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The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2019

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United Arab Emirates

CMS (UAE) LLP

Rob Flaws



Rachel Armstrong



1 Overview

1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

The UAE's telecommunications sector is currently served by two fully integrated telecommunications operators: Emirates Telecommunications Corporation (Etisalat) and Emirates Integrated Telecommunications Company (du). Etisalat and du provide multiple services across both fixed line and mobile networks.

In October 2015, the UAE Telecommunications Regulatory Authority ("TRA") announced fixed network sharing across the UAE, enabling both Etisalat and du to utilise fixed infrastructure and market services across all locations.

In January 2017, du acquired a licence from the Virgin Group to operate Virgin Mobile-branded services in the UAE. The licence term is for five years, granting du full rights to ownership, management and operation of the brand in the UAE.

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

- Federal Law by Decree No. 3 of 2002 Regarding the Organisation of the Telecommunications Sector (as amended) (the "UAE Telecommunications Law").
- Decision of the Supreme Committee for the Supervision of the Telecommunications Sector No. (3) of 2004.
- Federal Decree Law No. 5 of 2012 on combatting Cybercrimes.

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, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

The regulator is the TRA. In addition, the National Media Council ("NMC") regulates the content of audio-visual media.

1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment?

As set out in the answer to question 1.1, the UAE's telecommunications sector is currently served by two fully integrated telecommunications operators: Etisalat and du.

2 Telecoms

General

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

The United Arab Emirates has been a member of WTO since 10 April 1996.

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

The provision of telecoms networks is regulated by the TRA in accordance with the UAE Telecommunications Law.

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

The TRA regulates the telecommunications sector in the UAE and is also involved in cyber security, and hosts the UAE's Computer Emergency Response Team. Its main purpose is to develop sustainable competition in the UAE's telecommunications sector.

The UAE adopted a competition law framework in 2012 under Federal Law No. 4 of 2012 concerning the Regulation of Competition (the "Competition Law"); however, key regulations and instruments such as the executive regulations (Council of Ministers' Resolution No. 37 of 2014) and two relevant resolutions setting out core elements for determining anti-competitive practices,

such as market share thresholds, were not passed until 2014 and 2016 respectively, meaning that competition regulation in the UAE is still in its very early stages.

The Competition Law also provided for a Competition Regulation Committee (the “Committee”) to be established to oversee general competition law policy in the UAE. Day-to-day enforcement of the Competition Law is the responsibility of the Ministry of Economy, acting through its Competition Department.

The telecommunications sector is currently excluded from the remit of the Competition Law. The TRA includes terms in the licences issued to operators requiring them not to participate in anti-competitive practices.

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

To date, there have been no publicised cases of enforcement of the Competition Law, although we are aware that the Competition Department has been established.

The Competition Law stipulates that its provisions shall be enforced on all businesses in relation to their economic activities or the effect of their economic activities in the UAE (even where the conduct takes place outside of the UAE). It is, as yet, unclear how the courts will react to any jurisdictional disputes.

The telecommunications sector is currently specifically excluded from the remit of the Competition Law. The Telecoms Law stipulates that the TRA has the sole ability to issue regulations, instructions, decisions and rules regulating and ensuring competition in the telecommunications sector.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in your jurisdiction?

The TRA is the statutory body that issues licences or licence exemptions in accordance with the Telecommunications Law.

According to the Telecommunications Law, any sale, provision or operation of a Telecommunication Service requires a Telecommunications Licence. In some cases, such services may be provided through an agreement with an existing UAE-licensed operator.

All licences are issued individually to judicial persons (entities) meeting the requirements of the Telecommunications Law and pursuant to a decision made by the TRA Board.

A licence can be categorised as either a “Class Licence” or an “Individual Licence”. The two categories refer only to whether scarce resources are requested (spectrum/frequencies and/or numbers) and does not refer to an open class of available licences.

2.6 Please summarise the main requirements of your jurisdiction’s general authorisation.

An entity shall be eligible for a Class Licence if it is either:

- a company incorporated under the Commercial Companies Law (Federal Law No. 8 of 1984) and pursuant to Article 28 of the Federal Law by Decree No. 3 of 2003, Regarding the Organisation of the Telecommunications Sector and its amendments or any legal person approved by the Board of the Authority; or

- a company whose shareholding complies with the resolution in which the particular Regulated Activity has been approved to be licensed.

