



ICLG

The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2016

9th Edition

A practical cross-border insight into telecoms, media and internet laws and regulations

Published by Global Legal Group, with contributions from:

Andreas Neocleous & Co LLC

Bagus Enrico & Partners

Bello, Gallardo, Bonequi y García, S.C.

Borenus Attorneys Ltd

Bowman Gilfillan

Chajec, Don-Siemion & Zyto

Legal Advisors

Coulson Harney

Davies Ward Phillips & Vineberg LLP

Dr. Norbert Wiesinger, Law Offices

Gün + Partners

Heuking Kühn Lüer Wojtek

Hogan Lovells (CIS)

John W Fooks & Co

King & Wood Mallesons

Kromann Reumert

Linklaters LLP

Melchior, Micheletti & Amendoeira Advogados

Mori Hamada & Matsumoto

NautaDutilh N.V.

Olswang LLP

Pachiu & Associates

Pestalozzi

Sanchez Elia & Associates

Shay & Partners

Sociedade Rebelo de Sousa &

Advogados Associados, RL

The Law Office Krehić

Tilleke & Gibbins

Udo Udoma & Belo-Osagie

Webb Henderson

Wigley & Company

Wilkinson Barker Knauer, LLP

Živković Samardžić

GLG

Global Legal Group

Contributing Editor
Rob Bratby, Olswang LLP

Head of Business Development
Dror Levy

Sales Director
Florjan Osmani

Commercial Director
Antony Dine

Account Directors
Oliver Smith, Rory Smith

Senior Account Manager
Maria Lopez

Sales Support Manager
Toni Hayward

Editor
Gemma Bridge

Senior Editor
Suzie Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

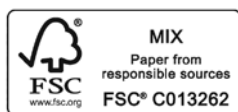
GLG Cover Image Source
iStockphoto

Printed by
Information Press Ltd.
September 2015

Copyright © 2015
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-910083-61-1
ISSN 2050-7607

Strategic Partners



General Chapter:

1	An Overview of the EU Regulatory Framework – Purvi Parekh & John Enser, Olswang LLP	1
---	--	---

Country Question and Answer Chapters:

2	Angola	Sociedade Rebelo de Sousa & Advogados Associados, RL: Octávio Castelo Paulo & Luís Neto Galvão	11
3	Argentina	Sanchez Elia & Associates: Juan Sanchez Elia & Alejandro Sigfrido Pérez	18
4	Australia	King & Wood Mallesons: Renae Lattey & Neil Carabine	24
5	Austria	Dr. Norbert Wiesinger, Law Offices: Dr. Norbert Wiesinger	34
6	Belgium	Linklaters LLP: Tanguy Van Overstraeten & Guillaume Couneson	41
7	Brazil	Melchior, Micheletti & Amendoeira Advogados: Sílvia Regina Barbuy Melchior	49
8	Canada	Davies Ward Phillips & Vineberg LLP: George Addy & Elisa Kearney	62
9	China	King & Wood Mallesons: Rui Wang	69
10	Croatia	The Law Office Krehić: Tarja Krehić	78
11	Cyprus	Andreas Neocleous & Co LLC: Andrea Kallis Parparinou	85
12	Denmark	Kromann Reumert: Torben Waage & Julie Bak-Larsen	92
13	Finland	Borenus Attorneys Ltd: Jukka Airaksinen & Henriikka Piekkala	99
14	Gabon	John W Ffooks & Co, member of the Bowman Gilfillan Africa Group: Lydia Rasoanirina & Hantamalala Rabarijaona	106
15	Germany	Heuking Kühn Lüer Wojtek: Dr. Dirk Stolz & Dr. Lutz Martin Keppeler	112
16	Hong Kong	King & Wood Mallesons: Joshua Cole	120
17	Indonesia	Bagus Enrico & Partners: Enrico Iskandar & Stephen Sim	128
18	Ivory Coast	John W Ffooks & Co, member of the Bowman Gilfillan Africa Group: Fenosa Rajomarison & Claudia Randrianavory	136
19	Japan	Mori Hamada & Matsumoto: Hiromi Hayashi & Akira Marumo	142
20	Kenya	Coulson Harney, member of the Bowman Gilfillan Africa Group: Edwina Warambo-Ogallo & Richard Harney	151
21	Mexico	Bello, Gallardo, Bonequi y García, S.C.: Carlos Arturo Bello Hernández & Quitzé Alejandra Espetia Mendoza	159
22	Netherlands	NautaDutilh N.V.: Paul M. Waszink & Piet Sippens Groenewegen	167
23	New Zealand	Wigley & Company: Michael Wigley	175
24	Nigeria	Udo Udoma & Belo-Osagie: Olajumoke Lambo & Godson Oghenechuko	181
25	Poland	Chajec, Don-Siemion & Zyto Legal Advisors: Andrzej Abramczuk & Mariusz Busiło	188
26	Portugal	Sociedade Rebelo de Sousa & Advogados Associados, RL: Octávio Castelo Paulo & Luís Neto Galvão	196
27	Romania	Pachiu & Associates: Remus Ene & Ioana Iovanesc	204
28	Russia	Hogan Lovells (CIS): Natalia Gulyaeva & Julia Gurieva	213
29	Senegal	John W Ffooks & Co, member of the Bowman Gilfillan Africa Group: Fenosa Rajomarison & Francky Rakotondrina	221

