
THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

FOURTH EDITION

EDITOR
JOHN P JANKA

LAW BUSINESS RESEARCH

THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

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CONTENTS

Editor's Preface	vii
<i>John P Janka</i>	
List of Abbreviations	ix
Chapter 1 COMPETITION LAW OVERVIEW	1
<i>Abbott B Lipsky, Jr with John D Colahan</i>	
Chapter 2 AUSTRALIA.....	15
<i>Anthony Lloyd, Paul Kallenbach and Paul Schoff</i>	
Chapter 3 BRAZIL	34
<i>André Gomes de Oliveira, Renato Parreira Stetner and Tiago Franco da Silva Gomes</i>	
Chapter 4 CANADA	46
<i>Hank Intven and Grant Buchanan</i>	
Chapter 5 CHINA.....	61
<i>Jihong Chen</i>	
Chapter 6 EGYPT	73
<i>Aly El Shalakany and Omar Sherif</i>	
Chapter 7 EUROPEAN UNION.....	85
<i>Maurits J F M Dolmans, Francesco Maria Salerno and Federico Marini-Balestra</i>	
Chapter 8 FINLAND	120
<i>Mikko Manner, Anna Haapanen and Suvi Laes</i>	

Chapter 9	FRANCE	132
	<i>Myria Saarinen and Jean-Luc Juhan</i>	
Chapter 10	GERMANY	151
	<i>Laura Johanna Reinlein and Gabriele Wunsch</i>	
Chapter 11	HONG KONG	167
	<i>Simon Berry and Viola Jing</i>	
Chapter 12	INDIA	184
	<i>Atul Dua, Salman Waris and Arjun Uppal</i>	
Chapter 13	ITALY	197
	<i>Stefano Macchi di Cellere</i>	
Chapter 14	JAPAN	211
	<i>Hiroki Kobayashi, Richard Fleming, Saori Kawakami and Chiyo Toda</i>	
Chapter 15	KOREA.....	225
	<i>Wonil Kim and Kwang-Wook Lee</i>	
Chapter 16	LEBANON.....	237
	<i>Souraya Machnouk, Rania Khoury and Ziad Maatouk</i>	
Chapter 17	LUXEMBOURG	249
	<i>Linda Funck</i>	
Chapter 18	MEXICO	269
	<i>Jaime Deschamps and Andoni Zurita</i>	
Chapter 19	NORWAY	279
	<i>Olav Torvund, Jon Wessel-Aas and Magnus Ødegaard</i>	
Chapter 20	PORTUGAL.....	287
	<i>Joana Torres Ereio, Joana Mota and Raquel Mauricio</i>	

Chapter 21	ROMANIA	303
	<i>Cosmina Simion and Laura Leancă</i>	
Chapter 22	SINGAPORE	317
	<i>Ken Chia and Koh See Khiang</i>	
Chapter 23	SOUTH AFRICA.....	340
	<i>Zaid Gardner</i>	
Chapter 24	SPAIN	351
	<i>Pablo González-Espejo and Leticia López-Lapuente</i>	
Chapter 25	SWEDEN	367
	<i>Erik Ficks and Björn Johansson Heigis</i>	
Chapter 26	SWITZERLAND	377
	<i>Michael Isler</i>	
Chapter 27	TAIWAN	392
	<i>Arthur Shay and David Yeh</i>	
Chapter 28	TURKEY	405
	<i>Serra Başoğlu Gürkaynak, Begüm Yavuzdoğan and M Onur Sumer</i>	
Chapter 29	UNITED ARAB EMIRATES.....	420
	<i>Joby Beretta</i>	
Chapter 30	UNITED KINGDOM.....	434
	<i>Omar Shah and Gail Crawford</i>	
Chapter 31	UNITED STATES	454
	<i>John P Janka and Jarrett S Taubman</i>	
Appendix 1	ABOUT THE AUTHORS.....	473
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS ...	497

EDITOR'S PREFACE

The pervasive influence of internet and wireless-based communications continues to challenge existing laws and policies in the TMT sector. Old business models fall by the wayside as new approaches more nimbly adapt to the shifting marketplace and consumer demand. The lines between telecommunications and media continue to blur. Content providers and network operators vertically integrate. Many existing telecommunications and media networks are now antiquated – not designed for today's world and unable to keep up with the insatiable demand for data-intensive, two-way, applications. The demand for faster and higher-capacity mobile broadband strains even the most sophisticated networks deployed in the recent past. Long-standing radio spectrum allocations have not kept up with advances in technology or the flexible ways that new technologies allow many different services to co-exist in the same segment of spectrum. The geographic borders between nations cannot contain or control the timing, content and flow of information as they once could. Fleeting moments and comments are now memorialised for anyone to find – perhaps forever.

In response, lawmakers and regulators also struggle to keep up – seeking to maintain a 'light touch' in many cases, but also seeking to provide some stability for the incumbent services on which many consumers rely, while also addressing the opportunities for mischief that arise when market forces work unchecked.

