4th Global Symposium for Regulators (Geneva, 2003)

Promoting Universal Access to ICTs

Other Documents

Note: The documents of this seminar were numbered sequentially regardless of type of document. This PDF includes only *other documents*.

For more information about the complete set of documents for the event, consult the "List of Documents" that follows.

List of Documents - Global Symposium for Regulators (Geneva, 2003)

SPEECHES

Language	Title	Author / Speaker
English	Opening Ceremony: Keynote Speech by ITU Secretary-General	Yoshio Utsumi, ITU Secretary-General
English	Remarks to the 2003 Global Symposium for Regulators	Muna Nijem, CEO Telecommunications Regulatory Commission, Jordan
English	Opening Remarks by Director of BDT	Hamadoun I. Touré, BDT Director
English	Opening Ceremony: Keynote Speech by Director of OFCOM	Marc Furrer, Director OFCOM, Switzerland

PRESENTATIONS

Language	Doc. No.	Title	Author / Speaker
English	4	Filling the Market Efficiency Gap: Lessons Learned from the Mobile Sector & How to Identify the True Access Gap	Sonja Oestmann, Intelecon Research & Consultancy Ltd.
English	7	Bhutan a Case Study: On the Use of VoWLANs for Rural Communications	Tensin Tobgyl, ITU
English	13	How does one Connect Rural India?	Ashok Jhunjhunwala, Indian Institute of Technology Madras, India
English	14	Universal Access & Universal Service: an Overview	Mandlesilo Msimang
Français	16	Promotion des TICs au Mali	Modibo Camara, Directeur, Comité de Régulation des Télécommunications, Mali
English	19	The Wireless Revolution and Universal Access	Michael L. Best, Georgia Tech, Harvard, MIT
English	22	Universal Service Funds and Minimum Subsidy Competitive Auctions	Edgardo Sepúlveda, McCarthy Tétrault LLP
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English	28	Telecom Dispute Resolution	Hank Intven, McCarthy Tétrault, Canada / Robert Bruce, Debevoise & Plimpton, UK
English	32	Mini-Case Studies in Latin America	Gustavo Tamayo, Jose Lloreda Camacho & Co, Colombia
English	33	Market Reform: A Tool for Achieving Universal Access	Kathleen Q. Abernathy, FCC
English	34	GSR - Chairperson's Closing Remarks	Muna Nijem, CEO Telecommunications Regulatory Commission, Jordan
English	35	GSR - BDT Director's Closing Remarks	Hamadoun I. Touré, BDT/ITU
Français	36	Des principes à la pratique: la couverture mobile des zones blanches en France	Audrey Baudrier, Autorité de régulation des télécommunications, France

DOCUMENTS

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English Français Español	3	Trends in Telecommunication Reform 2003 - Promoting Universal Access to ICTs - Practical Tools for Regulators (Executive summary)	ITU
English	5	Dispute Resolution in the Telecommunications Sector: Current Practices and Future Directions - Discussion Paper	ITU; World Bank
English Français Español	6	Dispute Resolution in the Telecommunications Sector: Current Practices and Future Directions - Discussion Paper (Executive Summary)	ITU; World Bank
English Français Español	8	Interconnection Dispute Resolution Mini Case Study: Botswana	ITU
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English	30	Information Document: DRAFT: Colombia Mini-Case Study: Implementing Capacity-based Interconnection Charges	ITU
English Français Español	31	GSR 2003 - Universal Access Regulatory Best Practices	Muna Nijem, GSR 2003 Chairperson

OTHER DOCUMENTS

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English	15	Information Society for Illiterate & Poor People: Too-Applications, Services, Problems and Solutions	Dr. Chowdary, Center for Telecom Management and Studies, India
English	17	Universal Access: The Role of Satellites	Ahmed Toumi, ITSO
English	20	Report on Dispute Resolution Settlement Procedures	ECC/CEPT
English Français Español	21	Guidelines for the Implementation of Innovatory Solutions Regarding Management and Funding of Universal Access/Service Policies	ITU - Study Group 1

INTERNATIONAL TELECOMMUNICATION UNION
TELECOMMUNICATION DEVELOPMENT BUREAU

Document: 15

GLOBAL SYMPOSIUM FOR REGULATORS
Geneva, Switzerland, 8-9 December 2003

DOCUMENT FOR INFORMATION

INFORMATION SOCIETY FOR ILLITERATE & POOR PEOPLE TOO- APPLICATIONS, SERVICES, PROBLEMS AND SOLUTIONS

Dr. Chowdary,
Center for Telecom Management and Studies, India

Information Society for Illiterate & Poor People too - Applications, Services, Problems and Solutions

By

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*Talk At **World Summit on Information Society**, at Geneva*
17th - 28th Feb 2003

India & Telecoms @ a glance

Area	: 3.3 m Km^2
Population	: 1,015 mil.
GDP	: (PPP) $ 1,100 bil.
Pop. below poverty line	: 30%
Literacy	: 65%

India & Telecoms @ a glance (2)

ixed I/c WLL	**:**	**40.0 m**
Growing @	**:**	**8.0 m p.a**
obiles	**:**	**10.0 m**
Growing @	**:**	**9.0 m p.a**
nternet Subs.	**:**	**3.8 m**
nternet Users	**:**	**35.0 m**

Information & Knowledge

- Information & Knowledge are resources that enrich & empower & so must be available to all, to avoid disparity, instability, strife.
- Internet is repository for elctronified/digitised information storage, exchange and retrieval.
- *Telecoms must be ubiquitous, broad-band, affordable, reliable*
- *Internet must be accessible to all and affordable to many.*

India & ICTs

- 30% people below poverty line
- 35% people are illiterate
- 4000 cities/towns; >600,000 villages
- Telephones reaching all (no Missing Link) through 1.2 mil Public Telephones (PTs); half in villages
- A self employed,educated, attendant remunerated by a commission on collections from usage helps illiterates
- 30% of telecom revenues come from PTs!

ICT for Classes, Governance & Masses Empowerment & Infomatisation

- Broadband telecoms, Soft-ware Technology Parks (STPs); ITES centers - commercially viable; State facilitation
- Outcome > 8000 software companies; 600,000 professionals
- $ 8.00 bln. Exports in 2002-'03
- ($ 50 bln by 2008 & $ 30 bln. ITES)

ICT for E-Governance

- Improving efficiency,economy, effectiveness, transparency & responsiveness; simple interface with citizens
- G2C government services to citizens and interaction
- Eg: Andhra Pradesh ; E-Seva, CARD, FAST, C-COPS, SMART-Gov; E-Procurement
  E-Seva: > 30 services,
  all together from any of the centers
  (118 towns + 5000 villages → Addl. 24,000)

ICT for Masses

- 72% of Indians are rural; literacy < 60%
- Per capita income : 1/3 to 1/5 of Urban people
- Poor infrastructure: roads, electricity, drinking water, heath services- a great divide.
- ICT to give information on all affairs- livelihood, education, entitlements, opportunities communication with sons far off...

Telecom Infrastructure

Optical Fiber Intercity (Route Km)

BSNL	Reliance	other P-Telcos	Rail Tel*	PGCL
326,000	60,000	40,000	60,000	20,000

* under construction

Digital Microwave	UHF	Analogue Transmission Media (coaxial & radio)
110,000	45,000	53,000

What Needs Doing (begun)

- Public Telephones being upgraded into public Internet kiosks # DSL; WLL & VSAT
- Attendants - trained for PC Skills
- G2C Services; E-Mail; Fax; IP Telephony
- Information Search & Presentation - Agriculture, health, markets, Government Schemes for farmers, small industries; school/college admissions; Tele - health/medical consultation...

Problems

- Content and language
- Cost of Dial-up Access (2 to 3 time Internet usage cost)
- Bandwidth & Reliability- Poorer as we go further from cities
- Capex for upgrade & Opex Subsidies - Universal Access Fund
- Electrical Power-unreliable, part of the day
- Cost of PC & other ICT Appliances
- Proprietary Software

Solution: Public Policies (1)

- National & Regional Consultative Councils for rapid diffusion of ICT in all regions, among all sections of people
- Rapid rise in literacy,education, computer sills, to diminish digital divide
- ICT for Masses as Mission Activity
- Extensive Public Discourse- None to be “left out”, “dropped”

Solution: Public Policies (2)

- Cost/ Expense Reductions (I/e Open Source software)
- Government Funding for Applications and content development (eg: Singapore, Canada)
- Public Internet kiosks & subsidies

Solution: Public Policies (3)

- Computer skills as part of education
- Telecom coverage index (like broadcasting / TV) X% of territory; y% of Pop.
- Spread Mobile Radio infrastructure/net work coverage

India's Aspiration (1)

Aanoh bhadraah ritavo yaantu viswatah

(Let noble thoughts come from all quarters of the world)

Vasudhaiva kutumbakam

(The whole world is one family)

Lokaah samastaah sukhino bhavantu

(Let all the peoples be comfortable)

Krinvato vishwamaaryam

(Let us make the whole world noble)

and to realise these aspirations

India's Aspiration (2)

Om! Sahanaavavatu; Sahanau Bhunaktu

(May we protect <u>together;</u> enjoy <u>together</u>)

Sahaveeryam Karavaavahaih

(May we perform valourous deeds <u>together)</u>

Maa Vidvishaavahaih

(May we not hate any)

Om! Tejaswinaavadheetamastu

(May what we learn be brilliant)

Om! Shantih, shantih, shantih

(Peace on earth, peace on the seas, peace in the skies)

THANK YOU

INTERNATIONAL TELECOMMUNICATION UNION
TELECOMMUNICATION DEVELOPMENT BUREAU

Document: 17

GLOBAL SYMPOSIUM FOR REGULATORS
Geneva, Switzerland, 8-9 December 2003

DOCUMENT FOR INFORMATION

UNIVERSAL ACCESS: THE ROLE OF SATELLITES

Ahmed Toumi
Director General and CEO, ITSO

GLOBAL SYMPOSIUM FOR REGULATORS

UNIVERSAL ACCESS: THE ROLE OF SATELLITES

SPEAKING NOTES

BY AHMED TOUMI [1], DIRECTOR GENERAL AND CEO, ITSO

THE CONCEPT

Universal service and universal access are concepts which have in recent years become important issues in the telecommunications sector. This is a direct result of measures to liberalise the telecommunications markets, a movement which gained a greater impetus during the decade of the 90's. In a monopolistic environment the telecommunications organizations offered some kind of universal service or universal access (thus fulfilling a government social obligation) as a trade off for the protection received from their respective governments. As liberalisation progressed the incentives for the traditional monopolistic telecommunications operators to fulfil this social obligation diminish. Governments were then faced with a situation where they had a social obligation of ensuring access to basic telecommunications to its populations but their power to impose such an obligation was becoming slimmer and slimmer.

As a result, the definitions of universal service and universal access as well as the ways in which this should be achieved took on a different meaning and became a politically more strategic and important issue for governments. In fact they had not only to find ways to encourage operators to continue to assist government in fulfilling the social obligation of providing service to as many people as possible at as affordable a rate as possible, but also had to find new ways in which to finance or get funding for such measures. Thus they started a process of providing for this new situation, and national and regional legislation started including specific provisions in relation to the provision, management and funding of such policies. Universal service was generally defined as the offer of basic telephony services to all citizens at the same price irrespective of their location in the country and universal access as the offer of access to basic telephony services to all citizens within a reasonable distance. Mechanisms ranging from separate subsidies to funding mechanisms, to local, rural or national tenders, were put in place to

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[1] Mr. Ahmed Toumi is currently the Director General and Chief Executive Officer of ITSO, the International Telecommunications Satellite Organisation. Prior to holding this position, Mr. Toumi has served in various senior managerial and engineering positions with the Ministry of Posts and Telecommunications of Morocco. In this context he was member of the Task High Level Committee that conducted the liberalization and privatisation of the Telecommunications sector in Morocco. He was also mayor of a city in Morocco.

provide for financing of universal service/universal access obligations[2] so that the burden of provision be shared between the players in the industry rather than placed on one operator.

EVOLUTION OF THE CONCEPT

The creation of the "Information Society" has been for sometime in the forefront of the political debate in countries around the world. Developments in technology and services have and are revolutionising access to information and the ability to process that information when accessed.

However, this is also generating debate about the risks of creating or expanding the gap between information 'haves' and 'have-nots': a considerable portion of society could be marginalized by its inability to access information available to the majority over information networks (the so called "digital divide").

In the United Nations Millennium Declaration,[3] Heads of State and Government expressed *their belief that the central challenge faced today is to ensure that globalisation becomes a positive force for all the world's people*, and resolved *"to ensure that the benefits of new technologies, especially information and communication technologies …are available to all".*

The challenge of bridging the "digital divide" has rapidly become a common goal of individuals, companies, countries, regions and international organizations. Different activities regularly confirm the firm commitment of all those who are involved to pursue the ambitious goal of making the benefits of technology universally accessible, i.e. to as many people as possible, as soon as possible and at as a low cost as possible.

Important to note is also the forthcoming World Summit on Information Society (WSIS)[4], which in its Draft Declaration of Principles recognises the need 'to *build a people-centred, inclusive and development oriented Information Society, <u>where everyone can create, access, utilize and share information and knowledge</u>…*

In the same document it is also recognized that:"*<u>Connectivity is a central enabling agent in building the Information Society"</u>*,

and that:

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[2] Possible mechanisms include the creation of a Universal Service/Access Fund to which all players contribute or the utilisation of the State budget, the former being the most commonly used.

[3] Res. A/RES/55/2, adopted 18.9.2000

[4] All the underlining are our responsibility

Universal, ubiquitous, equitable and affordable access to ICT infrastructure and services, including access to energy, and postal services, constitutes one of the challenges of the Information Society and should be an objective of all stakeholders involved in building it, [in conformity with the domestic legislation of each country]."

Even more important is that the Draft Declaration of Principles recognises that:

"*A well-developed information and communication network infrastructure and applications, adapted to regional, national and local conditions, easily-accessible and affordable, and making greater use of broadband and other innovative technologies where possible, can accelerate the social and economic progress of countries, and the well-being of all individuals, communities and peoples.*"

It is against this background that the debate about the scope of universal service/universal access is evolving. Governments are now considering as a social obligation not only the access to basic telephony services but also access to Internet services which will allow full use of ICT applications like e-learning, e-health, e-education….For example, the European Union in the recent approved legislative framework for the telecommunications sector included in the definition of universal service **the access at an appropriate bit rate to the Internet**[5]. The tendency is that this access will be considered as an integral part of universal service/universal access.

The question is what is an appropriate bit rate?

Here again we have to see what kind of applications are considered as a catalyser for digital inclusion. ICT applications are important tools in this context and as such one of the main focus of the international community is to provide solutions for proper and universal access to these applications. In this context broadband plays an important role (as recognized in the WSIS Draft Declaration of Principles and in the WSIS Draft Action Plan)

In conclusion, the concepts of universal service/universal access are evolving. Technological evolution has brought possibilities of accessing ICT applications which are regarded as a tool to combat the so called digital divide. Governments see as a social obligation the provision of access to the Internet at an appropriate rate so that its population can enjoy access to applications which they consider as crucial in the fight for digital inclusion and the need for partnerships to fund such access. Broadband plays a vital role in this context.

