

MOLINARI LEGAL CONSULTANCY

UNITED ARAB EMIRATES



**THE MOVE TOWARDS THE LIBERALIZATION OF
TELECOMMUNICATIONS IN THE UNITED KINGDOM**

by Ottavia Molinari

The move towards the liberalization of Telecommunications in the United Kingdom

We have witnessed incredible evolutions in the UK Telecommunications during the twentieth century ¹. The Telecommunication Act 1984 (the Act) ² is considered a landmark in the UK Telecommunication System ³ since it has been designed for three main objectives: first of all, that to transfer the majority of shares of British Telecom from public to private shareholding sector; second, to set up the Telecommunication Office called OFTEL as supervisory body of telecommunication licenses users and the regulator of the UK telecommunication system in order to assure the best quality, choice and value for money for all services; third, to confirm the principle that it is unlawful to operate in the telecommunication sector ⁴ unless an appropriate license has been issued. OFTEL promotes competition by encouraging new entrants into the telecom market and protects consumers when necessary, through price controls, universal service obligation ⁵ and other measures. It should be observed that over the years the obtainment of a license has moved from the obtainment of an *individual licence* to a so-called *class licence* whereby it is usually not required a fee and neither a formal application. The only obligations required are limited to the compliance with the terms of the relevant class licence. However, a consultation report issued by the Planning department indicates that the preliminary approval ⁶ process provides an opportunity for the authorities to consider the content of the proposals without the requirement for a planning application. By the way of example, if the authority does not make a decision within the appropriate deadline, operators may have an automatic right to install the proposed mobile phone development. These measures were introduced in order to facilitate the speedy rollout of certain telecommunication infrastructure which is required to bear the increasing traffic demands of all businesses and private users. The main criticism made of the system is its perceived complexity, and an alleged lack of adequate consultation procedures. There was also concern that short period of consultation does not allow sufficient time for the authority to consult adequately all people who are likely to be affected by the development.

-
1. Initially the Postmaster General possessed the monopoly right to provide both postal and telegraph services with the obligation to provide such services at uniform costs until 1911 when the Telephone Transfer Act gave authority to acquire private systems. The monopoly of the General Post Office (GPO) over the public telephone services and equipments come to end only in 1969 its status changed from being an government department to statutory corporation in line with a progressive process to introduce elements of competitions within the telecommunications market. Subsequently the monopoly turned into a duopoly when the GPO was divided into separate divisions of postal and telecommunications. The 1993 fixed the end of the duopoly by licensing over 200 operators with five national carriers and 4 mobile operators and over 69 companies licensed to operate facilities.
 2. Now amended by the Electronic Communications Act 2000
 3. The Telecommunication System is specified as any form of modern communication, which varies from telephone services to Internet, to radio, to TV, videoconferencing to BC radio, basically any system, which communicates separate premises by using, wires, and radio or light.
 4. The majority of regulatory bodies and Ministries of Telecommunications have planned to employ the comparative tender-based procedure, otherwise known as a "beauty contest", to award LMDS licences. However, United Kingdom, Switzerland, Austria and Luxembourg have chosen the auction method.
 5. Telecommunication services which are used by majority for social and economic scope and available to everybody upon reasonable request at an affordable price.
 6. <http://www.planning.dtlr.gov.uk/consult/tmd/04.htm> Telecommunications Mast Development Consultation paper

On January 1st 2000 a proposal issued jointly by OFTEL and the DEPARTMENT OF TRADE AND INDUSTRY came into effect. In this, households and businesses will have the right to retain their telephone numbers when they change service providers by granting customers a *number portability* service. This new regulation requires that subscribers or customers be able, if they wish, to keep their telephone numbers when they change their service provider of their *fixed* telecommunications services ie: *telephone services using geographic numbers* ⁷. Only those customers that remain at the same address will be able to change provider and keep their *geographic number* under this new number portability regime. The specific purpose of this regulation was to implement the terms of the Directive ⁸ 98/61/EC in UK law and therefore, to ensure that the current fixed number portability condition in telephone companies Telecommunications Act's licences would reflect the requirements of the Directive. The Regulation also ensures that those service providers that do not operate under a Telecommunications Act licence (systemless service providers) must comply with the number portability requirements contained in the Directive and will be liable to enforcement action through civil proceedings by the Director General of Telecommunications if they do not comply with the portability obligations set out in the Regulation. In the strategy of OFTEL, telephone companies marketing or offering telecommunications services should, with a reasonable charge, proactively seek to put portability facilities in place with other telephone companies and have a portability facility in place at the time a *contract* is signed with a customer. In order to meet this obligation, operators and service providers will need to have made all appropriate arrangements to establish a portability facility with those companies involved. In such circumstances, the provision of number portability after a contract is agreed should not significantly add to the time it would normally take to provide a service where number portability was not requested. OFTEL will take appropriate action if operators and service providers are using delays in establishing porting arrangements to seek to persuade customers to transfer without porting.