Continued Overleaf →

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

GLG

Global Legal Group

Country Question and Answer Chapters:

30	Serbia	Živković Samardžić: Slobodan Kremenjak & Miloš Stojković	227
31	Singapore	Webb Henderson: Angus Henderson & Daryl Cox	235
32	South Africa	Bowman Gilfillan, member of the Bowman Gilfillan Africa Group: Dominique Saayman & Livia Dyer	244
33	Switzerland	Pestalozzi: Clara-Ann Gordon & Phillip Schmidt	254
34	Taiwan	Shay & Partners: Arthur Shay & David Yeh	261
35	Thailand	Tilleke & Gibbins: Weerawat Distapinyo & Ahmet Yesilkaya	268
36	Turkey	Gün + Partners: Uğur Aktekin & Begüm Yavuzdoğan Okumuş	276
37	United Kingdom	Olswang LLP: Purvi Parekh & Tomos Jones	286
38	USA	Wilkinson Barker Knauer, LLP: Natalie G. Roisman & Brian W. Murray	295

EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Telecoms, Media & Internet Laws & Regulations*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of telecoms, media and internet laws and regulations.

It is divided into two main sections:

One general chapter. This chapter provides an overview of the EU Regulatory Framework for electronic communications and services in the EU Member States.

Country question and answer chapters. These provide a broad overview of common issues in telecoms, media and internet laws and regulations in 37 jurisdictions.

All chapters are written by leading telecoms, media and internet lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Rob Bratby of Olswang LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

United Kingdom



Purvi Parekh



Tomos Jones

Olswang LLP

1 Overview

1.1 Please describe the: (a) telecoms; (b) audio-visual media distribution; and (c) internet infrastructure sectors in the UK, in particular by reference to each sector's: (i) importance (e.g. measured by annual revenue); (ii) 3-5 most important companies; (iii) whether they have been liberalised and are open to competition; and (iv) whether they are open to foreign investment.

(a) Telecoms

The telecoms sector in the UK is one of the most open and competitive in the world. It was liberalised several decades ago when, in 1984, the former state-owned incumbent, British Telecom (“BT”), was privatised and Mercury Communications was licensed to offer fixed national networks and public telephony in competition with BT.

Since then, and in particular since European harmonisation of the sector and the unbundling of the local loop, a large number of players have entered the market, offering increasingly sophisticated, competitive and innovative communications services.

The landscape of the telecoms sector has significantly developed over the last several years. In its 2014 Communications Market Report, Ofcom, the UK’s national regulatory authority for communications, noted that in Q1 2014 around 61% of UK adults owned a smartphone. Over six million subscribers have signed up to 4G services. The number of superfast broadband service users increased from 3.8 million in March 2013 to 6.1 million in April 2014, comprising 26.7% of the total number of fixed broadband connections, which itself has continued to grow, increasing by 1% year on year to 22.6 million – roughly 73% of UK households. Mobile broadband connections remained relatively static at around 5 million.

According to Ofcom, telecoms revenue in 2013 was £38.6bn. This represented a decrease from 2012, when the corresponding figure was £39.2bn, largely due to a reduction in wholesale revenues and retail mobile revenues.

Among the most important companies in the sector are: BT (now British Telecommunications plc), with annual revenue of £18.2 billion in 2013/14; Virgin Media, the UK’s only national cable network operator, with annual revenue of £4.2 billion in 2014; Vodafone, with annual UK revenue of £6.2 billion in 2013/2014 (and group revenue of £38.3 billion); and Everything Everywhere (the joint venture created by the merger of Orange and T-Mobile,

which is now the largest mobile provider in the UK), with annual revenue of £6.3 billion in 2014. There is currently a lot of change going on in the sector, with BT seeking to acquire Everything Everywhere, and Three (owned by Hutchison Whampoa PLC, and the smallest mobile operator in the UK market) seeking to acquire O2 (owned by Telefonica). Both acquisitions are currently going through regulatory clearances at the time of writing.

The telecoms sector in the UK is open to foreign investment.

(b) Audio-visual media distribution

From four terrestrial TV channels in the 1980s, the UK audiovisual market has grown to be a very diverse and competitive market, with many players, both domestic and international. Analogue television has been switched off and all UK television homes now receive digital signals, either over-the-air or by cable or satellite distribution. The UK is also a leader in the delivery of on-demand content, across a broad range of devices.

The key players in the market are, in terms of content distributors, the BBC (state-owned) and ITV (privately owned and stock exchange listed), the former dependent primarily on licence fee income and the latter largely advertiser-supported, but there are also smaller public service broadcasters, Channel Four (state-owned) and Channel Five (privately owned and acquired in 2014 by Viacom), as well as many multichannel content operators including Discovery, Viacom (which also owns MTV, Nickelodeon and Comedy Central) and UKTV.

In terms of distribution, the key players are: British Sky Broadcasting (Sky) with over 11.5 million subscribers; Virgin Media (roughly 3.8 million subscribers); and growing offerings from former pure telecommunications players BT and Talk Talk (at the time of writing around 1 million subscribers each). However, many viewers receive content through a free digital television platform called Freeview, which is non-proprietary.

