



Quarterly update summarising regulatory and legal developments from the last three months in the communications, media and satellite sectors in Europe.

This edition includes contributions from the United Kingdom, Austria, Bulgaria, Germany, Hungary, Italy, Poland, Serbia, Spain, Switzerland and Ukraine.

United Kingdom

COMMUNICATIONS

Ofcom Spectrum Review

Ofcom have initiated a review to consider whether changes should be made to spectrum management policy across a number of bands between 1.4GHz and 86 GHz that are currently available to fixed links. A total bandwidth of 12 GHz spread across fourteen different bands is managed by Ofcom, with access available via one of a number of fixed link licence products that are subject to close technical coordination. It is these bands which form the core focus of this review. This consultation ended on 30 April 2012, following which, Ofcom will publish proposals where appropriate for changing the way these spectrum bands are managed.

For more information please go to: <http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum-review/summary/condoc.pdf>

Ofcom consults on proposals for the auction of the 800 MHz and 2.6 GHz bands

On 12 January Ofcom published a second consultation setting out their revised proposals for the auction of the 800 MHz and 2.6 GHz spectrum. This will be the largest ever single auction in the UK of internationally harmonised mobile spectrum. Following responses to its March 2011 consultation, Ofcom has modified some of its proposals on how it should auction the spectrum.

Ofcom intends to publish a statement on these issues in the summer.

For more information please go to: <http://stakeholders.ofcom.org.uk/binaries/consultations/award-800mhz/summary/combined-award-2.pdf>

Strategy for UHF bands IV and V

Spectrum in the UHF bands IV and V is in scarce supply yet is in increasing demand by a wide range of services; and the use of high power DTT transmitters in this spectrum requires international agreements to coordinate any significant changes to its use. Ofcom have published a consultation which sets out a proposed long term strategic approach to help match future supply of spectrum with demand for services capable of delivering significant benefits to citizens and consumers; as well as retaining sufficient flexibility to respond to uncertain future service, market and international harmonisation developments. Ofcom wish to ensure the sustainable delivery of DTT and other services which make shared use of this spectrum and enable the future release of potentially valuable harmonised mobile broadband spectrum in the 700MHz band to meet the growth in demand for mobile data capacity. The consultation ends on 7 June 2012 and Ofcom plan to publish a statement in the autumn.

For more information and the consultation please go to:

<http://stakeholders.ofcom.org.uk/binaries/consultations/uhf-strategy/summary/spectrum-condoc.pdf>

Ofcom consultation on proposal to vary Everything Everywhere's spectrum licences to allow use of LTE and WiMAX technologies

On 13 March 2012, Ofcom issued a consultation on its intention to vary Everything Everywhere's (EE) 1800 MHz Wireless Telegraphy Act 2006 spectrum licences to allow use of LTE and WiMAX technologies in this band. If Ofcom were to vary EE's licence now, it is likely that EE would be the only body capable of providing LTE/WiMAX services on a national basis for a period of approximately 15 months. Ofcom have provisionally concluded that there is no material risk of a distortion of competition if EE is permitted to use the 1800 MHz band to deploy LTE and/or WiMAX technologies at the earliest opportunity. Ofcom, therefore, proposes to grant EE's request. The consultation ends on 8 May 2012, following which Ofcom intend to publish a statement in May 2012.

For more information please go to: <http://stakeholders.ofcom.org.uk/binaries/consultations/variation-900-1800mhz-lte-wimax/summary/condoc.pdf>

PhonepayPlus warns about use of search engine market

PhonepayPlus, the premium rate telephone service regulator, has published a compliance update aimed at providers who use search engine marketing (SEM) to drive internet traffic towards websites that advertise premium rate telephone numbers as a means of accessing public information services or commercial enterprises. It is concerned about several potential breaches of its code of practice by services operating in this way and is launching a formal review of these services alongside individual providers. In the meantime the regulator has suggested certain practices that providers using SEM should adopt in order to comply with the code of practice.

For more information please go to:

http://www.phonepayplus.org.uk/For-Business/Code-and-Help/Code-Compliance-Updates/~media/Files/PhonepayPlus/ComplianceUpdates/2012_Compliance_Update_Third_party_provision_or_connection_to_public_information_and_commercial_customer_contact_numbers.pdf

Draft regulation: The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2012

The proposed regulations would amend the Wireless Telegraphy (Licence Charges) Regulations 2011 that came into force on 3 May 2011. The proposed regulations set out the changes that Ofcom propose to make to licence charges (fees) for some classes of wireless telegraphy licence other than those awarded by auction. In particular, the proposed regulations would implement changes that introduce 'Administered Incentive Pricing' (AIP) where licence fees are set above administrative costs to reflect a range of spectrum management objectives. In addition, the regulations also introduce the second phased increase for some maritime licence classes. Those proposed changes have been subject to prior consultation, in line with Ofcom's consultation principles.

For more information please go to: http://stakeholders.ofcom.org.uk/binaries/consultations/licence-charges-2012/summary/2012_Fee_Notice.pdf

Ofcom consultation on proposals to change the processes for switching fixed voice and broadband providers on the Openreach copper network

On 9 February 2012 Ofcom consulted on proposals to change the processes for switching fixed voice and broadband providers on the Openreach copper network. Ofcom's review of consumer switching processes is focussed on: ensuring that the consumer's experience of switching communications services is easy and hassle free; and switching processes do not obstruct providers competing with each other to deliver benefits to consumers in terms of lower prices, greater choice, innovation and value for money. The review focuses on addressing current problems as well as on ensuring that switching processes and systems remain capable of providing good consumer and competition outcomes in the future.

This consultation ends on 8 May 2012. Ofcom intend to publish a further consultation in Q2/Q3 2012-13 and a statement in Q4 2012-13.

For more information please go to: <http://stakeholders.ofcom.org.uk/binaries/consultations/switching-fixed-voice-broadband/summary/condoc.pdf>

Ofcom consultation on geographic telephone numbers

Geographic telephone numbers are fixed line telephone numbers that begin with '01' and '02' and are widely recognised, valued and trusted by consumers. Ofcom administers this resource and wants to ensure that sufficient numbers are available to allocate to communications providers (CPs). The forecast of CPs' demands show that, unless action is taken, there is a risk that geographical numbers to allocate to CPs will run out in some of the areas which have four-and-five digit area codes. In September 2011 Ofcom consulted on the matter and decided that they must increase supplies by closing local dialling. This means that fixed-line phone users in those areas will need to dial the area code when making local codes which will release new numbers for use but will not affect the cost of the call. The Bournemouth area code will be the first area code in which Ofcom's policy will be implemented. This consultation is to discuss: the date that local dialling in the Bournemouth area will be closed; the final arrangements for introducing a pilot scheme covering 30 area codes; the arrangements to make a limited quantity of blocks of 100 numbers to allocate to CPs in the areas with five-digit codes; and to consult on the legal instruments to give effect to these measures.