Developing and sustaining a dynamic telecommunication market is one of the UK Government's key objectives for helping the development of this important industry since competition is considered of vital importance. Although competition is increasing rapidly in the provision of both infrastructure and content, tough regulation will be required for some time to ensure that there is fair access to network systems for both content providers and infrastructure competitors. Under the Act, the Director General has a duty to investigate complaints of anti-competitive behavior in breach of the prohibitions ⁹ set in the COMPETITION ACT 1998 ¹⁰ in relation to telecommunications (unless they are frivolous) or on his own initiative and the power to impose financial penalties where infringements are committed negligently or intentionally. The COMPETITION ACT prohibits those agreements between undertakings, decisions by associations of undertakings (such as trade associations), and concerted practices which prevent, restrict or distort competition, or are intended to do so and the abuse by one or more undertakings of a dominant position in a market (about 40% or more in the market share) ¹¹ which may affect

7. Ordinary telephone numbers of subscribers at a fixed geographic location ex. numbers beginning (01 or 02) and services using non geographic numbers ex. Free phone numbers (080), local and national rate numbers (0845 and 0870), personal numbers (070) and premium rate numbers (090)

8. <http://www.oftel.gov.uk/numbers/port0100> Directive 98/61/EC, number portability requirements for fixed numbers also called the Numbering Directive. OfTel intends to enforce the implementing legislation. The Numbering Directive amended Directive 97/33 EC (the Interconnection Directive).

9. <http://www.oftel.gov.uk/html/comp-act/help/questions.html>

10. <http://www.ofwat.gov.uk/infonotes/inf45.html> Statutory Instrument 2000 No. 260 The Competition Act 1998 (Concurrency) Regulations 2000 which came fully into effect on 1 March 2000

11. The EC wants to change the way in which the dominant operators are identified. Instead of deeming telcoms with more than 50% market share as being "dominant", the Commission wants to introduce a more flexible system where the EU and national telcoms regulators decide together which companies have to share access to their networks. http://uk.gsmbox.com/news/mobile_news/all/340.gsmbox

trade within the UK. Since the legal framework for that process was put in place, unprecedented technological and market development has taken place and therefore the review of the telecommunication system regulation should be continuously up dated. Moreover, the European Commission reported ¹² as the greatest single problem facing new entrants (in obtaining interconnection on fair terms) the reluctance, or lack of empowerment of regulators to intervene in a forceful, timely and effective manner. Therefore, the European Commission ¹³ has proposed a new legislation that will remove existing barriers to the single market and re-orientate the framework to address an era of increasing competition and will define the powers and duties of national regulatory authorities. It will promote uniform application of the rules by requiring consultation with the European Commission on key decisions, to grant powers to a body (OFCOM) to promote competition in the communications services sector and protect consumers. OFCOM should ensure the continuing and effective mechanisms for tackling illegal material on the Internet and promote rating and filtering systems that help Internet users control the content they and their children will see ¹⁴. OFCOM will also consider complaints of unfair treatment or unwarranted infringement of privacy without sufficient cause in licensed broadcasting services, where no other legal remedy is being pursued. It has been suggested also that the intervention of the Data Protection Commissioner should produce and promote clear accessible guidance for those who gather data online and for individuals who wish to protect their data and know their rights.

By Ottavia Molinari

12 10 November 1999.

13. New Legislation For The Converging Electronic Communications Sector <http://europa.eu.int/ISPO/infosoc/telecompolicy/review99/review99.htm>

14. See. Electronic Communications Act 2000