The disruptive effect of these new ways of communicating creates similar challenges around the world: the need to facilitate the deployment of state-of-the-art communications infrastructure to all citizens; the reality that access to the global capital market is essential to finance that infrastructure; the need to use the limited radio spectrum more efficiently than before; the delicate balance between allowing network operators to obtain a fair return on their assets and ensuring that those networks do not become bottlenecks that stifle innovation or consumer choice; and the growing influence of the 'new media' conglomerates that result from increasing consolidation and convergence.

These realities are reflected in a number of recent developments around the world that are described in the following chapters. To name a few, these include liberalisation

of foreign ownership restrictions; national and regional broadband infrastructure initiatives; efforts to ensure consumer privacy; measures to ensure national security and facilitate law enforcement; and attempts to address 'network neutrality' concerns. Of course, none of these issues can be addressed in a vacuum and many tensions exist among these policy goals. Moreover, although the global TMT marketplace creates a common set of issues, cultural and political considerations drive different responses to many issues at the national and regional levels.

This fourth edition of *The Technology, Media and Telecommunications Review* provides an overview of the evolving legal constructs that govern these types of issues in 30 jurisdictions around the world. In the space allotted, the authors simply cannot address the numerous nuances and tensions that surround the many issues in this sector. Nevertheless, we hope that the following chapters provide a useful framework for beginning to examine how law and policy continues to respond to this rapidly changing sector.

John P Janka

Latham & Watkins LLP

Washington, DC

October 2013

LIST OF ABBREVIATIONS

3G	Third-generation (technology)
4G	Fourth-generation (technology)
ADSL	Asymmetric digital subscriber line
AMPS	Advanced mobile phone system
ARPU	Average revenue per user
BIAP	Broadband internet access provider
BWA	Broadband wireless access
CATV	Cable TV
CDMA	Code division multiple access
CMTS	Cellular mobile telephone system
DAB	Digital audio broadcasting
DECT	Digital enhanced cordless telecommunications
DDoS	Distributed denial-of-service
DoS	Denial-of-service
DSL	Digital subscriber line
DTH	Direct-to-home
DTTV	Digital terrestrial TV
DVB	Digital video broadcast
DVB-H	Digital video broadcast – handheld
DVB-T	Digital video broadcast – terrestrial
ECN	Electronic communications network
ECS	Electronic communications service
EDGE	Enhanced data rates for GSM evolution
FAC	Full allocated historical cost
FBO	Facilities-based operator
FCL	Fixed carrier licence
FTNS	Fixed telecommunications network services
FTTC	Fibre to the curb

List of Abbreviations

FTTH	Fibre to the home
FTTN	Fibre to the node
FTTx	Fibre to the x
FWA	Fixed wireless access
Gb/s	Gigabits per second
GB/s	Gigabytes per second
GSM	Global system for mobile communications
HDTV	High-definition TV
HITS	Headend in the sky
HSPA	High-speed packet access
IaaS	Infrastructure as a service
IAC	Internet access provider
ICP	Internet content provider
ICT	Information and communications technology
IPTV	Internet protocol TV
IPv6	Internet protocol version 6
ISP	Internet service provider
kb/s	Kilobits per second
kB/s	Kilobytes per second
LAN	Local area network
LRIC	Long-run incremental cost
LTE	Long Term Evolution (a next-generation 3G and 4G technology for both GSM and CDMA cellular carriers)
Mb/s	Megabits per second
MB/s	Megabytes per second
MMDS	Multichannel multipoint distribution service
MMS	Multimedia messaging service
MNO	Mobile network operator
MSO	Multi-system operators
MVNO	Mobile virtual network operator
MWA	Mobile wireless access
NFC	Near field communication
NGA	Next-generation access
NIC	Network information centre
NRA	National regulatory authority
OTT	Over-the-top (providers)
PaaS	Platform as a service
PNETS	Public non-exclusive telecommunications service
PSTN	Public switched telephone network
RF	Radio frequency
SaaS	Software as a service
SBO	Services-based operator
SMS	Short message service
STD-PCOs	Subscriber trunk dialling-public call offices
UAS	Unified access services
UASL	Unified access services licence

List of Abbreviations

UCL	Unified carrier licence
UHF	Ultra-high frequency
UMTS	Universal mobile telecommunications service
USO	Universal service obligation
UWB	Ultra-wideband
VDSL	Very high speed digital subscriber line
VHF	Very high frequency
VOD	Video on demand
VoB	Voice over broadband
VoIP	Voice over internet protocol
W-CDMA	Wideband code division multiple access
WiMAX	Worldwide interoperability for microwave access

Chapter 21

ROMANIA

Cosmina Simion and Laura Leancă¹

I INTRODUCTION

The advent of digital technologies coupled with legislative harmonising objectives have triggered considerable developments in the TMT sector in Romania over the past two years. Regulatory and industry efforts have culminated with the largest tender for spectrum allocation allowing 4G communications in 2012 as well as with the adoption of a national strategy for the transition from analogue to digital broadcasting in 2013.

II REGULATION

i The regulators

In Romania, the TMT sector is regulated by two specialised authorities.

The National Authority for Management and Regulation in Communications (ANCOM) is the regulatory body in the area of electronic communications, an independent public authority under Parliamentary control.

