digital switchover (discussed in the previous edition of Transmit), the once-again state-owned company, Antenna Hungária, the broadcaster of terrestrial digital television (DVB-T) in Hungary, launched a new, fourth multiplex in June 2014. It can now offer further channels for its free and for-fee DVB-T services throughout Hungary.

Media

New tax on advertisements

The Parliament has adopted Act XXII of 2014 on Advertisement Tax, (the '**Act**') which imposes a tax on advertisements. The entities affected by the tax are: (a) media service providers either established in Hungary or distributing content in Hungarian for at least 50% of their broadcasting time; (b) publishers of printed media products; (c) persons or entities that, for advertising purposes, use outdoor advertising spaces, vehicles or real estate or printed advertising material (catalogues, leaflets); and (d) publishers of advertisements on the internet, where the advertisement is predominantly in Hungarian.



The taxable amount is the net sales from the applicable advertising activities or the costs of advertising for self-advertisers. The rate is progressive, with 0% tax below a tax base of HUF 0.5 billion, 1% between 0.5 and 5 billion and up to 40% if the taxable amount exceeds HUF 20 billion.

The Act will become effective on 18 August 2014, establishing a tax obligation for the latter part of 2014.

Decision of Constitutional Court on liability of content providers for comments

The Hungarian Constitutional Court delivered a decision imposing liability on content providers for user comments in line with the Fundamental Law of Hungary. The underlying matter concerned a website that published a controversial article regarding the contracting practice of a real estate company which allowed unmoderated comments. The real estate company claimed that the article and the comments violated its moral rights. Both the Capital Court and

the Capital Court of Appeal found the operator liable for the comments, with the Supreme Court also upholding this position. The Supreme Court confirmed that user comments are individual opinions, private communications that fall beyond the scope of the safe-harbour provisions contained within the E-Commerce Directive. The operator appealed.

The Constitutional Court found that liability imposed on website operators for non-moderated, infringing third party information may result in a limit upon the freedom of expression and freedom of press, as it imposes additional burden on the day-to-day activities of such operators. However, it also found that this restriction is also necessary to achieve the protection of another fundamental right: the right to human dignity and integrity. Therefore, the Court held that the liability established by the civil courts remains within the boundaries of the Fundamental Law.

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Data Protection

The Italian DPA imposes significant obligations on Google based on Italian data protection law

As a result of the investigation launched last year after the changes made by Google to its privacy policy, on 10 July 2014 the Italian Data Protection Authority (Garante per la protezione dei dati personali) issued a decision which may have a significant impact on the activity of Google in Italy.

In summary, the Authority has ruled that:

- Google shall adopt a multilayered privacy notice. At the first level, users shall be generally informed of: (a) the processing purposes and the personal data undergoing processing (es. localization of terminals, IP addresses, etc.); and (b) the contact address that users can use to exercise their rights as data subjects. The second level requires more detailed information about the specific services provided to users and that Google shall clearly disclose that the users' personal data is monitored and used, inter alia, for the purpose of profiling for targeted advertising and that they are collected with more sophisticated techniques (such as fingerprinting) than simple cookies;

- Google must obtain a user's specific and informed consent prior to processing personal data for profiling and can no longer rely on the acceptance of the service terms and conditions to process such data for profiling purposes;
- Google will have to define maximum data retention periods, in compliance with the provisions of the Italian Privacy Code, both for the data retained in the 'active' systems and for back up data; and
- requests from users who have a registered account with Google (and are therefore easily identifiable) shall be met within two months if they relate to data which is stored on the 'active' systems and within six months if they relate to data which is stored on back-up systems. As regards, however, requests for cancellation affecting the use of the search engine, the Authority has declared that it will monitor the effects of the European Court of Justice's landmark decision on the right to be forgotten before taking a position.

Google will have 18 months to comply with the Authority's decision. However, by 30 September 2014 Google shall enter into an implementation plan with the Authority, which shall specify the measures that Google intends to implement in response to the decision and the controls that the Authority may perform to ensure compliance.



Media

Italian Communication Authority authorises sublicensing of TV Rights relating to the Serie A Championship

On 17 July 2014, upon the request of the Italian Serie A Football League, the Italian Communication Authority released Decision 379/14/CONS which expressly authorises the sublicensing of TV rights included in the so-called "Package D" relating to 132 games for the 2015/2016, 2016/2017 and 2017/2018 Serie A Championships.

Sublicensing of TV rights relating to the Italian Football League's games was originally prohibited by the Legislative Decree 9.1.2008 n° 9, in order to prevent the creation of a secondary market of TV rights where intermediaries could purchase the rights and resell them without respecting the obligations imposed upon the tenders organized by the Italian Football League. However, in recognition of the need to guarantee maximum audiences and to transmit on more platforms, the Italian Communication Authority has now decided to derogate from such prohibition with reference to the games included in the "Package D". This is on the condition that the sub-licensors do not further sublicense the relevant TV-rights.

For information, please go to: www.agcom.it

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Communications

New Telecommunication Act comes into force as of 9 May 2014

As discussed in the previous edition of Transmit, a new Telecommunication Act (the “**Act**”) has been published which liberalises the Spanish telecommunications market through administrative simplification. While there are new obligations for operators related to universal service provision, a number of information obligations are simplified.

The Act also guarantees the right for operators to access the infrastructure of the Public Administration while establishing strict conditions for any operators who fall under the control of the Public Administration. The principles applying to the administration of the radioelectric public domain, the radio waves between 9 kHz and 3,000 GHz are reinforced and an over-arching strategy is set out which aims to achieve broadband connectivity for everyone.