[5] Article 4.b, Directive 2002/22/EC, 7 March

THE ROLE OF SATELLITES

Compared to cable solutions, satellite technology offers the advantages of ubiquitous coverage, point-to-multipoint transmission capabilities, seamless transmission, independence from terrestrial infrastructure and rapid deployment. Thus, satellite technology could, on an affordable and timely basis, bring broadband (high speed) Internet services to developing countries and to rural and remote areas in developed countries where terrestrial infrastructure is largely non-existent or its rollout is prohibitive.

The satellite industry already has considerable resources and potential to provide universal broadband services. Unfortunately, although over 200 commercial satellites in geostationary orbit cover the entire planet –that is more than one satellite per country (there are 189 ITU member countries) – over half the global population has never used a telephone. It is important to note that over 69 countries accounting for more than 60% of the world population currently depend on satellites for their domestic and international telecommunication services.

It is in this context that the Global Universal Service Initiative was presented.

THE GLOBAL UNIVERSAL SERVICE INITIATIVE

"Satellite technology is poised to dramatically lower the price of high-speed internet services to the developing world and rural areas," under an initiative championed by the Director General of the International Telecommunications Satellite Organization (ITSO) for international broadband (high-speed internet) satellite services in preparation for the upcoming WSIS.

The global universal service initiative accelerates the implementation of these low-cost internet services – particularly in developing countries and rural areas where the so-called "digital divide" exists -- through an innovative public-private partnership. This initiative is modeled on the phenomenally successful gsm (digital mobile system) cellular market in Europe, in which a single technical standard allows manufacturers to achieve economies of scale and thus shrink the price of the equipment, combined with significantly relaxed national licensing rules that led to the explosion of the cellular market in Europe. Like the European cellular model, the satellite broadband initiative advocates the adoption of harmonized radio frequency bands among countries, a universal technical standard for user terminals and a minimal, yet still pro-competitive, regulatory environment.

The broadband initiative focuses on overcoming three main obstacles to lowering the prices of Internet services. The first obstacle is that high-speed Internet user terminals

currently are expensive because they traditionally are based on proprietary standards that are an impediment to the economies of scale required for mass production and lower-cost equipment. Second, the frequency spectrum and geostationary orbital slots for Fixed Satellite Services (FSS) currently are not available for use by inexpensive terminals accessing broadband services because almost all frequency bands are being used by large terminals (earth stations) coexisting with the terrestrial stations. As technology progresses, it may be timely to reallocate some of these resources in a more efficient manner. Third, the regulations and national rules governing "bandwidth" or satellite transmission capacity can be costly to comply with. In addition to contending with lengthy and complex international regulations to access spectrum and orbital resources, satellite operators also face many administrative and regulatory hurdles to gain access to domestic markets. Restrictions on user terminals, including utilization taxes and fees, complex and costly equipment approval procedures and reluctance to use the so-called network "head-end" or "Gateway" stations located outside the national territory -- just to mention a few -- are imposed by national governments on operators, equipment manufacturers and service providers.

The broadband initiative requires the cooperation of the governments to develop, much as they did with the GSM cellular technology, an attractive regulatory framework. This would require, specifically, the following two primary government actions. First, governments can accomplish this by identifying appropriate technical frequency bands and satellite orbital locations able to ensure global coverage, suitable for the provision of high-speed Internet services. Currently there is a significant amount of spectrum still unused. Second, governments need to establish a harmonized and minimal satellite telecommunications regulatory framework that promotes competition and broadband services. Such a framework should positively address key issues related to "landing rights" for satellite operators, licensing, fair competition, system-interoperability and government support, whenever the markets fail, to meet the needs for specific populations.

This initiative calls for the private sector to undertake the following in exchange for the opportunity to access prime frequency bands and orbital locations for the provision of high-speed Internet services to small-dish, low-cost user terminals, and access to a harmonized global regulatory market. First, the private sector should be encouraged to agree, on a voluntary basis, to adopt a universal technical standard for user terminals to access high-speed Internet service. This standard would facilitate mass production of simple, low-cost terminals. Second, the private sector should agree to use the new orbital locations and spectrum resources identified for the global broadband satellite services, exclusively to provide broadband services in conformity to with the universal technical standard specifications. Third, the private satellite operators should ensure the interoperability – the ability for the user to switch among broadband satellite systems, as well as guarantee the efficient and economic use of the frequency spectrum.

The broadband satellite initiative is a model that offers commercial and regulatory incentives to bring low-cost, high-speed Internet access to developing countries and rural markets. In conjunction with this model, the upcoming WSIS Summit meeting presents an historic the opportunity of to encourage governments to formally recognize the provision, on a global basis, of satellite high-speed Internet services through individual or community, low-cost, terminals (VSAT).

Since this Initiative was presented significant developments took place:

1. The ITU Radiocommunications Assembly in June 2003 approved a new Question (269/4), which requests the ITU-R to initiate the technical work that will facilitate the timely implementation of the Initiative. Question (269/4) has been referred to ITU-R Study Group 4 (the Fixed Satellite Services study group), and the results of this group's analysis will be ready in time for the second phase of the WSIS (Tunis, 2005).

2. The World Radiocommunications Conference (WRC03), also in June 2003, decided to introduce in the agenda for the forthcoming Conference (WRC07) point 1.19 *"to consider the results of the ITU-R studies regarding spectrum requirement for global broadband satellite systems in order to identify possible global harmonized FSS frequency bands for the use of Internet applications, and consider the appropriate regulatory/technical provisions . . .."*.

3. In the context of the preparations for the WSIS, and as a result of the wide support from the international community for the Initiative, proper references have been introduced in the draft Declaration of Principles and in the Draft Action Plan.

CONCLUSION

The concepts of universal service/universal access are evolving. Affordable access to Internet at an appropriate bit rate is now seen as a fundamental element of a universal service/universal access offer. The determination of an appropriate bit rate is essential for access to ICT applications which are seen as a way of achieving digital inclusion. Broadband is essential in this context. Satellite can become an important delivery mechanism. The global universal service initiative constitutes a unique opportunity of achieving mass access to the Information Society.

Documents of the Global Symposium for Regulators (GSR)

8 – 9 December 2003 – Geneva, Switzerland

Document No. 20

ECC Report 43: Dispute Resolution Settlement Procedures
Bornholm, October 2003

Electronic Communications Committee (ECC) within the European Conference of Postal and Telecommunications Administrations (CEPT)

Electronic Communications Committee (ECC)
within the European Conference of Postal and Telecommunications Administrations (CEPT)

DISPUTE RESOLUTION SETTLEMENT PROCEDURES

Bornholm, October 2003

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1 INTRODUCTION

1.1 Objectives

The number and complexity of interconnection disputes in many CEPT countries is likely to increase as an outcome of the current market developments based on digital convergence, globalisation, technological inventions, and national legislation governing liberalisation processes.
In addition, the new EU Framework Directive[1], reduces the time limit for dispute resolution from six to four months, and, at the same time, adds classes of disputes under the NRA responsibility. This implies that many of the CEPT countries will reorganise their dispute resolution processes.

The purpose of this report is to provide the regulatory bodies in CEPT countries with both general information regarding disputes and resolution settlement procedures, and country specific information concerning arrangements in other CEPT countries. This in order to promote greater understanding, and to facilitate further discussions regarding dispute resolution settlement procedures (DRSP).

As a result of the study and the discussions within APRII, this report is a first step towards further work on this regulatory issue in ECC in order to promote a clearer view of the complexity of DRSP. The next step will involve a developed analysis of the mechanisms and conditions of an effective DRSP and on the basis of "best current practice" will seek to establish some general guidelines or recommendations.

1.2 Background and scope

The regulatory tool to limit the number of disputes relating to interconnection and access to network, and the cost of disputes through *ex-ante* regulation by modification of the allocation of property rights, restricting the incumbent's control on essential resources, might be a limited tool of regulation especially in a dynamic environment. Current allocation of property rights is constrained by past investments and past regulations. It is likely that the future profound and rapid changes in the environment of interconnection agreements will increase the requirement for *ex-post* regulation and place interconnection Dispute Settlement Procedures more in the focus of the regulatory process. ECC PT4 APRII restarted work in 2002 on a study initiated by the former European Telecommunications Office (ETO) concerning Dispute Settlement Procedures, as disputes regarding interconnection arrangements were thought to be of increased interest. A new questionnaire was developed and sent out in 2002. Twenty-five CEPT countries have responded to the combined questionnaires (the former ETO and the new APRII questionnaire).

The country specific information concerning details of the dispute resolution processes in twenty-six CEPT countries, in the second part of this report, reflects the situation as it stood on the 8th of July 2003. The accuracy of the information concerning the individual national arrangements has been ensured by a consultation process engaging the CEPT Administrations during June-August 2003.

This report addresses dispute resolution procedures from the view of the governmental organisations, the national regulator or the ministry which handles the interconnection disputes between actors on the market. However, the views of the Industry concerning DRSP are highly considered and referred to. The discussions are to some extent based on the unusual nature of the interconnection relationship in the telecommunications industry. However, in the light of the new EU Framework Directive, disputes that are related to other issues are also, to some extent, discussed.

[1] Directive 2002/21/EC of the European Parliament and of the Council, Articles 20 and 21.

Part I. Disputes and Resolution Settlement Procedures in General

2 THE LEGAL FRAMEWORKS

The tools of liberalisation of the telecommunications market are sector-specific rules and competition law. The sector specific regulations are aimed at managing the complexity, and contradictions, of competitive and social objectives. Interconnection agreements might be affected by sector specific law and, as any contract between private entities, depend on commercial law. This duality of reference laws does not pre-assume an incompatibility between "general" and "specific" laws. However, interpretations of these two systems might be contradictory and affected by the asymmetry of information and the rationality of agents.

A dispute handled in a national court, or an international court as a last instance will, besides sector-specific rules and competition law, also involve national and international commercial and administrative laws. The various legislative regimes that in some cases are involved in a DRSP create complexity and the outcome may be difficult to predict.

A dispute settlement may involve one or more of the following legal regimes:

- Commercial law, private contractual law,
- Competition law,
- Public law,
- Telecommunications law,
- Sector-specific regulation,
- Consumer Protection law,
- Intellectual Property law,
- Administrative law,
- International law.

3 THE ROLE OF THE NATIONAL REGULATOR AND OTHER CIVIL BODIES

One of the features of the National Regulatory Authorities (NRAs) is the combination of powers that are usually kept separate: the regulatory function assigned to it implies that it can hold very diverse prerogatives, which range from determining generally applicable rules to controlling and sanctioning powers, including decision-making to settle disputes. Their original concept lies, on the one hand, in the fact that they are sectorial authority within the scope of regulating network industries and, on the other hand, in the fact that they have regulatory, sanctioning and arbitration powers.

In the telecommunications field, in addition to the common law regulation of competition entrusted to the Competition Council, the NRAs' have been entrusted with the task of technical and organisational regulation of the telecommunications market. In particular, the NRA may deal with cases related to refusal of interconnection, failure in commercial negotiations or a dispute regarding the conclusion or performance of an agreement for interconnection or access to a telecommunications network due to failure in agreement of either party, in accordance with EU regulation and national telecommunication laws. This specific possibility to regulate interconnection disputes between private operators allows the NRAs to create a subjective interconnection regulation to benefit those competing with the historic operator. This new form of legal regulation provides the possibility to permanently adapt the interconnection regulatory scope, as the NRAs set the aims of their strategy to favour development of the market by means of individual decisions.

"As a general rule, for regulation to be appropriate it should deliver appreciable benefits to end-users over the status quo through stimulating competition in a way that will deliver more choice for customers and/or provide greater opportunity for competitors to drive down prices. It should be designed to achieve these outcomes in a way which does not undermine prospects for development of sustainable competition in the long term."[2]

[2] Adapted from Oftel, U.K, communicated on its webpage.

4 THE NATURE OF DISPUTES

4.1 The fundamental factors

A dispute arises because of perceived differences in *interest* resulting from the *power* of the parties involved, as a combination of internal resources and external circumstances, and *rights*, legal frameworks such as contractual laws or sector specific regulation. An unpredictable environment, caused by factors such as changes of the legitimate interests of the parties, new entrants on the market, unfamiliarity with the universal business culture, or business practice in the area, or information imbalances will create an uncertainty (of the *interest* as well as the *rights* and *power)* which increase the chances for disputes. An increase in knowledge and predictability of the contracting environment will, at the same time, reduce the possibility of disputes emerging. Where the balance of *power* is equal, parties are more likely to reach a resolution via commercial negotiation. Either *rights* or *power* may be reframed in order to satisfy an *interest* and settle the dispute.

4.2 Interconnection disputes

Interconnection is generally analysed in economic literature as a simple problem of pricing network access. This point of view is justified by the fact that these charges often represent close to 50% of the new entrants' costs. What is primarily important is not the normative efficiency of access rules per se, but the costs of evaluating and enforcing access rules (pricing and non-pricing rules). This means that the higher the evaluation and implementation costs of individual rights, the more the transfer of these rights between competitors will generate significant disputes. In the case of interconnection, these costs are particularly high when exchanges concern the transfer of rights of use on essential infrastructures, which cannot be duplicated by the new entrants.

If the economic theory of transaction cost is applied to interconnection it follows that: *The more important the expected incumbent's private opportunity cost, the higher the contracting cost will be with regard to integration (other transaction attributes being given).*

The interconnection relationship in telecommunications is unusual in that incentives to contract are weak, or asymmetric as between incumbent and entrants, because interconnected operators are both partners and competitors.

The interconnection is a contractual hazard[3], and the interdependence between market players is prone to various disputes. The investment for shared use of essential facilities cannot be duplicated and will lose value if they are not used with these essential values. The interdependence between different market players might be very asymmetric, as between new entrants and incumbent. The incumbent controls the essential facilities, which are needed by the entrants to raise the value of his investment. After the contract is established, there will be an increased balance in dependence, as the behaviour of each party affects the quality of service of the other. The negotiation of contracts is more likely to end in disputes than the implementation of the contract.

The allocation network functioning costs among the different services are complex and the uncertainty opens the door to opportunistic behaviour. The incumbent has an incentive to prolong interconnection delays, to postpone competition and increase the entry cost for new entrants. Both incumbent and entrants may use delays as a strategy for extracting a larger share of joint profits. Another incentive for disputes is the value of transaction related information and the competitive advantage this information, gained by the dispute, might provide.

4.3 Anti-competitive behaviour

An abuse of the principle of non-discrimination[4] might be a time-consuming issue as it often involves several operators, or service providers. The dispute implies the abuse of one of the following two different constraints.

i) Requirements on operators[5] to propose contracts to new entrants whose terms and conditions are equivalent to those applied to internal transactions with their own units or subsidiaries.

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[3] "Contractual hazards occur because incumbents' property rights to essential facilities are not well delimited under frequent environmental change. Moreover, property rights enforcement problems emerge because each party's contribution to the joint value is difficult to measure. Contractual hazard may also be generated by *ex-ante* costs of delays and *ex-post* long time responsiveness in the coordination process. In addition, sharing information in order to reduce transaction costs is of strategic value on the horizontal dimension. Finally, even if one party detects opportunistic behavior of the other one, it cannot switch to another partner without high costs due to transactions -specific investments". (Chaves 1999).

