

Brussels, 6 April 2006

Infringement proceedings in the field of telecoms and electronic communications: What are the issues at stake in this round?

How often has the Commission already launched infringement proceedings against Member States for non-compliance with the 2002 regulatory framework for electronic communications?

In total, since the entry into force of the EU's regulatory framework for electronic communications in 2002, the Commission has opened proceedings under Article 226 of the EC Treaty against 24 EU Member States in some 70 cases due to failure to implement correctly the regulatory framework.

A number of Member States chose, following the launch of infringement proceedings by the Commission, to comply with the requirements of the EU's regulatory framework for electronic communications. This allowed the Commission so far to close 14 cases successfully, and without the need to move these cases to the European Court of Justice.

What are the issues at stake in the April 2006 round of infringement procedures?

1. Caller location information to emergency authorities

Principle

Telecommunications operators are obliged to provide, upon receipt of emergency calls via fixed or mobile phones, caller location information to emergency services, if this is technically feasible. This is needed to ensure that public safety answering points are given the best information available as to the location of the caller. In order to guide the Member States in the implementation of this requirement, the Commission issued a Recommendation¹ in 2003. In March 2005², the Commission noted that as from then onwards, they would regard the provision of caller location as technically feasible, since it was available in a majority of Member States.

Problem

Following the publication of the 11th Implementation Report (see [IP/06/188](#)), 11 cases have been opened against Member States concerning the non-availability of caller location information to emergency authorities in **Greece, Ireland, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, the Netherlands, Portugal and Slovakia.**

¹ Commission Recommendation of the processing of caller location information in electronic communication networks for the purpose of location-enhanced emergency call services, C(2003)2657, 25 July 2003

² Working document of the Commission services COCOM05-07, "Implementation of the single European emergency number 112: follow-up", 18 March 2005

Commission action

The commission has sent a letter of formal notice to **Greece** (for mobile phones), **Ireland** (for all phones), **Italy** (for mobile phones), **Cyprus** (for mobile phones), **Latvia** (for all phones), **Lithuania** (for mobile phones), **Luxembourg** (for mobile phones), **Hungary** (for all phones), **the Netherlands** (for mobile phones), **Portugal** (for mobile phones) and **Slovakia** (for all phones).

2. Universal Service

Principle

Compliance with the European Union's rules on the universal service in the electronic communications sector is a key element of the framework. These rules guarantee basic services for consumers such as connection and telephone services from a fixed location, public payphones, directory services and where appropriate, measures for disabled users with minimum levels of availability and affordability.

To this end, Member States may designate one or more undertakings to provide the universal service, and the EU's Universal Service Directive stipulates that there should be no *a priori* exclusion of telecoms operators from the possibility of being designated to offer such services.

Problem

In July, the Commission expressed concerns as to whether this principle had been correctly transposed into the national laws of **Hungary**, **Finland** and **France**.

Commission action

Finland, in its reply to the letter of formal notice has indicated that its national laws will be changed to take account of the Commission's concerns with regard to universal service.

In its reply to the letter of formal notice, **Hungary** assured the Commission that individual universal service requirements could be provided by different operators. The Commission has now decided to close the infringement proceedings. However, it will continue to monitor implementation of these rules very closely.

In the case of **France**, the Commission has decided to send a reasoned opinion because French law continues to restrict *a priori* designation as supplier of the universal service to operators capable of providing the universal service on the entire national territory.

3. Transition to the new regulatory framework for electronic communications

Principle

In order to avoid any kind of legal vacuum, the EU's Framework Directive provides that obligations imposed on operators under the previous regulatory framework should be maintained until the relevant markets have been reviewed under the new framework. Such legal certainty is crucial for private investment decisions and for the development of competition.

Problem

In **Slovenia**, several regulatory obligations imposed on undertakings under the previous regime had expired without the national regulatory authority (NRA) having decided in a market review whether similar obligations should be maintained in accordance with the new regulatory framework.

In **Estonia**, obligations based on the old Telecommunications Act and imposed for fixed telephony, mobile telephony, interconnection and leased lines should have ceased by 2005 irrespective of whether the market reviews under the new framework had been completed.

Commission action

The Commission has decided to close the cases against **Slovenia** and **Estonia**. In the case of Slovenia, the legal vacuum has been removed following the completion of 16 relevant market notifications. In the case of Estonia, the Commission will carefully monitor the application of a provision to carry out the market reviews and take decisions by 31 December 2007 at the latest.