The Act also deals with collaboration between the owners of the properties where the telecommunication installations are located and sets out an over-arching strategy which aims to achieve broadband connectivity for everyone. Finally, the Act creates a new Commission in the Ministry to inform the measures adopted for the protection of health in the face of radio-electric emissions.

For more information, please go to: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-4950

Order published which regulates the quality of service provided by electronic communications operators

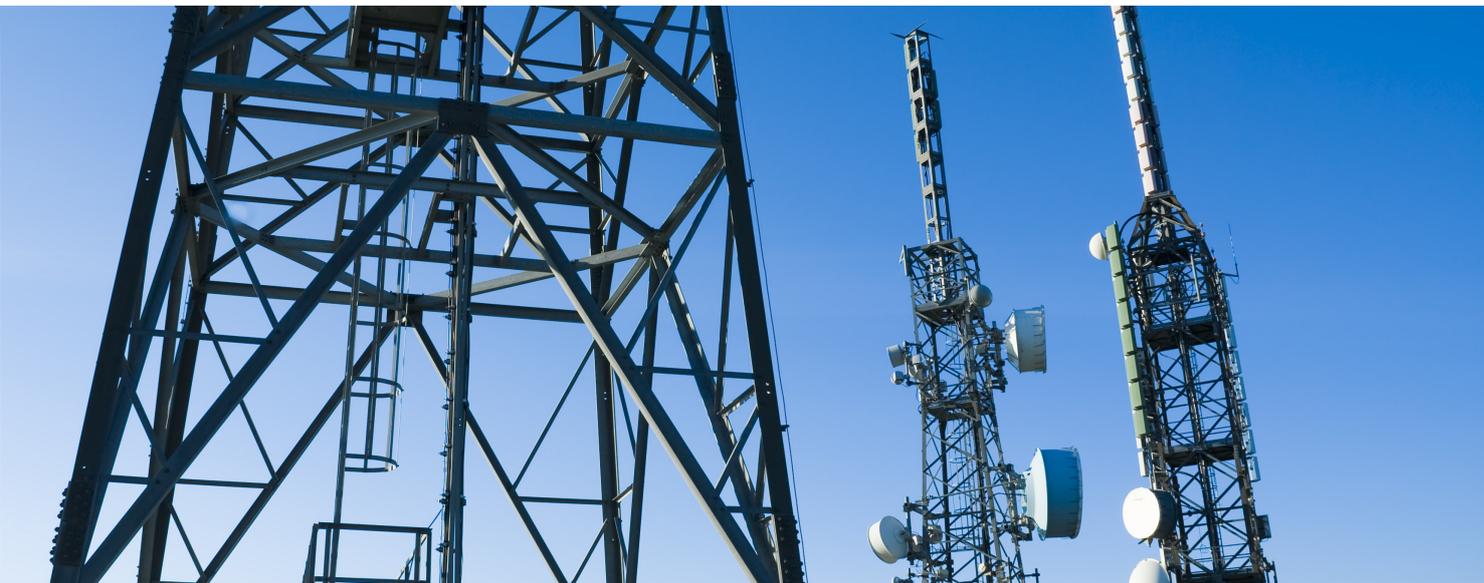
On 16 June, the Charter of the Rights of the Users of the Electronic Communications Services, which was approved by Royal Decree 899/2009 of 22 May, established obligations on network operators relating to the service quality in the provision of information to the Administration and to guarantee consumer rights.

The objectives of this Order are:

- (i) to establish conditions as to the quality of service of electronic communications which require operators to provide information to the consumers of the level of quality of their services, and make information available relating to the content of the contracts with the users, the assurance of the billing of the final consumers and the treatment of the events that involve a significant degradation in the quality of the service; and
- (ii) to establish minimum levels of quality for universal service.

Provisions introduced by the Order include: (i) the requirement to publish information on service quality; and (ii) the potential for a requirement that operators shall guarantee the accuracy of their billing.

For more information, please go to: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-6729



Competition and Markets Authority fixes the definitive prices of certain shared fibre optic

In 2012, Telefonica and Jazztel signed an agreement for the deployment of a fibre optic network and in 2013, Orange and Vodafone signed a similar agreement for a joint deployment of fibre optic but using the last part of the Telefonica Network which is installed inside buildings.

The Competitions and Markets Authority (“**CNMC**”) has determined in a resolution of 18 of June of 2014 that the prices fixed in the Telefonica Jazztel Agreement are, “reasonable and they must be also applicable for the access to those infrastructures for Orange and Vodafone.”

The effect of the determination is that the CNMC has effectively fixed the definitive prices for Vodafone and Orange to access to the final part of Telefonica’s fibre optic network which allows access to the inside of buildings. These two operators will now pay the same prices as Jazztel for this access. This means a discount of 34% from those fees proposed by Telefonica in the beginning. The definitive prices will be applied retroactively.

For more information, please go to: <http://www.cnm.es/es-es/telecomunicacionesyaudiovisuales/novedadestelecomunicacionesyaudiovisuales/novedadestelecomunicacionesyaudiovisualesdetalle.aspx?id=9883novedadestelecomunicacionesyaudiovisualesdetalle.aspx?id=9883>

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Communications

Consultation on the partial review of the legislation for internet domain names

The Federal Office of Communications (OFCOM) has launched a public consultation for interested parties (discussed in the previous edition of Transmit) to comment on the proposed revisions of the Ordinance on Internet Domains (OID), the Telecommunications Services Ordinance (TSO), the Ordinance on the Indication of Prices (OIP) and the Ordinance on Addressing Resources in the Telecommunications Sector (OARTS). The consultation procedure generated eighty three comments from interested parties.

