

Chapter 22

Electronic communications

1. General

As part of the harmonization of the national legal framework with the *acquis communautaire*, as well as considering the liberalization of the Romanian communications market beginning with January 1st, 2003, pursuant to the dissolution of the monopoly held by Romtelecom (the former national fixed telephony operator), a new regulatory framework on electronic communications was issued, basically consisting in two frame enactments: GEO no. 79/2002 on communications framework, which completely repealed the previous regulation (Telecommunications Law no. 74/1996), and GO no. 34/2002 on the access to public electronic communications networks and to the associated infrastructure, as well as their interconnection. The main novelty of GEO no. 79/2002 consists in the new independent regulatory authority established thereby in the electronic communications field, the licensing regime for the activities regarding electronic communications services and networks and defining the specific rules governing competition on the electronic communications networks and services market. The new legal framework introduces the “electronic communications” concept, which exceeds the area covered by the “telecommunications” concept, including signal transport through wire, radio, optic fibers or other electromagnetic means.

For the implementation of the enactments mentioned above, secondary legislation was adopted, so that, by the end of year 2003, Romania was among the first countries in Europe that had implemented the most important enactments of the *acquis communautaire* in the electronic communications field.

As a result of the new incoming regulatory framework, the Romanian electronic communications market has developed at an accelerated pace becoming one of the most attractive fields for the foreign investors.

2. Main regulations

- Government Emergency Ordinance no. 79/2002 on the general regulatory framework for communications, as further amended and completed, (“GEO no. 79/2002”);
- Government Ordinance no. 34/2002 on the access to public electronic communications networks and to the associated infrastructure, as well as their interconnection, as further amended and completed, (“GO no. 34/2002”);
- Law no. 304/2003 on the universal service and users’ rights relating to the electronic communications networks and services (“Law no. 304/2003”);

- Government Decision no. 744/2003 on the organization and functioning of the Ministry of Communications and Information Technology, as further amended and completed, (“GD no. 744/2003”);
- Law no. 510/2004 on the reorganization of the General Inspectorate for Communications and Information Technology, as further amended and completed, (“Law no. 510/2004”).
- Government Emergency Ordinance 106/2008 on the establishment of the National Authority for Communications.. (“GEO no. 106/2008”)
- Government Emergency Ordinance no. 73/2007 on the establishment of the Agency for Information Society Services (“GEO no. 73/2007”)

3. Competent public authorities in electronic communications sector

3.1. The Regulatory Authority

Under GEO no. 79/2002 corroborated with GEO no. 106/2008, the National Authority for Communications (“NAC”) was established as public institution subordinated to the Government, entirely financed from extra-budgetary revenues, having the main role to put into operation the national policy in the electronic communications, radio frequency and information technology field.

NAC is organized as an independent regulatory authority in the electronic communications radio frequency and information technology field, and is bound to maintain its operational and financial independence towards the electronic communications networks and services providers, as well as towards the producers or the authorized representatives of the producers of equipment meant for the supply of electronic communications networks and services, the importers or suppliers of such equipment.

One of the main goals of NAC’s activity is to protect the rights and interests of users. To achieve this goal, NAC may take all steps necessary to ensure users maximum benefits from a competitive environment in terms of offer diversity, tariffs and service quality.

The main powers and duties of NAC are:

- a) implementing the sectorial electronic communications, audiovisual communications, radio equipments and electronic communication equipments, including from the stand point of electromagnetic compatibility, information technology and postal services, policies and strategies;
- b) assigning the numbering resources for electronic communications services by elaborating the National Numbering Plan, the radio frequency allocated from the governmental bandwidth and the perspective plans in this respect, and managing the same at national level;
- c) management and coordination at a national level of the radio frequencies, in accordance with the national table for allocation of frequency bands;
- d) drafting and adopting the national technical norms and standards, adopting the technical regulations that make the application of the international standards binding at national level;
- e) regulating activities within the electronic communications, audiovisual communications, information technology and postal services and numbering

resources sector, by adopting and implementing general and individual decisions, and controlling the implementation of such;