The audio-visual media distribution sector in the UK is open to foreign investment.

(c) Internet

The internet infrastructure market in the UK has been liberalised. The main players coincide with those companies already mentioned above – the largest four domestic internet service providers are BT, Virgin Media, Sky and TalkTalk. Either organically or through acquisitions, these four players have accumulated user bases ranging from 4 to 8 million connections. Everything Everywhere (with 834,000 connections) is the other major provider.

The country code top level domain for United Kingdom web pages is .uk. Nominet UK is the .uk Network Information Centre.

1.2 List the most important legislation which applies to the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in the UK.

(a) Telecoms

- Communications Act 2003 (“2003 Act”).
- Wireless Telegraphy Act 2006 (“WTA”).
- Data Protection Act 1998.
- Regulation of Investigatory Powers Act 2000 (“RIPA”).
- Telecommunications (Lawful Business Practices) (Interception of Communications) Regulations 2000.
- Privacy and Electronic Communications (EC Directive) Regulations 2003.
- Data Retention (EC Directive) Regulations 2009 (“Data Retention Regulations”).
- Radio Equipment and Telecommunications Terminal Equipment Regulations 2000.
- Competition Act 1998.
- Enterprise Act 2002.

(b) Audio-visual media distribution

All of the above legislation is also relevant to the audio-visual sector; in particular the 2003 Act, but the other key pieces of legislation are the Broadcasting Acts 1990 and 1996 and the Audiovisual Media Services Directive 2010/13/EU.

(c) Internet

All of the above legislation is also relevant to the internet sector.

1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in the UK.

(a) Telecoms

- The UK Government Department for Culture, Media and Sport.
- The Office of Communications (“Ofcom”).
- The Competition and Markets Authority (“CMA”).
- The Competition Appeal Tribunal (“CAT”).
- PhonepayPlus.
- The Information Commissioner.

(b) Audio-visual media distribution

All of the above regulators are also relevant to the audio-visual sector, but the key regulators and ministries for this sector are:

- The UK Government Department for Culture, Media and Sport.
- The Office of Communications (“Ofcom”).
- BBC Trust (for the BBC only).
- The Advertising Standards Authority (self-regulatory body for advertising).
- ATVOD (co-regulatory body for on-demand television).

(c) Internet

- The UK Government Department for Culture, Media and Sport.
- The Office of Communications (“Ofcom”).
- Nominet UK.
- The Competition and Markets Authority (“CMA”).
- The Competition Appeal Tribunal (“CAT”).
- The Information Commissioner.

1.4 Are there any restrictions on foreign ownership or investment in the: (a) telecoms; (b) audio-visual media distribution; and (c) internet sectors in the UK?

There are no rules restricting direct or indirect foreign ownership interests in companies in the UK telecoms sector, the UK audio-visual media distribution sector or the internet sector.

2 Telecoms

General

2.1 Is the UK a member of the World Trade Organisation? Has the UK made commitments under the GATS regarding telecommunications and has the UK adopted and implemented the telecoms reference paper?

The UK has been a WTO member since 1 January 1995. It has made commitments under the GATS/GATT in relation to the telecommunications market and has adopted the WTO basic telecommunications agreement. The UK has also adopted and implemented the telecoms reference paper, which it jointly sponsored alongside the US in the Uruguay round of WTO negotiations.

2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

The provision of electronic communications networks and services and the use of radio spectrum are regulated by Ofcom.

In particular, Ofcom is responsible for:

- setting and enforcing the General Conditions;
- undertaking market reviews, setting and enforcing SMP conditions (e.g. access and interconnection);
- setting universal service obligations in accordance with the Secretary of State’s specification of services;
- setting consumer protection requirements and dealing with complaints;
- managing numbering;
- issuing and enforcing spectrum licences;
- regulating conditional access and electronic programme guides; and
- resolving disputes.

The day-to-day obligations imposed on electronic communications network and service providers (“Communications Providers”) are set out in the General Conditions of Entitlement (“General Conditions”). These General Conditions were adopted in July 2003 by the former Office of Fair Trading (which was replaced in 2014 by the CMA), and are subject to frequent modification. Additional obligations apply to operators with SMP (“significant market power”), and designated universal service providers (see further below).

Ofcom also has concurrent jurisdiction with the CMA to enforce competition law in respect of electronic communications matters (see further below).

PhonepayPlus regulates the content and marketing of premium rate services, including directory enquiry services.

The Information Commissioner is responsible for data protection and freedom of information.

At the time of writing (June 2015), Ofcom is carrying out a Strategic Review of Digital Communications, which will examine competition, investment, innovation and the availability of products in the broadband, mobile and landline markets to ensure that communications providers and services continue to meet the needs of consumers and businesses.

2.3 Who are the regulatory and competition law authorities in the UK? How are their roles differentiated? Are they independent from the government?

Ofcom is the UK's national regulatory authority for communications, and regulates, among others, the TV and radio sectors, fixed line telecoms, mobile, postal services, the use of radio spectrum and the airwaves over which wireless devices operate. Ofcom was established as a body corporate by the Office of Communications Act 2002. It is independent from government.