4. Market reviews

Principle

One of the cornerstones of the regulatory package on electronic communications that entered into force on 23 July 2003 is the process of market analysis and review of ex-ante obligations. If the market analysis of the national regulatory authority shows that there is no, or only limited, competition on certain electronic communications markets, then appropriate regulation should be imposed. National regulatory authorities must notify their findings for assessment to the Commission before implementing the proposed measures.

Without timely notification of the proposed measures by national regulatory authorities, there is a risk that the rules applicable to operators in the electronic communications sector will no longer be appropriate to the level of competition in the relevant markets. This may result, in some cases, in operators being subject to regulatory obligations that are no longer justified by market conditions or consumer needs or, conversely, in operators who are dominant in a relevant market not being subject to obligations that would ensure effective competition.

Problem

In October, the Commission sent letters of formal notice to **Belgium**, the **Czech Republic**, **Estonia**, **Cyprus**, **Latvia**, **Luxembourg** and **Poland** for failing to notify the Commission of electronic communications market reviews required by the EU regulatory framework for electronic communications.

Belgium and **Poland** have still not yet notified the European Commission of any market reviews that are required under the 2002 regulatory framework. These reviews are needed to ascertain whether telecom markets are effectively competitive.

Commission action

The Commission has now decided to send reasoned opinions to **Belgium** and **Poland** for not notifying any of the markets. This is the second stage of infringement proceedings and the two Member States now have two months in which to reply.

The Commission is still closely monitoring the market review notification process in the cases of **Cyprus**, **Latvia**, **Luxembourg**, **Czech Republic** and **Estonia** whose first notifications were received after the proceedings were opened in October.

5. Incomplete transposition of notification mechanism

Principle

National regulatory authorities are required, in consultation with industry, to analyse their national markets for electronic communications and propose appropriate regulatory measures to address market failures, and then notify their findings and proposed measures to the Commission and other national authorities.

Problem

In Latvia, the Electronic Communications law for notification purposes refers only to market definitions that differ from those listed in the EC Recommendation on relevant markets. No other provision in the measures transposing EU rules into national law appears to transpose the NRA's obligation to notify the Commission and other EU Member States of other draft measures.

Commission action

The Commission has sent a letter of formal notice to **Latvia**.

6. Independence of National Regulatory Authorities (NRAs)

Principle

The EU electronic communications directives stipulate that Member States should guarantee the independence of the national regulatory authority or authorities with a view to ensuring the impartiality of their decisions.

Problem

In **Finland**, the ministry responsible for the state's ownership of telecommunications operators was also in charge of some regulatory functions.

Commission action

The case relating to **Finland** could be closed since the Commission's concerns have now been met after the responsibility for the operators was transferred to another ministry. The ownership and regulatory functions are therefore now assigned to different ministries.

7. Number Portability

Principle

Number portability is a key facilitator of consumer choice and effective competition. It ensures that subscribers of one operator can retain their telephone number when they change to a different operator. The 2002 EU regulatory framework requires implementation of number portability for fixed services as well as for mobile services.

Problem

Number portability is provided in all EU15 Member States but at the moment is not available in six of the new Member States.

Number portability is still not fully available to subscribers in Slovenia.

Commission action

The Commission has sent a reasoned opinion to **Slovenia**.

Infringement proceedings are also pending against **Czech Republic, Latvia, Lithuania, Malta and Poland**.

8. Incomplete reference unbundling offer

Principle

According to Article 3 (1) of the Regulation 2887/2000, notified operators shall publish from 31 December 2000, and keep updated, a reference offer for unbundled access to their local loops and related facilities. This is a key element in boosting broadband access across Europe.

Since 1 May 2004, this obligation also applies in the case of new Member States as long as no market review has taken place under the new regulatory framework.

Problem

In **Estonia**, the available unbundling offer, published by the incumbent, does not include two of the minimum and obligatory elements required by the regulatory framework concerning collocation services and information systems.

Commission action

The Commission has therefore sent a letter of formal notice to **Estonia**.

What happened to earlier cases the Commission had opened for non-communication of national implementing legislation?

