

REGULATORY ASPECTS OF TELECOMMUNICATIONS DEVELOPMENT IN THE REPUBLIC OF MACEDONIA

Slavica Nasteska,
Agency for electronic communications, Skopje, Macedonia

Abstract: *The paper shows current status of the telecommunications sector in Republic of Macedonia from the legislation and regulatory point of view, giving the responsibilities of the established Agency for electronic communications, and planning the future steps in the process of liberalization of this sector.*

Keywords: *Liberalization, National Regulatory Authority, Information Communications Technologies (ICT)*

1. Introduction

Telecommunications as an essential part of Information Communications Technologies (ICT) play a great role not only in the economy of one country, but also in the everyday life. Quick and easy access to the information, fast and reliable exchange of information are the main components of the modern way of human living in all areas: in the field of education, business, administration, health, transport, entertainment, etc.

Historically, telecom infrastructure and services have been provided on a monopoly basis with the plain old telephone service as the main offering, and the government-owned PTT administration combining multiple roles as a policy-maker, regulator and operator. Technological advances in computers and digital technology in 1990's radically changed the telecom sector, creating opportunities for market entry by a range of competitors. In that way, telecom liberalization [1] means introducing competition into the telecom sector by allowing commercial enterprises to set up new telecom businesses as long they comply with certain government-defined policies, rules and regulations. It is a fundamental shift in the way a government, at the national level and through international treaty agreements, regulates the provision and use of public telecom resources.

The successful transformation of a monopolistic telecom market to a competitive one requires effective and independent regulators coupled with fair and efficient judicial appeal system.

“Liberalization” is not the same as “de-regulation”. On the contrary; a country that has not liberalized its telecom market needs no regulation because the incumbent operator is usually owned by and directly accountable to the government.

Liberalization, on the other hand, requires the establishment of a market-driven policy framework and pro-competitive regulations, or rules of the game, that will apply to all market players. Down the road, when a truly competitive market exists, policy-makers should aim to roll back sector-specific regulation and replace it with the application of general competition law. But in the early stages of liberalizing the telecom sector, policy-makers need to work with market stakeholders and take a “hands on” approach to creating the right environment for investment and competition.

“Liberalization” and “privatization” mean two different things, but the terms are often confused. The incumbent in Republic of Macedonia was privatized in 2000, but it continued to enjoy its monopolistic rights until the new regulatory frame for electronic communications in Republic of Macedonia is established.

2. New Law on electronic communications

In the Republic of Macedonia, global trends of telecommunications development are followed, starting with the change of the Telecommunications act from 1998 into the new Law on electronic communications [2], which the Parliament of the Republic of Macedonia adopted in February 2005 and become in force started on March 5th, 2005. Replacing the term “telecommunications” with “electronic communications” has an intention to regulate all activities related with electronic communications networks and services: voice telephony, data transmission, broadcasting radio and TV, internet, 3play,...

According to the main principles of WTO, which member is Republic of Macedonia since April 2003, electronic communications activities and services are treated as a public good easy accessible and competition driven. In that way, the new law provides a process of notifications to the national regulatory authority: building electronic communications infrastructure or commercial and operational start of electronic communications service providing, before starting any electronic communications activity. This situation enables all interested entities network operators and service providers to not have administrative barriers to start their electronic communication activities [3] according to the electronic communications law and other laws: for construction of the network, consumer rights and privacy protection, etc.

3. National Regulatory Authority

National regulatory authority in Republic of Macedonia, according to the law on electronic communications, is the Agency for electronic communications. It is established as an independent and non-profitable legal person with public authorities. The Agency in its work and in taking the decisions within the scope of its competences is independent and not subordinated to any state body or other public legal person or trade company engaged in operating in the field of electronic communications and is impartial towards them.

The Agency is responsible for its work before the Parliament of the Republic of Macedonia. It is obliged to submit an annual report not later than 31 March in the current year for the previous year on its work to the Assembly of the Republic of Macedonia. The annual report contains: report on the Agency's work during the previous period, annual work program for the coming period, report on the status of assets in the Universal Service Fund and report for executing the annual financial plan of the Agency. Agency has two level management bodies: Commission and Director.