ANCOM manages at national level the available resources necessary for the provision of electronic communications services and networks, such as radio frequencies, numeration resources and other associated technical resources. It also monitors the radio frequency bands allocated for non-governmental use and controls the market for radio equipment and terminal equipment used in the provision of telecommunication services.

Moreover, ANCOM is responsible for the implementation of the national policy in the area of electronic communications set forth by the Ministry of Communications and Information Technology (MCTI). While performing its legal duties, ANCOM closely cooperates with the Romanian Competition Council (RCC) and the National Authority for Consumer Protection.

¹ Cosmina Simion is a senior associate and Laura Leancă is an associate with DLA Piper.

The National Audio-visual Council of Romania (CNA) is the regulatory authority for the audio-visual sector. Its main responsibilities include the issuance of broadcasting licences, control over the content of audio-visual programmes broadcasted by audio-visual suppliers, monitoring the legal compliance of audio-visual services ensuring freedom of speech and protecting the Romanian culture and language. The CNA must submit any anti-competitive practices to the attention of the competent state authorities such as the RCC.

The legal framework governing the TMT sector implements the relevant European legislation and may be divided into four categories:

a electronic communications:

- Government Emergency Ordinance No. 111/2011 on electronic communications (GEO 111/2011); and
- Decision No. 629/2010 on the procedure for the authorisation of audio-visual programmes (Decision 629/2010);

b postal services:

- Government Emergency Ordinance No. 13/2013 on postal services;

c audio-visual:

- Audio-visual Law No. 504/2002 (the Audio-visual Law);
- Decision No. 220/2011 on the audio-visual code (the Audio-visual Code); and
- Decision No. 277/2013 on the procedure for granting, amendment, renewal and assignment for the audio-visual licence and the audio-visual authorisation decision (Decision 277/2013); and

d information society services:

- Law No. 365/2002 on electronic commerce (the e-Commerce Law).

ii Regulated activities

Provision of electronic communication services

The provision of electronic communications networks and services and of postal services is subject to a general authorisation regime set forth by ANCOM. According to decision No. 987/2012 issued by the President of ANCOM (Decision 987/2012), any entity intending to provide public communication services or networks must file a notification with ANCOM, prior to commencing its activity. The person having submitted a notification is deemed authorised to provide the services described in the notification, subject to the rights and obligations set forth by ANCOM in the general authorisation.²

2 However, Decision 987/2012 provides several exceptions to the notification requirement: (1) the provision of electronic communications networks for the purpose of a transmission having occasional or experimental character; (2) services which exclusively consist of the provision of the content of the information transmitted through electronic communications services or networks or through which editorial content is controlled, or which allow the hosting and subsequent access of the content of the transmitted information; and (3) the provision of electronic communication services for personal needs.

Licences and authorisations for the broadcasting of audio-visual programmes

Under the Audio-visual Law, the provision of a service programme by a broadcaster is subject to the granting of an audio-visual licence by the CNA. Although not yet functional, the provision of programmes based on a digital terrestrial system through a multiplex operator is subject to a licence to use radio frequencies in the digital terrestrial system, for the benefit of holders of digital audio-visual licences.

For broadcasting made based on a terrestrial radio-electric analogue system, the CNA will issue an audio-visual licence following a competitive procedure and upon presentation of the technical preliminary authorisation, as granted by ANCOM.

The broadcasting of audio-visual programmes is further subject to a broadcasting licence as well as a technical authorisation issued by ANCOM. Broadcasting licences are issued by ANCOM based on a direct grant procedure to the holders of audio-visual licences issued by the CNA.

Further to obtaining the broadcasting licence, respectively technical authorisation, and prior to the actual broadcasting, the CNA must issue a final authorisation decision.

In case the broadcasting is made via an electronic communication network, audio-visual licences are issued based on CNA decisions only. Such licences (satellite, cable) are issued based on the review of the file submitted by the broadcaster, containing information regarding the content of the programme to be broadcasted, agreement with the distributor of electronic communication services, technical information regarding the editing means available.³

Use of radio spectrum

Reception in the radio spectrum is free, except for specific situations provided in the procedure for licensing the rights to use the radio spectrum, cases in which a licence for the use of radio frequencies issued by ANCOM is required. While the reception of radio waves is not chargeable, the holders of licences for the use of radio frequencies and the holders of broadcasting licences are required to pay ANCOM the annual tariff for the use of the radio spectrum.⁴

On the other hand, transmission in the radio spectrum is allowed provided that a licence for the use of radio frequencies or a broadcasting licence (for the broadcasting of audio-visual programme services over a terrestrial radio frequency), as the case may be, has been issued by ANCOM. The licence for the use of radio frequencies may be obtained either upon direct granting procedure or by a comparative or competitive selection procedure.⁵

Foreign companies wishing to use the radio spectrum in Romania on an occasional basis for transmissions from Romania to their own audience in other countries may

3 Decision No. 277/2013 issued by the CNA, Article 3.

4 www.ancom.org.ro/en/radio-spectrum_2749. For a detailed overview of the procedure and list of tariffs for radio spectrum use, see Decision No. 551/2012 on the tariff for spectrum use issued by ANCOM.