The CMA is the UK's consumer and competition authority (though Ofcom also has concurrent powers to apply and enforce competition law in the telecoms sector). The CMA is a non-ministerial government department independent from government which acquired its powers in April 2014, combining the functions of, and replacing, the former Office of Fair Trading and the Competition Commission.

Rules are in place to co-ordinate the regulators' exercise of concurrent competition law jurisdiction under the Competition Act 1998 and the Competition Act 1998 (Concurrency Regulations) 2014. These rules are primarily designed to ensure that only one competent authority may launch a formal Competition Act investigation into the same conduct. Further, information on the operation of concurrency procedures is provided in the CMA's first Annual Report on Concurrency, published in April 2015.

Agreements or conduct relating to the sector covered by a concurrent regulator will generally be dealt with by that regulator.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

Yes. Many (although not all) Ofcom decisions can be appealed to the CAT for a review on the merits, i.e. the CAT will consider not just whether the decision is adequately reasoned, but also whether the decision was the right one.

Some decisions (including all those listed in Schedule 8 of the 2003 Act) may only be appealed on a judicial review basis to the English High Court, for example, decisions to bring criminal or civil proceedings and decisions given effect to by certain regulations or orders.

For all other decisions of Ofcom under Part 2 of the 2003 Act (which covers networks, services and radio spectrum) or any of Parts 1 to 3 of the WTA there is a right of appeal to the CAT, and from there, on a point of law only, to the Court of Appeal and Supreme Court.

The CAT will decide an appeal on the merits and by reference to the grounds of appeal set out in the notice of appeal. This means that the CAT is able to substitute its own view for that of Ofcom and has on occasion done so.

Specified price control matters are determined by the CMA on a reference from the CAT, which then ordinarily gives effect to that determination.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in the UK?

No licence or other authorisation is required to install or operate electronic communications networks or services unless the use of radio frequency spectrum is involved (see further below under Radio Spectrum) or access to public or private land is required (see the response to question 2.8 below).

In order to use radio frequency spectrum, a Communications Provider must have a licence under the WTA, although Ofcom also has the power to authorise spectrum use on a licence-exempt basis (see below under Radio Spectrum).

2.6 Please summarise the main requirements of the UK's general authorisation.

Please see Appendix 1.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded.

For many activities licences are not required, so the question does not arise.

Whilst there are no hard and fast rules concerning the duration of spectrum licences, typically they are granted for an initial fixed period, with an option to renew on payment of additional licence fees. Where applicable regulations have been passed, the licences may be traded or transferred.

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

The Electronic Communications Code ("Code"), a schedule to the 2003 Act, enables providers of electronic communications networks to construct infrastructure on public land (streets), and to take rights over private land, either with the agreement of the land owner or by applying to court.

In addition, there are also certain exceptions to planning legislation available to Communications Providers. For example, under planning regulations (The Town & Country Planning (General Permitted Development) Order 1995, as amended), land may be developed by Communications Providers to whom the Code applies for the purposes of their networks, in particular the installation, alteration or replacement of apparatus.

Access and Interconnection

2.9 How is network-to-network interconnection and access mandated?

General Condition 1 requires all Communications Providers to negotiate interconnection on request.

Various SMP conditions also require various UK Communications Providers (most notably BT and, for call termination, mobile

operators) to provide various interconnection and/or access services and to publish the reference terms and conditions.

2.10 How are interconnection or access disputes resolved?

Disputes between different Communications Providers concerning network access and the relevant terms and conditions for such access may be referred for resolution to Ofcom pursuant to sections 185 to 191 of the 2003 Act, as amended.

Ofcom must, other than in exceptional circumstances, make a binding determination resolving the dispute within four months of the date of its decision to handle the dispute, although this timescale has proved challenging in practice.

Under the revised EU Regulatory Framework, which was implemented in the UK in May 2011, a wider group of parties is entitled to refer disputes to Ofcom, and Ofcom is no longer compelled to resolve 'free-standing disputes' about network access not related to existing obligations, instead having discretion as to whether or not to accept such disputes taking account of its priorities and resources. Ofcom remains obliged, however, to resolve disputes involving existing obligations, for example, under the General Conditions, SMP or universal service conditions. Ofcom also gains new powers to recover its costs from complainants dependent on their conduct and the outcome of the dispute.

2.11 Which operators are required to publish their standard interconnection contracts and/or prices?

Following market reviews such obligations have been imposed on Communications Providers including BT and KCom (formerly Kingston Communications) for various products, and on Everything Everywhere, T-Mobile and Vodafone for voice call termination.

2.12 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and if so, how?

Interconnection and network access is subject to price regulation in a number of different markets, in particular, fixed narrowband, retail leased lines, symmetric broadband origination and trunk segments, wholesale local access and wholesale mobile voice call termination.

In general, where wholesale pricing obligations have been imposed, prices are required to be based on forward-looking long-run incremental costs plus a mark-up for common costs including return on capital employed, and in certain markets RPI-X price caps have been imposed. Ofcom has decided to use a pure LRIC basis for setting mobile termination rates and its decision was upheld by the former Competition Commission and the CAT.

