

## Chapter 22

### Electronic Communications

#### 1. General

As part of the harmonisation of the national legal framework with the *acquis communautaire*, considering the liberalisation of the Romanian communications market from 1 January 2003, and given the transposition of Directive 2009/136/EC and Directive 2009/140/EC, the legal framework for electronic communications was renewed by Government Emergency Ordinance No. 111/2011 on electronic communications, which repealed and replaced all the past enactments which formed the legal framework of telecommunications.

The current legal framework is fully compliant with EU Directives on telecommunication services, and consequently, creates more rights for consumers in their relationship with telecommunication service providers. As a result of the old and new regulatory framework, the Romanian electronic communications market has developed at an accelerated pace, becoming one of the most attractive fields for foreign investors.

#### 2. Main Regulations

- Law No. 154/2012 regarding the electronic communication infrastructure regime (“**Law No.154/2012**”);
- Government Emergency Ordinance No. 111/2011 on electronic communications (“**GEO No. 111/2011**”);
- Government Decision No. 548/2013 on the organization and functioning of the Ministry of Communications and Information Society, as further amended and completed (“**GD No. 548/2013**”);
- Government Emergency Ordinance No. 22/2009 on the establishment of the National Authority for Management and Regulation in Communications, approved by Law. No. 113/2010 (“**GEO No. 22/2009**”);
- ANCOM Decision No. 987/2012 on the general authorisation regime for the provision of networks and electronic communication services (“**Decision No. 987/2012**”).

#### 3. Competent public authorities in the electronic communications sector

##### 3.1. The Regulatory Authority

Under GEO No. 22/2009, ANCOM was established as an independent public authority subordinated to the Parliament, entirely financed from its own revenues and tasked with putting into operation the national policy in the electronic communications, audio-visual communications and postal services fields, including by regulating the market and by technical regulation in these fields.

ANCOM is bound to maintain its operational and financial independence from (i) networks and electronic communications services providers, (ii) equipment manufacturers or their authorised representatives, as well as from (iii) the postal services providers.

The most important powers and duties of ANCOM are:

- (i) implementing sector-specific policies and strategies;
- (ii) managing limited resources such as radio spectrum and numbering resources;
- (iii) regulating activities within the electronic communications, audio-visual communications and postal services sectors, by adopting and implementing general and individual decisions;
- (iv) acting as a decision-making body in settling disputes between network providers and/or electronic communications service providers, in order to ensure free competition and the protection of users' interests on the markets of such services;
- (v) oversight of the radio and telecommunication equipment market.

ANCOM may request from the services providers any information which is necessary for the exercise of its prerogatives. Such requests must be formulated in writing and for grounded reasons, and must target information with a nature and in an amount proportional with the purpose for which the information was requested.

Under a general authorisation, service providers must pay an annual monitoring tariff, which represents a certain percentage, calculated in accordance with the law, of the service provider's annual turnover in the year previous to that for which it is due.

### **3.2. Ministry of Communications and Information Society**

Apart from ANCOM, certain regulatory powers are exercised by the Ministry of Communications and Information Society which, in accordance with GD No. 548/2013, is acting as a specialised body of the central public administration in the field of, *inter alia*, communications and information technology. The Ministry has the following main powers:

- (i) defining, coordinating and monitoring policies and strategies in the fields of electronic communications, postal services, information technology and information society;
- (ii) implementing European policies in the field of electronic communications, postal services, information technology and information society;
- (iii) endorsing draft enactments which are incident to the supervised domains;
- (iv) ensuring the institutional and legal framework for the complete liberalization of the electronic communications and postal services markets.

## **4. General authorization regime and licenses**

### **4.1. General authorization regime**

Electronic communications network and service provision is performed under a general authorization regime. Any individual or legal entity intending to provide electronic communications networks or services must submit to ANCOM a notification on its intent, at the latest on the day it begins its activity. ANCOM establishes and updates the standard form of such notification, comprised of the information any person intending to provide electronic communications networks or services is bound to communicate in order to benefit from a general authorization.

A person complying with the notification procedure within the term and under the conditions stipulated by GEO No. 111/2011 and the Decision No. 987/2012 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.

A general authorization for the network and service types is drawn up and updated by ANCOM, 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. ANCOM may change the general authorization, by observing objectivity and proportionality principles, only after undergoing a consultation procedure (see Section 10 of this chapter), and only if such a decision is necessary under an international treaty to which Romania is party, or if the circumstances in which the general authorization was issued have changed.