5 For more details regarding the direct grant procedure, see Decision No. 658/2005 on the procedure for the issuance of licences for the use of radio frequencies issued by ANCOM.

acquire temporary licences for radio spectrum use in order to cover the transmission of a specific event (e.g., the transmission of the Europa League final in 2012).

iii Ownership and market access restrictions

Under Romanian law, there is no distinction between local and foreign entities in terms of ownership, investment or establishment of companies in the TMT sector. However, under the Audio-visual Law, any individual or company owning 10 per cent or more of the share capital or voting rights in a company holding an audio-visual or a broadcasting licence is required to notify the CNA.⁶

In respect of restrictions to enter the Romanian telecommunications market, an MVNO must notify ANCOM with regard to its intention.⁷ The access of MVNOs on the Romanian market further depends on whether they manage to enter into agreements with an existing mobile network operator (MNO) having already obtained a licence for the use of radio spectrum. Such contract would describe the technical and commercial conditions regarding the access to the network that will allow the MVNO to provide mobile communications services to the end users (Interconnection Agreement).

GEO 111/2011 provides that in order to ensure the interoperability of electronic communication services, any MNO has an obligation to negotiate an Interconnection Agreement with an authorised third party (such as an MVNO), upon its request.⁸

The MNO may be able to deny access to its mobile network solely based upon objective grounds or in case the request of the MVNO is not reasonable.

Moreover, in case ANCOM determines – based on a prior market analysis procedure⁹ – that the market is not effectively competitive, it may impose on MNOs with significant market power further obligations. These include obligations regarding transparency in relation to the interconnection of public networks; or obligations regarding access to these networks by related facilities to ensure that MNOs make available to third parties (such as new licence holders) similar services and information to those offered to their partners.

Apart from ANCOM, the RCC also supervises the observance of free competition rules on the telecommunications market and therefore may intervene and impose several conditions.¹⁰

6 Audio-visual Law, Article 43 para. 5.

7 GEO 111/2011, Chapter II.

8 GEO 11/2011, Article 12, para. 1, letter b.

9 The tender book for the 2012 competitive selection procedure for the grant of spectrum licences for the bands 800MHz, 900MHz, 1,800MHz and 2,600MHz provided that incumbent MNOs were required to negotiate in good faith a national roaming agreement with any new licence holder having reached a national coverage of at least 30 per cent of the population, in respect of all frequencies, despite the recommendations of the market study commissioned by ANCOM.

10 The RCC recommended that ANCOM amends the national roaming obligations imposed in the tender book to the effect that new licence holders be granted the right to access the

iv **Transfers of control and assignments**

Audio-visual licences may be transferred to third parties only with the prior approval of the CNA and subject to the undertaking of new holder to comply with all the obligations deriving from the licence. Moreover, both the assignor and the assignee must present evidence that they do not have any outstanding debts to the state. However, the transfer cannot occur earlier than one year as of the date the initial holder commenced broadcasting operations.

Broadcasting licences may be transferred to third parties under similar conditions, provided that the audio-visual licence is transferred as well and that the prior approvals of both the CNA and ANCOM have been obtained.¹¹

The grant of a licence to use radio frequencies in digital terrestrial system requires the prior approval of ANCOM, and the consultative opinion of the CNA.

The owner of a licence for the use of radio frequencies granted for the purpose of providing a public electronic communications network may assign the usage right obtained as per the licence provided that the prior consent of ANCOM, has been obtained.¹²

In terms of timing, ANCOM and the CNA are required to examine the request within 30 days of the filing of the application for transfer of the licence (10 days in the case of licences for digital resources).

In relation to mergers and acquisitions, such operations may fall under the restrictions set forth under competition legislation.¹³ In this sense, the respective operation may be considered as an economic concentration, provided the following thresholds are met:

- a* combined worldwide turnover of all the parties involved (or, if they are part of a group of companies, the combined turnover of the group) in the financial year preceding the acquisition exceeds the equivalent of €10 million in Romanian lei; and
- b* the turnover of each of at least two of the parties involved derived from activities carried out in Romania exceeds the equivalent of €4 million in Romanian lei during the last financial year.

If the above thresholds are met, the RCC must be notified and its prior approval must be obtained for the completion of a transaction.

The providers of audio-visual media services must notify the CNA with regard to any changes that may occur in respect of: their name, legal status or registered headquarters; the name of the legal representative and the structure of the shareholders up to the level of associate or a shareholder that owns a share higher than 20 per cent of

networks of incumbent MNOs, without the need for the new licence holders to achieve the 30 per cent national coverage (or at least to provide a lower percentage such as 20 per cent).

11 The Audio-visual Law, Articles 56 and 66.

12 GEO 111/2011, Article 35-36; the same rule applies to the assignment of the licences for the use of the numbering resources (Article 44-45 of GEO 111/2011).