The proposal for changes in the legislation include better consumer protection regarding value-added services by strengthening the provisions relating to the indication of prices and specific regulations for the management of the internet domain names “.ch” and “.swiss”.

The comments on the consultation can be found here: <http://www.bakom.admin.ch/dokumentation/gesetzgebung/00909/04636/index.html?lang=en>

OFCOM Annual report 2013

The Federal Office of Communications (OFCOM) has published its annual report for the year 2013.

The report summarises the projects in progress with the Federal Administration and outlines several matters related to internet issues, from either the technological, the statutory or the regulatory perspective. In doing so it is exercising its responsibility for internet governance within the framework of the national strategy to protect Switzerland from cyber risks (NCS) by coordinating international activities within the Government offices concerned.

For more information please visit: <http://www.bakom.admin.ch/org/jahresberichte/04673/index.html?lang=de>

Billag AG to remain collection agency until 2017

The Federal Department of the Environment, Transport, Energy and Communications (DETEC) and Billag have entered into a contract regulating radio and television reception fees. This contract is due to expire by the end of the year. However, DETEC has decided that Billag will remain the collection agency for radio and television reception fees until the entry into force of a new fee system to be decided in Parliament in 2017.

A new public invitation to tender for the role of collection agency will be issued once the new system has been determined.

For more information please visit: <http://www.bakom.admin.ch/dokumentation/medieninformationen/00471/index.html?lang=de&msg-id=53739>

Decision 140 II 80 of the Swiss Federal Court – VAT on public law services

On 31 January 2014, the Swiss Federal Court held, in a decision involving the Federal Office of Communications (OFCOM), the Federal Department of the Environment, Transport, Energy and Communications and Billag AG, that the judicial review of disputes on the passing on of the value-added tax (VAT) is based on public law when the goods and services supplied are regulated by public law, contrary to Article 6 of the Swiss Value Added Tax Act.

If the goods and services supplied are regulated by private law, the passing on of the tax is based on agreements governed by private law. In such case, the civil courts are competent to judge disputes about the passing on of the tax.



The legal relationship between Billag AG and the persons subject to a fee is regulated by public law. In this case, disputes about the passing on of the VAT were required to be regulated by means of an ordinance.

Efficiency of the management of the SSR

The Société Suisse de Radiodiffusion (SSR) is a public service providing regional and national telecommunication services composed of the five following companies: Schweizer Radio und Fernsehen (SRF); Radio Télévision Suisse (RTS); Radiotelevisione svizzera (RSI); Radiotelevision Svizera Rumantscha (RTR); and Swissinfo (SWI).

In November 2007, the Swiss Federal Council has granted SSR a broadcasting licence for 10 years subject to the SSR demonstrating that, as it is substantially financed by a television reception charge, it is capable of organising itself in order to secure an efficient use of the funds at its disposal. The Department of the Environment, Transport, Energy and Communications concluded, at the end of the first of three audit cycles, that SSR holds the elements of control which enables it to provide efficient management and efficient use of the resources at its disposal. The results of this report as well as the recommendations for improvement are described in a report by the Federal Office of Communications (OFCOM) published on its website.

For more information please visit: <http://www.bakom.admin.ch/dokumentation/medieninformationen/00471/index.html?lang=de&msg-id=53523>

The Netherlands



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Communications

Amendment proposed to Dutch Constitution

A proposal has been approved for an amendment to the Dutch Constitution, regarding the safeguarding of communications. The Dutch cabinet believes that Article 13 of the Constitution is outdated as a result of the advancements in information technology because at present it only protects confidentiality of phone calls, written correspondence and communication by telegraph and not any other means of telecommunication such as e-mail.

To provide for increased protection of confidentiality in other forms of telecommunications, the Dutch cabinet has approved a proposal to amend the Dutch Constitution on 11 July 2014. The proposal for the amended article provides for a technology neutral formulation and constitutional protection of confidentiality of all technological forms of communication.

This amendment must still be approved by the Dutch Parliament to take effect. This will take some time due to the legislative process involved.

Consultation to increase maximum fines available to ACM

The Dutch ministry of economic affairs is conducting a public consultation on the increasing of the maximum fines the Dutch telecoms regulator, ACM, can impose. The proposal is to double the maximum fine value, from € 450,000 to € 900,000. The maximum fine may be increased by a further 100% where there is a repeat offense within five years.

The proposal is the result of two external investigations showing that the current maximum fines have insufficient deterrent effect. According to the ministry a penalty must be severe enough - both financially and otherwise - to act as a deterrent. The principle underlies the "high trust, high penalty" approach used in the market surveillance as is shown in the Explanatory Memorandum to the proposal.