The CAT case of *BT v Ofcom (Partial Private Circuits)* has found distributed stand-alone costs ("DSAC") to be a relevant benchmark for assessing compliance with a LRIC+ cost-orientation obligation.

2.13 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

(a) Both BT and KCom are subject to accounting requirements pursuant to their SMP obligations on certain markets, including cost accounting rules and accounting separation obligations.

(b) In 2005, BT gave Undertakings to Ofcom in order to avoid a reference to the former Competition Commission under the Enterprise Act 2002. Among these obligations was an Undertaking to set up Openreach as a functionally separate business unit of BT to operate BT's local access network. Openreach must give access to certain key wholesale products on a so-called "Equivalence of Inputs" basis, including wholesale line rental, local loop unbundling and Ethernet services, on an identical basis to internal BT customers and external customers. BT's compliance with the Undertakings is monitored by an independent Equality of Access Board.

(c) No Communications Provider has been required to separate parts of its business into separate legal entities.

2.14 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

BT is required to provide metallic path facilities following a market review. Cable operators are not subject to a similar obligation.

2.15 How are existing interconnection and access regulatory conditions to be applied to next-generation (IP-based) networks? Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

In the Undertakings, BT committed to supplying other Communications Providers with network access using its next-generation network ("NGN") (i.e. IP-based electronic communications network) in network access markets where BT has SMP on terms allowing other Communications Providers to compete effectively with BT's end-to-end services over its NGN.

BT also committed to build its NGN and associated systems in a way to ensure that other Communications Providers can purchase network access from BT on the basis of Equivalence of Inputs, which, as above, requires equal treatment by BT of all Communications Providers (including BT itself).

In March 2015, Ofcom announced, following its 2014 fixed access market review, that it would require BT to provide a virtual unbundled local access ("VULA") product and that it would regulate VULA pricing in order to promote competition within the growing superfast broadband market. At the time of writing (June 2015), BT had announced its intention to appeal this decision to impose a minimum VULA margin to the CMA. TalkTalk had also announced its intention to appeal Ofcom's decision, such that it did not go far enough. BT would also be required to continue to provide physical infrastructure access ("PIA") and sub-loop unbundling ("SLU"), but both PIA and SLU would be subject to a so-called 'basis of charges obligation' to address the risk of excessive prices.

Price and Consumer Regulation

2.16 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

Mobile operators are subject to the EU-level Mobile Roaming Regulation (Regulation 531/2012), which imposes caps on wholesale and retail charges for mobile calls, SMS and data services while roaming between EU Member States. This repealed the

former Roaming Regulation (Regulation 717/2007) in June 2012, lowering the relevant price caps and including various structural measures to encourage switching to alternative roaming providers (see the general chapter for the impact of “Connected Continent” proposals on roaming).

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

The General Conditions include a number of consumer protection obligations and requirements which apply over and above general consumer protection law.

Numbering

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

Telephone numbers and network identifying codes are allocated and managed by Ofcom.

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

Communications Providers are required by General Condition 17 (Allocation, Adoption and Use of Telephone Numbers) to comply with the National Telephone Numbering Plan (see Appendix 1). Numbers are allocated for specific uses e.g. geographic, mobile, etc., and may be granted for a limited period of time.

In addition, the services offered behind particular number ranges may be subject to regulation by PhonepayPlus, for example, premium rate or 09 numbers, 08 and directory enquiry services and premium rate SMS.

Rules published by Ofcom which will come into force in July 2015 require operators to unbundle charges for calls made to non-geographic numbers, such as 0845 or 03 numbers, and to ensure that broadcasters are transparent when encouraging calls to these numbers, in order to reduce customer confusion.

2.20 Are there any obligations requiring number portability?

All Communications Providers are required by General Condition 18 (Number Portability) to facilitate the porting of numbers, including mobile numbers. This means that numbers must be ported on a customer’s request, subject to a reasonableness requirement, and Communications Providers must enter into porting arrangements when requested by another operator. Porting must take place within one business day. The cross-industry porting procedure has been defined in detail.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

Ofcom regulates spectrum use.

3.2 How is the use of radio spectrum authorised in the UK? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative ‘beauty parades’, etc.?

Unless licence-exempt (see below), a licence is required from Ofcom under the WTA. Ofcom’s commitment to market-driven spectrum use informs its preference for auctions as the primary means of distributing spectrum.

In March 2013, Ofcom announced the results of the 4G auction. Everything Everywhere, Hutchison 3G UK, Niche Spectrum Ventures (a subsidiary of BT), Telefonica and Vodafone all won spectrum. The winning bidders paid a total base price of £2.37 billion.

In November 2014, Ofcom announced its decision to make the use of spectrum in the 700 MHz band available for mobile broadband from 2022, or possibly up to two years earlier. Ofcom is funding the incremental costs for other users of the spectrum (primarily DTT broadcasters) in transitioning their services to other frequencies.

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

Yes, pursuant to the Wireless Telegraphy (Exemption) Regulations 2003, as amended.

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

For commercially exploitable wireless telegraphy licences, fees will normally be payable, either pursuant to prices bid at auction or under administrative incentive pricing (“AIP”) set under specific regulations according to the type of service involved. AIP seeks to set fees to mimic the market value of the spectrum.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

If the legal entity that has the benefit of the spectrum licence does not change, the change of control would not usually result in a change to the spectrum licence *per se*; however, a competition assessment may be triggered depending on who the potential acquirer is, which may ultimately impact on the spectrum licence.