- f) acting as arbitrator and ruling authority in settling of disputes between networks providers and services in the electronic communications and information technology sector providers, in order to ensure free competition and protection of the user interests on such services markets.
- g) monitoring the fulfillment of essential requirements of electromagnetic capability and efficient use of radio spectrum.
- h) management at a national level of TLD (top level domain) and SLD (second level domain) “.eu” for domain names reserved by Romania;
- i) management of the radio spectrum by planning the awarding, allocation of frequency bands, assignment of radio frequencies for the purpose of rational use of such resources.
- j) supervision of radio equipment and network terminal equipment market, from an electromagnetic compatibility standpoint.

Under GEO no. 79/2002, authorized providers of electronic communications networks and services are bound to pay an annual monitoring tariff, calculated as a percentage of their aggregate turnover or of the incomes obtained from the electronic communications networks and services provision of each provider. This percentage is equal for all providers and is determined on an annual basis, according to the formula stipulated by the GEO no. 79/2002, yet not exceeding - 0,4%. In order to determine the monitoring tariff according to the formula provided by GEO no. 79/2002, the providers of electronic communication networks and services must submit with NAC a copy of their annual financial statements, within 5 days as of the expiration of term provided for their submission to the territorial divisions of the public finances.

The annual monitoring tariff owed by the providers is established by decision of the president of NAC until July 15 of the relevant year. NAC has to convey to each provider the decision which establishes the quantum of the monitoring tariff owed for the relevant year. The provider must pay the tariff in two equal installments until the end of the year, within the terms provided by GEO no. 79/2002.

3.2. Ministry of Communications and Information Technology

Certain regulatory powers are retained by the Ministry of Communications and Information Technology, (“MCIT”), which, in its capacity of specialized body of the central public administration in the field of communications and information technology, has, among others, the following main role and responsibilities:

- a) to define the strategic and tactical sector objectives, meant to ensure the planning, elaboration and implementation of the electronic communications policy, evaluation and control of the fulfillment of such policy;
- b) to define the normative and methodological regulatory framework necessary for the implementation of the sector policy, to ensure the harmonization of the national regulations with those of the European Union and to implement the *acquis communautaire* within the electronic communications sector;
- c) to ensure the communication with civil society structures and citizens, in order to substantiate the objectives and policies;

- d) to encourage local and regional development, as well as private sector development;
- e) to encourage international partnerships.

3.3. The Agency for Information Society Services

The Agency for Information Society Services (“AISS”), which replaces the former General Inspectorate for Communications and Technology, organized as an autonomous public institution with legal status and subordinated to the Government, entirely financed from extra-budgetary revenues, and having as main object of activity the supervising and control of the activities for specific areas in the electronic communications sector, is entrusted with the following main powers:

- a) develops and operates the e-governing System, Public Procurement Electronic system and the information technology system for the electronic award of international freight transport and for the awarding of national transportation routes;
- b) regulates the specific activities for the provision of governing services through electronic means;
- c) implements, coordinates and operates, information and communication systems at a national level, for the purpose of provision of services destined to governing through electronic means;
- d) forwards to the MCTI proposals for legal enactments for the improvement of the legislative framework in providing the public services through electronic means.

4. General authorization regime and licenses

4.1. General authorization regime

One of the major changes introduced by the new electronic communications regulatory framework is the deregulation of the electronic communications network and services provision, which shall now be performed under the general authorization regime. Individual licenses are only required for the use of radio electric frequencies and numbering resources. Any individual or legal entity intending to provide electronic communications networks or services must submit with NAC a written notification on its intention at least 7 days prior to starting its activity. NAC establishes and updates the standard form of such notification, comprising the information which any person intending to provide electronic communications networks or services is bound to communicate in order to benefit from a general authorization.