The closing date for comments is 5 September 2014

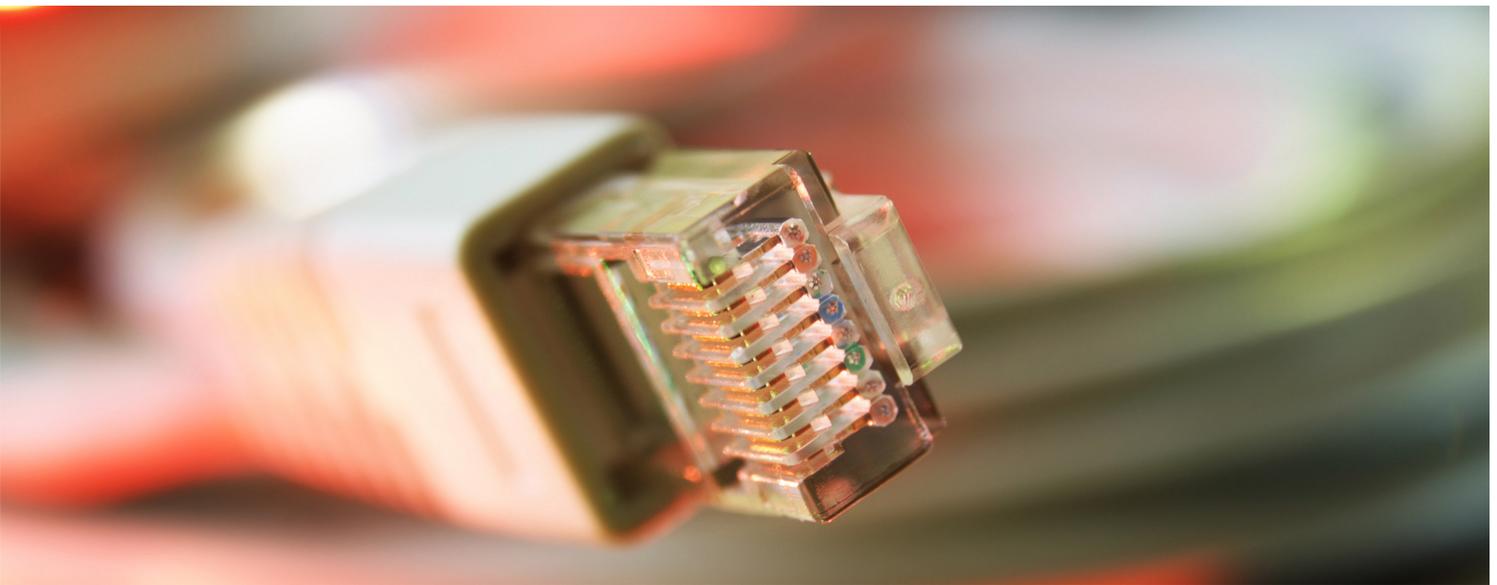
For more information please go to:

<http://www.internetconsultatie.nl/wetsvoorstelverhogingboetemaximaacm> (in Dutch)

Amendment to the National Spectrum Plan

The National Spectrum Plan of The Netherlands has been amended by the Dutch Government. The 608-614 MHz band was until now only reserved for radioastronomy. This band will from now be available for low capacity mobile communications and audio connections, on a limited scale. Licences shall be issued on a first come, first served basis.

Furthermore, the amended National Spectrum Plan, in part implements EU Directive 2008/411. From September 2014, licences in the 3.6 GHz band for mobile communication may be issued, as well as licences in the 3.7 GHz band for closed mobile networks. These licenses will apply until September 2022. Due to defence activities, the frequencies are not available north of the geographical line running through Amsterdam and Zwolle. Research has indicated that interest of the market in the 3.5 GHz band is still very low.



For more information, please go to: <http://www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2014/07/03/nationaal-frequentieplan-2005-nfp-geconsolideerd-3-juli-2014.html> (in Dutch)

Government proposes new legislation to protect telecoms infrastructure

The Dutch Government intends to issue new legislation aimed at improved protection of the national telecom infrastructure. Any company seeking to control a company who owns vital telecommunications infrastructure, those that are essential to the functioning of Dutch society and the security of The Netherlands (for instance KPN), must first obtain a certificate of no objection from the Ministry of Economic Affairs. On 10 June 2014, the Minister of Economic Affairs set out the intended framework in a letter to the Dutch Parliament which would give the Minister authorisation to:

- designate entities as owning vital telecommunications infrastructure;
- issue a declaration of no-objection to the party attempting to acquire a controlling interest in the designated entity;
- issue a declaration of no-objection in case of a potential sale of vital infrastructure of the designated entity; and
- issue a declaration of no-objection regarding proposed appointments of members of the Board of Management and Supervisory Board in the designated entity.

Vital telecommunications infrastructure services and networks are those that are essential to the functioning of Dutch society and the security of The Netherlands. In normal circumstances the declarations will be issued, unless the Minister has firm grounds to believe there is a risk to national security.

For more information see: [The Minister of Economic Affairs' Letter](#) (in Dutch)

Media

Consultation on the future of free-to-air TV

On 31 January 2017, the current DVB-T licences will expire. Consequently the Dutch Government has decided to hold a public consultation on the future of free-to-air TV.

In 2015, the Dutch Government intends to offer its views to the market on the future of free-to-air TV and is currently undecided as to whether there is still a need for such services. As a result of developments in the UHF broadcasting band and internet alternatives, continuing market demand for television terrestrial broadcasting networks is not certain. This consultation is in preparation for a full consultation on the matter which will be published in the fourth quarter of this year and the closing date for comments is 28 July 2014.

For more information, please go to: <http://www.internetconsultatie.nl/toekomstdvbt> (in Dutch)

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Communications

Fees reduced for Ukraine's radio frequency resources and numbered resource allocation

On 24 June 2014, the National Commission for the State Regulation of Communications and Information (the 'NCCIR') approved a reduction in the fees connected with the use of Ukraine's radiofrequency resources and numbered resource allocation. The new fees are set forth for the period from 1 June 2014 till 31 December 2014.