The Commission consists of five (5) members, including the President who acts as a chairperson on meetings of the Commission. The Assembly of the Republic of Macedonia upon proposal by the Committee on election and appointment issues of the Assembly of the Republic of Macedonia appoint the members of the Commission. Candidates for members of the Commission shall be proposed under the condition that they are citizens of the Republic of Macedonia and that they have an university degree in the field of science, law or economy with professional knowledge and experience of more than 5 years and relevant knowledge of the electronic communications sector.

The Commission has the following competencies:

- to adopt a statute and other acts of the Agency;
- to adopt the annual financial plan of the Agency and final statement of accounts;
- to adopt annual work program for the Agency;
- to adopt annual work report;
- to appoint the Director of the Agency in compliance with this law;
- to follow the implementation of the annual and other work programs and initiatives of the Agency;
- to decide upon complaints in second instance;
- to cooperate with other state bodies and institutions, units of the local self-government and non-governmental organizations and associations of citizens;
- to submit reports, recommendations and suggestions to the Assembly of the Republic of Macedonia and other state bodies and institutions from the electronic communications sector and
- to undertake other activities as regulated by the Law on electronic communications and the Statute of the Agency.

The Director manages the work of the Agency and is responsible for the lawful work thereof and in performing his/her duties, s/he is authorized to:

- execute contracts on behalf of the Agency;
- issue decisions upon issues for which the Commission does not decide on;
- prepare acts adopted by the Commission;
- delegate powers within the scope of his/her jurisdiction;
- issue decisions in first instance;
- appoint inspectors for electronic communications taking into account the relevant and fair representation;
- perform other activities set forth in the Law on electronic communications and in the Statute of the Agency;
- issue acts for the enforcement of the Law on electronic communications;
- appoint persons on managing positions in the Agency.

The Agency for electronic communications is competent to:

- supervise, control and monitor electronic communications network operator' activities and service providers' activities in accordance with the Law, the regulations adopted pursuant there to and the existing concession agreements;
- stimulate the establishment of interconnection between electronic communications networks and ensure the interconnection on non-discriminatory terms, on the base of the approved referent offers;
- initiate activities for ensuring interconnection:
 - o approve the referent offer for interconnection and/or access and the referent offer for unbundled access to local loop of operators with significant market power, and
 - o determine the operators with significant market power in cooperation with the Commission for protection of competition;
- conduct registration of notification of operators of electronic communication networks and providers of the electronic communication services;
- provide access of the users to public electronic communication networks and public communication services on non-discriminatory base;
- undertake measures and prescribe protection for the purpose of preventing operators of electronic communication networks and providers of electronic communication services from engaging in non-competitive activities;
- prepare and administer the Plan for allocation of radio frequencies and the Plan for assignment of the radio frequencies;
- monitor the use of the radio frequency spectrum in accordance with the Plan for allocation of radio frequencies and the Plan for assignment of the radio frequencies;
- issue radio frequencies authorizations;
- conduct coordination of radio frequencies with the regulatory bodies of the neighboring and other countries;
- adopt and administer the Numbering Plan for electronic communication networks and services of the Republic of Macedonia;
- assign numbers and series of numbers to the operators of public communication networks and providers of public communication services;
- manage and monitor the national use of numbers, pursuant to the Numbering Plan and in the case of determined irregularities to withdraw the numbers and series of numbers;
- prepare and administer public tenders for the assignment and use of radio frequencies;
- determine the content of the standard agreement between the operators of the electronic communication networks, providers and users of the electronic communication services;
- undertake measures pursuant to the Law in case of violation of provisions of the Law or provisions and conditions contained in the existing concession agreements;
- control the prices for electronic communication services and take measures in cases where the electronic communication network operator or electronic communication service provider either alone or jointly hold a dominant position in a relevant market for electronic communication services;