This consultation ends on 2 May 2012. Ofcom intend to publish two statements: the first will conclude on the consultation in relation to closing local dialling in the Bournemouth area code and is expected to be published in May 2012; the second will conclude proposals in relation to number charging and 100 number block allocations and is scheduled for publication in July 2012.

For more information, please go to: <http://stakeholders.ofcom.org.uk/binaries/consultations/geo-numbers/summary/condoc.pdf>

MEDIA

The Press Complaints Commission to transfer to new regulatory body

In July 2011 the Press Complaints Commission (PCC) announced that it would be conducting a review of press regulation. This followed the launch of the Leveson Inquiry into the culture, practices and ethics of the press. The PCC Chairman has since drafted proposals for a new regulatory system and role of the new regulator. These proposals state that the regulator should have two arms: one dealing with complaints and mediation; the other to carry out an auditing function and where necessary enforce standards and compliance with the Editors' Code of Practice. In March 2012, the PCC confirmed that it will close and that a transitional body will replace it. The PCC agreed that it should move into a transitional phase, transferring its assets, liabilities and staff to a new regulatory body designed along the lines proposed by the PCC Reform Committee. The PCC has emphasised that it will continue to deal with existing and new complaints made

under the Editors' Code of Practice during the period of transition. It is unclear when the transition phase will begin.

For more information please go to: <http://pcc.org.uk/news/index.html?article=NzcyNA==>

Ofcom decision on Channel 5 Facebook voting credits

Ofcom has resolved a case involving complaints by viewers of Channel 5's Big Brother final. The complaints arose because during the last few minutes of voting in the final viewers could not access the broadcaster's Facebook page and use voting credits they had bought because the innovative system had crashed. Channel 5 avoided a finding of breach because it had allowed unregistered votes to be reused, increased its server capacity for future events; and taken action to improve the speed for dealing with such incidents. Ofcom noted in its decision that Channel 5 was not absolved of its responsibilities to viewers in respect of rule 2.14 of the Broadcasting Code. This rule prevents broadcast competitions and voting from misleading the audience in such a way as to cause material harm, such as financial loss. Despite the fact that Channel 5 had said in its voter terms and conditions that voting credits were non-transferable and non-refundable and had also purported to exclude liability for technical failure they were still responsible under rule 2.14.

For more information please go to: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2001/obb201.pdf>

Murphy v Media Protection Services Ltd (2007) EWHC

The European Court of Justice ruled in favour of pub landlady, Karen Murphy, in her appeal against conviction for using a Greek TV decoder service in the UK. Instead of using Sky, which costs £700 per month to see Premier League matches, Karen Murphy used the Greek TV station Nova, which cost her £800 per year. Murphy was forced to pay fines and costs of almost £8000 after the Premier League launched legal proceedings against her for using the Greek TV decoder service in her Portsmouth pub. She was convicted under the Copyright, Designs and Patents Act 1988 for dishonestly receiving a programme with intent to avoid payment of any charge applicable to the programme.

Murphy took her case to the European Court of Justice (ECJ) which found in her favour and ruled in October 2011 that national laws prohibiting the import, sale or use of foreign decoder cards were "contrary to the freedom to provide services and cannot be justified either in light of the objective of protecting intellectual property rights or by the objective of encouraging the public to attend football stadiums". The ECJ distinguished that while live matches were not protected by copyright, any surrounding media, such as any opening video sequence, the Premier League anthem, pre-recorded films showing highlights of recent Premier League matches and various graphics, were works protected by copyright. To use any of these extra parts associated for a broadcast, a pub would need the permission of the Premier League.

Murphy subsequently appealed conviction which was allowed and overturned by the High Court on 24 February 2012. Despite the High Court judge finding in her favour he made it clear that complex issues surrounding this case would have to be reviewed and decided at a later date. Therefore, Murphy was free from a conviction but the case leaves no guarantee that other establishments are free to use foreign decoders without potential court action. It is thought that the Football Association will surround broadcasts with enough copyright material to make it extremely difficult for pubs to broadcast without infringing the copyright.

For more information please go to: <http://www.bbc.co.uk/news/business-17150054>

Ofcom confirms code on prevention of undue discrimination between broadcast advertisers

Ofcom consulted on the introduction of a code on the prevention of undue discrimination between broadcast advertisers on 3 November 2011. This implements Ofcom's duty, under section 319 of the Communications Act 2003, to set standards to ensure that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services. Guidance set out in the Code is intended to help broadcasters assess whether their behaviour towards advertisers could be construed as discriminatory,

and if so, whether it can nevertheless be justified or whether it amounts to “undue” discrimination. Ofcom has now published the final version of its ‘Code of the prevention of undue discrimination between broadcast advertisers’. Ofcom has made a few small changes to the guidance section of the code following the consultation in November 2011, and has published a statement explaining its consideration of the consultation responses. The code is published as an addendum to the Broadcasting Code and came into effect on 27 February 2012.

For more information please go to:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/undue-discrimination.pdf>

BBC proposals for coverage of the London 2012 Olympic Games – 24 January 2012

The BBC has acquired non-exclusive broadcast rights for the London 2012 Olympic Games, which are listed events for the purpose of section 97 of the Broadcasting Act 1996. A listed event is a sporting or other event of national interest which is for the time being included in a list drawn up by the Secretary of State. In order to provide comprehensive coverage, the BBC plans to make all other Olympic events available through additional streams. These additional streams would be made available on the BBC’s website, and in whole or part, through satellite, cable and digital terrestrial broadcast. As these additional streams may not be receivable by the requisite 95% of the population, the BBC has sought Ofcom’s consent for the relevant listed events to be broadcast. Ofcom has given consent to the BBC to broadcast live coverage of the 2012 Olympic Games, please see Ofcom’s statement here: <http://stakeholders.ofcom.org.uk/consultations/bbc-coverage-2012-olympics/statement>

For more information please go to: <http://stakeholders.ofcom.org.uk/consultations/bbc-coverage-2012-olympics/?a=0>

Austria

COMMUNICATIONS

Austria implements 60 Euros cost limit for mobile data services

On 10 February 2012 a meeting of the Austrian regulatory authority (RTR-GmbH), the executive board of the four Austrian mobile operators and representatives of several government departments took place. As a result of this meeting a 60 Euros cost limit for mobile data services will be applicable in Austria as of 1 May 2012. According to the RTR-GmbH this new regulation will protect consumers from high telephone bills. Furthermore, the RTR-GmbH explained that during recent months they had to deal with a huge amount of dispute resolution proceedings with values of 650 Euros on average in relation to mobile data services. The cost limitation regulation will also be applicable to existing contracts on mobile data services. Kostenbeschränkungsverordnung der RTR-GmbH wird auch für Altverträge anzuwenden sein. Sie tritt ab 1. Mai 2012 in Kraft.