For more information, please go to: <http://nkrzi.gov.ua/index.php?r=site/index&pg=158&id=4614&language=uk>

New audit plans adopted affecting telecoms entities and users of Ukrainian radio-frequency resources

On 3 June 2014, the NCCIR adopted the schedule for new audit plans of telecommunication market entities and users of radio-frequency resource of Ukraine within public bands for the period from June till September 2014.

For more information, please go to: <http://nkrzi.gov.ua/index.php?r=site/index&pg=158&id=4683&language=uk>

New types of radio electronic facilities and radiation devices may be used in Ukraine

Between March and June 2014 the NNCIR adopted several decisions to add various types of radio electronic facilities to the register of radio electronic facilities and radiation devices which may be used in the territory of Ukraine within public bands. These are equipment for: (i) cellular mobile radio systems; (ii) broadband wireless access system; (iii) microwave line-of-sight systems; (iv) telemetry, telecommand and data operation systems; (v) wireless personal sound systems; (vi) any part of combined products for personal, family, domestic and technological demands; (vii) trunked mobile radio systems; (viii) fixed satellite radio communication; and (ix) short range traffic security monitoring systems.



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Communications

Brazil launches fixed telephony public consultation

Brazil's Telecommunications Regulator, Anatel, has started a public consultation on the new General Plan for the Universal Fixed Switched Telephony Service (PGMU-STFC) as well as the review of STFC concessions for local, domestic long distance and international services for the 2016-2020 period. These services are obligatory under the public system and are currently being offered by concessionaires Oi, CTBC, Vivo, Sercomtel and Embratel.

For more information, please go to: <http://www.telecompaper.com/news/brazil-launches-fixedtelephony-public-consultation--1020526>

Operators will be able to pay fines over a 60 month period

A new measure introduced by Anatel will allow them to force operators to pay fines over a 60 month period. Anatel has imposed a number of large fines on Brazil's network operators over the past few years but because of the large amount owed, operators end up paying nothing. The new measure will mean that operators will have to pay their fines in small sums over 60 monthly instalments; a low interest rate of 1% will also apply to the fines.

For more information, please go to: <http://mobilexpert.com.br/mercado-telecom/materias/8940operadoras-poderao-parcelar-multas-da-anatel-em-ate-60-vezes>

Virgin Mobile receives authorisation to operate mobile services as an MVNO

Virgin Mobile Brasil has received authorisation from Anatel to operate as an MVNO (Mobile Virtual Network Operator) covering the entire Brazilian territory. This will allow the company to provide mobile phone services without owning any telecommunications infrastructure. Virgin Mobile has signed an agreement with Telefonica's Vivo for the use of infrastructure to provide the services.

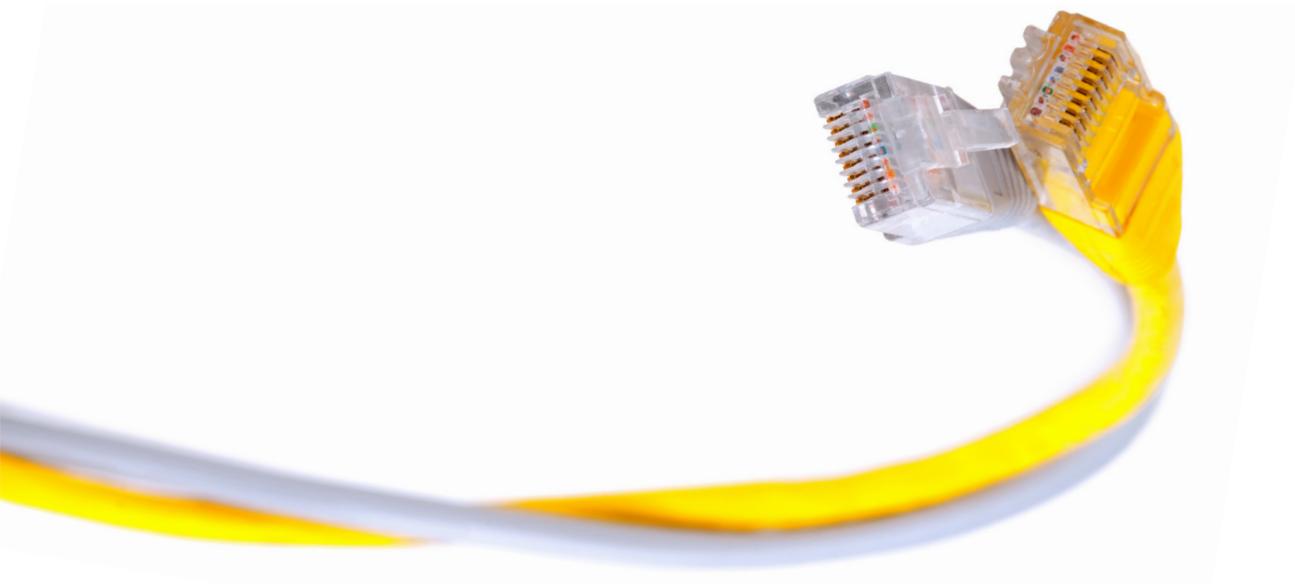
For more information, please go to: <http://www.anatel.gov.br/Portal/exibirPortalNoticias.do?acao=carregaNoticia&codigo=33828>

Media

Brazil records 18.76 million Pay TV subscribers in May 2014

By the end of May 2014, Brazil had 18.76 million Pay TV subscribers, equating to 28.72 for every 100 homes. The two biggest providers of these services are Telmex and Sky/DirectTV with Direct to Home (DTH) being the main form of technology used to provide them.