13 According to the Competition Law No. 21/1996.

the share capital and of the voting rights of the company holding an audio-visual licence; and the names of the managers.¹⁴

III TELECOMMUNICATIONS & INTERNET ACCESS

i Internet and internet protocol regulation

Information society services fall under the scope of e-Commerce Law. However, there is no regulatory distinction between different types of internet-protocol-based services.

ii Universal service

The right to access the universal service includes a range of electronic communication services that must be provided to all end users, at a certain quality level, regardless of the geographical location and for an affordable price.¹⁵

The universal service providers are designated by ANCOM following a public tender procedure, for a period of maximum 10 years.¹⁶

The concept of 'universal service' includes services such as: access to publicly available telephone services at a fixed location; access to public pay telephones; and information services regarding subscribers and development of subscribers' registers.

If universal services obligations are imposed on providers, then they are required to offer users additional facilities such as: the possibility for consumers to selectively block certain calls or certain phone numbers upon request; scheduled payment of the connection tariff to publicly available telephone services, with the inclusion of additional costs; and cost control methods and planning.¹⁷

Should ANCOM consider that the net cost incurred by the universal service provider for the provisions of such service represents an unfair burden, it may decide to compensate the respective provider, upon its request. ANCOM determines which providers in the market are required to contribute to the compensation mechanism as well as the respective contributions (determined based on turnover criteria). ANCOM may decide that only certain providers exceeding a predetermined turnover threshold are required to contribute to such contribution.

iii Restrictions on the provision of service

Pricing restrictions in relation to end users

In accordance with European requirements, roaming charges are specifically regulated by ANCOM.

14 The Audio-visual Law, Article 48-49.

15 GEO 111/2011, Article 76.

16 GEO 111/2011, Article 77.

17 GEO 111/2011, Article 84.

ANCOM also sets maximum levels for termination tariffs (i.e., the price paid by a telephone service provider to the operator in whose network a call made by the former's own users is terminated), which is ultimately reflected in the price paid by end users.¹⁸

Moreover, ANCOM monitors the evolution and level of charges in relation to universal services and may require providers to lower their prices in order to ensure that persons with moderate incomes or having special needs are granted access to universal services.¹⁹

Access obligations

As explained in Section II.iii, *supra*, providers of electronic communication services are required to grant access to MVNOs based on contractual arrangements.

Based on recent developments in the market, providers of electronic communications services such as cable operators seem to be able to choose the content they carry and favour certain content while excluding others. The market is not affected in the sense that end users may ultimately have access to the excluded content from other cable operators.

In 2012, one of the largest cable operators in Romania excluded several Discovery channels from its programme list, while replacing them with its own channels providing similar content. The RCC considered that there was no abuse of dominant position.

Content monitoring

Providers of electronic communications services are under no obligation to monitor the content transmitted or hosted within their network. Conversely, under the e-Commerce Law,²⁰ providers fulfilling a mere technical role (i.e., transmission of information, temporary or permanent hosting and caching) are not liable for the content provided that: (1) they do not alter such content; (2) they are not or have not been made aware that the content is illegal or may breach third-party rights; and (3) once they become aware of the illegal nature of the content, they act promptly to remove or block such content and to notify the competent authorities in respect of activities which appear to be illegal.

iv Security

Security measures

On 31 July 2013, ANCOM adopted a decision regarding the minimum security measures for electronic communications network providers. The decision sets forth a procedure for reporting security incidents with significant impact on the security and integrity of national or European electronic communications networks. Therefore, providers are required to file a notification with ANCOM should an incident with significant impact (i.e. an incident affecting more than 5,000 connections for at least 60 minutes) occur,

18 www.ancom.org.ro/uploads/links_files/Raport_Anual_final_site_5_iunie_2013.pdf.

19 GEO 111/2011, Article 83.

20 E-Commerce Law, Articles 12-16.

before 1 p.m. on the day following the incident. The decision entered into force on 1 October 2013.

Data privacy

Processing of personal data in the electronic communication sector is expressly regulated under Law No. 504/2006. Under this law, several restrictions are imposed on providers of electronic services. The most important relate to the obligation to report any data breaches to the data protection authority, the requirement to obtain users' consent in relation to the storing of cookies and the requirement to anonymise traffic data when it is no longer necessary for the transmission of a communication. Special conditions for processing localisation data are also imposed.

In respect of commercial communications, the law requires providers to obtain the user's consent (opt-in) as well as to provide them with an easily accessible, free of charge method to withdraw such consent in the context of each commercial communication that is being sent (opt-out). Sanctions for breach of such requirements can be up to 2 per cent of the company's turnover.

In June 2012 Romania implemented Directive 2006/24/CE on data retention via Law 82/2012 in order to avoid legal action from the European Commission for failure to transpose the Directive. This was the second transposition attempt since in 2008, the implementation legislation was declared unconstitutional by the Romanian Constitutional Court whose main objections related to the providers' obligation to retain traffic, localisation and identity data for six months after its processing. However, since such provisions were also incorporated in Law 82/2012, it has caused major controversies on the market, currently under debate.

Protection of minors

While there is no specific legislation governing the protection of minors in the online environment, the general provisions of the Romanian Civil Code apply.

The activity performed by minors online (e.g., providing personal data) may be considered as legal act which cannot be performed by minors below 14 years of age (but by their parents/legal guardians on their behalf) or in case of minors over 14 years, as an act which requires parental consent in order to be valid.