For more information please go to: <http://www.rtr.at/en/pr/PI10022012TK> (only available in German)

MEDIA

New law on the transparency of media cooperation published

On 1 January 2012 a new law on the transparency of media cooperation, advertising orders and financial support for media owners (öMedKF-TG) came into effect. The öMedKF-TG aims to enhance the transparency of press and media publishing ordered by the government. For this purpose public or governmental institutions are obliged to inform the public about every kind of media cooperation e.g. financial support for radio and TV broadcasters or publishers of print media. The publishing has to take place quarterly and shall include information about the recipient of the money and the total amount of money spent. The completeness

of the information is to be assessed by the Austrian Audit Court (Rechnungshof). A violation of the publishing obligations may lead to a financial penalty of up to 20,000 Euros (in case of a repeated violation 60,000 Euros).

For more information please go to: <http://www.parlament.gv.at/PAKT/VHG/XXIV/II/01276/index.shtml> (only available in German)

SATELLITE

New Austrian Outer Space Act

The Austrian Federal Law on the Authorization of Space Activities and the Establishment of a National Space Registry (Act) came into force on 28 December 2011. The Act establishes conditions for authorisation and state supervision of the activities of commercial operators; obligatory insurance requirements (which could be waived if the space activity is in the public interest); and the change of the operator of a space object which is subject to authorisation.

Bulgaria

COMMUNICATIONS

Changes to the Electronic Commerce Act

The revised Electronic Communications Act, promulgated in the State Gazette No 105/2011, introduces changes to the Electronic Commerce Act. These changes are in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 and relate to the storage and the access to private information. The service provider must inform the users of the processed data and the duration of such processing. In addition, users will have the right to withdraw their consent to such data processing at any time.

For more information please go to: <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=59799>

Bulgarian News Agency Act published

The Bulgarian News Agency Act, promulgated in State Gazette No 99/2011, provides a detailed legislative framework with regard to the activities of the Bulgarian News Agency (BTA). The new act revokes the Statute of the BTA, and explicitly outlines the principles, management procedures and budget structure of the BTA.

For more information please go to: <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=59255>

MEDIA

New online gambling regulation

On 15 March 2012 the Bulgarian Parliament adopted a new Gambling Act, subject to publication in State Gazette No 30/2012 and will come into force on 1 July 2012. In line with the new legislative changes, online gambling websites shall be subject to strict control and monitoring by the State Gambling Commission. In addition, the commission shall maintain a public register of all such websites which do not have a proper licence.

For more information please go to: <http://www.parliament.bg/bg/laws/ID/13713>

Bulgarian Telecom Operator to adopt new advertising policy

Recently, one of the leading Bulgarian telecoms operators, M-tel, announced a new online mobile advertising policy. At present, advertisers have the choice of using the internet, mobile and SMS marketing platforms. In its press release M-tel plans to further develop these platforms, through additional processing and utilisation of its archives of information, without disclosure of its clients' personal data.

Germany

COMMUNICATIONS

Kabel Deutschland sues Deutsche Telekom over excessive fees for cable channels

On 5 April 2012 the management board of Kabel Deutschland, one of Germany's leading cable network operators, announced that the company had sued Deutsche Telekom for damages and repayment in the amount of more than 100 million Euros before the civil court in Frankfurt am Main. According to Kabel Deutschland, Deutsche Telekom has been charging abusive fees for the usage of its cable channels and infrastructure since 2004. Kabel Deutschland referred to several decisions by the Bundesnetzagentur in which significantly lower fees were determined. Deutsche Telekom opposed the claim and stated that the cable channels subject to the Bundesnetzagentur's decisions cannot be compared to the cable channels used by Kabel Deutschland. The proceeding is expected to take several years.

For more information please go to: <http://beck-online.beck.de/?vpath=bibdata\reddok\becklink\1019725.htm&pos=11&hlwords=medien#xhlhit>

The Bundesnetzagentur provisionally prohibits price model for VDSL bitstream access

On 2 April 2012 the Federal Network Agency (Bundesnetzagentur) published a preliminary decision through which it prohibits Deutsche Telekom from selling Very High Speed Digital Subscriber Line (VDSL) bitstream access under a new price model. The company had informed the Bundesnetzagentur back in mid-January 2012 of its plans to introduce a price model known as the VDSL contingent model in addition to its current price model for VDSL IP bitstream access. The VDSL contingent model is characterized by parties wishing to have VDSL IP bitstream access to book a certain contingent of bitstream access nationwide or at regional level by making a so-called upfront payment. With this booking, subscribers obtain the right to lease VDSL IP bitstream access for the next 11 years within the framework of the agreed contingent subject to a certain monthly fee. Owing to the overall mechanism, which means the upfront payment is distributed across the access lines actually leased in terms of cost accounting, the more use is made of the agreed contingent, the lower the price becomes.

In an ex post control proceeding, the Bundesnetzagentur arrived at the preliminary conclusion that the model was considerably hampering the competitive opportunities of other companies without any objective justification. The Bundesnetzagentur holds the view that the new price model cannot be justified by special investment-related risks or capacity utilisation risks. Interested parties have the opportunity to comment on the Bundesnetzagentur's decision until 2 May 2012. The decision will subsequently be communicated to the EU Commission and the national regulatory authorities of the other EU Member States which will have one month to submit their comments. It will then be possible to announce the final decision.

For more information please go to: http://www.bundesnetzagentur.de/cln_1931/SharedDocs/Pressemitteilungen/EN/2012/120402PriceModelVDSLBitstreamAccess.html?nn=48242

Coverage requirement now met for 800 MHz band in Schleswig Holstein

Following the auction of the frequencies for wireless network access in the 800 MHz, 1.8 GHz, 2.0 GHz and 2.6 GHz bands which took place in early 2010, in January 2012 the Bundesnetzagentur announced that mobile operators have now also met the coverage requirement for the 800 MHz band in Schleswig Holstein, which follows Bavaria, Baden-Württemberg, Hesse, North-Rhine Westphalia, Rhineland Palatinate and Saarland as the seventh state covered. The three companies, Telekom Deutschland GmbH, Vodafone D2 GmbH and Telefónica Germany GmbH & Co. OHG are now able to freely use the frequencies they purchased in the 800 MHz band there too. The progressive coverage and roll-out obligations, which were part of the 800 MHz frequencies assignment, have already been met in half of the 13 federal states with limited broadband coverage. It is expected that network operators will continue to drive forward network expansion in the coming year in order to improve broadband provision.