For more information, please go to: <http://www.anatel.gov.br/Portal/exibirPortalNoticias.do?acao=carregaNoticia&codigo=34189>



Satellites

Anatel auctions satellite exploration rights for R153.15 million (USD 69 million)

On 6 May, Anatel auctioned four satellite exploration rights for USD 69 million. The purpose of the auction is to improve telecommunications infrastructure in the country. Hispamar Satelites offered USD 29 million for the first exploration right to operate a Ku band, 431% over the minimum price requested.

SES DTH do Brasil offered USD 14.8 million and USD 12 million for the second and third exploration rights respectively. They will be used to operate bands C, Ku and Ka (which will be used for broadband). Eutelsat do Brasil offered USD 12.7 million for the fourth exploration right, 131% above the minimum asking price. The first and third exploration rights will be used to provide satellite TV services. All the rights are for duration of 15 years, renewable for a further 15 years.

For more information, please go to: <http://www.anatel.gov.br/Portal/exibirPortalNoticias.do?acao=carregaNoticia&codigo=33512>

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Communications

Telecommunications Industry Implemented VAT and Business Tax Reform from 1 June 2014

On 29 April 2014, the Ministry of Finance and State Administration of Taxation jointly released 'The Circular on the Inclusion of the Telecommunications Industry in the Pilot Collection of Value-added Tax in Lieu of Business Tax' (the '**Circular**'), clarifying that the telecommunications industry will be included in the pilot collection of value-added tax (VAT) in lieu of business tax from 1 June 2014.

Under the Circular, basic telecom services and value-added telecom services will apply the tax rate of 11% and 6% respectively and entities providing telecom services to overseas entities shall be exempted from VAT. After the tax reform is implemented, the tax item for the postal and telecom industries in the business tax system shall accordingly no longer be applicable. In addition, prior to 31 December 2015, domestic entities qualified as general taxpayers may choose to calculate and pay their VAT according to a simplified method for the voice communication service, electronic data and information transmission service provided by them via satellites.

For more information, please go to: http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201404/t20140430_1073969.html

Rules on Foreign Investment in Value-Added Telecom Services in SFTZ Released

The Ministry of Industry and Information Technology ("**MIIT**") on 15 April released 'The Administrative Measures for Foreign Investment in Value-Added Telecommunications Services in the China (Shanghai)

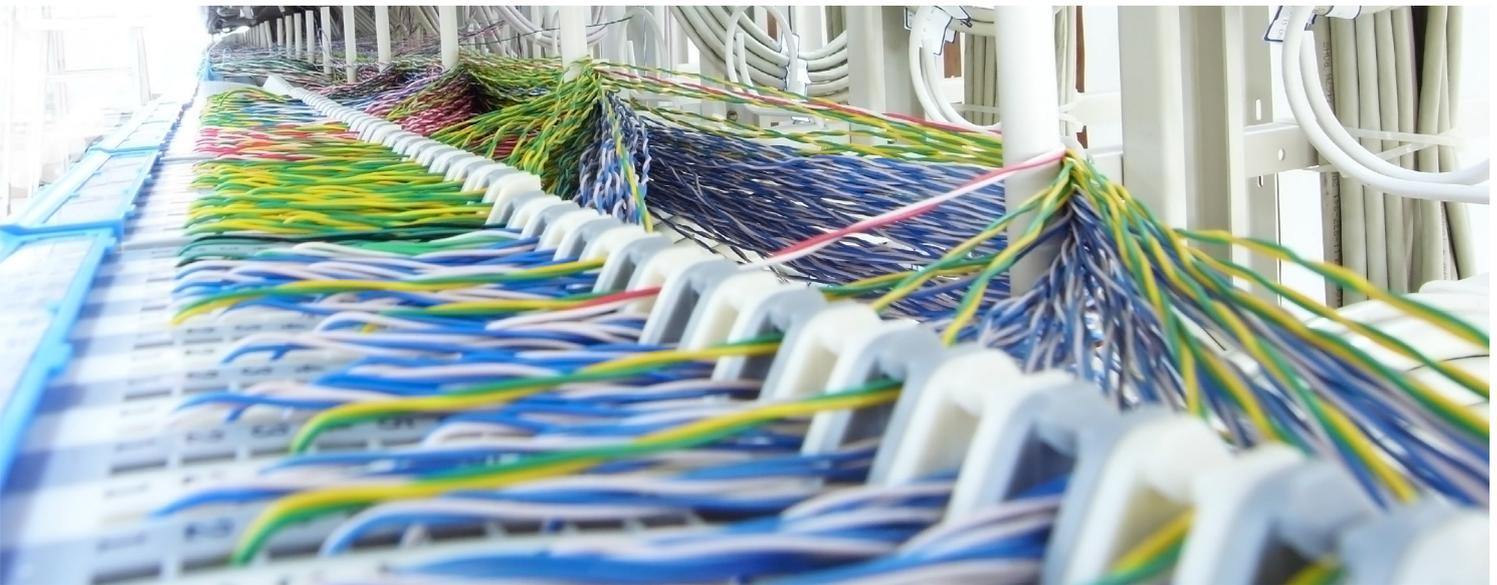
Pilot Free Trade Zone on a Pilot Basis'. The measures contain specific provisions on the procedures for the examination and approval of applications of foreign enterprises within the Pilot Zone for operations of value-added telecommunications services, as well as the application requirements, materials, supervision and review, evaluation on a pilot basis, etc. The measures also delegate the examination and approval authority for foreign investment in value-added telecommunication services from the MIIT to the Shanghai Communications Administration, and greatly reduce the timeframe for examination and approval of applications.