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

Yes. The regime for controlling the trading and leasing of spectrum licences is set out in the WTA and the Wireless Telegraphy (Spectrum Trading) Regulations 2012 (“Trading Regulations”) which, from 13 September 2012, replaced and revoked the earlier trading regulations. Ofcom’s consent is no longer needed for most spectrum trades.

The Trading Regulations allow spectrum licence holders in certain classes to transfer all of their licence rights and obligations.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

RIPA governs interception of the content of communications (Part I Chapter I) and acquisition of data associated with that communication (Part I Chapter II).

The regime for retention of communications data in the UK is set out in the Data Retention and Investigatory Powers Act 2014 and the Data Retention Regulations 2014. It is a criminal offence (punishable by a fine and/or up to two years' imprisonment) to intercept communications without a warrant or without satisfying other limited exceptions.

The Home Office is responsible for enforcement, which it undertakes through two bodies. The Investigatory Powers Tribunal investigates complaints about the use of powers under RIPA. The Interception of Communications Commissioner provides independent oversight of both the interception and communications data regime. In the Queen's Speech in May 2015 new measures were announced to introduce a new investigatory powers bill that will "modernise" RIPA and be far more wide ranging. This bill is going through the legislative process at the time of writing.

Please note that the EU General Data Protection Regulations, currently in draft form, seek to generally harmonise data protection law across the EU, although they are not expected to come into force until 2018.

4.2 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

The Government can require a Communications Provider to maintain intercept capacity by issuing a specific notice, preceded by consultation.

RIPA sections 12-14 and The Regulation of Investigatory Powers (Maintenance of Interception Capability) Order 2002 set out the framework. The Order sets out 10 general obligations aimed at enabling assistance with intercept warrants.

Traditional telephone calls, VoIP calls, emails and other forms of electronic communication are potentially caught, depending on the Communications Provider and number of customers.

Public postal services are subject to intercept capacity rules.

4.3 How does the state intercept communications for a particular individual?

A warrant from the Home Secretary is required. Sections 5-11 of RIPA set out the requirements. A Communications Provider must do what is reasonably practicable.

A limited number of authorities, including security and defence, the police and tax authorities may also apply for warrants.

Warrants are only granted where necessary for: national security; preventing or detecting serious crime; or safeguarding the economic wellbeing of the UK. Tests of necessity and proportionality must be satisfied.

It is a criminal offence (punishable by a fine and/or up to two years' imprisonment) to fail to implement a warrant.

4.4 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

The Data Retention and Investigatory Powers Act 2014 requires the different types of data set out in the schedules to the Data Retention Regulations 2014 to be retained for a maximum of 12 months.

The rules are set out in Part III RIPA, and fleshed out in the Retention of Communications Data Code of Practice (2015).

The Government has power to serve a notice: to require disclosure of protected information in an intelligible form; to require disclosure of the means to access protected information; and to require disclosure of the means of putting protected information into an intelligible form.

Notice to disclose encryption keys may only be served where necessary for: national security; preventing or detecting serious crime; safeguarding the economic wellbeing of the UK; or "effective exercise or proper performance" by a public authority of statutory powers or duties. Necessity and proportionality tests must be met.

It is a criminal offence (punishable by a fine and/or up to two years' imprisonment) to fail to comply with a disclosure notice.

4.5 What call data are telecoms or internet infrastructure operators obliged to retain and for how long?

The maximum retention period under the Data Retention and Investigatory Powers Act 2014 and the Data Retention Regulations 2014 for all types of data is 12 months.

The state's powers to acquire and use this communications data are governed by RIPA Part I Chapter II and by the Acquisition and Disclosure of Communication Data Code of Practice (2015).

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in the UK?

Broadcasters of linear and non-linear content are regulated differently (see question 5.2 below). The provision of the infrastructure over which content is delivered is regulated under the telecommunications regulation regime described above.

5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

Linear content, whether delivered over the internet or via traditional distribution platforms, is regulated under a licensing regime administered by Ofcom, other than the BBC's services which are regulated by the BBC Trust (although Ofcom has remit over certain aspects of the BBC's behaviour). All UK linear TV channels require a licence (see question 5.3 below).

Since 2009, under the AVMS Directive, UK-based non-linear services have been subject to a set of minimum standards. Ofcom

has designated ATVOD as its co-regulator for editorial content, and the Advertising Standards Authority as the co-regulator for advertising content on non-linear services.

Non-linear services do not require a licence, but there is a compulsory pre-notification requirement to ATVOD before making such 'on demand' services available. ATVOD levies a notification fee for each On Demand Programme Service that a service provider offers, which varies according to the annual revenue of the service provider up to the limit of £25,000 for 2014/2015.

There is an additional layer of obligations (and benefits) applying to the public service broadcasters ("PSBs") in the UK, which include ITV, Channel 4, Channel 5 and S4C. The PSBs are under an obligation to make their core channels available to major platforms, however this does not apply to on-demand services. In addition, there are "Must Carry" obligations on platforms to carry PSB linear channels, which do not apply to on-demand content.