For more information please go to:

http://www.bundesnetzagentur.de/cln_1912/SharedDocs/Pressemitteilungen/EN/2011/111228BroadbandExpansionSchleswigHolstein.html?nn=214432

The Federal Council of Germany has granted its approval to the amendment of the German Telecommunications Act

On 10 February 2012 the Federal Council of Germany (Bundesrat) has granted its approval to the amendment of the German Telecommunications Act (TKG). The new TKG implements the 2009 EU telecommunications reform package. Prior to its consent the Bundesrat raised concerns which delayed the legislative process. The concerns were not related to the implementation of EU telecommunications reform but the relation between the federal and the state government of Germany on matters of broadcasting and frequency administration. According to the German constitution (Grundgesetz), broadcasting legislation and administration lies in the competence of the federal states. The main concern of the federal states was that the nationwide telecommunications and broadcasting frequency regulations might interfere with their political objectives in that field. The amended TKG now considers these concerns and stipulates that the federal and state government cooperate in all matters of frequency allocation.

For more information please go to: <http://www.bundesrat.de/DE/presse/pm/2012/018-2012.html> (only available in German)

MEDIA

Results of investigation on central marketing of German football club's media rights published

On 30 March the German Federal Cartel Office (Bundeskartellamt) published a report in which it approved the marketing plans of the German Football Association (DFL) for the 2013/2014 season onwards.

In its investigation the Bundeskartellamt examined DFL's marketing model for the award of media rights to the 1st and 2nd German Football League (Bundesliga) from the 2013/2014 season onwards. The marketing model planned by DFL contains a large number of broadcasting rights packages to be used both in free TV and pay TV via different transmission paths. With regard to the free-TV highlights coverage the marketing model includes two alternative scenarios. Scenario I provides inter alia for a package for free-TV highlights coverage from 18:30h. Scenario II, on the other hand, includes a package for highlights coverage via "Netcast" (i.e. mainly Web-TV) from 19:00h and free-TV coverage from 21:45h.

The Bundeskartellamt stated that in principle, the central marketing of the clubs' media rights by DFL represents an anti-competitive agreement. Under German and European competition law such agreements can only be exempted from the prohibition of cartels if they result in efficiency advantages and consumers have a fair share of these. The Bundeskartellamt came to the conclusion that this was the case with the plans presented by the DFL.

For more information please go to: http://www.bundeskartellamt.de/wDeutsch/aktuelles/presse/2012_01_13-II.php (available only in German)

The report of the Bundeskartellamt is available at:

http://www.bundeskartellamt.de/wDeutsch/download/pdf/Kartell/Kartell12/Kartell_Fallberichte_12/B06-114-10.pdf (available only in German)

Hungary

COMMUNICATIONS

National Media and Communications Authority (NMHH) legislation

The NMHH has issued new decrees on the detailed rules on number portability (2/2012 NMHH rendelet) and electronic communication service providers' obligations in connection with data protection, confidentiality, network security and service security (4/2012 NMHH rendelet).

State-run consortium won biggest frequency block at 900 MHz band auction

A consortium of state-owned Hungarian Post (Magyar Posta), the Hungarian Electricity Works (MVM) and a unit of the Hungarian Development Bank (MFB) has successfully bid for a 5MHz frequency block which covers a frequency range suitable for both Internet and voice services in the 900MHz band at auction, making it the fourth player on Hungary's mobile telecommunications market. The three mobile telecommunications service providers until now, Magyar Telekom, Telenor Magyarország and Vodafone Magyarország, also won frequency blocks in the auction, Magyar Telekom and Vodafone both won 2 MHz of frequency in the band, while Telenor won 1.8 MHz, all best suited for Internet services in rural areas. The National Media and Communications Authority rejected the appeals of the three mobile telecommunications service providers on the decision to award the fourth mobile licence to the consortium, and made its decision final, but the three turned to the court for further appeal.

MEDIA

Increased regulation of movie ratings could make promotion and distribution more difficult

NMHH has recently passed a new decree (10/2012 NMHH rendelet) on the rules of indication of motion picture ratings. The detailed provisions complete the new and stricter regulation of motion picture classification and distribution, in effect since 1 January 2012 as set out in Act II of 2004 of the Motion Picture Act. Contrary to the former regulation the new rules provide no exception from the obligation of filing a copy of the motion picture for review to the NMHH together with the distributor's request for rating and registration at least 30 days before the start of distribution. The amendment may result in unwanted delays of the motion pictures' Hungarian premiere as the distributors usually do not receive a digital copy of the film before the international release or they are not allowed to disclose it to any third parties. The "Under rating" label - which was applied by distributors on movie trailers during promotion before the official classification of the film - may not be used anymore. Instead, distributors may request a *preliminary rating* from the NMHH which serves as a separate rating for movie trailers valid only until the definitive rating of the film. The rules on indication of ratings are now applicable for all advertisements in any form and all communications (including non-promotional notices) of the motion picture, except those published more than 60 days prior to distribution.

Italy

COMMUNICATIONS

A digital agenda for Italy

In a document addressed to the Government and Parliament on 11 January 2012 the Board of the Communications Authority (AGCOM) proposed a set of measures to modernise the country, simplify compliance, reduce management costs and free resources in order to support growth.

In relation to the imminent use of pro-liberalisation measures to support growth, the AGCOM sent a document to the Government and Parliament in which it proposed to use a Digital Agenda for Italy capable of governing the country's modernisation, routing Italy on the networks and services of the next generation.

The following are the main fields of action and a few specific interventions that need to be taken:

- the adoption of a political spectrum, enhancing frequency resources and freeing more resources for broadband;
- the promotion of next-generation telecommunication networks;
- incentives for digital content movement in order to promote a more competitive environment concerning access to resources for the media;
- the promotion of online transactions by means of pro-digitalisation regulations; and
- electronic money and E-commerce development.

For more information please go to: <http://www.agcom.it/default.aspx?DocID=7919>

Memorandum of Understanding between AGCOM and Unioncamere for the conciliation of disputes between users and operators of electronic communications

AGCOM announced on 14 March 2012 that AGCOM and Unioncamere (the Italian Association of the Chambers of Commerce) have signed a memorandum of understanding in order to establish the procedures and principles to be applied to conciliation at the Chambers of Commerce in relation to disputes between users and operators of electronic communications.

The Memorandum is experimental and will on reconciliation and on the most relevant issues in the electronic communications sector.