[4] Interconnection Directive European Commission (97/33/EC).

[5] *Operator identified as SMP (Significant Market Power) or other definitions, often the incumbent.*

A dispute concerning this constraint is particularly complex to investigate. The NRA might encounter great difficulties in checking internal transfers, even if obligated operators must provide an accounting separation. Not only is there the problem that the operator could hide information from the NRA, and from new entrants, the information, with a sufficient degree of precision, might not even be known by the operator.

In fact, integration and partnership agreements allow the operator to limit his costs for measuring rights transferred internally in relation to costs for measurement which he must incur in order to transfer these rights externally.

ii) Requirements on operators to offer equivalent contractual terms and conditions to all new entrants for equivalent interconnection services.

Disputes concerning these constraints will probably be easier to investigate, as the information is in fact available in all interconnection agreements signed by SMP operators and submitted to the NRA.

Complicated disputes may also occur outside the interconnection requirements, based on anti-competitive behaviour where, for example, suppliers alone or jointly engage in anti-competitive cross-subsidisation; using information obtained from competitors with anti-competitive results; and not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which is necessary for them to provide services.

4.4 Obligations on operators

The open telecommunications market and the entry of new competitors are facilitated by cost oriented prices on access to the networks. In order to secure access rights to basic telecommunications for everyone, the operators may be submitted to additional regulation. The incumbent is frequently obligated to provide access to basic telecommunications, universal services or number portability. However, what is considered to constitute universal services may change as the "information society" develops and there might be an increase in the number of operators that will be obligated by the NRA to provide different kinds of services. Other operators than the incumbent, such as operators identified to possess SMP, that traditionally have not been required to carry out these services could find themselves with a new obligation that has to be financed. This might cause a rise in the number and complexity of disputes between the NRA and operators/service providers.

4.5 Cross-border disputes

Cross-border disputes create complex issues based on the differences in the national laws and jurisdictions involved. An interconnection agreement concerning cross-border interconnection is commercially complex and in addition to the usual parameters included in an agreement based on a national setting might require specifications of: the currency of tariffing and settlement; details concerning congestion and network management, such as the operational language and different procedures depending on the different countries and networks involved. This commercial complexity combined with the different regulatory requirements and other different legislation involved may generate incentives for disputes.

"Disputes may arise e.g. regarding to which licensing/authorisation category a requesting company from Member State A belongs if the national interconnection regulation in Member State B differs between categories of interconnecting companies and accordingly between terms and conditions for interconnection." [6]

See also "5.1 Cross-border disputes under the new EU framework".

4.6 Disputes involving consumers/end-users

Disputes might also be initiated by customer complains concerning operators/service providers' unfair contract terms, access to services etc. Disputes concerning consumer rights are in general not referred to in the discussions concerning DRSP in the telecommunications sector. Consumer protection in terms of transparent and sound procedures for complaints, independent mandates for consumer commissioners etc might be found under the authority of other national institutions concerning consumer protection in general and not the NRAs.

4.7 Licence, authorisation or registration

Disputes arising from a failure to comply with the licence conditions may involve a large number of stakeholders, such as end users, other operators and the NRA.

[6] Report from European Telecommunications Platform Cross Border Interconnect Working Group. ETP(99)084. Draft Issue 1-11 June 1999.

4.8 Radio Spectrum Disputes

Disputes could arise from issues regarding radio frequency allocation and usage, such as access to radio spectrum based networks or services, or from interference to radio spectrum networks or services. Investigations involving disputes concerning radio spectrum are likely to be very resource intensive, as involvement of technical compatibility tests or monitoring could be required.

Radio spectrum disputes might be expected to arise more frequently owing to the introduction of market mechanisms, such as spectrum trading, especially combined with the liberalisation of licence conditions to allow more flexibility in spectrum use.

"Due to the fact that radio spectrum disputes are likely to be complex issues about interference or spectrum use compatibility, it may be that disputes about radio spectrum are not suited to ADR."[7]

5 IMPACT OF THE NEW EUROPEAN UNION REGULATORY FRAMEWORK

The new EU Framework Directives allow National Regulatory Authorities to refuse to determine disputes if Alternative Dispute Resolution (ADR) mechanisms are available. Therefore, in general, it might be possible for the EU Member States to assess the following: the NRA will decline to adjudicate disputes between operators which are not dominant and will encourage them to use some form of ADR.

The EU Framework Directive requires that market reviews must be carried out, in most cases, before regulation is imposed, and that regulation is only to be imposed where the market is not effectively competitive, i.e. where at least one operator has Significant Market Power.[8] In addition, the Framework Directive obligates the NRAs to resolve disputes within the shortest possible timeframe and within a maximum of four months (apart from exceptional circumstances). However, the EU Directives are expected to bring other challenges with regard to dispute resolution. The number of disputes dealt with under the new EU Regulatory Framework is expected to increase, as the new directive broadens the scope of dispute resolution beyond that of the previous Interconnection Directive[9] from 1997. This broadening of scope extends to involve disputes concerning rights to use radio spectrum.

5.1 Cross-border disputes under the new EU framework

Article 21, of the EU Framework Directive states the following concerning the resolution of cross-border disputes:

"1. In the event of a cross-border dispute arising under this Directive or the Specific Directives between parties in different Member States, where the dispute lies within the competence of national regulatory authorities from more than one Member State, the procedure set out in paragraphs 2, 3 and 4 shall be applicable.

2. Any party may refer the dispute to the national regulatory authorities concerned. The national regulatory authorities shall co-ordinate their efforts in order to bring about a resolution of the dispute, in accordance with the objectives set out in Article 8. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives.

3. Member States may make provision for national regulatory authorities jointly to decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8. They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party seeking redress, and if either party requests it, the national regulatory authorities shall co-ordinate their efforts in order to bring about a resolution of the dispute, in accordance with the provisions set out in Article 8.

4. The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts."

5.1.1 Definition of a cross-border dispute

There are two important elements in the text of article 21 to help define the cross-border nature of a dispute:

i) The dispute must lie within the competence of NRAs from more than one Member State, which means that where one single NRA can settle the problem (e.g. when a foreign operator is licensed in this Member State), article 21 shall not apply. The fact that the litigation occurs between two companies originating from different States is not sufficient.

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[7] *Dispute resolution under the new EU Directives. A consultation by Oftel and the Radiocommunications Agency. Oftel. 4 November 2002. London.*

[8] See European Commission guidelines on market analysis and the assessment of significant market power (2002/C 165/0) and recommendation on relevant product and service markets (2003/311/EC).

[9] Directive 97/33/EC of the European Parliament and of the Council.

ii) Paragraph 2 allows the involved parties to refer the dispute to both NRAs concerned. It seems that "concerned" should be taken as a synonym of "competent" mentioned in paragraph 1. Since the text does not specify on which grounds the competence is based (territoriality, nationality of the company), one must conclude that the solution of referring the case to both NRAs was adopted to deal with situations where there is an ambiguity about the competence.

5.1.2 Qualification of the dispute

In order to achieve efficient co-operation between the NRAs, some legal prerequisites must be clarified. One of them is the qualification of the dispute, which stems from the legal qualification of the relations between operators. In the case of an interconnection agreement, most probably the contract will be of a commercial nature (as opposed to civil law). A common understanding of this qualification is important to allow NRAs to apply similar rules when cooperating. The nature of the settlement decision taken by the NRA, on the other hand, is crucial for determining the right appeal procedure against this decision. Almost all countries consider the settlement decision as an administrative one, pursuant to general administrative laws or sector-specific laws, or a combination of both.

5.1.3 Co-operation between NRAs during the investigation phase

Co-operation is an obligation stemming from article 21, paragraph 2.

In any dispute settlement action, the NRA receives a complaint describing, in sufficient details, the reasons for the dispute. The NRA must then carry out a verification of the facts, that leads first to the acceptance (or the refusal) of the complaint, and then to the forming of an opinion on the compliance of the defendant with the provisions of the directives and national regulations. Hearings may complement the investigation. This procedure is roughly similar in all Member States, as shown by the 2001 survey.

In the case of a cross-border dispute, the plaintiff will communicate the grounds for its complaint to both NRAs concerned, and the collection of information will normally necessitate investigations in the two countries. When doing so, the two NRAs would have to define jointly what information is relevant, and which further investigations are needed (auditing of accounts, for instance), and would exchange the collected data.

5.1.4 The resolution of the dispute and the enforcement of the decision

To envisage the settlement of a cross-border dispute, several options are open:

i) Joint competence of both NRAs, which would result in setting up procedures to achieve common deliberations on the cases.

ii) Competence of only one NRA, if article 21 of the EU new framework directive is interpreted as creating a mere obligation of co-operation, leaving the final decision to one NRA. The question is to decide which of the NRAs is competent the NRA of the plaintiff's country or the NRA of the defendant's country.

This question is linked to the problem of enforcement of the decision.

The binding nature of the decision, envisaged in both cases, might imply legal difficulties. If the decision is a joint one, will it be considered as two identical national decisions or as a new kind of decision? If the decision is made by one NRA only, how can it produce effects in another country?

5.1.5 Right of appeal

The right of appeal against NRAs' decisions is clearly enshrined in the Framework Directive. There is no reason to except cross-border dispute settlement decisions from this general right.

The results of the appeal procedures are not dealt with in the Directive. Given the tight relationship between the process of a cross-border dispute settlement and the exercise of the right of appeal, it is necessary to study the different issues raised by appeals, in order to propose a coherent solution.

6 THE DIFFERENT MARKET SITUATIONS IN CEPT COUNTRIES

6.1 Competitive markets in CEPT countries - Members of the European Union

Interconnection is vital to effective competition in the telecommunications market. The European Union Interconnection Directive,[10] which has been in operation since 1st January 1998, was aimed to secure a harmonised framework for interconnection based on reciprocal rights and obligations.

The Interconnection Directive required Member States to impose rights to obtain and obligations to provide interconnection on operators and service providers. Organisations with significant market power are subject to additional obligations. The incumbent operator is required to meet all reasonable access requests from other operators. Additionally, the incumbent operator is required to offer access at points other than the network termination, points available to everyone, and to offer cost-orientated rates for interconnection. Interconnection should be offered on a non-discriminatory and transparent basis in European Union.

This EU Directive had a fundamental impact on the telecommunications market in EU countries.

The former EU Interconnection Directive created basic conditions for competition on the market to emerge. The new EU framework, which entered into force on 24 April 2002, [11] is more focused on competition law and analyses of the market[12]. The regulatory constraints will be limited to areas where the market fails to provide effective competition.

The EU Member States were obligated to implement the new directives at midnight of the 24 July 2003, 15 months after entry into force, and one of the most difficult issues is the implementation of the directives into the various legal cultures of the Member States. This is highlighted in legal terms by the differences between EU countries with a civil code and those with a common law system, and the different traditions of public administrative law. Even where the sector-specific regulation directives are duly implemented there will still be a difference of terminology and interpretation between the national sector-specific regulation and national competition laws concerning market regulation issues.

6.2 Partly competitive markets in CEPT countries – European Union Enlargement or non EU Members

These countries are in the middle of the liberalisation process. The requirements for consistency concerning the EU regulation throughout Europe demand a rapid regulatory process, via the former EU interconnection directive to the new EU framework[13]. These countries will have to face all the challenges of the EU countries and resolve the complex regulatory processes, in an extremely short time frame. The regulatory processes and the market developments will be at various stages, in different countries, at the same time. In addition, the frequent changes in the legal framework might create uncertainty for the market players and increase the numbers of disputes.

6.3 *Monopolistic markets in CEPT countries - Non European Union Members*

The liberalisation processes take place in the telecommunications sector globally, and several CEPT countries outside the EU have started the regulatory process towards a competitive telecommunications market. The independent NRAs[14] emerge as new governmental organisations in order to handle the process towards the liberalised market. The decisions of and the procedures used by regulators shall be impartial with respect to all market players.

The liberalisation process will be more unpredictable as globalisation and the impact from regulation and market pressure from competitive markets will increase.

In some of the CEPT markets the future telecommunications developments will be more predictable and to a greater extent follow the traditional jurisdiction, and remain, somewhat, monopolistic during a period of time. However, the globalisation of the markets will have an increased impact.

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[10] Interconnection Directive (97/33/EC). The proposed changes were to be in place by 31 December 1997.

[11] *Publication in the Official Journal of the European Community*

[12] See the European Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services. Brussels 2002

[13] Information concerning the implementation in future EU countries, by Mr Peter Scott, Head of Unit in DG Information Society, European Commission, at the ECTA Regulatory Conference, in Brussels December 2002.

[14] *The WTO Reference Paper on regulatory principles, which is aimed to clarify and amplify some of the basic principles of the GATS, defines an independent regulator as a body that is separated from, and not accountable to, any supplier of basic telecommunications services.*

7 THE MARKET EVOLUTION - THE CONVERGENCE

In the light of convergence[15] the sector-specific regulation relating to other sectors, particularly broadcasting and media, may cause jurisdictional complexity in the telecommunications sector. As more and more telecommunications organisations operate in related markets, traditionally regulated under different regimes, the potential for conflict of regulatory measures becomes greater thereby complicating any dispute resolution process.

The nature of conflicts is changing as the market develops. Some issues, such as cost allocation and the number of interconnection points are less considered, whereas questions relative to performance standards, to information exchange procedures, to direct measures of quality and to the nature of *ex-post* dispute resolution devices to be implemented become more and more important.[16]

In the context of rapid technological and regulatory changes, the property rights of the incumbent are necessarily defined with little precision. The *ex-ante* regulation in a dynamic market environment is a limited tool of regulation as the current allocation of property rights is constrained by past investment and past regulation. This might raise the contracting costs, and create opportunities for operators to increase their engagement in lobbying of the regulators and seeking more "privacy" in the dispute resolution processes.

"In some circumstances, it is possible that a dispute between the parties, particularly one which involves matters of interpretation of their obligations, can be resolved by means of lobbying to an appropriate person within the government or regulatory regime for their view. The government views may be powerful and result in a resolution of the dispute but one disadvantage is that the parties may lose control over the process if the dispute becomes of particular political interest."[17]

It is likely that the future profound and rapid changes in the environment of interconnection agreements will increase the requirement for *ex-post* regulation and place interconnection Disputes Settlement Procedures more in the focus of the regulatory process.

8 THE PUBLIC INTEREST AND PRIVATE SECTOR CONCERNS

NRAs are required to act in the public interest to secure adequate interconnection services for the ultimate benefit of telecommunications users, and the interconnection disputes will fall to NRAs to resolve. The NRA intervenes in the unappreciable dynamic market and in order to obtain the aimed results different legislation might be applicable.

The industry expresses in general strong concerns regarding variations in national legislation. The harmonised European Union telecommunications sector theoretically deals with the same principles throughout the European Union, but in reality these are interpreted slightly differently in each Member State under the principle of subsidiarity. In addition, the different substantive rules in the different national sector specific rules and the competition rules may create an unclear situation. Overlapping responsibilities between the different national regulatory authorities, and differences between national legislation may complicate the dispute resolution processes and create an unpredictable environment for market players.