For more information, please go to: <http://www.miit.gov.cn/n11293472/n11293832/n12843926/n13917072/15956607.html>

The Three Largest Chinese Telecom Operators to Establish JV without Sharing Base Stations

Executives from China Telecom and China Mobile confirmed that the three largest Chinese telecom operators will establish a joint venture without sharing base stations. Rumours previously spread on the Internet that China Mobile, China Unicom and China Telecom would jointly invest to establish a national base station company. However, Wang Xiaochu, chairman of China Telecom, said that the three companies will set up a company to avoid the repeat construction of facilities, which will help them reduce costs, but without sharing base stations. He also revealed that apart from the joint venture, they currently do not have any other resource sharing, cooperation plans or intentions.

For more information, please go to: <http://www.cidcom.com/html/yaowen/201406/10-228714.html>



Media

Seven Authorities Issue Policies to Support Film Development

The Ministry of Finance, the National Development and Reform Commission, the State Administration of Taxation and four other ministries have jointly released 'The Circular on Several Economic Policies for Supporting Film Development' (the '**Circular**'). The Circular proposes nine specific policies to support film development. In terms of the tax preferential policies, production revenue generated from the sales of film copies (including digital copies) and assignment of copyright, distribution revenue and projection revenue generated from film projection in rural areas shall all be exempted from value-added tax from 1 January 2014 to 31 December 2018. In addition, the Circular also proposes to vigorously promote direct financing for film enterprises. Eligible film enterprises are supported to go public, and film enterprises are encouraged to issue corporate bonds, enterprise bonds, assembled trust funds, collective bonds, small and medium-sized enterprise privately placed bonds and other nonfinancial enterprise debt financing instruments.

For more information, please go to: http://wzb.mof.gov.cn/pdlb/zcfb/201406/t20140619_1101488.html

China to Promote Digital Transformation and Upgrading of Press and Publication Industry

The State Administration of Press, Publication, Radio, Film and Television and the Ministry of Finance have jointly issued 'The Guiding Opinions on Promoting the Digital Transformation and Upgrading of the Press and Publication Industry,' (the '**Opinions**'). The Opinions specify the target of promoting the digital transformation and upgrade of the press and publication industry, which is encouraging a number of affected enterprises to implement transformation and upgrade projects to drive and accelerate the overall transformation and upgrade of the wider industry

within three years. The Opinions present the tasks of digital transformation and upgrading of the press and publication industry in the following four respects: standardization of digital transformation and upgrade; enhancing the level of technical equipment for digital transformation and upgrade; strengthening the digital publication talent pool; and exploring new models of digital transformation and upgrade.

For more information, please go to: <http://www.nipso.cn/onevs.asp?id=21146>

Satellite

China, Russia to Cooperate in Satellite Navigation

On 1 July 2014, China and Russia signed a memorandum of understanding agreeing to cooperate in developing satellite navigation systems. The document was signed by the China Satellite Navigation Office and Russian Federal Space Agency on the sidelines of the on-going China-Russia exposition in Harbin. According to the director of the China Satellite Navigation Office, the two countries plan to build monitoring stations in each other's territory, which will promote the integration of the two satellite navigation systems and improve their performance. Russian Deputy Prime Minister Dmitry Rogozin said that Russia is also looking forward to cooperating with China in other aerospace fields, such as the exploration of the Moon and Mars.

For more information, please go to: <http://www.ecns.cn/2014/07-01/121769.shtml>

Europe

Communications

Landmark agreement between the European Commission and South Korea on 5G mobile technology

On 16 June 2014, the European Commission and South Korea signed a Joint Declaration on Strategic Cooperation in Information Communications Technology (ICT) and 5G, agreeing to deepen discussions in the area of Net Futures (network and communications, 5G, cloud computing), an element of on-going relations on ICT topics. They also agreed on the need for harmonized radio spectrum to ensure global interoperability and on the preparation of global standards for 5G. The agreement is a milestone in the global race to develop 5G mobile technologies.

Both sides will also work towards a coordinated call for research project proposals, to be launched in 2016. An industry memorandum of understanding will be signed between the EU's 5G Infrastructure Association (whose members include Alcatel-Lucent, Atos, Deutsche Telekom, Ericsson, Nokia, Orange, Telecom Italia, Telenor and Telefonica) and South Korea's 5G Forum.

Following the launch by the Commission of a Public-Private Partnership on 5G in December 2013, the EU is investing €700 million over the next seven years into the 5GPPP through the Horizon 2020 programme. EU industry is set to match this investment by up to 5 times, to more than 3 billion euros. South Korea is investing and coordinating research through 5G Forum and there are other major public and industry-led initiatives in China, Japan, Taiwan and the US.

For more information, please go to: http://europa.eu/rapid/press-release_IP-14-680_en.htm

Data Protection

Senior EU official criticises extra-territorial scope of US court judgement concerning data protection

In April 2014, Microsoft challenged a warrant issued against it in the US on the basis that the information which the US authorities are seeking to search is held on servers located in an EU state. However, the district court judge in New York held that the warrant was valid and Microsoft must allow access to the data, despite the fact it is held outside of the territory of the US.