For more information please go to: <http://www.agcom.it/default.aspx?DocID=8312>

MEDIA

Assignment of frequencies for Digital terrestrial television for some Italian regions

With a deliberation adopted on 22 February 2012, the AGCOM has resolved to assign the frequencies for the DTT – Digital terrestrial television in some of the Italian Regions that so far have not been affected by the change. The Regions include Abruzzo, Molise, Basilicata, Puglia, Calabria and Sicily.

The plan to assign the frequencies is a result of the process of digitalisation of the TV system which Italy is undergoing. The plan is aimed at allowing the switch off in the aforementioned Regions and to guarantee the users' rights to the service.

For more information please go to: <http://www.agcom.it/default.aspx?DocID=8262>

Developments in the “beauty contest” to assign TV frequencies

The Government has decided to repeal the “beauty contest” to assign TV frequencies; therefore an auction will take place. One of the major Italian media companies, Mediaset, has announced it will take legal actions against the Government’s decision.

Poland

COMMUNICATIONS

Work on the frequency management plan (Plan zagospodarowania częstotliwości)

On 13 April 2012 the President of the Office of Electronic Communications (UKE) announced the commencement of work on the management plan for the following frequency bands: 1710-1785 MHz; and 1805-1880 MHz. Interested parties may submit their proposals to the UKE. On 18 April 2012, a similar announcement concerning the frequency band 174-230 MHz was issued.

For more information please go to:

http://www.uke.gov.pl/uke/index.jsp?place=Lead07&news_cat_id=168&news_id=7887&layout=3&page=text

Changes to the National Frequency Allocation Table (Krajowa Tablica Przeznaczeń Częstotliwości)

On 3 April 2012 the Council of Ministers issued a regulation introducing changes to the National Frequency Allocation Table which makes more frequencies available to the telecommunications sector. The regulation concerns the following frequency bands: 790-862 MHz; 1730-1755 MHz; 1825-1850 MHz; 70.1-70.3 MHz; 2400-2450 MHz; and 2200-2300 MHz.

The released frequency band 790-862 MHz is a part of the so-called digital dividend (i.e. radiofrequency spectrum available due to switching off analogue television signals).

For more information please go to:

http://www.uke.gov.pl/uke/index.jsp?place=Lead01&news_cat_id=168&news_id=7877&layout=3&page=text

Decisions on retail fixed-line markets

In March 2012, the President of UKE notified the European Commission of two draft decisions concerning retail fixed-line markets: the market for access to the public telecommunications network at a fixed location for consumers; and the market for access to the public telecommunications network at a fixed location for end-users that are not consumers. On both markets Telekomunikacja Polska S.A. (TP) was found to have significant market power and as such was ordered to fulfill some regulatory obligations.

For more information please go to:

http://www.uke.gov.pl/uke/index.jsp?place=Lead01&news_cat_id=168&news_id=7849&layout=3&page=text

Report on telecommunications infrastructure

In February 2012, the President of UKE started work on a report on telecommunications infrastructure by sending requests to over 9,000 entities to provide information for the report. The report will be published on 30 June 2012.

For more information please go to:

http://www.uke.gov.pl/uke/index.jsp?place=Lead01&news_cat_id=498&news_id=7745&layout=3&page=text

TP to change the Frame Offer (SOR)

On 31 January 2012, the President of UKE ordered TP to prepare a draft amendment to the Frame Offer on telecommunications access in respect of call origination and termination, wholesale access to TP's network and access to the subscribers' connections (so called SOR). The changes to SOR should simplify the alternative operators' cooperation with TP.

For more information please go to:

http://www.uke.gov.pl/uke/index.jsp?place=Lead01&news_cat_id=480&news_id=7711&layout=3&page=text

Change to the Arrangement between TP and UKE concerning investments

On 30 January 2012, the President of UKE and Telekomunikacja Polska S.A. (TP) signed an additional Protocol to the Arrangement concerning the investments declared by TP. The Protocol extended the term to carry out investments declared by TP in broadband connections by three months (i.e. by 31 March 2013). By this time, 220,000 broadband connections should reach the bit rate of 30 Mb/s.

For more information please go to:

http://www.uke.gov.pl/uke/index.jsp?place=Lead01&news_cat_id=480&news_id=7707&layout=3&page=text

New President of the Office of Electronic Communications (UKE)

On 27 January 2012, the Sejm (Polish Parliament) appointed a new President of UKE, Ms Magdalena Gaj. Ms Gaj replaced Ms Anna Streżyńska who had been the President of UKE for the last six years.

For more information please go to:

http://www.uke.gov.pl/uke/index.jsp?place=Lead01&news_cat_id=498&news_id=7719&layout=3&page=text

MEDIA

The National Broadcasting Council consultations on TV digitalisation

The National Broadcasting Council (KRRiT) is carrying out consultations concerning the second phase of TV digitalisation. Within this phase KRRiT will be able to place four additional TV channels on free MUX-1. Interested parties may submit comments concerning the process by 2 July 2012.

For more information please go to:

<http://www.krrit.gov.pl/dla-nadawcow-i-operatorow/aktualnosci/news.622,zaproszenie-do-konsultacji-w-sprawie-uzupelnienia-mux--1.html>

National Broadcasting Council yearly report

On 30 March 2012, KRRiT published its annual report concerning the problems of the broadcasting sector and KRRiT's activity in the previous year. The report includes information on the implementation of the directive on audiovisual media services and digitalisation.

The report may be found under:

http://www.krrit.gov.pl/Data/Files/_public/Portals/0/sprawozdania/spr2012/sprawozdanie_krrit_03_2012.pdf

Serbia

COMMUNICATIONS

Ratel becomes Observer at BEREC

Soon after Serbia obtained the candidate status for EU membership in March 2012, the Serbian Republic Agency for Electronic Communications (Ratel) has been provided with Observer status at the Body of European Regulators for Electronic Communications (BEREC). This is expected to allow Ratel to have constant access to areas relevant for its operations and directly exchange experiences with other European regulators, which should contribute to Serbia's overall progress in the area of electronic communications.

MEDIA

Serbian Broadcasting Agency adopts rules relating to TV viewers with impaired hearing

On 12 April 2012, the Serbian Broadcasting Agency adopted the Mandatory Instructions for Broadcasters to Allow Smooth Informing of TV Viewers with Impaired Hearing. The Instructions set out the detailed rules which all Serbian broadcasters are obliged to comply with to enable TV viewers with impaired hearing to smoothly follow informative TV contents relating to electoral campaigns in 2012.

Preparations for full digital TV signal nearly completed

On 4 April 2012, the Serbian Broadcasting Agency set the list of broadcasters whose contents shall be represented in five packages of different program contents in Initial Network for Testing the Digital TV Signal.