The TRA requires all applicants for Class Licences to provide it with relevant information. This includes information regarding: their management and shareholding structures; their business operations, including the type of networks and services they intend to provide; and funding sources for these business operations.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?

An entity shall be eligible for an Individual Licence if it is either:

- a company incorporated under the Commercial Companies Law (Federal Law No. 8 of 1984) and pursuant to Article 28 of the Federal Law by Decree No. 3 of 2003, Regarding the Organisation of the Telecommunications Sector and its amendments or any legal person approved by the Board of the Authority; or
- a company whose shareholding complies with the resolution in which the particular Regulated Activity has been approved to be licensed.

The TRA requires all applicants for Individual Licences to provide it with relevant information. This includes information regarding: their management and shareholding structures; their business operations, including the type of networks and services they intend to provide; and funding sources for these business operations.

Individual Licences will be issued for services which require the usage of scarce resources of spectrum and numbers. Individual Licences will be issued for a period of 10 years.

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?

This answer is not available.

Access and Interconnection

2.9 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

This answer is not available.

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

This answer is not available.

2.11 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?

This answer is not available.

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

This answer is not available.

2.13 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or 'regulatory holidays'?

This answer is not available.

Price and Consumer Regulation

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

This answer is not available.

2.15 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?

Yes. The TRA actively regulates consumer protection through a specific Consumer Protection Regulation.

Numbering

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

The TRA licenses telephone numbers and network identifying codes to telecom operators who are licensed to provide telecommunication services in the UAE, i.e. Etisalat and du. Telephone numbers are regarded as part of a national resource which is administered by the TRA and therefore, no licensee shall be entitled to ownership of any number or numbers allocated to that licensee or to any customer of the licensee. Licensees shall not use any numbers other than those allocated by the TRA.

Initially, all allocations for the rights to use number resources will be made by the TRA to licensees, who will then assign the rights to use the individual numbers to its subscribers.

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

If a licensee fails to use the allocated number resource within six months of the allocation, the TRA will withdraw the allocation. Similarly, if a licensee fails to achieve the utilisation level set by the TRA, the TRA may withdraw the allocation of the unused numbers. When the rights to use have been withdrawn, the TRA will not normally reallocate the rights to use of that numbering resource for a period of one month to minimise the risk to end users.

2.18 Are there any obligations requiring number portability?

Mobile number portability was announced in December 2013, and since this time, users have been able to switch between Etisalat and

du whilst retaining the same number. The change was introduced to promote competition between the two providers.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

The TRA is responsible for managing and regulating radio spectrum in the UAE.

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

The TRA manages the allocation and assignment of all radio services in the UAE. The TRA manages a national frequencies database, which includes information related to the use of the frequency spectrum by UAE authorised users. The TRA allocates frequencies to all entities, governmental and non-governmental, civil or military, as well as individuals, in accordance with the National Spectrum Plan.

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

No. Any use of the radio spectrum without authorisation from the TRA is prohibited. Temporary authorisations are available for periods of between one and 90 days.

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

The TRA sets the fees and manages the payment. To a large degree, this information is confidential.

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

The authorised entity is required to follow the process set out in its authorisation. In the event that the authorised entity breaches the conditions of its authorisation, the TRA may suspend or revoke its authorisation. Prior to such revocation or suspension, the TRA will provide notification of the pending revocation or suspension and set out a stipulated period (set by the TRA in its discretion) for the authorised entity to remedy the breach.

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

Authorisation can only be transferred or assigned to a third party if (1) the authorisation issued by the TRA includes a provision for the transfer or assignment to a third party, and (2) the prior consent of the Board of Directors of the TRA approves the transfer or assignment. Any transfer that fails to satisfy these requirements is void.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework for cybersecurity.

At a federal level, the main legal framework around cybersecurity is Federal Law No. 5 of 2012 (as amended by Federal Law No. 12/2016) concerning Combatting Information Technology Crimes (the “UAE Cybercrimes Law”) and the UAE Penal Code.