"Clear, predictable, and transparent legal rules on jurisdiction are crucial to the growth of electronic commerce on a global scale. Without jurisdictional rules that make sense for businesses, growth of electronic commerce will encounter legal barriers and retard economic benefits to all societies. Equally important is the issue of consumer protection and remedy mechanisms that are critical to build consumer confidence in using the electronic medium for purchasing goods and services."[18]

A detailed definition of a successful dispute resolution process might differ between the various actors involved. However, all organisations active in the telecommunications sector would probably be able to express an opinion with regard to the following requirements for any dispute resolution mechanism:[19]

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[15] See the European Commissions Green paper on convergence between the telecommunication, media and IT sector and the implication for regulation, COM (97) 623 final, 03.12.97.

[16] Inventory of Procedures for Interconnection Disputes: Sweden, Great Britain and the United States. De Vlaam, de Bruijn & Heuvelhof. School of Systems Engineering, Policy Analysis and Management, of Delft University of Technology.1997.

[17] *Page 40. Interconnection Disputes Settlements in the European Telecommunications Industry and its effects on the European Institutions and Regulatory Environment. ETP WG/DR-Final Version. Report 2000. ETP(00)030.*

[18] Global Business Dialogue on Electronic Commerce (GBDe), Jurisdiction, September 13th 1999.

[19] *See page 2 of the BIAC, Annual Report 1996; "The BIAC and OECD".*

1. Time: A solution should be found in a very short timeframe, sometimes within a few weeks. Uncertainty affects investment decisions and delay increases the cost.

2. Effectiveness: Solutions must operate within commercial and regulatory constraints. The solutions should be fair and independent, comprehensible and predictable.

3. Expert knowledge: The problems posed by the operation of a telecommunications service or infrastructure are sufficiently specific to require deep knowledge of technical, economic, financial, regulatory, and legal issues on the part of the dispute resolvers, particularly judges, arbitrators, and mediators. Dispute resolvers should be familiar with the basic understanding of telecommunications technologies systems and operations.

4. Confidentiality: For various reasons, parties may wish to keep the fact that they are in dispute, and the details of that dispute, private and confidential, especially if it concerns trade secrets or price-sensitive information.

5. Cost: The administrative cost involved in resolving a dispute through arbitration or ADR is in general below the cost of conventional proceedings regarding the governmental budget. However, an ADR process might be more costly than conventional proceedings such as DRSP or court case concerning the other parties involved.

9 METHODS FOR DISPUTE AVOIDANCE - DISPUTE PREVENTION

It might be that both the industry and the public interest, represented by NRAs, are often of the same opinion: the ideal situation is to avoid disputes entirely[20].

The best way to handle dispute resolution within the telecommunications industry is to avoid disputes arising in the first place. That can sometimes be a question of luck, but more often it is a matter of careful planning at the outset of any project. Time invested at the beginning in identifying possible areas of dispute and creating systems to help avoid or minimise those disputes is time well spent. Anyone who has been through a dispute process will be aware that even the most efficient methods of dispute resolution are expensive and often take up considerable management resources (especially that most valuable resource - time).

9.1 Anticipating Contract Guidelines

If a contract clearly designates the rights and obligations of the parties, then there is less scope for disagreement to arise in the course of a project. Particular attention should be given to deadlines and timing generally as well as the criteria for measuring the performance of particular obligations, especially where the performance of an obligation gives rise to a corresponding obligation on the part of another party, for example, payment. When drafting any clause in a contract that requires another party to perform a particular obligation, attention should always be given to the possible scenarios if something goes wrong. Creative thinking about what might then happen can enable the parties to pre-empt such disputes and provide for what to do in the event of problems arising in the contract itself, thereby avoiding the need to resort to any method of dispute resolution.

9.2 Partnering

Partnering is not a dispute resolution procedure but a dispute prevention process through which business associates redefine their working relationship in the contractual documentation so that, as far as possible, they collaborate as a team rather than work solely in what they may see as their own separate interests.

A partnering process is intended to help parties involved in major projects or high-stakes business relationships to establish working relations based on open communication, teamwork, shared risks and rewards and collaborative decision-making. While the goal of a partnering relationship is that business should be conducted in a way that maximises efficiency, harmony, and quality, "partners" also recognise that disputes are inevitable in any working relationship. Thus, the partnering process also encourages agreement over innovative and efficient ways to resolve conflict. Partnering seeks to resolve such conflicts as quickly, amicably and creatively as possible so that business can continue.

The partnering agreement is generally distinct and separate from the business contract although the latter may have some collaborative aspect. The partnering agreement should state:

- what the partnering relationship hopes to achieve in terms of behavioural attitudes to matters such as improved project cost, programme and quality, teamwork, and open communication;
- a time-frame and process for selecting a neutral facilitator;

[20] See "Inventory of Dispute Resolution Mechanisms: What are the choices for the telecommunications sector?" ETP (98)107, Brussels 1998.

- a dispute resolution procedure complementary to the business contract; and
- site and time-frame for participation in a partnering "retreat" and who will participate in the retreat.

9.3 Facilitator

In addition to offering independence and neutrality, the facilitator should be an expert in group dynamics and team building, and should have knowledge of the industry involved. Therefore, in a telecommunications project, he or she should understand the industry.

Like a mediator, the facilitator should not express opinions on the issues being discussed or suggest solutions. He or she is there to promote respect, trust and innovative thinking so that the participants themselves can take decisions that are in the common interests of the team and that promote the goals of the project.

10 ALTERNATIVE DISPUTE RESOLUTION TECHNIQUES

When a genuine disagreement arises between the parties, then it is often helpful to resort to methods of alternative dispute resolution (ADR), at least in the first instance before resorting to a binding adversarial method of dispute resolution such as litigation or arbitration.

ADR techniques are designed to ensure that the parties can continue to work together notwithstanding the fact that they are in dispute. This is particularly the case with disputes arising in the course of the project such as a long-term infrastructure project. Some of the more common methods are described below.

10.1 Arbitration[21]

Arbitration is a private alternative to court litigation. It is a binding dispute resolution procedure in which a tribunal issues a ruling known as an award. The parties are often represented by lawyers who argue their clients' cases before the tribunal which may comprise a single arbitrator or a panel of arbitrators, usually three. The arbitrators are often appointed by the parties themselves and may be chosen for their particular expertise, often legal or technical. The tribunal is expected to behave "judicially" and will determine the rights and liabilities of the parties on the issues put to it, in accordance with "natural justice" principles.

Parties usually choose to go to arbitration by placing an arbitration clause in their contract: The effect of such a clause, if valid, is to take the substantive dispute out of the courts' jurisdiction. Arbitration is of particular importance in the international context, since arbitral awards are enforceable in a large number of different countries under the provisions of the New York Convention.

10.2 Expert Determination[22]

Expert determination is a voluntary process in which a neutral third party, who is usually an expert in the field in which the dispute arises, gives a binding determination on the issues in dispute.

A dispute may be referred to expert determination either by means of a term in a pre-existing agreement or on an ad hoc basis. Unlike an arbitrator, an expert has no obligation to act judicially, although he or she must act fairly. The expert is often asked to resolve key issues of fact, rather than to determine the parties' legal rights and liabilities. The expert's decision is generally able to challenge only on very limited grounds. Unlike in arbitration, an expert's decision is not enforceable under any treaty.

10.3 Management review

This technique involves the parties putting their claims before a panel of senior members of management of each party (usually those who have been nominated by agreement before the dispute has arisen) to see if the dispute can be resolved amicably by management.

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[21] Definition based on ETP (00)030 Annex D
[22] *Definition based on (00)030 Annex D*

10.4 Facilitated negotiation

A neutral facilitator may be brought in from outside the project to help the parties to try and resolve their dispute. In the classic understanding of what a facilitator is, he is not normally someone who will evaluate the strength of the parties' position but rather it would be somebody who will attempt to focus on the interests of the parties. Where the parties have engaged in a partnering process, the facilitator will already be known to the parties and will be an integral part of the project team. Where a wholly independent person is brought in to try to solve a particular dispute which has arisen, he will generally be acting as mediator.

10.5 Mediation

Mediation is negotiation facilitated by the introduction into the dispute of a neutral intermediary. Two or more parties meet with a neutral third party, who guides the negotiation process, advising and listening to all sides, and helps the parties arrive at a settlement. Unless or until encapsulated in a formal agreement, a mediated settlement is non-binding. If any party to the dispute is not satisfied with the outcome, that party may opt not to sign a settlement agreement and may proceed to another form of dispute resolution procedure.

Mediation can be tailored to a specific situation, the process is private and confidential and, since the goal of mediation is problem-solving, it is often successful in preserving working relationships. In general, except perhaps in the USA and some European countries, ADR is in practice equated with mediation.

Mediation is one of the most informal dispute resolution procedures. The process is completely flexible and negotiable by the parties and any party may walk out at any time.

The mediation process is usually said to be voluntary, but it is increasingly common for those with business relationships to include dispute resolution clauses in their commercial contracts, stipulating that mediation is to be attempted first in the event of a dispute. In some jurisdictions mediation is also increasingly being encouraged or mandated by the courts.

Mediation is best suited to disputes in which:

- a negotiated settlement is desired
- there is no requirement to set a legal precedent or example
- the parties wish to keep the proceedings confidential
- tension and emotions are impeding communication
- time and/or costs are a concern
- the disputants desire or need to maintain relations and
- there are commercial matters at issue which are more significant than the strictly legal position.

Because mediation is a process in which the parties control the outcome, it is more likely that a working relationship will survive mediation than it will litigation or arbitration.

11 DISPUTE RESOLUTION MECHANISMS

11.1 The Role of Public Administrations

The role of the regulator in the dispute resolution might be one or both of the following:

i) **Mediator / conciliator,** a neutral part in order to facilitate the contractual negotiations. As a neutral part the NRA guides the negotiation process, advising and listening to all sides, and helps the parties arrive, if possible, at a "win-win" settlement, or at best one which the parties can live with.

ii) **Regulatory interventionist,** which determined constraints that might aver to one side in the dispute.

The problems posed by the operation of a telecommunications service or infrastructure are sufficiently specific to require deep knowledge of technical, economic, financial, regulatory and legal issues on the part of the dispute resolvers, particularly judges, arbitrators and mediators. The NRAs as dispute resolvers should be familiar with the basic understanding of telecommunications technologies systems and operations.

"The possibility that the regulatory agency will be staffed more or less completely by people who have spent their entire careers in incumbent operators is a very real one, in the case of industry regulators."[23]

The communications business and the government regulation of it are inter-dependant processes which operate over time, and the relative power of the important actors, both in the governments and in the various industries, are key ingredients in the complex political process that results in the national competition policy in all countries.

11.2 Time Span and Organisation of the Process

The issues of the dispute resolution settlement process are here differentiated in three distinct time periods:

Before — The formal complaint or the request for dispute resolving is sent to the regulator. Whether there is e.g. a certain minimum negotiation period, how to prove that required negotiations were conducted. Whether the dispute is genuine and that the parties have seriously tried to find a solution on their own. Is the NRA acting as conciliator, a neutral part to facilitate the negotiations? Investigations may also be initiated by the NRA on its own initiative (pro-active role), the scope and when the NRA may intervene and the intentions for this pro-active role.

During — The scope of the investigation, and the timeframes of the decision period. What are the enforcement powers of the regulator in order to make a decision, and under what circumstances, e.g. can he impose a new contract or just alter the proposed and negotiated one? To what extent may fines be imposed? The form and organisation of the procedure, e.g. is a public consultation/hearing to be held? Which parties have a right to make statements or intervene? The transparency of the information involved during the process.

After — The NRAs enforcement power of the decision, and the rights to appeal. The impact of an eventual appeal of the binding nature of the decision. The degree of transparency of the settled dispute.

11.3 Factors of importance in the process

11.3.1 Timescale for resolution

A solution should be found within an appropriate timeframe. Uncertainty affects investment decisions and delays increase the economic impacts of the dispute. Additionally, suitable time has to be considered in order for the NRA to make an appropriate investigation, including necessary consultations. A decision could be based on best information available at a specific time, based on information which is specified in specific requirements for the information needed in the decision-making process.

11.3.2 Costs - Economic consequences

The economic consequences for the different parties involved in the dispute process and/or affected by its settlement might have a profound impact on the incentive to enter a dispute and the development of the dispute process itself. Even the parties which are only indirectly involved in the dispute might calculate costs or an economic benefit not only as a result of the settlement of the dispute, but during the time in which the dispute is not finally settled.

"The essential problem with interference dispute resolution at the FCC is moral hazard. Incumbents are permitted to oppose applications for new entry virtually without cost, imposing delays that deter competition. Regulatory proceedings to protest interference form an "attractive nuisance" that existing operators inevitably use to fend off newcomers who threaten to lower prices and steal market share."[24]

It is important to note that many of the crucial factors, such as confidentiality, costs and the timeframe of the dispute might have various economic impacts on the different parties directly or indirectly involved in the dispute.

[23] Designing the Next Generation telecom Regulation: ICT Convergence or Multisector Utility. World Dialogue on Regulation. Executive Summary on Draft Paper #0205, August 2002

[24] Liberalizing US Spectrum allocation. Thomas W. Hazlett. Manhattan Institute for Policy Research. 9 November 2001. Published in Telecommunications Policy 27 (2003) 485-499. See www.sciencedirect.com.

11.3.3 Transparency - Confidentiality

As the market becomes more and more complex, the competitive advantage of obtaining valuable transactions-related information increases, and complicates the necessary assembling of information in the dispute resolution process. The parties involved in a dispute may wish to keep the fact that they are in dispute, and the details of that dispute, private and confidential, especially if it concerns trade secrets or price-sensitive information.

11.3.4 Enforcement Mechanisms - Remedies

The regulatory tool to limit the number of disputes relating to interconnection and access to network, and the cost of disputes through *ex-ante* regulation by modification of the allocation of property rights, restricting the incumbent's control on essential resources, is a limited tool of regulation especially in a dynamic environment. Current allocation of property rights is constrained by past investments and past regulations.

In general, where there is entrenched market power, sector specific regulation might be used to provide an ex ante framework in which competition can emerge rather than relying solely on retrospective (i.e. ex post) action. However, as competition develops on the market, competition law remedies may provide an effective solution and deterrent to further anti-competitive practices and it may not therefore be necessary to impose the same ex ante obligations, or indeed any such obligations. In addition, even where ex ante obligations have been imposed, it may be more appropriate to use competition law to deal with any subsequent complaints.

The NRA develops definitions for when a remedy should be considered and how the remedy should be applied. Remedies regarding a dominant operator might include the following: requirement to provide network access on reasonable request; requirement not to unduly discriminate; requirement to publish a Reference Offer; requirement to notify prices; and requirements concerning accounting separation.

11.3.5 Appeals

The impact of the NRA enforcement mechanisms of an appeal, and the final decision in last court instance concerning an NRA resolution might be crucial regarding the incentive structures concerning disputes and in the end the overall result of the sector specific regulation.