Serbian Broadcasting Agency adopts rules for broadcasters in electoral campaigns

In view of upcoming general elections in Serbia, on 9 March 2012 the Serbian Broadcasting Agency adopted the Mandatory Instructions for Radio and TV Broadcasters in Electoral Campaigns for Local, Parliamentary, Presidential and Elections for Minority Councils of Republic of Serbia. The Instructions set out detailed rules which are obligatory for all radio and TV broadcasters in Serbia; the instructions relate to equal and just representation of electoral campaigns of various political parties and other candidates in elections, as well as the system for Ratel's electronic monitoring of complying with these rules by respective broadcasters.

Spain

COMMUNICATIONS

Framework for Action Plan for the release of the Digital Dividend

The Council of Ministers has approved the Framework for the Action Plan for the release of the Digital Dividend. The Framework Plan provides the roadmap which will release the 800 MHz band for electronic communications services and in particular mobile broadband.

For more information please go to:

<http://www.minetur.gob.es/telecomunicaciones/en-US/Novidades/Paginas/PlanMarcoActuacionesDividendoDigital.aspx>

The Ministry of Industry supports the Competitiveness Plan for Spanish SMEs

The initiative was launched by the ICT sector in response to the need to improve the competitiveness of SMEs through efficient use of cloud computing. The major business associations are collaborating in this initiative.

The Minister of Industry, Energy and Tourism presided over the presentation of the Plan of Competitiveness for SMEs. The initiative came from the ICT sector in response to the need to improve the competitiveness of SMEs through efficient use of cloud computing. It aims to help further job creation and the promotion of innovation. The Minister of Industry, HP, Intel, Microsoft, Nokia, Vodafone and major business associations collaborated in the initiative. The Minister has said that an increase in SME competitiveness can lead to a strong platform for sustained economic growth recovery.

For more information please go to:

<http://www.minetur.gob.es/en-US/GabinetePrensa/NotasPrensa/2012/Paginas/plancompetitividadpymes.aspx>

The government warns of fraud in Premium SMS Service contracts

The fraudulent use of commercial brands to attract subscriptions to Premium SMS services has been detected.

The Commission is officially investigating this matter and has opened 11 files which may lead to the closure of the numbers if a breach of the Code of Conduct is found. The Commission recommends all users to read the conditions of the subscription carefully, and reminds them that to cancel it, they must send a message with the word "BAJA" to the number which sends them the unwanted Premium SMS messages.

For more information please go to:

<http://www.minetur.gob.es/en-US/GabinetePrensa/NotasPrensa/2011/Paginas/npreunioncssta151211.aspx>

Switzerland

COMMUNICATIONS

New mobile telephony frequencies for the Swiss telecom carriers Orange, Sunrise and Swisscom

The companies Orange, Sunrise and Swisscom have been allocated mobile telephony frequencies in the auction which took place in early 2012 (*see CMS Quarterly Communications Update of July 2011*). The allocation concerned on the one hand frequencies which were already free or which would soon become free and on the other hand all those granted to operators in the past. The Swiss Federal Communications Commission (ComCom) launched the procedure to guarantee the future of mobile telephony provision of high quality and at the lowest possible prices.

At the end of 2011, four companies had filed a candidature dossier. The company In&Phone was not able to take part in the auction because analysis of the documents revealed that it did not satisfy the legal requirements and the obligations related to the procedure.

The auctions made CHF 996'268'000 for the Federal Treasury.

For more information please go to:

<http://www.bakom.admin.ch/themen/frequenzen/03569/index.html?lang=en>

Partial revision of the Swiss Telecommunications Act

The Federal Council wishes to progress work on a partial revision of the Swiss Telecommunications Act (TCA) in the current legislative session in order to resolve important issues about the future development of electronic communications. In its new report on the evaluation of the telecommunications market for the attention of Parliament, the Federal Council notes that the current TCA has had a positive effect on the telecommunications sector but is coming up against boundaries from a technological perspective.

The TCA is being overtaken by rapid technological developments in the telecommunications industry. For example, the current TCA is based on the copper network, which will increasingly be replaced by new fiber and cable networks and mobile radio systems. This means that there is a risk that the Act may not have its full impact on the evaluation of the telecommunications market. The Federal Council thus intends to take in hand the drafting of a consultation paper on the partial revision of the TCA during the current legislature. In the process, rules will be drawn up which will be available in good time if problems occur and which will allow a more flexible approach than at present.

For more information please go to:

<http://www.bakom.admin.ch/dokumentation/medieninformationen/00471/index.html?lang=en&msg-id=43935>

Decision of the Federal Administrative Tribunal of 28 February 2012 (A-2969/2010): Swisscom AG v. Colt Telecom Services AG and the Federal Communications Commission

With decree of March 2012, ComCom decided that the incumbent telecom carrier Swisscom is dominant in the market for leased lines in the access network and so is required to offer its leased lines to all providers at cost-based prices. ComCom exempted connections between two specific points for which at least two alternative offers are available from its regulation. Based on this reasoning ComCom retroactively set the prices for access to the leased lines for the years of 2007 until 2009.

Swisscom filed an appeal with the Swiss Federal Administrative Tribunal (Tribunal) challenging ComCom's decree. Swisscom argued that there are strong competitors in the market which possess capable and adequate infrastructure for leased lines. According to Swisscom, ComCom failed to see that the market is sufficiently competitive and consequently over-regulates the market for leased lines. In addition, Swisscom claimed that ComCom did not properly calculate the prices for access to the leased lines.

The Tribunal partly dismissed Swisscom's appeal concurring with Swisscom's dominance in the market and its obligation to offer its leased lines at cost-based prices. Yet, the Tribunal affirmed Swisscom's claim insofar that ComCom did not properly calculate the prices for access to the leased lines ruling that ComCom had to reassess the prices for the years of 2007 until 2009.

Three weeks after this decision, the Tribunal affirmed its ruling in a similar procedure where Swisscom filed an appeal against the telecom provider Sunrise and ComCom.

Decision of the Federal Administrative Tribunal of 8 April 2011 (A-300/2010): Swisscom AG v. Sunrise Communications AG and the Federal Communications Commission

With the product Cable Ducting FMG, the incumbent telecom carrier Swisscom provides other telecommunications service providers with access to its underground cable ducting.

With appeal to the Tribunal the telecom carrier Sunrise challenged the prices for the use of the Cable Ducting FMG which were assessed by the Swiss Federal Communications Commission (ComCom) for the years of 2008 and 2009 based on the "long run incremental costs" (LRIC) pricing method. Sunrise claimed that Swisscom generates unjustifiably high benefits if the price calculation for the Cable Ducting FMG is based on costs which would occur if the underground cable ducting had to be newly built although Swisscom's cable ducting had been established for decades and had been amortized for a long time. According to Sunrise, ComCom must instead base its price calculations on depreciated costs which would decrease the cost for the Cable Ducting FMG by 60 %.

