

# **MOLINARI LEGAL CONSULTANCY**

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## **THE SEVENTH REGULATORY PROGRAM**

Legal aspects of Telecommunication

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## LLM COURSE ON I.T. & TELECOMMUNICATION LAW

Considering the Seventh Report on the Implementation of the Telecommunications Regulatory Programme, indicate what you consider to be the major successes (or failures) of the EU's Telecommunications Policy

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During the last decade the EU concentrated in an intensive regulatory activity <sup>1</sup> covering the Telecommunication sector toward two focused issues, *harmonization* of national laws by the Member States by adopting standardized, transparent rules in relation to the licensing of telecommunications service providers and implementation of an Open <sup>2</sup> Network <sup>3</sup> Provision as well as *liberalization* <sup>4</sup> and opening the market to competition <sup>5</sup>. As a matter of fact, a lot of legal documentation and material, enclosing 20 Directives, have dealt to general and specific issues in the European Telecommunication field.

The major goal reached was to have managed the transition from monopoly to competition by creating a competitive market in this process of liberalization by reinforcing the competition in all market segments and by continuing the protection of the basic rights of consumers. However, this ever-increasing speed in the technology of the telecommunication, which naturally characterized this field, is creating the necessity to keep the regulatory framework up-dated and in line with its evolution, particularly with the convergence between telecommunications, broadcasting, IT sectors and consequential continuous changes in the parties' demand.

In this large number of framework regulatory as above mentioned, it has in my opinion, a large importance to refer to the report called "the Implementation of the Telecommunications Regulatory Package", which is yearly prepared by the Commission of the European Communities. The latest Seventh Report is commenting the new regulatory framework, which is designed to increase competitiveness and convergences markets based in a digital, knowledge-based economy for Europe. The Report focuses on key indicators from the market development, transposition of directives on the telecommunication national laws, effectiveness of the rules transposed into national law and finally identifies and examines outstanding regulatory issues to be further covered by further directives under studies. Specifically, the communication message contained in this Seventh Report referees to both general and unexpected improvement as well as to negative regulatory issues, which are also ascertained. Despite pessimistic micro economical background, it has been positively reported an expanding segment in revenue in the telecommunication mobile services as well as in the level of Internet penetration in the EU. Therefore, the penetration of mobile services and subscribers in Europe results to be continuously increasing by a general market growth. Moreover, the liberalization bringing competition has put the consumers in front of a choice of competing operators which has comported as beneficial result, a declining tariff overall. It is important to mention that by eliminating differences prizes as prior proposed in each individual Member State, the new offers are starting reflecting actual costs incurred. This situation is eliminating the phenomena of prices distortion or unbalanced. Positively, the competition between

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1. <http://europa.eu.int/ISPO/infosoc/telecompolicy/review99/review99.htm>
  2. <http://europa.eu.int/ISPO/infosoc/legreg/docs/90387ecrev.html> Directive 90/387 was concerned with the establishment of "Open Network Provision" or ONP.
  3. Directive 97/33 of the European Parliament and of the Council of 30 June 1997 on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP). <http://europa.eu.int/ISPO/infosoc/telecompolicy/en/dir97-33en.htm>
  4. Status Report on European union Electronic Communications policy, Brussels, 22 December 1999. <http://europa.eu.int/ISPO/infosoc/telecompolicy/en/tcstatus.htm>
  5. Competition Directorate (DG IV) Competition; The European Commission. [http://europa.eu.int/comm/competition/index\\_en.html](http://europa.eu.int/comm/competition/index_en.html)
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the Member States brought also for consumers a choice of more than five operators for long distance and international calls.

The national regulatory authorities (NRAs) are monitoring the improvement obtained by all the States Member by constantly reporting their activities and results to the Commission of European Communities. The implementation of the regulatory framework seems to be substantially achieved in France, Italy and Luxembourg where national laws have transported the principles of the Directives in line with the local market conditions. The first negative data is that not all Member States have been reported having adopted in full the regulatory framework at European level, plus some implementing measures seem to be not necessary coherent between countries. In fact, many of the Member States are reported to have failed to ensure implementation of the principle in detail particularly with the Interconnection and Leased Lines Directives. However, overall, average annual rent for international half-circuits continued were reported decreased in the EU during the year 2000. Some disappointments have arisen also in regard to the not satisfactory progress in a substantial number of Member States<sup>6</sup> with regard to the local *loop unbundling* to permit high-speed Internet access. In this regard, the remedies proposed are binding deadlines and credible penalties. The Commission believes that flat rate interconnectivity for Internet should be encouraged as well as the cost-charges of peak time *terminating calls* in mobile networks and provision should not be too much divergent between Member States. In reference to leased lines for broadband and e-commerce roll-out, the Commission is of the opinion that there are not substantial justifications for continuing high prices, lengthy delivery times and absence of cost orientation or conditions. Furthermore, a stricter rigor in verifying regulatory accounts immediately after closed, should be accomplished in order to avoid tariff distortions and price squeezes mean-while the full functioning of numbering policy should be available in all States Members. However, there has been considerable criticism over the differences in the approach that the NRAs had between the licensing and roll-out of G3 mobile services due to a relatively large margin for individual margin by NRAs in the field of the telecommunication licensing framework. The role invested by local and municipal authorities should be defined to remove uncertainties. In the March 2001 Communication to the Commission a disparity in the licensing and roll-out conditions for third generation mobile services is also reported. It appears that any relaxation of existing obligations will be possible under a new regulatory framework adapted to a competitive environment when the current situation shall be fully implemented. In some of the State Members are still reported some problems in relation to the granting of right of way arising from the multiplicity of local and regional authorities with powers in this area.

In conclusion, this overall supervisory activity conducted by the Commission by the way of monitoring action of quality services, price transparency and contract issues should definitely improve the consumers' protection. It has been suggested that the same statutory authority (NRAs) should also be addressed of the power to solve the dispute rapidly by having added new responsibilities and the matter is reported to be still in evolution and under phase of study.

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**Data 4/5/02**

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6. Germany, Greece, Italy, Luxembourg or Portugal.