The UAE Penal Code contains general provisions prohibiting crimes that will apply to cybercrime; for example, the misuse of confidential information and the Cybercrimes Law specifically targets those crimes involving computers, networks and electronic information.

4.2 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.

Cabinet Resolution No. 21 of 2013 concerning Information Security Regulations in the Federal Authorities and Executive Council Resolution No. 13 of 2012 regarding Information Security in the Government of Dubai set out the establishment of a public prosecution body for the investigation of cybercrime.

4.3 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?

Voice over internet protocol (“VoIP”) services are considered a Regulated Activity and must be licensed by the TRA. However, the TRA has indicated that third parties may work with licensees such as Etisalat and du to legally provide VoIP services in the UAE. The TRA’s position is that such restriction to local licensees is required to protect telecom customers, as the TRA can only intervene and assist with issues if the provider of such services is a licensee.

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

This answer is not available.

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

This answer is not available.

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

This answer is not available.

5 Distribution of Audio-Visual Media

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

The relevant legislation is Cabinet Resolution No. 23 of 2017 Concerning Media Content, which came into force in July 2017.

This sets a number of standards on all media content. These tend to reflect standards already contemplated by the UAE Penal Code, Cybercrimes Law and Press Law. The key distinction is that the cabinet resolution has ushered a media-specific regime that expressly applies these standards on a UAE federal level to both printed and digital content. Key provisions include: respecting Islamic and religious beliefs, cultural heritage, symbols and institutions; anything that harms national unity or security; and not causing harm to vulnerable members of society. The resolution also ensures protection of intellectual property rights and privacy of individuals.

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.

In accordance with the NMC Chairman’s Decision No. 35 of 2013, all advertisements that are produced, placed or distributed within the UAE or imported into the UAE must abide by the national standards for media content set out in Federal Law No. 15 of 1980 Concerning the Press and Publications.

In regard to the internet and other platforms, the TRA implements the Internet Access Management (“IAM”) policy in the UAE and co-ordinates with the NMC, Etisalat and du to implement the IAM policy.

The same regulation of content applies across all platforms and, in the UAE, OTT providers must comply by the same standards; any content which is contrary to such standards is prohibited.

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

Applications for a media licence are required for audio-visual works and are to be filed with the NMC. A licence from the NMC is required for any entity that carries out media activities related to the production, transmission, distribution and transmission of printed, digital, audio and visual information through the media, both in print and online.

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

This is dependent upon any restrictions set out in the licence agreement. To the extent that assignment to a third party is not expressly provided for in the licence agreement, such action will be prohibited.

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?

This answer is not available.

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

This answer is not available.

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

There are no specific regulations requiring net neutrality in the UAE. Bandwidth throttling by ISPs is quite common in the UAE, and network traffic that relates to VoIP services are sometimes blocked or can have its capacity reduced.

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

Content is regulated by the TRA and access to websites and webpages that contain prohibited content is blocked by the TRA.

The TRA defines prohibited content as "any content that offends against, is objectionable to, or is contrary to the public interest, public morality, public order, public and national security, Islam morality or is otherwise prohibited by any applicable UAE law, regulation, procedure, order or requirement". Examples of prohibited content include, but are not limited to:

- Internet content that allows users to have access to prohibited content including proxy servers and VPNs.
- Pornography and nudity content.
- Impersonation, fraud and phishing.
- Insult, slander and defamation.
- Invasion of privacy.
- Offences against the UAE and public order.
- Drugs.
- Infringement of intellectual property rights.
- Discrimination.
- Racism and contempt of religion.
- Gambling.
- Terrorism.

The use of VPNs is governed by the UAE Cybercrimes Law. Whilst the use of VPNs for legitimate purposes is permitted in the UAE, it is a criminal offence to use a fraudulent VPN address by using a false or third-party address or to commit any crime or preventing its discovery.

The TRA has clarified that companies, institutions and banks are free to lawfully use VPNs to gain access to internal networks via the internet. However, a business can still be held accountable for misuse of its VPN.

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