11.4 Learning by Resolving Disputes

"Abilities of institutions in charge of dispute resolution to learn from their activity are crucial. Their capacity to transmit learning to rulemaking is even more crucial. The nature of informal and formal devices used for this purpose is determining of regulation efficiency."[25]

In some countries, the main means through which learning is transmitted relies on the possibility for regulators to amend the incumbent license. Information is shared among parties in forums composed of the different actors participating in negotiations. From a dynamic point of view, efficiency might be increased if learning from dispute resolution can be transmitted to the adaptation of incentive structures.

[25] Incentive Structures and Dispute Resolution Devices in the Telecommunications Industry: United Kingdom, New Zealand and United States. Buno Chaves. ATOM (Centre d'Analyse Théorique des Organisations et des Marchés - MSE - Université Paris) Paris 1999. See http://atom2.univ-paris1.fr/

Part II. Country Specific Information

12 DETAILS OF DISPUTE RESOLUTION PROCESSES IN CEPT COUNTRIES

The information regarding conditions in CEPT countries presented below is based on the results of two questionnaires. The first questionnaire on Interconnection Disputes Procedures was the outcome of a study initiated by the former European Telecommunications Office (ETO). The study on interconnection disputes was transferred from the former ETO to APRII at the Budapest meeting, in September 2001.

APRII restarted work on the study in 2002, as the Interconnection Disputes Procedures were thought to be of increased interest. The original ETO questionnaire was revised in a second version, which was sent out in 2002. The questionnaires are presented in Annex A, "ECC APRII (02)23R1 Questionnaire on dispute resolution Settlement Procedure", and Annex B, "ECTRA-APRII 2001, Dispute Resolution Procedure, Questionnaire".

Twenty-six CEPT countries have responded to the combined questionnaires.

The individual national information reflects the situation as it stood on the 8th of July 2003. The accuracy of the information concerning the individual national arrangements has been verified by the respective NRAs in a consultation process during 2003.

The study covers more than half of the CEPT countries, including EU Member States, accession countries, applicants and countries outside the EU. The study shows no visible pattern concerning the different features of the DRSP in relation to the history of liberalisation, the earlier liberalised markets of the EU Member States versus the different stages of partly competitive markets in non-EU Member States, some of whom have recently started the process towards a liberalised telecommunications markets.
However, the new EU framework focus on competition law might transfer the authority of the DRSP from the NRA to the NCA. The situation in Belgium where competence regarding dispute resolution is divided between the NRA and the Competition Council (NCA) might be the future situation in several countries.

12.1 Applicable Legislation and Competence

The NRAs are in general competent to deal with disputes concerning interconnection and access between operators and, in a few countries, also between end users and operator. The legislation applicable on a dispute resolution procedure is in general a combination of sector specific regulation and general administrative laws.

Besides the directly applicable legislation of the process by sector specific regulation or general administrative laws, there is other legislation covering areas such as privacy, confidentiality of commercial, industrial or personal data and access to public administration documents which have an impact on the DRSP. See below "12.7 Access - Transparency of the Process" and "12.10 Publication of the Result of the Resolution".

In Belgium, competence regarding dispute resolution is divided between the NRA and the Competition Council (NCA). The NCA is the authority concerning the dispute resolution settlement process and the NRA is competent concerning conciliation. If the case involves a request for interconnection from a new operator on the market, the NRA has the authority to decide, for example, the timeframe for finalisation of the negotiations, whether the request is reasonable and the conditions for the agreement. This situation is not considered as an interconnection dispute in the absence of an interconnection agreement. These principles are in general laid down in a sector specific regulation. Certain elements of the procedure before the Competition Council might be found under the General Competition Law.

Legislation applicable on a dispute resolution procedure

Country	*Sector Specific Regulation*	*General Administrative law*	*Other legislation applicable*
Austria	X	X	
Belgium	X		General Competition Law
Bulgaria	X	X	
Croatia	X	X	
Czech Republic	X	X	
Denmark	X	X	
Finland	X	X	
Hungary	X	X	
Iceland	X	X	
Ireland	X		
Italy*			Law no. 249/97
Latvia	X		
Lithuania	X	X	X
Malta	X	X	
Moldova	X		
The Netherlands	X	X	
Norway*	X	X	
Poland	X	X	
Portugal	X		
Romania	X		
Slovak Republic	X	X	
Spain*	X	X	
Sweden	X		
Switzerland	X	X	
Turkey	X	X	Licence
United Kingdom*	X		Licence

** Information from 2001, the former ETO Questionnaire, ECTRA-APII/01/04.*

12.2 Initiation of the Procedure

The procedure is in general initiated after a written request is submitted to the NRA by one of the parties. In Belgium the request should be presented at the Competition Council Registry.

The NRA may take a pro-active role and initiate the procedure. This is the case in 50% of the CEPT countries according to the answers received.

Country	*At the request of one party*	*Initiated by NRA*	*Prerequisite to exhaust the possibility of voluntary agreements and minimum time of previous negotiations between the parties*
Austria	X		six weeks
Belgium	X	X[26]	no defined timeframe (no requirements concerning conciliation by NRA)
Bulgaria	X		two months
Croatia	X		six weeks ,disputes regarding interconnection
Czech Republic	X	X	90 days, disputes regarding interconnection
Denmark	X		three months
Finland	X	X	
Hungary	X	X	no defined time frame
Iceland	X	X	one month
Ireland	X	X	no defined time frame
Italy*	X	X	
Latvia	X	X	no defined time frame
Lithuania	X	X	three months (refuse to interconnect)
Malta	X	X	
Moldova	X	X	30 days
The Netherlands	X		no defined time frame
Norway*	X	X	NRA conciliation period of 3-6 months
Poland	X		90 days
Portugal	X	X	
Romania	X		no defined time frame
Slovak Republic	X		three months from the day of delivery of the first agreement proposal
Spain*	X	X	
Sweden	X		
Switzerland	X		three months
Turkey	X	X	three months
United Kingdom*	X	X	

** Information from 2001, the former ETO Questionnaire, ECTRA-APII/01/04*

12.3 Rectification

If the request for intervention from the NRA does not comply with the legal requirements, it is in general possible to rectify the application or to supplement the request with additional information. However, in Norway and Portugal this procedure is not foreseen.

[26] The NCA has in general the authority concerning disputes. The NRA in Belgium may intervene at its own initiative, in cases where a new operator on the market formulates an interconnection request to another operator.

Country	*Possibility to rectify a request for intervention*	*Legal requirements*	*Time limits*
Austria	X	The NRA may request rectification or supplementation	
Belgium[27]	*Not specified*	*Not specified*	*Not specified*
Bulgaria	X	The NRA requires and sets the terms for the rectification	
Croatia	X	The NRA requires rectification or supplementation	
Czech Republic	X	The NRA requires rectification or supplementation	set by the NRA
Denmark	X	The NRA may request rectification or supplementation	
Finland	X	The NRA may request rectification or supplementation No legal requirement for the request for intervention	
Hungary	X	The NRA may request rectification or supplementation	set by the NRA
Iceland	X	No procedural rules have been set The NRA may request additional information	
Ireland	X	The NRA invites the complainant to re-submit the request if it is legally unfounded.	
Italy*	X	No procedural rule on formal rectification is foreseen. The parties are obligated to present additional or modifications of information to the NRA.	
Latvia	X	After fulfilment of all necessary legal requirements. The NRA may request rectification or supplementation	
Lithuania	X	The Dispute Resolution Commission may request rectification or supplementation.	set by the Dispute Resolution Commission
Malta	Not foreseen	The NRA may request supplementation	
Moldova	X	The complainant may intervene with additional information at any time in the process. The NRA may request any relevant additional data.	
The Netherlands	X	The NRA may request rectification or supplementation	set by the NRA
Norway*	Not foreseen		
Poland	X	On request of the President of the OTR the parties shall submit their positions on divergences and documents for the case to be considered in 14 days.	14 days
Portugal	Not foreseen	Fix telephone service: On request from the NRA information has to be available within 10 days.	
Romania	X	The NRA may request rectification or supplementation	set by the NRA
Slovak Republic	X	The NRA may request rectification or supplementation	
Spain*	X	The CMT request rectification before the official opening of the procedure, if the request for intervention does not fulfil legal requirements.	10 days
Sweden	X	The NRA may request rectification or supplementation There are no specific legal requirements.	
Switzerland	X	The NRA may request rectification or supplementation No formal requirements	
Turkey	X	The NRA may request rectification or supplementation	
United Kingdom*	*Not specified*	*Not specified*	*Not specified*

** Information from 2001, the former ETO Questionnaire, ECTRA-APII/01/04*

12.4 Initiation of the Administrative Procedure

The NRAs are obligated, with only a few exceptions, to send out an official notification concerning the initiation of the dispute resolution process. The receivers of this mandatory official notification are divided into three different categories of affected parties concerning the dispute resolution:

i Directly involved parties
ii Parties that are directly affected by a decision in the case
iii The market in general is affected.

[27] No Case Law was available in Belgium by the date of this Report.

In most cases, it is mandatory to send an official notification of the initiation of the procedure only to the parties directly involved in the case. The complainant and the respondent are in general considered to be the parties directly involved. These directly involved parties, complainant and respondent, could be defined as legal or natural persons who are specified in the application for intervention to the NRA. This is applicable for example in Lithuania and Hungary. In other countries it is not obligated to specify the parties directly involved in the application. The parties directly involved are identified by other means, such as parties whom the NRA considers to be directly involved and must be asked for their response to the issues raised in the application.

It is mandatory for the NRAs in some countries to first clarify the scope of the dispute and then officially notify all of the parties that would be affected by a decision. In the UK, for example, all operators on the market are considered affected by a decision if the case involves the incumbent. In the Czech Republic an affected party whom the NRA is obligated to notify could also be a legal or natural person who declares that its rights, duties and legally protected interest could be affected by the decision until the contrary is proved.

In Ireland, for example, this first consideration by the NRA of the scope of the dispute might result in a public notification, if the case is considered to be of a public interest. This is the situation for all cases that involve consumers in the UK.

To whom is the official notification sent

Notification of the initiated procedure is mandatory	***Directly involved parties-complainant & respondent***	***Other affected parties-directly affected by a decision***	***A dispute that may affect the market in general***
Austria	A registered letter is sent to the respondent.		
Belgium	*The form of the notification is not specified*		
Bulgaria		A registered letter is sent to all the parties involved.	
Croatia	An official letter is sent to the parties directly involved.		
Czech Republic	A formal letter is sent to the parties directly involved, who are specified in the application.	All parties considered to be involved will be notified	
Denmark	A registered letter is sent to the parties directly involved.		
Finland	*Not specified*	*Not specified*	*Not specified*
Hungary	A formal letter is sent to the parties directly involved, who are specified in the application. Relevant documents are attached		
Iceland	A formal letter is sent to the parties directly involved		
Ireland[1]	A request for response, within 14 days, to the issue raised by the complainant will be sent to the respondent.	All parties considered to be involved will be notified.	A summary of the dispute may be published on the website.
Italy*	A notification is sent out within 10 days of the presentation of the request for intervention.		
Latvia		An official letter is sent out to the parties directly involved, and to other affected parities.	

To whom is the official notification sent

Notification of the initiated procedure is mandatory	*Directly involved parties- complainant & respondent*	*Other affected parties-directly affected by a decision*	*A dispute that may affect the market in general*
Lithuania	Dispute Resolution Commission sends a copy of the application together with annexes to the defendant specified in the application.		
Malta	A letter, email or facsimile (subject to notification request) is sent to the parties directly involved.		
Moldova	*Not specified*		
The Netherlands	A registered letter is sent to the parties directly involved.		
Norway*		A request for comments, with relevant documents attached, or a letter which states the complaints' standpoint.	
Poland	A notification including information regarding the case is sent to the respondent.		
Portugal	A registered letter is sent out.		
Romania	A request for response to the issue raised by the complainant will be sent to the respondent. All the documents provided by the complainant are attached.		
Slovak Republic		A registered letter is sent out to the parties directly involved and to parties aggrieved by a decision.	
Spain*		A notification is carried out within ten days after the date of initiation.	The initiation of the procedure is published.
Sweden	The respondent is notified the request for dispute resolution.		
Switzerland	A letter is sent to the respondent with the application attached.		
Turkey	A formal letter is sent to the parties.	*Not specified*	*Not specified*
United Kingdom*	A copy of the determination request is sent to the respondent immediately upon receiving an application.	Other interested will be notified later.	A dispute involving the incumbent. In certain cases the consumers may be considered to be involved.

** Information from 2001, the former ETO Questionnaire, ECTRA-APII/01/04*

1) The NRA decides within 10 days of receipt of complaint if the dispute is considered to affect other parties or the market in general. If this is the case, the NRA identifies the parties involved and invites comments from these parties within 14 days.

12.5 Investigation Procedure

The parties involved in a dispute are in general given the opportunity to submit documents and other relevant information regarding the case up until the date of the issuing of the final determination. The parties may intervene with arguments of substantial matters in the case even after a decision is issued by the NRA, as the decision might be revised. This is the case in Moldova and Bulgaria for example.

In Lithuania new evidence may be supplied until the Dispute Resolution Commission decides to begin the hearing process, and arguments may be put forward until the end of these hearings.

Documentation or evidence in the form of testimony, expert opinions, inspections etc. to support a claim outlined in the complaint are used in the investigation procedure. The NRA has in general a possibility to request any information necessary, or to make inspections, such as visiting an organisation's premises, in order to clarify a situation.

In Belgium the case is investigated both by a member of the NRA and a member of the Competition Service, the investigation body of the Competition Council (NCA).

Does the NRA have inspection capacity?

Country	*Yes*	*No*
Austria	X	
Belgium	X	
Bulgaria	X	
Croatia	X	
Czech Republic	X	
Denmark		X
Finland	X	
Hungary	X[1]	
Iceland	X	
Ireland	X	
*Italy**		X
Latvia	X	
Lithuania	X	
Malta	X	
Moldova	X	
The Netherlands		X[2]
*Norway**	X	
Poland	X	
Portugal	X	
Romania	X	
Slovak Republic		X
*Spain**	*Not specified*	*Not specified*
Sweden	X	
Switzerland	X	
Turkey	X	
*United Kingdom**	X	

* *Information from 2001, the former ETO Questionnaire, ECTRA-APII/01/04*

1) The NRA in Hungary has a limited inspection capacity.
2) No inspection capacity in case of disputes in the Netherlands.

12.6 Consultation and Reports regarding other Bodies

The most common situation is that the NRA is not obligated to consult any specific body before issuing a decision. However, there might be some consultations needed before a decision could be taken, and which body to consult and the specific forms of the consultations are in general decided by the NRA on a case by case basis.

The Norwegian NRA and National Competition Authority (NCA) have established an informal procedure regarding cases concerning competition matters. When the case subject to a dispute resolution concerns competition questions, the NRA contacts the NCA in order to reach an agreement regarding the appropriate administrative procedure. The aim is to avoid a situation where both authorities handle the same case at the same time. The procedure is the normal practice and in general used; however, it is not mandatory. Iceland has also an informal procedure established concerning the cooperation between the NRA and NCA regarding disputes.

In Belgium, it is mandatory to consult the NRA, as the NCA is the authority concerning disputes.