- control the prices of electronic communication services determined in the referent offers of operators of electronic communication networks and services with significant market power;
- control the tariff regimes laid down in the current concession agreements;
- manage and administer the Universal Service Fund, collect fees from operators that are not providers of universal services on a separate account on behalf of the Fund, and make disbursement from the Fund for the universal service providers;
- resolve disputes between:
 - o operators of electronic communication networks and service providers concerning interconnection and/or access upon a proposal by either party to the dispute, in accordance with the Law;
 - o operators of electronic communication networks and service providers pursuant to the provisions of the Law and provisions adopted pursuant thereto;
 - o users and operators of electronic communication networks and service providers pursuant to the provision of the Law and provisions adopted pursuant thereto;
- create, maintain and update an electronic database containing information from the electronic communication sector and ensure that the information is available to the public in accordance with the rules on confidentiality and regulations on access to information;
- cooperate with bodies and institutions competent for broadcasting and protection of competition;
- follow the development of the electronic communications;
- gather data and information from electronic communication network operators and electronic communication service providers;
- provide information for the users, operators and service providers, as well as for the international organizations and bodies;
- adopt and implement the secondary legislation adopted pursuant to the Law;
- adopt technical regulations on the base of the Law;
- approve the use of radio and telecommunications terminal equipment;
- ensure that the operators of the electronic communication networks and service providers abide the obligations which are prescribed in the interest of the defense, security and the public order and in the case of declared war and state of emergency;
- administer the implementation of national and international standards and technical regulations in the field of electronic communications;
- participate in the work of international organizations and associations of national regulatory bodies from the electronic communication sector;
- perform its work in a transparent and non-discriminatory manner, providing opportunity to all interested parties to give their remarks and comments regarding the initiatives, measures and decisions of the Agency and
- administer the procedure for determining the universal services provider and signs the agreement with it upon a previous consent obtained by the Minister in charge of electronic communications.

The official start of the work of the Agency for electronic communications in the Republic of Macedonia was on the 1st of July 2005. Until now, the expert staff of the Agency has produced more than 20 by-law documents, which were adopted by the Commission. In this paper only rules for regulating the telecom sector will be mentioned, among which:

- Decision of determination the relevant markets;
- Notification;
- Guideline on technical and financial information that should be reported;
- Numbering plan;
- Interconnection;
- Access to and use of specific network facilities;
- Minimum set of leased lines;
- Unbundling the local loop;
- Carrier selection and preselection;
- General conditions for providing public services, tariffs and QoS parameters.

4. Regulation for electronic communications

The general principle which is applied not only to the electronic communications law, but also into the by-law documents related with it, is technical neutrality, which makes an opportunity for all technologies (old and especially the new ones) equally to get into the market and to compete between themselves.

The whole regulation is ex-post based, which means that the Agency supervises the status on different markets, controls the operation of network operators and service providers and takes measures if some entity violets the law. In Republic of Macedonia is implemented the recommendation of European Commission for relevant markets of products and services (O.J.L 114 from 08.05.2003) and 18 markets are defined as follows [5]:

- a) Relevant markets for retail sale of products and services:
 - access to a public telephone network at a fixed location for residential end users;
 - access to a public telephone network at a fixed location for business end users;
 - publicly accessible local and/or national telephone services at a fixed location for residential end users;
 - publicly accessible international telephone services at a fixed location for residential end users;
 - publicly accessible local and/or national telephone services at a fixed location for business end users;
 - publicly accessible international telephone services at a fixed location for business end users;
 - a minimum set of leased lines;

- b) Relevant markets for the wholesale of products and services:
 - call origination service in a public telephone network at a fixed location;

- call termination service in a public telephone network at a fixed location;
- transit service in a public fixed telephone network;
- unbundling access to local loop and local sub-loop for providing broadband services and voice services;
- access to broadband services;
- terminating segments of leased lines;
- trunk segments of leased lines;
- access to public mobile communication networks and services for the purpose of call origination in public mobile communication networks;
- call termination services in public mobile communication networks;
- national market for international roaming of public mobile communication networks;
- broadcasting.