Cyber-security

A number of legal texts sanction the hacking and other forms of IT-related crimes. In the past years, the Romanian police, in collaboration with professional organisations such as Business Software Alliance have intensified their efforts in order to stop online piracy and illegal downloading of copyright protected works. Moreover, in 2012 the National Centre for Response to Cyber-security Incidents (CERT-RO), published guidelines regarding minimum security measures on the internet that include rules on social network use, configuration of wireless networks²¹ and best practices to ensure the safety of personal computers.

21 The guidelines are available at <http://cert-ro.eu>.

IV SPECTRUM POLICY

i Development

ANCOM manages the whole radio spectrum available in Romania by allocating frequency bands. To this end, ANCOM is actively involved in the preparation of the National Table of Frequency Bands Allocations (NTFA), which is adopted by MCTI.

In 2012, ANCOM organised the largest tender for allocation of spectrum frequencies (the 2012 Tender), thus placing Romania as one of the first countries in central and Eastern Europe to allow 4G communications.

ii Flexible spectrum use

Following the 2012 Tender, of the 575MHz subject to adjudication, 485MHz (85 per cent) have been allocated to five operators in the 800MHz, 900MHz, 1,800MHz and 2600MHz bands, which allow broadband voice mobile communications and internet. Following the tender, the spectrum resources available for mobile communications have increased by 77 per cent. In order to allow 4G communications, a considerable part of the frequencies was cleared by the Ministry of National Defence. Telecom companies already provide 4G services in some areas of the country.

Moreover, according to the publicly available information disclosed by ANCOM, 676 rural areas that prior to the 2012 Tender were not covered by broadband mobile communications networks, would now benefit from HSPA/HSPA+/LTE network coverage.²²

iii Broadband and next-generation mobile spectrum use

On 29 July 2013, ANCOM confirmed that the spectrum licences granted to the winners of the 2012 Tender will be valid until 5 April 2029.²³ Operators are required to ensure broadband services having a download speed of at least 2 Mbps, with a probability of at least 95 per cent for indoor reception in respect of areas inhabited by at least 60 per cent of the population.

Licence holders are also required to conclude national roaming agreements with other licence holders in order to ensure access to the '112' emergency number, even when users are outside the coverage area of their own network.

iv Spectrum auctions and fees

The tariffs for radio spectrum use are set forth in ANCOM's Decision No. 51/2012.

Following the 2012 Tender, the state has obtained revenues of approximately €700,000 corresponding to licence fees for radio spectrum use.

22 The results of the 2012 Tender may be found here: www.ancom.org.ro/uploads/links_files/24_09_2012_Rezultate_licitatie_spectru_radio_.pdf.

23 ANCOM press release available at: www.ancom.org.ro/29-iulie-2013_5015.

V MEDIA

i Restrictions on the provision of service

Quota obligations

As of the date of Romania's accession to the European Union, any broadcaster under the jurisdiction of Romania is required to allocate the majority of its broadcasting time to European works, except for the time dedicated to news, sporting events, games, advertising, as well as teletext and teleshopping services.²⁴

In addition, after excluding time dedicated to those programmes mentioned above, any broadcaster under Romanian jurisdiction must allocate at least 10 per cent of its broadcasting time to European works developed by independent producers.²⁵

Protection of minors

Under Audio-visual Law,²⁶ the transmission of programmes, within radio and television services, that may seriously impair the physical, mental or moral development of minors, especially programmes containing pornography or unjustifiable violence is forbidden.

Audio-visual programmes that are likely to impair the physical, mental or moral development of minors may be broadcast provided that the broadcasters, by selecting the time of the broadcast or by any technical measure (e.g., encoding or other system of conditioned access), ensure that minors within the broadcasting area cannot under normal circumstances see or hear such programmes.

Moreover, such programmes may be transmitted on an un-encoded basis or without other restrictive technical measures provided that the broadcasting is accompanied by an acoustic or graphic warning and by a display of a warning visual symbol throughout the entire broadcasting time, informing viewers of the category of programme broadcast.

In order to protect minors, the Audio-visual Code classifies audio-visual programmes as follows:

- a* generally accessible programmes;
- b* programmes that may be viewed by minors under 12 years of age with parental consent;
- c* programmes prohibited for minors under 12 years of age;
- d* programmes prohibited for children under 15 years; and
- e* programmes prohibited for minors under 18 years.

The Audio-visual Code imposes several restrictions in respect of the broadcasting time of such programmes (e.g., programmes prohibited for those under 15 years can only be broadcast between 11 p.m. and 6 a.m.). The broadcast of audio-visual programmes

²⁴ The Audio-visual Law, Article 22.

²⁵ Independent producers are defined as persons financially supported within an amount lower than 25 per cent from the same sources as the programme service broadcasting the works of the respective person and if they hold less than 25 per cent out of the share capital of the company financing the respective programmes

²⁶ The Audio-visual Law, Article 39 and 391.

containing smoking, drinking or obscene scenes between 6 a.m. and 8 p.m. is also prohibited.