A consultation procedure is	*The National Competition Authority*	*Other bodies*
mandatory		***Belgium** (NRA)*
		***Bulgaria** (Special cases of interest for the national security and defence)*
	Denmark *(Decisions concerning competition regulation)*	
	***Hungary** (Decisions on SMP identification and approval of RIO's)*	
	***The Netherlands** (Special cases, both NRA and NCA involved)*	
	Spain (The CMT is legally entitled to a report from any body which is necessary for the correct resolution of the dispute).*	
	***Switzerland** (Cases concerning market dominance)*	***Switzerland** (The price control authority)*
not mandatory	***Austria*** ***Croatia*** ***Czech Republic*** ***Finland*** ***Iceland** (An informal procedure is established between the NRA and the NCA)* ***Ireland*** ***Italy**** ***Latvia*** ***Lithuania*** ***Malta*** ***Moldova** (In cases regarding competition issues the NRA consults the Competition Authority)* ***Norway*** (An informal procedure is established between the NRA and the NCA).* ***Poland*** ***Portugal*** ***Romania*** ***Slovak Republic*** ***Sweden*** ***Turkey*** ***United Kingdom****	

* *Information from 2001, the former ETO Questionnaire, ECTRA-APII/01/04.*

12.7 Access to Information- Transparency of the Process

The transparency of the process concerning the information assembled in a dispute resolution varies between the different CEPT countries. Five levels of transparency in an ascending pattern could be identified, from publicly open and published on the NRA web page to restricted and accessible for the NRA only.

The concept of confidentiality is addressed, and definitions are presented in almost all of the answers. Italy is the only country that does not refer to any specific jurisdiction or common practice concerning confidentiality.

Three general types of confidential information in a dispute resolution case could be identified in the answers:

i) Personal data, information covered by national legislation regarding privacy, data protection laws, etc.
ii) Information that might have an impact on the national state security.
iii) Commercial or industrial confidential information.

In Belgium the President of the Competition Council determinates the confidential nature of the documents involved.

The NRAs have, with some exceptions (Czech Republic, Croatia, and Latvia), the authority to finally confirm the confidentiality of the information. In Croatia the parties which have submitted the information have the right to decide if the information should be confidential. In the Czech Republic trade secrets are confirmed by a court decision only, if this information is claimed to be open. In several countries such as Ireland, the United Kingdom, Switzerland and Romania, the parties may outline any information as confidential. However, the NRA makes the final decision concerning confidentiality and may override this request. In Ireland the NRA is also obligated to identify confidential material which the compliant or the respondent might have failed to notice or omitted.

In Norway the access to information regarding dispute resolutions, with the exception of conciliation cases, is handled primarily under "The Public Administration Act" and "The Freedom of Information Act". These acts state that all documents of a public office in general are publicly accessible. However, the NRA has the authority to decide that certain information is confidential and outside the scope of these laws. Denmark, Finland, Iceland and Sweden have a similar jurisdiction.

In Portugal the question of confidentiality is based on the classification of the documents as "nominative" or "non-nominative". The nominative documents contain personal data regarding individuals.

Information concerning the status of the draft determination is missing for Italy, Norway, Spain, and United Kingdom.

Access to the information of the procedures, such as documents and the draft determination.

Country	*Closed only the NRA*	*Closed the parties involved*	*Open third party upon request/ or the right to be informed*	*Open public information*
Austria	the draft determination	information of the procedure		decisions of fundamental significance
Belgium	the draft determination	information of the procedure described in an investigation report, complete files on request		decisions
Bulgaria	the draft determination	information of the procedure		decisions
Croatia	the draft determination	information of the procedure		decisions
Czech Republic	the draft determination	information of the procedure		decisions on price regulation
Denmark	the draft determination		all information of a public administrative procedure	decisions

Country	*Closed only the NRA*	*Closed the parties involved*	*Open third party upon request/ or the right to be informed*	*Open public information*
Finland	the draft determination			information of the procedure decisions included
Hungary	the draft determination	information of the procedure		decisions
Iceland	the draft determination		all information of a public administrative procedure	decisions
Ireland		information of the procedure the draft determination included		decision and summary of the dispute, initiation note when the dispute is of general interest.
Italy*		information of the procedure		decisions
Latvia	the draft determination	information of the procedure		decisions
Lithuania	the draft determination	Information of the procedure if confidentiality is requested by the parties		information of the procedure decisions included
Malta	the draft determination	information of the procedure		
Moldova	information of the procedure	the draft determination		decisions
The Netherlands	draft determination		information of the procedure	a public version of the decisions
Norway*				information of the procedure
Poland	the draft determination	information of the procedure decisions included		decisions
Portugal	the draft determination	nominative documents by request to the party	nominative documents after authorisation by the concerned party	non-nominative information of the procedure
Romania		information of the procedure the draft determination included		decisions
Slovak Republic	the draft determination	information of the procedure decisions included		decisions on price regulation and SMP
Spain*		information of the procedure the draft determination included		decisions
Sweden	the draft determination	information of the procedure	information of the procedure to a certain extent	decisions
Switzerland	the draft determination	information of the procedure		
Turkey	the draft determination	information of the procedure		decisions
United Kingdom*		information of the procedure		decisions

** Information from 2001, the former ETO Questionnaire, ECTRA-APII/01/04*

Certain information (see definitions above) of the procedure in the two categories ***"Open-public information"*** and ***"Open- third party upon request/ or the right to be informed"***, and the category ***"Closed-the parties involved"***, are restricted and subject to national jurisdiction concerning confidentiality.

12.8 Hearing Procedure and Proposal of Resolution

The transparency concerning the hearing procedure is in general limited to the parties involved in the dispute settlement procedure. In some countries, the parties involved have an opportunity to influence the transparency of the procedure. In Moldova the hearing procedure is open to the public if the parties involved agree. In Lithuania and the Netherlands the procedure is generally an open hearing. However, the procedure will be closed upon request from one or more of the parties involved.

The Hearing procedure is	*Closed only for the parties involved*	*Open to other than the parties involved*
Mandatory	**Denmark** **Italy*** **Finland** **Hungary** **Latvia** *(parties involved and other affected parties)* **Lithuania** *(closed upon request from the parties)* **Moldova** **Norway*** *(opportunity for comments from the parties invited by notification of the proposed decision)* **Poland** **Portugal** **Romania** **Switzerland** *(negotiations for the conciliation)*	**Belgium** **Bulgaria** **Lithuania** **Moldova** *(open if agreed by the parties)* **Norway*** *(cases concerning public available information)*
Practice	**Austria** **Iceland** **Malta** *(the forms depends on the proceedings of the case)* **The Netherlands** **Spain*** *(may be disregarded)* **Slovak Republic** [1]	**Croatia** *(hearing procedures are decided by the NRA, and are open to the public)*
Hearing Procedure is not used	**Czech Republic** [1] **Ireland** [2] **Sweden** [3] **Switzerland** **United Kingdom*** **Turkey**	

** Information from 2001, the former ETO Questionnaire, ECTRA-APII/01/04*

1) NRA summon a hearing if it is considered necessary for the clarification of the case
2) Informal meetings may occur, before the final determination, at the request of the NRA the parties involved.
3) Meetings which are closed to the parties involved may occur.

12.9 Resolution of the Dispute and the Possibility for Appeals

The period of time from the application is submitted until the resolution from the NRA.

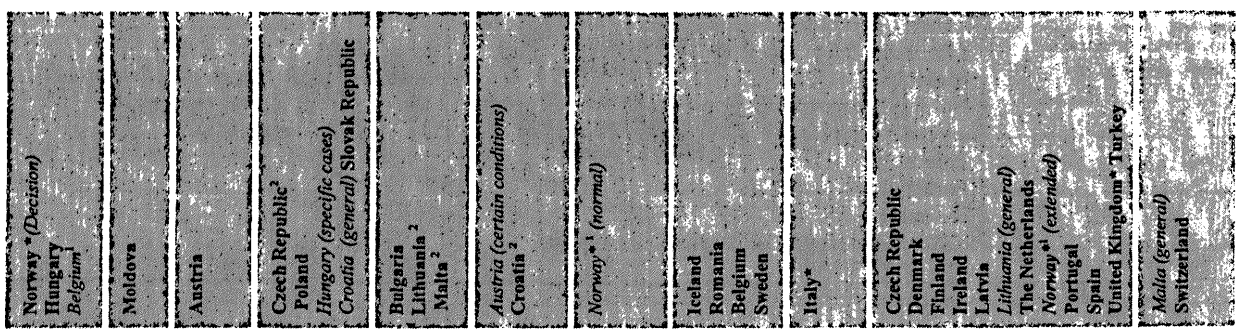
There are in general specified requirements concerning the period of time from when the application is submitted until the resolution has to be issued by the NRA.

The new EU framework requires that the NRA makes a decision within four months concerning an application regarding dispute settlement.

Norway and Hungary seem to have the shortest timeframe regarding the resolution of disputes. However, the Norwegian NRA could have been involved in a conciliation process for up to six months previous to when the request for intervention was submitted by one of the parties.

The Belgium NCA has to issue a decision concerning a dispute within four months. The Belgium NRA has to reconcile the parties in a conciliation process within one month following a request.

The time limits in CEPT countries to resolve the procedure or to issue a decision.



* *Information from 2001, the former ETO Questionnaire, ECTRA-APII/01/04*

1) Conciliations

2) Disputes concerning interconnection.

Appeal and Enforcement of NRA Decisions

The NRA decision may be subject to an appeal in all of the CEPT countries in the survey. The appeal is submitted in the first instance, in general, to the NRA or the national court.

In Ireland a decision appealed to the NRA may at the same time be submitted as an appeal to the national court, as the rights of the parties under an NRA internal appeals procedure are without prejudice to any right either party possesses to appeal to the High Court. Iceland, Denmark and Malta have a special arrangement, in which appeals in the first instance are under the authority of an Appeal Body.
The decisions of the Post- and Telecom Administration in Iceland are obligated to be handled by a special Appeal Body before an appeal can be submitted to the national court. This Appeal Body is composed of three people appointed by the Minister of Communication. The decisions of this Appeal Body are final at an administration level only. The parties involved may submit an appeal concerning this decision to the national court, within six months from the date when the decision of the Appeal Body was issued.

The lawsuit does not suspend the effects of the NRA decision during the appeal processes in many of the countries. However, whether an appeal will suspend the compliance nature of a certain NRA decision depends in some countries upon the specific circumstances of the decision itself. In Poland, Ireland, Latvia, Lithuania or Switzerland, for example, the court (in Ireland the High Court) will decide whether an appealed decision of the NRA will continue to be binding during the court process until the case is finally resolved.

In the Czech Republic it is the sector specific regulation that determines in which decisions the parties are compliant and in which they are not.

The NRA has, with some exceptions, the authority to impose sanctions in the form of fines or other necessary enforcement actions, such as license revocation regarding the respondent party of a decision. The NRAs in Austria, Latvia, Italy and Sweden do not have this authority. However, in Sweden the decision is considered as a legal contract between the parties. In cases of shortcomings by either party the other party may send a request for a judgement summons to the national court.

The Irish NRA sends a "Warning Notice" one month prior to imposing a sanction. The NRA might publish this "Warning Notice" when considered appropriate.

When a NRA decision is appealed, the national courts have, in general, the right to review both procedural matters and factual issues. However, this review right might be limited concerning factual issues.

Enforcement of NRA Decisions

Country	*Binding NRA decision suspended by appeal*		*Binding NRA decision In general*	*NRA sanctions of the non complainant party*	*Appeal*			
	In general	*Court decision*			*NRA first instance*	*Court first instance*	*Appeal body*	*Review right*
Austria		X	X [1]	***none***		X		yes
Belgium [2]			X	Fines and licence revocation		X		yes
Bulgaria			X	fines or license revocation		X		yes
Croatia			X	fines		X		yes
Czech Republic	X		X interconnection	penalty sanctions	X			yes
Denmark			X	issue of order & fines			X	yes
Finland			X	conditional fine		X		yes
Hungary		X		fines & other necessary enforcement actions		X		yes
Iceland			X	Fines or licence revocation			X	yes
Ireland		X		amendment, suspension or revocation of the license, or other specific measures	X	X [3]		yes
Italy*		X		***none***		X		yes
Latvia			X	fines		X		yes
Lithuania		X		fines		X		yes
Malta			X [4]	fines and suspension of the license			X	yes
Moldova			X	suspension or revocation of the license	X			yes
The Netherlands		X		penalty payment or fines	X			
Norway*			X	closure of network, services, equipment, or radio activity, or cessation of marketing & fines	X			yes
Poland		X [1]		financial penalty		X		yes
Portugal	X [6]			fines		X		yes
Romania		X		administrative fines		X		yes
Slovak Republic	X			order of execution of an resolution & fines	X			yes
Spain*			X [5]	withdrawal of license & pecuniary fines	X			yes
Sweden		X	X	***none***		X		yes
Switzerland		X		fines & financial penalty				yes
Turkey		X	X	administrative fines	X			***no***
United Kingdom*			X	a licence breach could be subject to a court decision	X			***no***

** Information from 2001, the former ETO Questionnaire, ECTRA-APII/01/04*

1) In Austria and Poland the parties involved have the opportunity to agree on another resolution, which then will override the binding NRA decision.
2) In Belgium the Competition Council (NCA) issues the dispute resolutions. The NRA has the authority to execute the decisions of the NCA.
3) In Ireland the rights of the parties under a NRA internal appeals procedure are without prejudice to any right either party possesses to appeal to the High Court.
4) On Malta the appellant may request the Appeals Board to suspend the NRAs decision.
5) In Norway and Spain the NRA or the court may defer the implementation of the decision until a final decision has been made. If the execution of a decision is foreseen to cause serious damages the Spanish NRA has the authority to suspend it.
6) The NRA decision in Portugal has the same executive strength as a first instance court sentence. The NRA could proceed to juridical execution regarding the terms of the code of civil law.

12.10 Publication of the Result of the Resolution

The NRAs are in general obligated to publish their decisions in an official bulletin or on the NRA website. In Croatia, it is not mandatory for the NRA to publish its decisions. However, it is common practice that the NRA publishes its decision in "the Official Gazette" and on the NRA website. In Ireland, a summary of the dispute and its decision is publicly available at the NRAs website. The entire determination will only be made available to the parties directly involved in the dispute.

In the Czech Republic, an individual decision regarding a dispute are not published. However, it is mandatory to publish decisions concerning price regulation in the official bulletin and these decisions are also available on the NRA web page.