The person complying with the notification procedure within the term and under the conditions stipulated by GEO no. 79/2002 and is deemed as authorized to provide the types of networks or services indicated in the notification, and will have all the rights and obligations stipulated in the general authorization. Any modification of the data contained in the notification has to be communicated to NAC within 10 days.

The general authorization for the network and services types is drawn up and updated by NAC, which thereby establishes the conditions for their supply and determines the rights and obligations incumbent on the providers for each type of network or service. NAC may change the general authorization, by observing the objectivity and proportionality principles, only after undergoing the consulting procedure (see Section 10 of this chapter), and only if such a decision is necessary under an international treaty Romania is part in, or if the circumstances based on which the general authorization was issued have changed.

The individuals or legal entities authorized under GEO no. 79/2002 to operate public electronic communications networks or provide electronic communications services have the following rights:

- a) the right to negotiate and conclude access or interconnection agreements with any other authorized providers of public communications networks or electronic communications services, under the terms of GO no. 34/2002;
- b) the right to be appointed to provide any element of the universal service, either nationwide or in certain areas, as provided by the law.

Upon request or “ex officio”, NAC may issue, within maximum 7 days, a standard certificate attesting that a certain entity has sent a notification in accordance with GEO no. 79/2002, certificate which sets forth the terms under which such person enjoys the right of access to properties and the right to negotiate access or interconnection agreements.

Note that, the individuals or legal entities intending to provide electronic communication networks or services exclusively for personal requirements do not have the obligation to submit with NAC a written notification with respect to such intention. Nonetheless, such entities shall have the rights and obligations set out under the general authorization.

4.2. Licenses

As the radio electric frequencies and numbering resources are limited, belonging to the state public property, their use is allowed only after obtaining a license granted under such conditions which should ensure their efficient use. Where technically possible, and if the risk of producing disturbing interferences is reduced, MCIT may designate certain categories of frequencies for free use, subject to the general authorization regime with respect to access and use conditions.

Licenses for the use of radio electric frequencies, as well as licenses for the use of numbering resources are granted by NAC. Both the licenses for the use of radio electric frequencies and the licenses for the use of numbering resources are granted through an open, transparent and non-discriminating procedure, within at most 6 weeks, as the case may be, as of the receiving of a request in this respect, except for licenses for specific radio electric frequency bands (e.g. bands used by the 3rd generation mobile networks), that will be granted based on a procedure of competitive or comparative selection within at most 8 months as of the procedure initiation date.

The licenses shall establish the periods for which the right to use radio electric frequencies or the numbering resources is granted. The licenses to use radio electric frequencies or numbering resources may be assigned to a third party, authorized under GEO no. 79/2002, only with the prior approval of NAC, as the case may be, and only if all the obligations arising from such licenses are undertaken and observed, including the clauses referring to the license assignment. Any license assignment agreement failing to comply with the terms above is void.

5. Rules applicable to network and services providers having significant power on the market

A provider of electronic communications networks or services shall be deemed as having significant power on a certain market if, either individually, or together with other such providers, enjoy on that market a position equivalent to a dominant position.

A dominant position on a certain market is the position of a provider of electronic communications networks or services which enable the latter, to a significant extent, to have

an independent behavior as compared with its competitors, customers and consumers. Furthermore, if on a certain market there is only one provider of electronic communications networks or services, it is presumed that such provider has a significant power on that market.

According to GEO no. 79/2002, in case the regulations in force demand for certain obligations to be imposed, maintained, modified or withdrawn as a result of a market analysis, NAC shall determine whether real competition exists on the relevant market, based on such an analysis performed according to the provisions of the Regulation concerning the performance of market analysis and the determination of the significant power on the market, approved by the decision of NAC's President. In order to perform such market analysis NAC shall collaborate, as the case may be, with the Competition Council.