In favour of Swisscom, the Tribunal ruled that the LRIC pricing method is reasonable according to the TCA since it prevents the competitors of Swisscom to extensively invest in their own infrastructure while using Swisscom's infrastructure at unjustifiably favorable prices. The Tribunal stated in its reasoning that the creation of competition eventually does not require the lowest possible prices but an environment for competing investments.

Ukraine

COMMUNICATIONS

The new telecommunication services rules adopted by the Ukrainian Cabinet of Ministers

On 11 April 2012 the Cabinet of Ministers of Ukraine passed a resolution adopting the new telecommunication services rules (the New Rules). The previous rules, which had been in force from 9 August 2005, were repealed in their entirety by the same resolution. The New Rules have been adopted following broad public discussion. In particular, the major players of the telecommunication market and non-governmental organisations had been provided with opportunities to put forward their positions in regard to the draft New Rules. The New Rules introduce several noteworthy provisions and contain a broader list of terms and definitions in comparison to the previous rules. Such improvement aims to allow better interpretation of the New Rules consequently more efficient application.

The section regarding rights and obligations of the consumer has been modified. In particular, the right of the consumer to choose and adhere to specific subscription packages is now better protected. For example, the service provider may no longer unilaterally change the subscription package chosen by the consumer.

The New Rules will regulate quality characteristics of the telecommunication services, in particular concerning velocity of data transition. The New Rules are expected to give the consumer access to the information about the telecommunication services and bring about more transparency and predictability to the telecommunication market of Ukraine.

The New Rules came into effect on 23 April 2012 and may be accessed at:

<http://zakon2.rada.gov.ua/laws/show/295-2012-%D0%BF/page> (Ukrainian only).

The new unified emergency telephone number (112) introduced in Ukraine

On 13 March 2012 the Ukrainian Parliament adopted the law introducing the new unified emergency telephone number for all types of emergencies. Ukraine has followed the practice of many states by establishing a unified emergency telephone number regardless of the type of emergency and the public authority in charge of dealing with it, i.e. police, ambulance, fire brigade and rescue service.

The law came into force on 8 April 2012 and may be accessed at:

<http://zakon1.rada.gov.ua/laws/show/4499-17> (in Ukrainian only).

MEDIA

National Television and Broadcasting Council of Ukraine (NTCU) adopts the new licensing rules which regulate the order for obtaining licences by providers of “programme services”

On 28 December 2011 the new licensing rules for the “programme services” providers were adopted (the Rules). The Rules extend to the providers of the cable television services, satellite television, mobile phones service and internet connection.

The Rules introduce the unified list of documents which must be submitted by a service provider to the competent authority in order to obtain a licence. After the application and all the required documents are submitted, the competent authority must consider them in a one month term and issue a licence for the period of ten years. The Rules also contain the grounds and procedure for reissuing and annulment of the licence. The Rules came into effect on 23 March 2012 and may be accessed at:

<http://zakon2.rada.gov.ua/laws/show/z0351-12#n13> (in Ukrainian only).

Broadcasting of interactive TV games limited

On 9 February 2012 the Ukrainian Parliament amended the Law of Ukraine on TV and Radio Broadcasting. The amendments impose a ban on broadcasting TV and radio programmes which offer participation in interactive games or quizzes by making phone calls or sending text messages if such phone calls and text messages are subject to higher charges than the standard rates of the telephone services providers.

There are certain exceptions to this ban such as official lotteries or broadcasting on the channels with limited access. Even where such programmes are broadcast on the TV or radio channels with limited access (those which require certain passwords or other authorisation to access it) certain mandatory regulations should also be applied. In particular, broadcasting of programmes with payable interactive contests should be constantly followed by a warning that the participation is for a fee and an indication of the chances of the potential participants to reach the studio.

The law came into force on 16 March 2012 and may be accessed at:
<http://zakon2.rada.gov.ua/laws/show/4386-17> (in Ukrainian only).

National Television and Broadcasting Council of Ukraine (NTCU) introduces new rating of movies and restrictions on broadcasting on national memorial days

On 8 February 2012 the NTCU introduced a new system of rating movies depending on the target audience. According to this new system, all movies shown on the Ukrainian television must be marked with special signs which indicate the audience the movie is designated for e.g. movies for the general public, movies that may be watched by minors in the presence of adults or for adults only, etc.

This resolution took effect on 16 March 2012 and may be accessed at:

<http://zakon1.rada.gov.ua/laws/show/z0307-12> (in Ukrainian only).

The NTCU also introduced certain restrictions for the TV and radio broadcasting in the days of national mourning and memory days. In particular, it bans broadcasting of comedy movies, concerts and other entertainment programmes on those days.

This resolution came into effect on 7 March 2012 and may be accessed at:

<http://zakon2.rada.gov.ua/laws/show/z0286-12> (in Ukrainian only).

Europe

COMMUNICATIONS

European Commission proposes new EU data protection framework

On 26 January 2012 the European Commission published its proposal of a new regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation). The main objectives of developing the new framework were to modernise the EU legal system for the protection of personal data. In particular, these included the following objectives: meeting the challenges resulting from globalisation and the use of new technologies; strengthening individuals' rights, and at the same time reducing administrative formalities to ensure a free flow of personal data within the EU and beyond; and to improve the clarity and coherence of the EU rules for personal data protection and achieve a consistent and effective implementation and application of the fundamental right to the protection of personal data in all areas of the EU's activities. The proposed General Data Protection Regulation shall replace the existing regime set out in Directive 95/46/EC. The new regime is expected to have a significant impact on data controllers and processors who are active within the EU as well as on companies which are located outside it but who monitor the behaviour of EU consumers, or offer them goods or services online and, therefore, have to deal with personal data.

The proposal for the new data protection regime can be found here: http://ec.europa.eu/home-affairs/doc_centre/police/docs/com_2012_10_en.pdf

Study on the cost of non-Europe in e-communications published

On 28 February 2012 the European Commission released an external study on the cost of non-Europe in e-communications. The study comes to the conclusion that, if the internal market for electronic communications were completed, the EU gross domestic product (GDP) could grow by up to 110 billion Euros a year, or more than 0.8% of GDP. The "digital bonus" for EU growth described in the study would result from more competition; increased economies of scale for telecom operators; and the chance for every European to access all online content and services throughout the EU, such as music, movies and video games. New and more efficient economic activity could arise from the ability to subscribe to TV from your home country when living abroad, the possibility of receiving healthcare monitoring from your local physician while on holiday, or a business using a single Cloud computing provider for offices in many EU countries. The study was carried out by an international team of experts and academics. It suggests three main types of policy measures to tackle obstacles: reduced regulatory fragmentation (e.g. common rules on contract duration and transparency of bills); more European standardisation (to allow pan-European services of assured quality to emerge in areas such as e-Health, e-Energy, E-Mobility); and the need for more coordination of the activities of national telecoms regulators at EU level.