The Audio-visual Code imposes further restrictions in respect of the broadcasting of interviews with minors having been involved in or having witnessed a crime or other dramatic events.

Advertising restrictions

Under the Audio-visual Law, the proportion of television advertising spots and teleshopping spots within a given hour shall not exceed 20 per cent (12 minutes); on public television channels, their duration shall not exceed eight minutes within any hour.

The Audio-visual Code imposes several other restrictions in relation to advertising of different types of products (alcoholic beverages, tobacco, food products, etc).

In addition to restrictions imposed under audio-visual legislation, any audio-visual communication must comply with the general advertising requirements prohibiting misleading advertising and unfair commercial practices.²⁷

ii **Digital switchover**

On 19 June 2013, the Government approved the national strategy for the transition from analogue terrestrial television to digital television and the implementation of multimedia digital services at national level, which was previously approved by the CNA on 14 May (the National Strategy).²⁸ In accordance with the international obligations assumed by the Romanian state, the transition should be finalised by 17 June 2015. As of this date, analogue transmissions will no longer be broadcast.

The digital switchover process should bring lower costs, higher transmission quality, both in terms of image and sound, an increased number of channels available to end users, improved mobile reception on mobile telephones or other devices (e.g., cars). The objective is to provide digital television services to 95 per cent of the population.

In order to implement the transition, four national digital multiplexes for digital terrestrial television in the UHF band and one in the VHF band shall be awarded by ANCOM via a national selection procedure.

One of the four multiplexes to be granted in the UHF band must comply with several requirements in relation to territorial coverage, population and technical conditions. This multiplex is to be implemented after 17 June 2015 and will have to ensure a national coverage of 90 per cent of the population and 80 per cent of the territory until 31 December 2016.

The National Radiocommunications Company which is currently operating the public television channels will implement a project to expand the current experiment of digital television in DVB-T standard to the national level. This project entails the use of

27 Law No. 158/2008 on misleading and comparative advertising, Law No. 363/2010 on unfair commercial practices.

28 Government Decision No. 403/2013 on the approval of the Strategy regarding the transition from analogue television to digital terrestrial television and the implementation of multimedia digital services at national level.

the frequencies allocated for the analogue network for the channel TVR 2, observing 'free to air' transmission requirements' under transparent and non-discriminatory economic conditions for public television channels.

The analogue transmission of the public TV channel TVR2 shall take place gradually at regional level, according to a timetable mutually agreed by the CNA, ANCOM and the National Radiocommunications Company. However, in order to ensure the continuity of broadcasting services, the transmission of the channel TVR 2 will not be interrupted for more than 20 days during the transition to the digital system.

ANCOM and the CNA will be responsible for supervising the transition process and for granting licences for frequency use in terrestrial digital system.

iii Internet-delivered video content

Although the degree of penetration of the IPTV technology on the Romanian market is still relatively low in the area of electronic communications, according to ANCOM, the number of subscribers for this technology increased in the first half of 2012 by 15.9 per cent, up to approximately 35,000.²⁹

However, since this technology depends on the internet infrastructure in Romania, users in certain areas of the country where internet coverage is as low as 9.16 per cent (according to the latest report published by ANCOM in 2012) may not benefit from this technology.

Apart from existing IPTV operators (Romtelecom, iNES, RCS&RDS), on 20 June 2013, the CNA approved the request filed by UPC (one of the largest cable operators in Romania) to be granted a retransmission authorisation for an IPTV network whereby more than 200 TV channels would be retransmitted via the internet.

iv Mobile services

In 2012 the growing demand for the MVNO business model caused ANCOM to elaborate in collaboration with industry representatives, the guidelines on the activities performed by MVNOs on the Romanian electronic communications market (the Guidelines). While the Guidelines do not have binding force, they provide useful information in relation to the general authorisation requirements, allocation of digital resources and methods for concluding interconnection agreements.

ANCOM recommends that negotiations in view of the conclusion for the first Interconnection Agreements between MVNOs and incumbent MNOs should not exceed six months, and three months for subsequent agreements.

MVNOs shall not be required to pay the charges related to spectrum use as they do not hold the right to use radio frequencies.

Following such developments, 17 providers of electronic communication services have expressed their interest to operate as MVNOs.³⁰ Moreover, following the 2012

29 According to the statistics included in the annual report of ANCOM for the year 2012, available at www.ancom.org.ro/uploads/links_files/Raport_Anual_final_site_5_iunie_2013.pdf.

30 Ibid.

Tender, three of the incumbent MNOs (Cosmote, RCS & RDS and 2K Telecom) undertook to host MVNOs. They are required to negotiate the interconnection agreement with MVNOs within six months and to ensure its implementation within four months of its execution, in order to allow the provision of electronic communication services.