If, based on such market analysis, NAC finds that:

- a) on that relevant market real competition exists, NAC will not impose either of the above mentioned obligations or will withdraw the same, in case such restrictions exist;
- b) if, on that relevant market there is no real competition, then, based on the same regulation, NAC will identify the providers of electronic communications networks or services having significant power on the market, and will impose them the above mentioned restrictions, or will maintain or modify such restrictions, where they already exist.

Any measures for the withdrawal, imposing, maintaining or modification of certain obligations, further to a market analysis, may only be taken after undergoing the consulting procedure (see Section 10 of this chapter).

In enforcing these rules, GO no. 34/2002 determines the obligations to be imposed by NAC to operators considered as having significant power on a certain relevant market (see Section 7 of this chapter).

6. Rules on settling disputes between providers

In case of disputes between providers of electronic communications networks or services in connection with any obligations imposed by law, the interested party will notify NAC accordingly, in order to settle such litigation. NAC, in its position of arbitrator and decision-making body, will settle the dispute through conciliation or contentious procedure.

The conciliation is an optional procedure aiming at amicably settling the dispute. Therefore, in case the parties reach an understanding, the conciliation is finalized by a settlement concluded between the parties. If the parties do not wish to use such procedure or, although they have chosen this procedure, the dispute is not settled in 30 days as of NAC's notification, the dispute is settled through a contentious procedure.

Within the contentious procedure, NAC's president will issue a binding decision settling the dispute, within 4 months from the date when NAC was notified, except for exceptional cases, when a longer period is necessary for proper settlement of the case.

The decision of NAC's president may be challenged before the administrative panel of the Court of Appeal in Bucharest, within 30 days from its communication to the parties.

The conciliation and/or contentious procedure carried out before NAC are free of charges and optional. Therefore, in case of a dispute between the providers of electronic communications networks or services, the interested party may address directly to the court of justice in order to settle their dispute.

7. Access to and interconnection of the electronic communications networks and the related infrastructure

Providers of electronic communications services and electronic communications network operators are entitled to negotiate and enter into access or interconnection agreements between themselves.

Additionally, in order to ensure supply and efficient operation of the electronic communications services destined to the public use, any public communications network operator has:

- a) the right to negotiate an interconnection agreement with any other operator of a public communications network in order to provide electronic communications services to the public, including electronic communications services accessible to users through another public communications network interconnected with the network of any of the two operators;
- b) the obligation, upon request of a legally authorized third party, to negotiate an interconnection agreement with such party, for the provision of electronic communications services to the public, including electronic communications services accessible to users through another public communications network interconnected with the network of any of the parties.

GO no. 34/2002 establishes NAC's obligation of taking all the necessary steps to encourage and, where necessary, to ensure adequate access and interconnection, as well as interoperability of such services, being empowered to establish the conditions for enabling interconnection or access based on NAC's own initiative or, in case of disagreement between the parties, at the request of any of the parties.

Thus, NAC may impose operators deemed as having a significant power on a certain relevant market, one or several of the obligations below:

- a) transparency obligations with respect to the interconnection of the communications networks or the access to such networks or their associated infrastructure, which may involve publication of certain information such as technical requirements, network characteristics, accounting information and tariffs applied;
- b) non-discrimination obligations, regarding the terms imposed to third parties, as well as the information and services made available to the same;
- c) obligations for granting access to and use of specific elements of the network or of the related infrastructure, which could involve, *inter alia*, granting to a third party the right of access to specific elements of the network or to related infrastructure, including the unconditioned access to the local loop, the provision of collocation or any other forms of divided use of the premises/equipments, network interconnection etc.;
- d) obligations with reference to cost recovering or to the tariff control, including obligations of grounding the tariffs depending on costs and obligations related to bookkeeping for the supply of certain access or interconnection modalities;

- e) obligations to publish a reference offer for unconditional access to the local loop made of metal wires, optical fibers, coaxial cable, that may be imposed on the operator having significant power on the local loop supply market.

If, based on a market analysis, NAC establishes that, on a certain relevant market, real competition exists, NAC will withdraw or modify the obligations imposed.