Individuals or legal entities authorized under GEO No. 111/2011 and Decision No. 987/2012 to operate public electronic communications networks or provide electronic communications services have the following rights:

#### **4.1.1. Provision of electronic communications networks**

A provider of public electronic communications networks has the right to make its network available only to a third party who is authorised to provide electronic communications networks or services, or to a third party authorised according to specific legislation in the audio-visual field.

A provider of private electronic communications networks has the right to connect as an end-user to a public electronic communications network, using a connection means agreed upon together with the provider of public electronic communications network.

#### **4.1.2. Provision of electronic communications services**

A provider of publicly available electronic communications services may therefore use a network of a third provider of public electronic communications networks, upon the approval of such third provider, with such provider's consent and if the respective network allows, from a technical point of view, the provision of the electronic communications service.

#### **4.1.3. Access right to properties**

A provider of electronic communications networks may install, maintain, replace, or move any element of the network, including stands and other facilities necessary for their support, as well as terminal points used for the provision of electronic communications services on, over, in or under buildings which are public or

private property, as the case may be, in accordance with the legal provisions regulating access rights to properties.

#### **4.1.4. Access and interconnection**

A provider of public electronic communications networks or of publicly available electronic communications services may negotiate and conclude access or interconnection agreements under the conditions set out by GEO No.111/2011

#### **4.1.5. Designation as a Universal Service provider**

A provider of public electronic communications networks or of publicly available electronic communications services has the right to be designated to provide any services within the scope of Universal Service over the entire national territory, or over regions of national territory, in accordance with the provisions under Chapter VI of GEO No.111/2011.

#### **4.1.6. Adjacent rights**

A provider of publicly available electronic communications services has the right to publish subscribers' directories containing identification data and telephone numbers of subscribers, in written, electronic or in any other form, with the observance of the provisions of Law no. 677/2001 on Data Protection.

A provider of publicly available telephone services has the right to provide directory enquiry services and customer service. ANCOM issues and transmits to the applicant, within a maximum of 7 days from the date of notification, a standard certificate (i) attesting that such an applicant has sent the notification in accordance with ANCOM Decision No. 987/2012, and that it benefits from the right to supply the types of electronic communications networks and services indicated within the notification, and (ii) which sets forth the terms under which such a person enjoys right of access to properties, and the right to negotiate access or interconnection agreements.

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

## **4.2. Licenses**

As radio electric frequencies and numbering resources are limited, belonging to the state as public property, their use is allowed only after obtaining a license granted under such conditions which ensure their efficient use. Where technically possible, and if the risk of producing disturbing interference is reduced, ANCOM 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 ANCOM. Both licenses for the use of radio electric frequencies and licenses for the use of numbering resources are granted through an open, objective, transparent, non-discriminating and proportional procedure, within at most 6 weeks from the receipt of a request in this respect, except for licenses for specific radio electric frequency bands (e.g. bands used by 3<sup>rd</sup> generation mobile networks),

which are granted based on a procedure of competitive or comparative selection. The licenses establish the periods for which the right to use radio electric frequencies or 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. 111/2011 and Decision No. 987/2012, only with the prior approval of ANCOM, 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 null and void.

#### **4. Rules applicable to network and services providers having significant power on the market**

A provider of electronic communications networks or services is deemed as having significant power in a certain market if, either individually, or together with other providers, it has on that market a position equivalent to a dominant position.

A dominant position in a certain market enables a provider of electronic communications networks or services, to a significant extent, to have independent behaviour as compared to its competitors, customers and consumers. Furthermore, if in a certain market there is only one provider of electronic communications networks or services, it is presumed that such a provider has significant power on that market.

According to GEO No. 111/2011, in case the regulations in force demand for certain obligations to be imposed, maintained, modified or withdrawn as a result of a market analysis, ANCOM determines whether real competition exists on the relevant market, based on an analysis performed according to the provisions of the Regulation concerning the performance of market analysis, and the determination of significant power on the market, approved by a decision of ANCOM's President. In order to perform such a market analysis ANCOM collaborates, as the case may be, with the Competition Council.

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

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

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

In enforcing these rules, GEO No. 111/2011 determines the obligations to be imposed by ANCOM to operators considered as having significant power in a certain relevant market (see Section 7 of this chapter).

#### **5. 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 notifies ANCOM accordingly, in order to settle such

litigation. ANCOM, in its position of arbitrator and decision-making body, settles the dispute through a jurisdiction-administrative procedure.

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

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

The administrative procedure carried out before ANCOM is free of charges and is optional. Therefore, in a case of a dispute between the providers of electronic communications networks or services, the interested parties may address directly to the court of justice in order to settle their dispute.