At earlier stages, the Commission had launched proceedings against those Member States that had not adopted legislation necessary to transpose the new framework into national law in a timely manner. (see [MEMO/05/478](#) and [MEMO/05/242](#))

Four proceedings against **Greece** have been closed after it notified the Commission of measures it took to transpose the electronic communications framework into its national laws. A further case concerning the ePrivacy directive is still pending before the European Court of Justice.

Where can I find further information on pending infringement proceedings concerning the electronic communications sector?

A complete overview of the state of non-conformity and incorrect application cases can be found on the implementation and enforcement website of the Information Society and Media DG:

http://europa.eu.int/information_society/policy/ecomm/implementation_enforcement/index_en.htm

What is the EU regulatory framework for electronic communications?

The EU regulatory framework for electronic communications came into force in 2002 and consists of five Directives:

- **Framework Directive:** outlines the general principles, objectives and procedures;
- **Authorisation Directive:** replaces individual licences by general authorisations to provide communications services;
- **Access and Interconnection Directive:** sets out rules for a multi-carrier marketplace, ensuring access to networks & services, interoperability, and so on;
- **Universal Service Directive:** guarantees basic rights for consumers and minimum levels of availability and affordability;
- **e-Privacy or Data Protection Directive:** covers protection of privacy and personal data communicated over public networks.

What are the regulatory principles of the EU regulatory framework for electronic communications?

The liberalisation of telecommunications, completed in 1998, was generally considered a notable success. Opening up formerly monopolistic markets led to dramatically lowered prices and improved services for both consumers and business, boosting Europe's communications industry and creating economic growth.

Continuous technological innovation, however, overtook the telecoms regulatory regime. Digitisation now allows many kinds of content to be delivered over different networks. The Internet has become a global infrastructure for a range of electronic communications services. Information and communications technologies are converging, opening up considerable possibilities for new industries and services.

The EU regulatory framework for electronic communications tackles this technological convergence and extends and adapts the benefits of liberalisation to electronic communications in general.

Based on the experience of telecoms liberalisation, policy makers believe that extending competition and ensuring opportunity and reward for innovative companies is the key to promoting technological advance. So why regulate? Why not let market forces alone generate growth in the e-communications sector?

The difficulty is that Europe's telecommunications industry originated in state-run monopolies, leaving a legacy of imperfect competitive conditions.

Continued regulation is therefore essential for as long as these former monopolists have significant market power, to ensure a level playing field for new market entrants.

Another reason is that market forces alone may lead to the exclusion of some social groups from essential public services. The new regulatory system therefore recognises a universal service obligation to ensure basic services at affordable prices to all in cases where the market alone does not provide.

There are therefore a number of key principles underlying the Directives of the EU regulatory framework for electronic communications:

- **Cutting red tape:** A general authorisation procedure for operators to enter new markets replaces individual licences. This drastically cuts red tape for enterprises, which no longer face frustrating delays as national regulators check compliance with licence conditions.
- **Light regulation:** The framework builds upon general concepts of competition law, as applied to normally functioning markets. Regulation is seen as essentially a *temporary phenomenon*, required to make the transition from the formerly monopolistic telecommunications industry to a fully functioning market system. To develop in the short term, new market entrants need regulatory support to gain access to the networks of incumbent operators and to provide the benefits to end users which the market would offer if it were effectively competitive. However, as the sector evolves, operators will increasingly build their own infrastructures and compete more effectively. As normal market conditions develop, regulation can be rolled back, and competition law, as applied to industry in general, will replace sector-specific intervention.
- **Technological neutrality:** Regulation now refers to "electronic communications" - not "telecommunications". The same principles now apply regardless of which kind of existing or potentially new technology is involved. This "technological neutrality" is essential to provide the necessary flexibility to deal with emerging technologies and their convergence in fields such as media, internet and mobile communications.
- **Consistency across the European market:** Operators need to be assured that their investments can be planned in a stable regulatory environment, consistent and predictable throughout the EU's Single Market. Such a regime allows companies to operate on a scale which only a European-wide market can provide. The regulatory framework establishes new processes permitting collaboration among the national regulatory authorities of the Member States and between national authorities and the Commission. This extensive collaboration plays a key role in achieving the necessary coherence within the regulatory process at European level. In key areas, each national regulatory authority submits its draft national measures to the Commission and to other national authorities for consideration, and discusses common approaches in the European Regulator's Group, established by the Commission in 2002. In this way, a consistent approach is developed throughout the single market while permitting maximum flexibility to deal with national markets and conditions.