8. Rights of access to properties

GEO no. 79/2002 establishes in article 22 the conditions whereby authorized providers of electronic communications networks may install, maintain, replace and remove any element of the electronic communications networks, including supports and other facilities necessary to support them, as well as the terminal points used to provide electronic communications services, above, in or under buildings. Separate conditions are established for public and private property.

Thus, the authorized providers have the right to perform the above-mentioned works with respect to real estate belonging to the state public property or the administrative-territorial units, in case the following conditions are cumulatively met:

- a) the exercise of this right is in line with the use or the public interest to which the real estates is destined;
- b) the works performance does not infringe the specific urbanism or territorial arrangement requirements or the environment, health or the public order protection;
- c) the conditions of exercising this right have been agreed by both parties, either through an authenticated contract or, in its absence, by court decision.

In case of private property, the following conditions have to be cumulatively fulfilled:

- a) such property should not be affected or should be affected to an insignificant extent by performing such works or, if another authorized electronic communications networks supplier already performed such works on the same property, the usage right over such property should not have been permanently affected by an additional restriction as a result of performing of such new works;
- b) the works performance does not infringe the specific urbanism or territory arrangement requirements or requirements regarding the environment, health or the public order protection;
- c) the conditions of exercising this right were agreed by both parties, either through an authenticated contract or, in its absence, by court decision.

9. Universal service principle and users protection

Under Law no. 304/2003, the universal service principle refers to the right of every Romanian end user to benefit from the services that are falling within the scope of universal service at a certain quality level, irrespective of its geographical location in the country, and at accessible tariffs.

The following services are falling within the scope of universal service:

- a) provision of the access to public telephone network, at a fixed location;
- b) directory enquiry services and making available the subscribers' directories;
- c) access to the public pay telephones.

For the services mentioned above at items a) and c) the universal services providers shall be designated by NAC's decision following a public auction, or exceptionally "ex officio". Secondary regulations adopted by NAC for the implementation of the universal service within the electronic communication field establish the conditions and the procedure for the designation of the universal services providers and the mechanism of compensating the net costs for the provision of such services.

Law no. 304/2003 also includes mandatory provisions for the protection of end users. According to said law, contracts between providers of electronic communications services and end users must be executed in writing and should include at least the following clauses, as the article 19 provides:

- a) the identification data of the provider;
- b) the services provided, the service quality levels offered and the duration of the initial connection;
- c) the types of maintenance and repair services offered;
- d) the prices and tariffs for each product or service covered by the contract and their computation, the methods for updating the information on the tariffs;
- e) the duration of the contract, the conditions for renewal or termination of the contract, the conditions for suspending the service;
- f) the liquidated damages in case of contract breach; and
- g) the procedure for settlement of disputes.

Should the provider be allowed to unilaterally modify the contract, it shall be liable to notify such intention to the end user at least 30 days prior to operating the amendment (irrespective of the modification). The end user is entitled to unilaterally withdraw from the contract, without paying the liquidated damages, in case of disagreement with the proposed amendments. The notification send by the relevant provider should expressly specify the right of the end user to unilaterally withdraw from the contract.

10. Consultation procedure

Every time NAC intends to adopt measures for the application of the GEO no. 79/2002 or the special legislation in the field of electronic communications, measures which may have a significant impact on the relevant market, NAC must observe the consultation procedure provided by the GEO no. 79/2002.

The procedure consists of NAC's obligation to publish the issue subject to consultation on its own web site. Within minimum 30 days, or, in case of measures to be urgently adopted, at least 10 days after the date of their publication on the Internet, any interested person may submit written comments.

A measure subject to the consultation procedure may not be adopted before the expiration of a 10-day period following the deadline for the comments submission. NAC must publish a synopsis of the comments so gathered, no later than on the date of publication on NAC's web site of the decision approving the relevant measure. The published material will also contain NAC's position as to the comments received on same issue.