VI THE YEAR IN REVIEW

According to the action plan set forth by ANCOM for 2013,³¹ its main priorities relate to the following areas:

- a* following the entry into force at the end of 2012 of the law regarding the regime of electronic communications network infrastructure, the development of: (1) an inventory of public electronic communications networks and of associated infrastructure elements; (2) a database detailing the conditions and contracts required to access state property; (3) a standard contract for access to private property in order to perform technical services on electronic communications networks;
- b* implementation of an online application comparing the communications offers available to end users and an online application measuring the technical quality parameters of internet services;
- c* amendments to the secondary legislation governing the procedure of authorisation for broadcasting audio-visual services and the issuance of licences for the use of radio spectrum and numbering resources;
- d* organisation of a public consultation in respect of the frequency bands which have not been awarded following the 2012 Tender;
- e* elaborating guidelines on the minimum content of distance contracts in the sector of electronic communications; and
- f* following the entry into force in March 2013 of the new law governing postal services, ANCOM will review the general authorisation regime for postal services. ANCOM will assess whether providers of postal services falling within the scope of universal services may be chosen following competitive mechanisms or alternatively, whether they will have to be designated by ANCOM.

As regards data protection in the light of the imminent entry into force of the new European Data Protection Regulation, it is expected that the proposed changes will cause significant public debates and reactions from the industry, especially from the IT sector, which is the most affected by the new legislative provisions that specifically target the online environment. The Regulation will impose sanctions of up to 2 per cent of an entity's worldwide turnover.

Since 2012, several IT companies have initiated lobbying actions both at national and European level under the umbrella of industry associations and professional organisations. Such courses of action will most likely continue throughout 2013 prior to the final form of the Regulation being adopted.

31 www.ancom.org.ro/en/plan-de-actiuni_119.

In relation to mergers and acquisitions, based on information available in the local press,³² Orange and Vodafone, the biggest operators on the local mobile communications market, seem to envisage a possible merger of their Romanian subsidiaries into a new infrastructure company, with a view to common development of their 4G mobile communications networks, as well as the optical fibre support infrastructure. While currently no official information has been disclosed, sources in the press seem to believe that the two companies have already notified the RCC regarding their intention, and that the project has also presented to the MCTI.

VII CONCLUSIONS AND OUTLOOK

After more than 10 years since ANCOM issued its first regulatory decision, the telecommunications sector has registered an increase of 75 per cent in the period 2003–2011, totalling €3.5 billion (approximately 2.6 per cent of Romania's gross domestic product).³³

While the Romanian market is yet to achieve the development shown by its west European neighbours, considerable efforts have been made in this sense both at regulatory and industry level. The same pattern will most likely be followed in the years to come in order to ensure that the market reaches its development potential and becomes a competitive environment in line with European standards.

32 www.zf.ro/business-hi-tech/alianta-surprinzatoare-orange-si-vodafone-isi-vor-dezvolta-in-comun-retelele-in-romania-concurenta-e-ok-dar-sa-nu-depaseasca-linia-de-atentie-11154395.

33 Such data was extracted from press articles describing the results presented by ANCOM during a press conference held in November 2012.

Appendix 1

ABOUT THE AUTHORS

COSMINA SIMION

DLA Piper

Cosmina is a senior associate with DLA Piper's Bucharest office, coordinating the intellectual property, media and technology practice, with over 10 years of professional experience.

She specialises in commercial law, with particular emphasis on intellectual property. She is constantly advising on issues relating to copyright and related rights, advertising and consumer protection, sponsorship, as well as any regulatory aspects related to media and technology. Cosmina also heads our data protection practice to include data management strategy, compliance and regulatory aspects at local level.

Cosmina has assisted a broad range of clients active in the IT, telecoms, media, financial and pharmaceutical sectors. Her client portfolio includes Publicis Groupe, Mondelez (formerly Kraft Foods), Romtelecom, DFG Corp, MIH Allegro, Teamnet International.

Cosmina is a licensed industrial property counsel with the Romanian State Office for Patents and Trademarks (trademarks and industrial designs) as well as a WIPO certified specialist in e-commerce and intellectual property.

Prior to joining DLA Piper, she acted as counsel in a US media group with operations in central and eastern Europe.

Cosmina authors numerous legal articles on various topics such as the new audio-visual content code, liability for content posted on the internet, social media and the protection of privacy.

LAURA LEANCĂ

DLA Piper

Laura is an associate with the intellectual property, media and technology practice of DLA Piper's office in Bucharest.

Since joining DLA Piper in 2010, Laura has specialised in intellectual property law. She advises numerous clients on trademark and copyright registration, licensing and infringement, as well as on the protection of IP rights in the context of e-commerce and new technologies (cloud computing, social media). Her clients include Publicis Groupe, Mondelez (formerly Kraft Foods), Romtelecom, DFG Corp, MIH Allegro, Teamnet International.

Laura has been extensively involved in various commercial matters ranging from drafting general commercial, franchising and outsourcing agreements to assisting clients on regulatory compliance issues regarding consumer protection, gambling, audio-visual and advertising law.

Laura has developed a considerable expertise in the area of data protection, with a focus on mediating the relationships between clients and regulatory authorities, compliance issues and strategy.

Her experience in the corporate sector includes advice on several mergers and acquisitions.

Laura is a graduate of the University of Bucharest and of the University Paris I Panthéon-Sorbonne. In 2010 Laura obtained an LLM in International Business Law from University College London and since 2012 she has been a WIPO-certified specialist in trademarks, designs and unfair competition.

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