Broadcasters of linear content are subject to the Broadcasting Committee on Advertising Practice (BCAP) Code, whereas non-linear content falls under the remit of the General Committee on Advertising Practice (CAP) Code. As a result, non-linear content providers are not subject to certain rules, such as those regarding the watershed.

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

Leaving aside the BBC, the key licence types are as follows:

- DRL – licence in force for public service broadcasters as successor to analogue broadcast licence.
- DPSL – digital programme service licence; for services distributed via UK digital terrestrial television.
- TLCS licence – for linear services distributed via other platforms for reception by members of the public.

DRL licences contain certain public service obligations regarding the types of programming to be broadcast, but beyond these, all licence types contain broadly similar obligations to comply with:

- Ofcom programming standards (including standards of taste and decency, protection of minors and editorial integrity);
- advertising standards (including truth and accuracy in advertising, control over the timing and scheduling of advertisements); and
- minimum requirements for European content and content from independent producers.

For PSB licences, there are limits on the rights which may be acquired under a commissioning arrangement with an independent producer.

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

Licences are assignable with the prior approval of Ofcom and are subject to the payment of a small fee to Ofcom (currently £1,000). Other than in respect of the public service broadcasting licences, Ofcom will only decline to approve a licence assignment where the assignee would have been ineligible to apply for the licence in the first place or is not a "fit and proper" person to hold a licence.

There are no restrictions on change of control in Ofcom licences, although any company that acquires control of an Ofcom licensee is required to be a "fit and proper" person and to not be from the category of entities ineligible to hold an Ofcom licence (political

and religious bodies, local government authorities and advertising agents and those "connected" with them, as well as those convicted of certain "pirate broadcaster" offences). Notification must be given to Ofcom within 30 days after any change of control takes place.

6 Internet Infrastructure

6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

Under the Electronic Commerce Regulations 2002, provided that a service provider that acts as an ISP, network operator or web host complies with the Regulations, it will generally not be liable for any material where it:

- acts as a mere conduit;
- caches the material; or
- hosts the material.

Where a service consists of either transmitting in a communication network of information which has been provided by a recipient of the service (e.g. an ISP transmitting a customer's email) or where the service consists of the providing access to a particular communication network (for example, an ISP) then the service provider will not be liable for damages, any other financial remedy or any criminal sanction if:

- it did not initiate the transmission;
- it did not select the receiver of the transmission; and
- it did not select or modify the information in the transmission.

There is no general obligation on service providers to monitor content, but once a service provider gains 'actual knowledge' of any unlawful material or the removal from its original source of any cached material, it must act 'expeditiously' to ensure that such material is taken down. This has been construed relatively restrictively, meaning that if a service provider has taken on any editorial role, it cannot rely on this defence.

Section 1 of the Defamation Act 1996 also provides for a defence for a service provider which has published a defamatory statement where it: (a) is not the author, editor or publisher of the material; (b) takes reasonable care in relation to the publication; and (c) does not know or has no reason to believe that which it did caused or contributed to the publication of a defamatory statement. The leading case of *Godfrey v Demon Internet* established that it is not necessary for an ISP to remove defamatory material instantly on notification, but that this must be done within a reasonable time (in this case a delay of 10 days defeated the defence).

6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

Under the Digital Economy Act 2010, large ISPs are required to collaborate with content owners in a process where infringers are notified and warned of their conduct. In addition, ISPs must provide a list of infringers to the relevant content provider.

However, whilst this legislation is in force, it is not yet known when or if the sections relating to online piracy will be implemented in their current form. The industry-led scheme Creative Content

UK, formerly known as the Voluntary Copyright Alert Programme (“VCAP”), has been established. It will shortly launch some voluntary equivalents to these provisions of the Digital Economy Act 2010, including sending educational alerts to those who infringe content online.

In December 2012 the EU, along with 54 other countries including the US and Canada, declined to sign up to a revised version of the United Nations’ International Telecommunication Regulations, a voluntary treaty aimed at regulating telecommunications around the world.

6.3 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any ‘net neutrality’ requirements?

Yes, subject to general competition law, Communication Providers are able to differentially charge. There is no requirement or regulation for net neutrality in the UK. However, Communications Providers with SMP (including BT) are subject to undue discrimination rules, and general competition law also applies.

In Ofcom’s November 2011 statement on its approach to ‘net neutrality’, it stated that it recognised the benefits associated with a ‘best-efforts’ internet on the one hand and the provision of managed services on the other, and wanted them to co-exist. However, should managed services be prioritised in such a way that insufficient network capacity remains for ‘best-efforts’ access, Ofcom would consider imposing a minimum quality of service obligation on all Communications Providers.

Whilst the blocking of alternative services by ISPs is, in Ofcom’s view, highly undesirable, and discriminatory traffic management can have almost the same effect, Ofcom intends to rely on the operation of market forces (i.e. alternatives being offered and users switching) to address these issues. At the time of writing (June 2015) Ofcom had broadly reiterated its maintenance of its 2011 position, and warned against “over prescriptive and detailed legislation”.

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content?