More information concerning this topic and a link to the study are available at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/193&format=HTML&aged=0&language=%20EN&guiLanguage=en>

Green Paper consultation on developing an integrated European market for card, internet and mobile payments

On 11 January 2012, the European Commission published a Green Paper on the next steps on the way towards an integrated European market for card, internet and mobile payments. The Green Paper aims to identify and analyse the obstacles which hinder European market integration in these promising payment technologies; assess the current landscape of card, internet and mobile payments in Europe; and identify the gaps between the current situation and a fully integrated payments market and the barriers which have created these gaps. The main issues identified in the paper concern market access and entry for existing and new service providers, payment security and data protection, transparent and efficient pricing of payment services,

technical standardisation, interoperability between service providers. The Commission will announce the next steps in the second quarter of 2012.

Further information about the green paper is available at:

http://ec.europa.eu/internal_market/consultations/2012/card_internet_mobile_payments_en.htm

European Parliament adopts radio spectrum policy programme

The European Parliament has adopted a five-year Radio Spectrum Policy Programme (RSPP) at the second reading under the co-decision procedure. The aim of the RSPP is to ensure efficient management and use of spectrum, and to promote investment, competition and innovation.

For more information please go to: <http://uk.practicallaw.com/9-518-0666?q=European+Parliament+adopts+Radio+Spectrum+Policy+Programme>

MEDIA

The ECJ ruled that an owner of an online social network cannot be obliged to install a general filtering system preventing copyright infringements committed by its users

On 16 February 2012 the ECJ ruled that the owner of an online social network cannot be obliged to install a general filtering system covering all its users in order to prevent the unlawful use of musical and audio-visual work (Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM), Case 360/10, 16 February 2012). The court stressed that such preventive monitoring would require an active observation of the files stored by users with the owner of the social network. Accordingly, the filtering system would require that owner to carry out general monitoring of the information stored on its servers, something which is prohibited by the E-Commerce Directive. Moreover, the effects of that injunction would not be limited to the social network provider as the filtering system but may also infringe the fundamental rights of its service users, namely their right to protection of their personal data and their freedom to receive or impart information, which are rights safeguarded by the Charter of Fundamental Rights of the European Union. The court came to the conclusion that it would not respect the prohibition to impose a general obligation to monitor on approval. Nor would it respect the requirement that a fair balance be struck between the protection of copyright, on the one hand, and the freedom to conduct business, the right to protection of personal data and the freedom to receive or impart information, on the other.

The full text of the judgement is available at: <http://curia.europa.eu/juris/documents.jsf?num=C-360/10>

ECJ decision on copyright for a football fixture

The ECJ ruled in a decision on 1 March 2012 (Football Dataco and Others v Yahoo! UK Ltd and Others, Case C-604/10) that a football fixture list cannot be protected by copyright when its compilation is dictated by rules or constraints which leave no room for creative freedom. The court stressed that the fact that the compilation of the list required significant labour and skill on the part of its creator does not justify it being protected by copyright. The Court stated that the copyright protection provided for by the Database Directive (Directive 96/9/EC) concerns the 'structure' of the database, and not its 'contents'. That protection does not extend to the data itself. Furthermore, the Court observed that the notion of 'intellectual creation', which is a necessary condition in order to be eligible for copyright protection, refers to the sole criterion of originality. The court also made clear in its decision that, given that the Database Directive harmonises the protection given by copyright to databases, national legislation which grants copyright protection under conditions which are different to those set out in the directive is incompatible with European Union law.

The full text of the judgement is available at <http://curia.europa.eu/juris/documents.jsf?num=C-604/10>

International

COMMUNICATIONS AND SATELLITE

International Telecommunication Union (ITU) World Radio Conference 2012

i. Bringing into use requirements

The ITU has clarified the concept of bringing a satellite network frequency assignment into use, by requiring a national administration to prove that it has been providing services in a certain orbital position for a period of at least 90 days. The relevant administration will have to provide evidence that at the end of the 90 day period the space station, or satellite, which has the capacity to operate in the notified frequency bands, has been in continuous use for that period. This regulation will come into effect at the start of 2013. This will provide some certainty for regulators, administrations, investors and operators as previously there have been varying interpretations and no agreed period for bringing into use.

The WRC-12 also recognised that an ITU administration could bring into use, or continue to use, frequency assignments for a satellite network by using a space station under the responsibility of another administration, provided that the latter did not object within 90 of being notified. This will apply for assignments brought into use after the end of WRC-12.

ii. Time period during which a satellite can cease operating before a position is cancelled

The time period in which a satellite can cease operating in an orbital slot it is registered in before the position is annulled has been increased by the ITU from two to three years. This will provide an operator with more time in which to fill a slot if, for example, a satellite needs to be replaced due to technical reasons.

iii. Leniency requested by Iran and Bulgaria

During the conference, Iran requested leniency for the re-instatement of the ZOHREH-1 network, despite the fact that it had repeatedly missed deadlines for bringing the satellite into use. The WRC endorsed the re-instatement of ZOHREH-1, after detailed coordination discussions between France (on behalf of Eutelsat IGO, which has satellites close to the planned ZOHREH-1 network) and Iran.

A similar request was made by the Bulgarian administration to allow it to submit a filing which, under normal circumstances, would not have been permitted as being too close to existing frequency assignments, including those of Eutelsat. The WRC accepted the Bulgarian proposal, noting that this was exceptional and any consequences would have to be addressed with Eutelsat.

For more information please see - <http://www.itu.int/ITU-R/index.asp?category=conferences&rlink=wrc-12%3C=en4>

UNIDROIT Space Assets Protocol

The Protocol to the Cape Town Convention on Matters Specific to Space Assets (Protocol) was adopted on 7 March 2012. The Protocol was opened for signature on 9 March 2012, but only three States: Burkina Faso; Saudi Arabia; and Zimbabwe, signed it at the closing ceremony of the diplomatic conference in Germany.

The Protocol, on entry into force with 10 ratifications or accessions, will establish a separate international registry of security interests in space assets.

For more information please see:

<http://www.unidroit.org/english/workprogramme/study072/spaceprotocol/conference/main.htm>

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