Publication of the decision

The decision is published	*Available on the NRA web site*	*Published in official bulletin*	*Presented in other media or not specified*
mandatory	**Austria**		
		Belgium *(the Belgian State journal)*	
		Bulgaria	
	Denmark		
	Iceland		
	Ireland *(summary of the dispute and the decision)*		
		Italy*	
	Finland		
	Hungary	**Hungary**	
			Latvia
		Lithuania *(the resolution is published upon decision of the Director of the Communications Authority)*	
	Moldova		
	Norway*		
	Romania		
			Spain*
			United Kingdom*
not mandatory	**Croatia**	**Croatia** *(it is a common practice that the NRA publishes its decision in the official gazette and on the web page*	
	The Netherlands		
	Slovak Republic *(decisions on price regulation and SMP are published)*		
	Sweden		
	Switzerland	**Switzerland**	**Switzerland**
Not published	**Czech Republic**		
	Malta		
	Poland		
	Portugal		
	Turkey		

** Information from 2001, the former ETO Questionnaire, ECTRA-APII/01/04.*

13 CONCLUSION

As set out in the introduction, the main concern of the report, including the study, was to provide the regulatory bodies in CEPT countries with both general information regarding disputes and resolution settlement procedures, and country specific information concerning arrangements in other CEPT countries.

As a result of the study and the discussions within APRII during the work of this report, it has become clear that a number of issues need to be addressed in order to facilitate further discussions regarding dispute resolution settlement procedures (DRSP) and to present some guidelines concerning "best current practice. This further work is based on the following conclusions.

In the context of the newly liberalised regulatory environment, disputes will probably arise more frequently between incumbent operators and new entrants, between the new entrants themselves, and between operators and regulators both on national and international level. Additionally, the nature of conflicts is changing as the market develops, and the NRA has to regulate interconnection in a radically uncertain environment. Ongoing institutional changes, technological developments, and digital convergence make the developments of the market environment uncertain to predict, and the information needed in order to detect opportunistic behaviour might be limited or difficult to collect. The value of transactions related information might complicate the necessary assembling of necessary information. It is therefore of importance to ensure the transparency of processes and the possibility for the NRA to assemble the information necessary for an appropriate resolution of upcoming disputes. The public access to information concerning a dispute process and its resolution is also of great importance.

This implies the need for well-defined dispute resolution processes in order to resolve these more frequently arising and increasingly complex disputes efficiently. The national procedures have also to adapt to global/regional trends and the national DRSP has to be complemented with definite procedures on a regional and a global scale.

Considering the emerging global and dynamic market environment, the Authorities in charge of disputes, as the parties involved, have to consider their abilities to learn from disputes, and efficiency might be increased if learning from dispute resolution can be transmitted to the adaptation of the incentive structures.

In conclusion, when considering dispute prevention it is important to keep in mind that legislation and the dispute settlement procedure are not the only issues that have to be addressed. The enforcement of the dispute settlement resolutions and the means of tracking abuses of market power and anti-competitive behaviour, or abuse of consumer rights should also be taken into account.

"There is no need to reinvent any wheels with respect to dispute resolution procedures and techniques. The real challenge for policymakers in the public sector and for private sector experts in dispute resolution is, we firmly believe, how best to adapt the wealth of experience with private dispute resolution to issues of public importance and concern and how to create new and more effective incentives for cooperative behaviour among market participants"[28]

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15 ABBREVIATIONS

ADR	Alternative Dispute Resolution
APRII	Accounting Principles and Regulatory Interconnection Issues
ATOM	Centre d'Analyse Théorique des Organisations et des Marchés
BIAC	The Business and Industry Advisory Committee
CEPT	The European Conference of Postal and Telecommunications Administrations
DG IV	European Commission Directorate General for Competition
DG XIII	European Commission Directorate General for Telecommunications, Information Market and Exploitation of Research
DRSP	Dispute Resolution Settlement Procedure
ECC	Electronic Communications Committee
ECC PT4	Electronic Communications Committee Project Team 4
ECTA	European Competitive Telecommunications Association
ETO	European Telecommunications Office
ETP	European Telecommunications Platform
EC	European Commission
EU	European Union
FCC	Federal Communications Commission
GATS	General Agreement on Trade and Services
GBDe	Global Business Dialogue on Electronic Commerce
ICT	Information and Communication Technologies
ITU	International Telecommunications Union
ITU-D	International Telecommunications Union Telecommunication Development Bureau
NCA	National Competition Authority
NRA	National Regulatory Authority
OECD	Organisation for Economic Co-operation and Development
ONP	Open Network Provision
RIO	Reference Interconnection Offer
SMP	Significant Market Power
WTO	World Trade Organization

ANNEX A

DISPUTE RESOLUTION PROCEDURE

ECTRA/APRII/01 Questionnaire

GENERAL ISSUES: applicable legislation and competence
What rules guide the dispute resolution procedure by the NRA? Is the procedure ruled by General Administrative Law or by sector specific regulation? What sort of disputes is the NRA competent to deal with?

INITIATION OF THE PROCEDURE
How is the procedure initiated? At the request of a party or does the NRA have the power to start on its own initiative? Is there any formal requirement for the validity of the request of NRA intervention? Is it a prerequisite to exhaust the possibility of voluntary agreements before submitting a complaint before the NRA? If so, how long should be the negotiations before having the opportunity to submit complaint before the regulator?

PRESENTATION OF DOCUMENTS
Where must the requests for intervention and communications of the interested parties be presented? Must they necessarily be presented at the NRAs Registry or may they be presented at any other official registry? What sort of documents must be presented with the request of intervention to the NRA?

RECTIFICATION
If the request for intervention does not comply with the legal requirements, is it possible to rectify it later? When and how? In case of shortcomings in the text of the complaints lodged, must/may the NRA request further data or documentation from the complainants? Does the NRA appreciate its own competence to resolve the dispute?

INITIATION OF THE ADMINISTRATIVE PROCEDURE
Is the initiation of the procedure notified to every interested party? How would you define "interested party"? How is the notification carried out?

INTERIM MEASURES
Is it possible for the NRA to adopt provisional measures if considered necessary to guarantee the effects of the final resolution? Are the interim measures only adopted upon the request of the complainant? Or may the NRA act on its own initiative?

PROOF PERIOD
Is there a "proof period" within the dispute resolution procedure? If so, how long is this period? What type of proofs/tests may be carried out? Does the NRA have inspection capacity?

REPORTS
Is it mandatory for the NRA to consult different bodies before taking a decision?
Is there any mandatory report from a different body?
Until what moment of the procedure the interested parties have the right to make arguments and give documents to the NRA?

ACCESS TO DOCUMENTS / REGISTERS
How is the access of the interested parties to the information of the procedure (documents, registries, state of the procedure) regulated? Who has the right of access to documents?
Is there a limitation to the access based on the confidential nature of certain information?
What is confidential?
Who determines the confidential nature of the documents?

HEARING PROCEDURE - PROPOSAL OF RESOLUTION
Is it mandatory to have a hearing procedure before the final resolution?
If so, is the hearing procedure open to anyone or to interested parties only?
Do the interest parties have the right to know the proposal of the final decision and to make new arguments?

DECISION - RESOLUTION OF THE DISPUTE
Is there a time limit to resolve the procedure/to issue a decision?
Must the NRA decision provide the reasons on which it is based?
Is the NRA decision binding for the parties?
What are the powers of the NRA in case of non-compliance with its decision?
Is the NRA entitled to sanction the non-compliant party? If so, what are the possible sanctions?

PUBLICATION
Is it mandatory to publish the NRA decision?
May the NRA decide not to publish certain parts of the decision?

APPEALS
Is the decision of the NRA subject to appeal?
Is the appeal submitted before the NRA in first instance? Or is the appeal submitted directly before the Courts or before an Appeal Body (of non-judicial nature)?
Does the submission of an appeal suspend the effective implementation of the decision?
Does the Court/Appeal Body have the right to review procedural matters and/or factual issues?

ANNEX B:

QUESTIONNAIRE ON DISPUTE RESOLUTION SETTLEMENT PROCEDURE ECC/APRII(02)

GENERAL ISSUES: applicable legislation and competence
– *Does the NRA have a role of: (Several answers are possible)* – *mediator*[29], ☐ – *arbitrator*[30] ☐ – *regulator*[31] ☐ – *What rules guide the access and interconnection dispute resolution procedure by the NRA*[32]*?* – *general Administrative Law* ☐ – *sector specific regulation* ☐

INITIATION OF THE PROCEDURE
— *How is the procedure initiated?* – *at the request of a party* ☐ – *or does the NRA have the power to start on its own initiative* ☐ – What are the formal requirement for the validity of the request of NRA intervention? – *draft agreement with statements of both parrties* ☐ – *application for access to network* ☐ – *copy from trade registry* ☐ – *copies of correspondance of parties on the matter* ☐ – *other (please specify)* ☐ – Is it a prerequisite to exhaust the possibility of voluntary agreements before submitting a complaint before the NRA? If so, how long should be the negotiations before having the opportunity to submit complaint before the regulator? – *Where must the requests for intervention and communications of the interested parties be presented?* – *at the NRA's Registry* ☐ – *at any other official registry (Please specify)* ☐

RECTIFICATION
- If the request for intervention does not comply with the legal requirements, is it possible to rectify it later? - Yes (When and how?) ☐ - No ☐ - *In case of shortcomings in the text of the complaints lodged, must/may the NRA request further data or documentation from the complainants?* – *Yes (Please specify if applicable)* ☐ – *No* ☐

[29] Mediator: advisory role, help to bring the parties back to the negotiating table.
[30] Arbitrator: find a consensual decision together with the parties, making a non binding decisión.
[31] Regulator: interventionist solution that might not be welcome from all sides, i.e. making a binding decision in his power as regulator that might be avers to one side.
[32] In the document, NRA can mean a ministry if there is no NRA in the concerned country.

INITIATION OF THE ADMINISTRATIVE PROCEDURE
– *To whom is sent the initiation of the notified procedure?* – *How would you define who to notify?* – *How is the notification carried out?*

INVESTIGATION PROCEDURE
– *What type of proofs/tests may be carried out?* – *Does the NRA have inspection capacity?* – *Yes* ☐ – *No* ☐ – *Until what moment of the procedure the interested parties have the right to make arguments and give documents to the NRA?*

REPORTS
– *Is it mandatory for the NRA to consult different bodies before taking a decision?* – *Yes* ☐ – *No (Please specify)* ☐ – *Is there any mandatory report from a different body?* – *Yes* ☐ – *No* ☐

ACCESS TO DOCUMENTS / REGISTERS
– *Who has access to the information of the procedure (documents, registries, state of the procedure) regulated?* – *Is there a limitation to the access based on the confidential nature of certain information?* – *Yes* ☐ – *No* ☐ – *What kind of information can be excluded and on what basis?* – *Who has the authority to decide the information is confidential?* – *NRA* ☐ – *Other* ☐ – *Is it possible to challenge the decision of confidentiality?* – *Yes* ☐ – *No* ☐

HEARING PROCEDURE - PROPOSAL OF RESOLUTION
– *Is it mandatory to have a hearing procedure before the final resolution?* – *Yes* ☐ – *No* ☐ – *If so, is the hearing procedure open to anyone or to whom?*

DECISION - RESOLUTION OF THE DISPUTE

- *Do the parties involved in the dispute have the right to know the proposal of the final decision*
  - *Yes* ☐
  - *No* ☐

and to make new arguments?
  - *Yes* ☐
  - *No* ☐

- *Is there a time limit to resolve the procedure/to issue a decision?*
  - *Yes (Please specify)* ☐
  - *No* ☐

- *Must the NRA decision provide the reasons on which it is based?*
  - *Yes* ☐
  - *No* ☐

- *Is the NRA decision binding for the parties?*
  - *Yes* ☐
  - *No* ☐

- *What are the powers of the NRA in case of non-compliance with its decision?*

- *Is the NRA entitled to sanction the non-compliant party?*
  - *Yes (What are the possible sanctions)* ☐
  - *No* ☐

PUBLICATION

- *Is it mandatory to publish the NRA decision?*
  - Yes ☐
  - *No* ☐

- *What are the forms of the publication?*

- *May the NRA decide not to publish certain parts of the decision?*
  - Yes ☐
  - *No* ☐

APPEALS

- *Is the decision of the NRA subject to appeal?*
  - *Yes* ☐
  - *No* ☐

- *Is the appeal?*
  - *submitted before the NRA in first instance* ☐
  - *Or is the appeal submitted directly before the Courts* ☐
  - *or before an Appeal Body (of non-judicial nature)* ☐

- *Does the submission of an appeal suspend the effective implementation of the decision?*
  - *Yes* ☐
  - *No* ☐

- *Does the Court/Appeal Body have the right to review procedural matters and/or factual issues?*
  - *Yes* ☐
  - *No* ☐

INTERNATIONAL TELECOMMUNICATION UNION
TELECOMMUNICATION DEVELOPMENT BUREAU

Document: 21

GLOBAL SYMPOSIUM FOR REGULATORS
GENEVA, SWITZERLAND, 8-9 DECEMBER 2003

INFORMATION DOCUMENT:

GUIDELINES FOR THE IMPLEMENTATION OF INNOVATORY SOLUTIONS REGARDING MANAGEMENT AND FUNDING OF UNIVERSAL ACCESS/SERVICE POLICIES

International Telecommunication Union (ITU)

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INTERNATIONAL TELECOMMUNICATION UNION

TELECOMMUNICATION DEVELOPMENT BUREAU

ITU-D STUDY GROUPS

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SECOND MEETING OF STUDY GROUP 1: GENEVA, 2 - 5 SEPTEMBER 2003
SECOND MEETING OF STUDY GROUP 2: GENEVA, 8 - 11 SEPTEMBER 2003

Question 7-1/1: Universal access/service

STUDY GROUP 1

SOURCE: CHAIRMAN OF ITU-D STUDY GROUP 1

TITLE: GUIDELINES FOR THE IMPLEMENTATION OF INNOVATORY SOLUTIONS REGARDING MANAGEMENT AND FUNDING OF UNIVERSAL ACCESS/SERVICE POLICIES

Introduction

In the framework of the study of Question 7-1/1 on universal access/service of ITU-D Study Group 1 submits the guidelines, the fruit of a study on innovatory solutions regarding management and funding of universal access/service policies, to the World Summit on the Information Society (WSIS) with a view to including them in the WSIS Action Plan.

Historically, universal access/service was provided by a public operator or one exercising a regulated monopoly and the funding mechanism for it was structured accordingly.

Now that the process of liberalizing economies is intensifying, the regulatory authorities face the problem of providing and funding universal access/service in an increasingly competitive environment.

The concept of universal access/service is generally defined as a series of measures in the public interest aimed at ensuring access for all, under specified conditions, to a package of electronic communication services considered to be essential, of a certain quality, and at an affordable price.

However, the terms of this definition take no account of the economic consequences of its application. The political principles that they express may, however, have an impact on the functioning of the sector and have repercussions on national competitiveness and territorial coherence.

Results of analysis of the experiences of a number of developing and developed countries whose environment is either liberalized or monopolistic allow the following guidelines to be identified:

– *define consumer needs and rights in order to stimulate usage;*

– *define the main stages of a universal access/service policy;*

– *establish a framework conducive to investment;*

– *make innovations in funding and management.*

The guidelines are described below.

GUIDELINES

Define consumer needs and rights in order to stimulate usage

The concept of universal access/service is both *a right to be served for consumers and a right to serve for operators of electronic communications*.

