European Electronic Communications Code

OTT Stakeholder Event

5th November 2020
Issues for Discussion

• The General Authorisation Process
• Information Requests from Undertakings
• Security Requirements
• Access and Interconnection
• New Rights Afforded to Consumers
• ePrivacy Regulations / Lawful Interception
• Consequential Amendments to 2002 Act
• Q&A
1. General Authorisation

- Articles 12 and 13
- Applies to all ECS, excluding NI-ICS (including NB-ICS, IAS, services consisting wholly or mainly in the conveyance of signals)
- All ECS (-NI-ICS) required to get a GA
- Register with ComReg
- Straightforward process - online
- Suite of obligations on operators subject to GA
Electronic Communication Service (ECS)
A service provided via Electronic Communications Network (ECN):
- Internet access service
- Interpersonal communications service
- Services consisting wholly or mainly in the conveyance of signals such as transmission services used for provision of machine-to-machine services and for broadcasting

Interpersonal Communication Service (ICS)
A service providing direct interpersonal and interactive exchange of information via ECN, between a finite number of persons

Number Based ICS
An ICS which connects with publicly assigned numbering resources or enables communication with a number

Number Independent ICS
An ICS which does not connect with publicly assigned numbering resources or does not enable communication with a number
Conditions of the GA

- The GA recognises that operators that benefit from the use of public numbering resources and a publicly ensured interoperable ecosystem should be subject to certain obligations / conditions
- GA allows the operator to provide services throughout the EU
- Potential conditions listed at Annex 1
- Currently the GA includes a range of conditions, including, *inter alia*:
  - Provision of Info
  - Security Requirement
  - Consumer Protection
  - Legal Interception
  - Admin Charges
  - …..
2. Information Requests

• Article 20 and 21
• **Article 20:** Information Requests to all ECS / ECN / Associated Services
• Requests are required to be proportionate and reasoned
• Information requests to ensure conformity with the Directive, opinions / decisions made in accordance with it
• Compliance with requests is mandatory
• **Article 21**
• Information requests to authorised undertakings
• Can be in order to ensure
  • *compliance with the GA*
  • *Collating studies / reports*
  • *Publishing overview of price / quality of services*
  • *Geographical Survey*
  • *Manage radio spectrum*
  • *Market analysis procedure*
3. Security

• Key Articles: Article 40 and 41
• **Article 40** – requires ECS / ECN to ensure the security of their network
• Requirement to report security breaches that have had a significant impact on the operation of their network without undue delay
• When is an incident “significant”? Take into account the following:
  • *Number of users affected*
  • *Duration of incident*
  • *Geographical spread of incident*
  • *Impact on functioning of the network*
  • *Impact on economic and social activities*
• **Article 41** imposes an obligation on Member States to ensure that competent authorities can enforce in respect of these security provisions

• ComReg will be the relevant NR

• They will be permitted to:
  - *Issue binding instructions to operators*
  - *Require information to be provided by ECS / ECN*
  - *Submit to a security audit (to be paid for by the operator)*
4. Access and Interconnection

- Article 61(2)(c) – where end-to-end connectivity between end-users is endangered due to lack of ICS interoperability
- ComReg can impose obligations on relevant providers of NIICS with a significant level of coverage and user uptake, to make their services interoperable.
- Such obligations can only be imposed:
  - *To the extent necessary to ensure interoperability* AND
  - *Where the Commission has found an appreciable threat to end-to-end connectivity throughout the Union or in at least 3 MS and has adopted implementing measures specifying the nature and scope of the obligations that may be imposed*
5. New Rights for Consumers

• Consumers of all ECS / ECN benefit from new rights under the Code

**All ECS / ECN**

• *Contract Summary Templates (Art 102)*
• *Information on Usage (Art 102 – only relevant for services subject to billing)*
• *Inclusion in a comparison tool “where applicable” in accordance with Art 103(2)*
• *QoS Publication Requirements (Art 104)*
Consumer Rights Excluding NI-ICS

• Aforementioned Rights
• Publication of terms and conditions of service (Art 103)
• Inclusion in Comparison Tool (Art 103)
• Rules regarding contract termination and duration (Art 105)
• Number portability (Art 106)

- Update to definition of ECS in Code and Repeal of Framework Directive
- ePrivacy Relies on FWD Definitions
- ePrivacy Directive (ePrivacy Regs) will have expanded scope – cover all ECS
- Concerned with processing of ECS data, unsolicited communications, direct marketing
- Not “one-stop-shop”
- ePrivacy Regulation Negotiations – Update
- ePrivacy Directive Derogation
Legal Interception

• Policy Area of DJE

• Section 110, Postal and Telecommunications Services Act, 1983 and Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993

• Currently applies only to authorised undertakings

• Will continue to apply to these entities

• NB-ICS can be subject to legal interception orders
7. Consequential Amendments to 2002 Act

- Consequential amendments to the 2002 Act required by EECC
- Update to the definition of ECS and ECN for the purpose of the 2002 Act
- Update to ComReg’s functions
- Knock on effects for some of ComReg’s powers under the act, in certain instances
Q&A
Thank You!

Follow on questions?

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