On 24 June 2014, Viviane Reding, Vice-President of the European Commission, made a statement detailing how the US court order bypasses the existing formal procedures that are agreed between the EU and the US and the Commission is concerned that the extraterritorial effect of US laws may result in a breach of international law. The Vice President urges the US to, 'proceed via agreed formal channels of co-operation'.

With the increasing prevalence of cloud computing and mobility of data, the decision is one with potential for serious implications for data controllers and data subjects alike. Microsoft have appealed the decision in the US courts.

For further information, please go to: <http://www.nu.nl/files/nutech/Scan-Ares-MEP-in't-Veld-.pdf>



EU Court Judgement establishes 'Right to be Forgotten' from internet search engines

On 13 May 2014, the Court of Justice of the European Union issued a decision which confirmed the right of data subjects across the EU to have certain information forgotten from search engines where it can be shown to be 'inadequate, irrelevant or excessive.' Google was held to be a data controller in its own right by virtue of the systems it uses to process and index data which it then provides as search results. Consequently, requests for erasure can be made by data subjects even where the information available on the underlying website is lawfully published and the publishers cannot be compelled to alter or remove it.

In addition, the Court confirmed that Directive 95/46/EC applies to companies registered outside of the EU where a branch or subsidiary within an EU member state exists for the purpose of advertising and selling the services of the non-EU entity.

Guidance on how to interpret the decision and the practical steps search providers should take is expected for the EU's Article 29 Working Party in September. Until then, it is up to search providers and national regulators to interpret the decision as best they can.

For more information, please go to: http://www.law-now.com/DirectMail/%7B6FA571CD-3900-4BD6-9F0B-1AC6C09FCFE5%7D_googlerightsjune2014.htm#page=1

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Satellite

SpaceX protests U.S Air Force tender awarded to ULA

On 28 April 2014, Space Exploration Technologies Corporation ('**SpaceX**') filed a formal bid protest in the U.S. Court of Federal Claims seeking to prohibit the US Air Force from buying 22 first stage Atlas 5 rocket cores on a sole source basis to be used for launches by Atlas 5 manufacturer United Launch Alliance ('**ULA**'). SpaceX claims that in planning to make those awards, the U.S. Air Force violated U.S. laws requiring competition in government procurement.

In its complaint, SpaceX also alleged some of the funds the Air Force was paying to ULA were in turn paid to Russian engine manufacturer NPO Energomash, which was ultimately controlled by Russian Deputy Prime Minister Dmitry Rogozin. Rogozin was a subject of the first round of sanctions imposed by the Obama administration on certain Russian individuals as a result of Russia's Ukraine activities.

Although SpaceX's lawsuit did not request that purchases of RD-180 engines be prohibited, the judge, on her own motion, issued an injunction on April 30 barring the Air Force or ULA from making further purchases of RD-180 engines until the U.S. Government demonstrated none of the RD-180 funds were covered by the Russian sanctions. The injunction was lifted in early May after the Government filed letters with the court from the U.S. Departments of Treasury, State and Commerce indicating in their view the RD-180 payments did not violate sanctions orders imposed by the Obama administration.

On 30 June 2014, the Air Force filed a motion to dismiss the SpaceX lawsuit claiming the lawsuit was not filed in a timely manner by SpaceX. ULA filed a similar motion to dismiss on 8 July.

For more information please go to: <http://spacenews.com/article/military-space/40524spacex-challenge-toula-block-buy-could-hinge-on-questions-of-timing> and <http://spacenews.com/article/military-space/41174ula-asks-court-to-dismiss-spacex%E2%80%99s-block-buy-protest>



Russia threatens to withhold supplies and services vital to the U.S. space program

In a development possibly related to the injunction in the SpaceX lawsuit mentioned above, on 13 May 2014, in a message posted on his Twitter account, Russian Deputy Prime Minister Dmitry Rogozin stated he intended to ban export of Russian RD-180 engines used to launch US military satellites on Atlas 5 launch vehicles. United Launch Alliance reported they had received no formal indication from the Russians of the cut off of engines, and in any event there would be no immediate impact on U.S. national security launches since ULA had a two-year backlog of RD-180 engines.

In his Twitter message, Rogozin also stated Russia does not intend to continue cooperation with U.S. on the International Space Station (ISS) past 2020, four years prior to when NASA hoped to continue ISS operations. Rogozin also stated Russia will suspend operations of U.S. GPS satellite ground stations based in Russia.

As of this writing, no official Russian action on the above has been reported, nor is there any indication that Russian Soyuz flights carrying U.S. astronauts to the ISS will be affected, at least prior to 2020.

For more information please go to: <http://spacenews.com/article/military-space/40547rogozin-calls-for-ban-on-us-military-use-of-rd-180>

NASA extends deadlines for manned spacecraft completion milestones

NASA has extended the deadlines for SpaceX and Sierra Nevada to complete milestones for building their manned spacecraft until March 2015. The extension should allow SpaceX to complete the pad abort test for their 'Dragon capsule'. A similar extension for Sierra Nevada should allow a flight test of their 'Dream Chaser'.

For more information, please go to: <http://behindtheblack.com/behind-the-black/points-of-information/an-contract-extension-from-nasa-for-spacex-and-sierra-nevada/>





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