## **6. Access to and interconnection of the electronic communications networks and related infrastructure**

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

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

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

GEO No. 111/2011 establishes ANCOM's obligation to take all necessary steps to encourage and, where necessary, ensure adequate access and interconnection, as well as interoperability of such services, exercising its attributes so as to promote economic efficiency, sustainable competition, efficient investment and innovation and to ensure the maximization of end users' benefits.

Thus, ANCOM may impose on operators deemed to have significant power on a certain relevant market, one or several of the obligations below:

- (i) transparency obligations with respect to the interconnection of communication networks or access to such networks or their associated infrastructure, which may involve publication of certain information such as technical requirements, network characteristics, accounting information and applied tariffs;

- (ii) non-discrimination obligations, regarding the terms imposed to third parties, as well as the information and services made available to the same;
- (iii) obligations for granting access to, and use of, specific elements of the network, or of 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 unconditional access to the local loop, the provision of collocation or any other forms of divided use of the premises/equipments, network interconnection etc.;
- (iv) obligations with reference to cost recovery or to tariff control, including obligations of grounding tariffs depending on costs and obligations related to bookkeeping, for the supply of certain access or interconnection modalities.

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

#### **7. Rights of access to properties**

Law No. 154/2012 establishes the conditions whereby authorized providers of electronic communication networks may install, maintain, replace and remove any element of the electronic communication networks, including supports and other facilities necessary to support them.

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

- (i) the exercise of this right is in line with the use or the public interest to which the real estate is destined;
- (ii) the performance of works does not infringe the specific requirements of urbanism or territorial arrangements, construction quality requirements or the environment, health or public order protection;

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

- (i) the right of use of the 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 right of use over such a property should not be permanently affected by an additional restriction as a result of performing such new works;
- (ii) the performance of works does not infringe specific urbanism or territory arrangement requirements, or requirements regarding the environment, health or public order protection;
- (iii) the conditions of exercising this right were agreed by both parties, either through an authenticated contract or, in its absence, by a court decision.

The provisions of Law No. 154/2012 do not apply to electronic communication networks and to infrastructure elements owned or administrated by public institutions or authorities from the system of national security, public order and national security.

### **8. Universal service principle and users protection**

Under GEO No. 111/2011, the universal service principle refers to the right of every Romanian end user to benefit from services that fall within the scope of universal service at a certain quality level, irrespective of their geographical location in the country, and for accessible tariffs.

The following services fall within the scope of universal service:

- (i) provision of access to the public telephone network, at a fixed location;
- (ii) directory enquiry services and the availability of subscribers' directories;
- (iii) access to public pay telephones.

For the services mentioned above the universal services providers are designated by ANCOM's decision following a public auction, or exceptionally "ex officio". Secondary regulations adopted by ANCOM for the implementation of universal service within the electronic communication field establishes the conditions and procedure for the designation of universal services providers, and the mechanism of compensation of the net costs for the provision of such services.

GEO No. 111/2011 also includes mandatory provisions for the protection of end users. According to Chapter V of the said law, contracts between providers of electronic communication services and end users must be executed in a clear, intelligible and easy to understand form, and should include at least the following clauses:

- (i) the identification data of the provider;
- (ii) the services provided;
- (iii) in case of contracts concluded for the provision of public telephony services, the option for the subscriber to include or not their personal data in databases, in view of receiving information about services regarding subscribers and subscribers registers;
- (iv) prices and tariffs for each contracted service or package of services and, if applicable, the price of each product contracted with the service, the means of applying such fees, modalities by means of which updated information on all applicable tariffs may be obtained, ways of performing the payment, and an indication of whether there are any cost differences due to different methods of payment;
- (v) the duration of the contract, the conditions for renewal or termination of the contract, the conditions for suspension of the service;
- (vi) the applicable damages and the modality to grant such damages, in case the agreed quality levels and other contractual clauses are not observed;
- (vii) the procedure for dispute settlement; and

- (viii) the measures that may be taken by the provider in case of security breaches, treats or vulnerabilities in relation to the provision of the network or services.

Should the provider be allowed to unilaterally modify the contract, it must notify such an intention to the end user at least 30 days prior to operating the amendment. 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 sent by the relevant provider should expressly specify the right of the end user to unilaterally withdraw from the contract.

## **9. Consultation procedure**

When ANCOM intends to adopt measures for the application of the GEO No. 111/2011 or special legislation in the field of electronic communications, measures which may have a significant impact on the relevant market, ANCOM must follow the consultation procedure provided for by the GEO No. 111/2011.

The procedure consists of ANCOM's obligation to publish the issue subject to consultation on its own web site. Any interested person may submit written comments within a minimum of 30 days, or, in case of measures to be urgently adopted, in a shorter term, but not less than 10 days as of the date of their publication on the Internet.

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