Ex-ante regulation is implemented only to the significant market power operator with intention not to allow to incumbent to confirm its dominant position on that relevant market, but to give a chance and to create an environment to all other operators to compete on that market applying the principles of non-discrimination and fair-play. According to the law, the operator named A.D. “Makedonski telekomunikacii” Skopje is nominated as SMP operator on the relevant markets for fixed telephony network and services, access to data network and leased lines. Related with this recognized SMP position on these markets, according to the law, A.D. “Makedonski telekomunikacii” has an obligation to prepare Referent Interconnection Offer (RIO) [7] and Referent Unbundling Offer (RUO) [8] and to submit them to the Agency on approval. The referent offers for interconnection and unbundling the local loop are under detailed study at the Agency and after correcting many remarks proposed by the Agency, they would be processed for approving.

Here would be expressed the meaning of the local loop unbundling, as a policy measure which is built on the recognition that incumbent has a dominant position in the provision of local communication access by virtue of their control over the local loop. This position of dominance has resulted from the many years during which incumbent had a monopoly in the provision of telecommunication infrastructure and voice telephony services. It had created the bottleneck control of incumbent over the local loop and access to this loop. The intention of involving the local loop unbundling is not only to promote competition in local telephony, but also to use it to stimulate broadband services development in Republic of Macedonia. Investment in broadband will mainly come from the private sector. In its broad economic policy guidelines, European Commission recommended that “Member States should: ... ensure effective competition in local telecommunication networks (the ‘local loop’) in order to speed up the development of the European broadband network”. Competition is expected to drive investment, generate innovation and lower prices. The new regulatory framework takes full account of the convergent nature of broadband. Encouraging efficient investment in infrastructure (by new entrants and incumbent operator) and promoting innovation are explicit objectives for regulators. This means taking account of the need for investors to obtain an adequate return on their investment, in the light of the risks taken. This also means that regulatory uncertainty for investors must be reduced as much as possible. In the wider context, the Agency is supporting the full exploitation of broadband networks, which will support the upgrade and efficiency of technology for optical fiber access

networks, mobile broadband wireless services (3G and beyond), convergence of fixed and mobile networks, including the transition to the next generation Internet Protocol and take account of security and privacy issues.

5. Concluding remarks

Telecom liberalization brings clear benefits to the country, both directly through lower charges for services and a better range of services, and indirectly through the opportunities for business development and economic growth, which a fully developed communications infrastructure creates. The challenges and opportunities of telecom liberalization are different for every country.

One finding is universal: telecom liberalization requires planning and forethought, consultation with all the affected participants, a clear view of the objectives, and, above all, the political vision and courage to start the process and keep it going in the face of obstacles. Political and policy leaders need to take the long and strategic view of the best interests of their countries.

While opposition to liberalization can be vocal, it is usually a minority voice. Building a comprehensive and efficient communications infrastructure will reap benefits for all citizens, throughout the economy and for generations to come.

References

- [1] "Telecoms liberalization" – International Chamber Commerce, May 2004
- [2] Law on electronic communications, Official Gazette of Republic of Macedonia, No. 13/2005;
- [3] Regulation on the content and form of notification, necessary documentation and confirmation of registration, Official Gazette of Republic of Macedonia, No. 58/2005;
- [4] Guidelines for providing information and financial data, adopted 07.07.2005;
- [5] Decision for determining relevant markets, adopted 17.08.2005;
- [6] Rules for access and use of specific network facilities, Official Gazette of Republic of Macedonia, No. 64/2005;
- [7] Regulation on the level of the information which will be published in the Referent Interconnection Offer, Official Gazette of Republic of Macedonia, No. 61/2005;
- [8] Regulation on the level of the information, which will be published in the Referent Unbundling Offer, adopted 19.10.2005;
- [9] Numbering Plan, Official Gazette of Republic of Macedonia, No. 58/2005.

Sadržaj: *Ovaj rad prikazuje tekući status Sektora telekomunikacija u Republici Makedoniji, sa pravne tačke gledišta, kao i regulative. Pri tome se daju ovlašćenja za formiranu Agenciju elektronskih komunikacija, uz planiranje budućih koraka u procesu liberalizacije ovog sektora.*

Ključne reči: *liberalizacija, nacionalno regulatorno telo, informaciono-komunikacione tehnologije (ICT).*

REGULATORNI ASPEKTI RAZVOJA TELEKOMUNIKACIJA

U REPUBLICI MAKEDONIJI
Slavica Nasteska