Universal access/service policies require the following actions to be implemented:

– define consumers' needs and rights in terms of the provision of services, information and transparency. Consumers must be able to define the services which they need and which are accessible to them in financial terms;

– establish effective procedures for settling differences between users and enterprises supplying communication services accessible to the public;

– draw up a charter of user rights which would stipulate that national regulatory authorities consult user and consumer associations before taking certain measures;

– focus on contractual procedures to ensure that consumers have a minimum level of legal security in their relations with operators. Contracts should specify conditions and quality of service, procedures concerning cancellation and cessation of service, compensation measures and methods for settling disputes.

Define the main stages of a universal access/service policy

In order to be effective, a universal access/service strategy must be reviewed and readjusted periodically in the light of social, commercial and technological changes.

In addition to adopting basic measures in the sector such as opening it up to competition and setting up an independent regulatory body, political leaders must define specific political objectives and monitor the implementation thereof by undertaking the necessary reviews and adjustments at regular intervals.

Hence it is essential to define the main stages of a universal access/service policy. These stages are planning, implementation and evaluation. Above all there is a need to define the scope of universal access/service, to guarantee an affordable price, to find companies which can provide universal access/service, to calculate both the direct costs of the provision of universal access/service and the indirect advantages thereof, to choose a funding mechanism and apply it.

Political leaders, regulators and operators must implement new competencies and the institutional means necessary for drawing up an appropriate policy and strategy.

Establish a framework conducive to investment

Regular and effective action with respect to regulation must enable the implementation of a universal access/service policy. The purpose of such action will be to remove obstacles to the effectiveness of the market, quantify the operating deficit relating to universal access and establish suitable conditions for interconnection and/or relevant instructions for the distribution of revenue.

Universal access policy must seek to make services available to the greatest possible number. The criterion of economic efficiency should therefore be upheld and obstacles to investment and the efficient functioning of the market removed.

It is necessary to give political leaders and regulators the means to "encourage" operators to become more efficient, so that universal access/service can be proposed on the widest possible scale. Regulators and political leaders must also take steps to ensure that new technologies for the reduction of costs are applied.

Make innovations in funding and management

There is a need to encourage innovatory initiatives in funding and management such as:

– self-financing of network development;
– self-management of rural communities;
– systems of licensing for the running of public telephone booths or private telecentres;
– universal service funds financed by contributions levied from operators' turnover.

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INTERNATIONAL TELECOMMUNICATION UNION

TELECOMMUNICATION DEVELOPMENT BUREAU

Document: 21

COLLOQUE MONDIAL DES REGULATEURS

GENEVE, SUISSE, 8-9 DECEMBRE 2003

DOCUMENT D'INFORMATION:

LIGNES DIRECTRICES POUR LA MISE EN OEUVRE DE SOLUTIONS INNOVANTES EN MATIERE DE GESTION ET FINANCEMENT DES POLITIQUES DE SERVICE/ACCES UNIVERSELS

Union internationale des télécommunications (ITU)

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UNION INTERNATIONALE DES TÉLÉCOMMUNICATIONS

BUREAU DE DÉVELOPPEMENT DES TÉLÉCOMMUNICATIONS

COMMISSIONS D'ETUDES DE L'UIT-D

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DEUXIÈME RÉUNION DE LA COMMISSION D'ÉTUDES 2: GENÈVE, 8 - 11 SEPTEMBRE 2003

Question 7-1/1: Accès/service universel

COMMISSION D'ÉTUDES 1

ORIGINE: PRESIDENT DE LA COMMISSION D'ETUDES 1 DE L'UIT-D

TITRE: LIGNES DIRECTRICES POUR LA MISE EN OEUVRE DE SOLUTIONS INNOVANTES EN MATIERE DE GESTION ET FINANCEMENT DES POLITIQUES DE SERVICE/ACCES UNIVERSELS

Introduction

Dans le cadre de l'étude de la question 7-1/1 sur le service / accès universels de la Commission d'études 1 de l'UIT-D présente au Sommet mondial sur la Société de l'Information (SMSI) des lignes directrices, fruits d'une étude sur les solutions innovantes en matière de gestion et de financement des politiques de service / accès universels, en vue de les faire figurer dans le Plan d'action du SMSI.

Historiquement, le service / accès universels était fourni par un opérateur public ou réglementé en monopole, et son mécanisme de financement était conçu en conséquence.
A l'heure où le processus de libéralisation des économies s'intensifie, les autorités réglementaires sont confrontées au problème de la fourniture et du financement du
service / accès universels dans un environnement de plus en plus concurrentiel.

Le concept de service / accès universels est défini de manière générale comme un ensemble de mesures d'intérêt public visant à garantir à tous, dans des conditions définies, l'accès à un ensemble de services de communication électronique reconnus comme essentiels, d'une qualité donnée, et à un prix abordable.

Cependant, les termes de cette définition ignorent les conséquences économiques de son application. Les principes politiques qu'ils expriment sont pourtant susceptibles d'affecter le fonctionnement du secteur, et d'avoir des répercussions sur la compétitivité nationale et la cohérence territoriale.

Les résultats de l'analyse des expériences de plusieurs pays en développement et développés dont l'environnement est soit libéralisé soit monopolistique conduisent à dégager les lignes directrices suivantes :

- *Définir les besoins et les droits des consommateurs pour stimuler les usages ;*
- *Définir les principales étapes d'une politique de service / accès universels ;*
- *Mettre en oeuvre un cadre incitatif pour l'investissement ;*
- *Innover en matière de financement et de gestion.*

Ces lignes directrices sont décrites ci-après.

LIGNES DIRECTRICES

Définir les besoins et les droits des consommateurs afin de stimuler les usages

Le concept de service / accès universels est à la fois un *droit à être servi pour les consommateurs et un droit à servir pour les opérateurs de communications électroniques.*

Les politiques de service / accès universels requièrent les actions suivantes :

- définir les besoins et les droits des consommateurs en termes de fourniture de services, d'information et de transparence. Les consommateurs doivent pouvoir définir les services dont ils ont besoin et qui leur sont accessibles au plan financier.
- élaborer des procédures efficaces pour le règlement des différends opposant, d'un côté, les utilisateurs et de l'autre, les entreprises fournissant des services de communications accessibles au public ;
- rédiger une charte des droits des utilisateurs qui prévoirait que les autorités réglementaires nationales consultent des associations d'utilisateurs et de consommateurs avant de prendre certaines mesures ;
- privilégier les voies contractuelles en s'assurant que les consommateurs bénéficient d'un niveau minimum de sécurité juridique dans leurs relations avec leur opérateur. Les contrats devraient spécifier les conditions et la qualité du service, les modalités de résiliation et de cessation du service, les mesures de compensation et le mode de règlement des litiges.

Définir les principales étapes d'une politique de service / accès universels

Pour être efficace, une stratégie de service / accès universels doit être revue et réajustée périodiquement à la lumière des évolutions sociale, commerciale et technologique.

Il incombe aux responsables politiques, au-delà de l'instauration de mesures de base dans le secteur telles que l'ouverture à la concurrence et la mise en place d'un organisme de régulation indépendant, de définir des objectifs politiques spécifiques et d'en surveiller l'application en procédant à intervalles réguliers aux examens et réajustements qui s'imposent.

Dans cette perspective, il est essentiel de définir les principales étapes d'une politique de service / accès universels. Ces étapes sont la planification, la mise en œuvre, et l'évaluation. Il s'agit avant tout de définir la portée du service / accès universels, de garantir un prix abordable, de trouver les sociétés qui pourront assurer le service / accès universels, de calculer à la fois les coûts directs de la fourniture du service / accès universels et ses avantages indirects, de choisir un mécanisme de financement et d'en assurer l'administration.

Les responsables politiques, les régulateurs et les opérateurs devront mettre en oeuvre de nouvelles compétences ainsi que les moyens institutionnels nécessaires à l'élaboration d'une politique et d'une stratégie appropriées.

Mettre en œuvre un cadre incitatif pour l'investissement

Les interventions régulières et efficaces en matière de réglementation doivent permettre la mise en oeuvre d'une politique de service / accès universels. Elles auront pour objet de supprimer les obstacles à l'efficacité du marché, de quantifier le déficit d'exploitation de l'accès universel et d'établir des conditions d'interconnexion appropriées et/ou des directives de répartition des recettes pertinentes.

La politique d'accès universel doit viser à rendre les services disponibles au plus grand nombre. Il convient donc de s'attacher au critère d'efficacité économique et de supprimer les obstacles entravant les investissements et le fonctionnement efficace du marché.

Il est nécessaire de donner aux responsables politiques et aux régulateurs les moyens « d'inciter » les opérateurs à devenir plus efficaces, afin que le service / accès universel puisse être proposé sur une échelle la plus large possible. Les régulateurs et les responsables politiques doivent faire en sorte également que de nouvelles technologies de réduction des coûts soient mises en oeuvre.

Innover en matière de financement et de gestion

Il est nécessaire d'encourager les initiatives innovantes en matière de financement et de gestion comme :

- l'autofinancement du développement des réseaux ;
- l'autogestion des communautés rurales ;
- les systèmes de contrats de franchise pour gérer les cabines téléphoniques publiques ou les télécentres privés ;
- les fonds de service universel financés par des contributions sur le chiffre d'affaires des opérateurs.

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DIRECTRICES PARA LA APLICACIÓN DE SOLUCIONES INNOVADORAS EN MATERIA DE GESTIÓN Y FINANCIAMIENTO DE LAS POLÍTICAS DE ACCESO/SERVICIO UNIVERSAL

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Cuestión 7-1/1: Acceso/servicio universal

COMISIÓN DE ESTUDIO 1

ORIGEN: PRESIDENTE DE LA COMISIÓN DE ESTUDIO 1 DEL UIT-D

TÍTULO: DIRECTRICES PARA LA APLICACIÓN DE SOLUCIONES INNOVADORAS EN MATERIA DE GESTIÓN Y FINANCIAMIENTO DE LAS POLÍTICAS DE ACCESO/SERVICIO UNIVERSAL

Introducción

En el marco del estudio de la Cuestión 7-1/1 sobre el acceso/servicio universal de la Comisión de Estudio 1 del Sector de Desarrollo de las Telecomunicaciones presenta en la Cumbre Mundial sobre la Sociedad de la Información (CMSI) algunas directrices, fruto de un estudio sobre soluciones innovadoras en materia de gestión y financiamiento de las políticas de acceso/servicio universal, con miras a que se incluyan en el Plan de Acción de la CMSI.

Históricamente, el acceso/servicio universal era suministrado por un operador público o regulado en situación de monopolio y su financiamiento estaba concebido de manera acorde. A medida que los procesos de liberalización de las economías ganan terreno, las entidades reguladoras se enfrentan con el problema del suministro y de la financiación del acceso/servicio universal en un entorno cada vez más regido por la competencia.

El concepto de acceso/servicio universal se define, de manera general, como un conjunto de medidas de interés público tendentes a garantizar a todos, bajo ciertas condiciones, el acceso a un conjunto de servicios de comunicación electrónica reconocidos como esenciales, de una determinada calidad y a un precio asequible.

Sin embargo, los términos de esta definición ignoran las consecuencias económicas de su aplicación, aunque los principios políticos que encarnan pueden afectar el funcionamiento del sector y tener repercusiones sobre la competitividad nacional y la coherencia territorial.

Los resultados del análisis de las experiencias de varios países desarrollados y en vía de desarrollo, de entorno liberalizado o monopolístico, permiten definir las siguiente directrices:

– *definir las necesidades y los derechos de los consumidores a fin de estimular el uso;*
– *definir las principales etapas de la política de acceso/servicio universal;*
– *implementar un marco que fomente la inversión;*
– *innovar en materia de financiamiento y gestión.*

Estas directrices se describen a continuación.

DIRECTRICES

Definir las necesidades y los derechos de los consumidores a fin de estimular el uso

El concepto de acceso/servicio universal es, a la vez, *para los consumidores un derecho a ser atendido, y para los operadores de comunicación electrónica un derecho a prestar servicios*.

Las políticas de acceso/servicio universal exigen las siguientes medidas:

– Definir las necesidades y los derechos de los consumidores en cuanto a suministro de servicios, información y transparencia. Los consumidores deben tener la libertad de definir los servicios que corresponden a sus necesidades y que les son económicamente asequibles.

– Idear procedimientos eficaces para resolver los problemas que puedan surgir entre los usuarios y las empresas que suministran servicios de comunicación al público.

– Redactar un código de derechos del usuario en el que se contemple la necesidad de que los órganos reguladores nacionales consulten a las asociaciones de usuarios y de consumidores antes de tomar ciertas medidas.

– Privilegiar los términos contractuales asegurándose de que los consumidores se beneficien de un nivel mínimo de seguridad jurídica frente a los operadores. Los contratos deben especificar las condiciones y la calidad del servicio, las modalidades de rescisión del contrato y de suspensión del servicio, las medidas de compensación y la manera de resolver los litigios.

Definir las principales etapas de la política del acceso/servicio universal

Una estrategia de acceso/servicio universal, para que sea eficaz, debe ser revisada y actualizada periódicamente teniendo en cuenta la evolución social, comercial y tecnológica.

Además de instaurar ciertas medidas básicas tales como la apertura del mercado a la competencia y la creación de un organismo de regulación independiente, los responsables políticos deben definir objetivos políticos específicos y supervisar su aplicación mediante revisiones y actualizaciones periódicas.

En este marco, es fundamental definir las principales etapas de la política de acceso/servicio universal. Dichas etapas son: la planificación, la aplicación y la evaluación. Se trata, ante todo, de definir el alcance del acceso/servicio universal, garantizar un precio asequible, hallar las empresas que puedan garantizar el acceso/servicio universal, calcular, a la vez, los costos directos del suministro del acceso/servicio universal y las ventajas indirectas, escoger un mecanismo de financiamiento y garantizar su administración.

Los responsables políticos, los reguladores y los operadores deberán crear nuevas responsabilidades, así como los medios institucionales necesarios para la elaboración de una política y una estrategia apropiadas.

Implementar un marco que fomente la inversión

La revisión periódica y eficaz de la reglamentación debe permitir la aplicación de la política de acceso/servicio universal. Dicha revisión tendrá por objeto eliminar los obstáculos que impidan el buen funcionamiento del mercado, cuantificar el déficit de explotación del acceso universal y establecer las condiciones de interconexión apropiadas y/o los criterios de distribución de los ingresos pertinentes.

La política de acceso universal debe propender a la popularización de los servicios disponibles. Por consiguiente, conviene priorizar el criterio de eficacia en términos económicos y suprimir los obstáculos que puedan ir en menoscabo de las inversiones y el buen funcionamiento del mercado.

Es necesario otorgar a los responsables políticos y a los reguladores los medios para incitar a los operadores a hacerse cada vez más eficaces, a fin de que el acceso/servicio universal se pueda ofrecer a la mayor escala posible. De igual manera, los reguladores y los responsables políticos deben procurar que se apliquen nuevas tecnologías de reducción de costos.

Innovar en materia de financiamiento y de gestión

Es necesario estimular las iniciativas innovadoras en materia de financiamiento y de gestión tales como:

– el autofinanciamiento del desarrollo de las redes;

– la autogestión de las comunidades rurales;

– los sistemas de concesión para administrar las cabinas telefónicas públicas o los telecentros privados;

– los fondos de servicio universal financiados por contribuciones según el volumen de negocios de los proveedores.