There are no general obligations. However, UK copyright law contains a process, under section 97A of the Copyright, Designs and Patents Act 1988, under which content owners have successfully sought injunctions against specific ISPs in connection with sites which are known to be consistent infringers of IP. Such orders have to date been made requiring most of the major ISPs to block content from e.g. Pirate Bay, Newzbin and a number of other services which offer peer-to-peer or live streaming services.

6.5 How are ‘voice over IP’ services regulated?

VoIP services are regulated in the same way as other electronic communications services by the General Conditions. Ofcom has issued specific guidance on access to emergency services in the context of regulation of VoIP services, and in its 2011 statement on implementing the revised EU framework and changes to the General Conditions.

Appendix 1

Summary of which General Conditions apply to which types of providers (sourced from Ofcom).

Condition	All providers of ECNs and ECSs	Providers of public ECNs and ECSs	Providers of publicly available telephone services or PTNs
1. General access and interconnection obligations	Paras 1.2 and 1.3 only	Yes (network providers)	Yes (network providers)
2. Standardisation and specified interfaces	Yes	Yes	Yes
3. Proper and effective functioning of the network			Yes (but excludes mobile networks)
4. Emergency call numbers			Yes
5. Emergency planning			Yes
6. Public pay telephones	#	#	#
7. Must carry obligations	*	*	*
8. Operator assistance, directories and directory enquiries			Yes
9. Requirement to offer contracts with minimum terms		Yes	Yes
10. Transparency and publication of information			Yes
11. Metering and billing		Paras 11.1 and 11.2 only	Yes (subject in part to turnover threshold)
12. Itemised bills			Yes
13. Non-payment of bills			Yes (but excludes mobile services)
14. Codes of practice and dispute resolution		Yes	Yes
15. Special measures for end users with disabilities			Yes
16. Provision of additional facilities			Yes

Condition	All providers of ECNs and ECSs	Providers of public ECNs and ECSs	Providers of publicly available telephone services or PTNs
17. Allocation, adoption and use of telephone numbers	Yes	Yes	Yes
18. Number portability	Yes	Yes	Yes
19. Provision of directory information	Yes	Yes	Yes
20. Non-geographic numbers	Yes	Yes	Yes
21. Quality of service	Yes	Yes	Yes

Providers of public pay telephones.

* Providers of “Appropriate networks” used for receiving TV.



Purvi Parekh

Olswang LLP
90 High Holborn
London WC1V 6XX
United Kingdom

Tel: +44 207 067 3000
Fax: +44 207 067 3999
Email: purvi.parekh@olswang.com
URL: www.olswang.com

Purvi is a Partner and Head of Olswang’s International Telecoms practice.

Purvi is a telecoms and technology lawyer. Her telecoms experience spans all kinds of networks and platforms, including mobile, fixed line and satellite. She has advised on some of the most innovative projects affecting the telecoms market today, including network sharing (active and passive, light and deep), MVNOs, M2M, mobile payments, convergence and 4G/LTE. Purvi also advises on the regulatory aspects of telecoms work. Her experience in telecoms regulation includes proposals for the EU single market, network access, MVNO regulation, leased lines, net neutrality and numbering and portability issues.

Purvi also specialises in outsourcing and procurement work across the telecoms and technology sectors. She has extensive experience in both private sector and public sector outsourcing and offshoring, where she has acted for both customers and suppliers.

Purvi was born in India and her passion for the country has led her to focus on India technology and sourcing work, both inbound and outbound. She has extensive experience in particular of BPO and ITO transactions in this area.

Purvi splits her time between London and Madrid.



Tomos Jones

Olswang LLP
90 High Holborn
London WC1V 6XX
United Kingdom

Tel: +44 207 067 3000
Fax: +44 207 067 3999
Email: tomos.jones@olswang.com
URL: www.olswang.com

Tomos is an Associate in Olswang’s Commercial Group in the UK.

He practises across a wide range of areas including media, content and telecoms, and advises on commercial, regulatory and copyright law issues to clients across the media and communications landscape. His particular focus is in relation to the distribution of audiovisual and music content over new platforms.

Tomos has worked in private practice and in-house at a major UK broadcaster, with particular emphasis on new means of content distribution. Prior to becoming a lawyer he worked in the advertising industry.

OLSWANG

Olswang is a pioneering sector-focused firm with a distinctive approach to business law and a progressive culture. Headquartered in London, Olswang has a European network spanning Belgium, France, Germany, Spain and the UK, and an Asian base in Singapore.

Olswang’s multi-disciplinary lawyers across Europe and Asia have the specialist skills to cover all legal aspects of the telecoms sector and its convergence with adjacent technology and media sectors. The firm translates its expertise into practical, commercial and high quality advice to help its clients maintain their leadership roles in the marketplace.

The telecoms practice acts for providers and users of telecoms services; the team has expertise on telecoms issues across all vertical sectors and all types of networks and platforms – fixed, mobile, satellite, VPN, private line communications, NGN, terrestrial broadcasting, cable TV and the internet. The team has worked on some of the most innovative changing business projects in the telecoms and media sectors.

Olswang advises on the full range of issues in the sector: commercial/transactional; regulatory; corporate/M&A; finance; competition; intellectual property; dispute resolution; real estate; and tax.

Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks



59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk