Regulation of Telecommunications in the European Union: a challenge for the Countries acceding to the European Community

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The multi-sector negotiations with the prospective Member States and the European Commission on the conditions of accession present an occasion for re-assessing the *acquis communautaire*. For the Accession Candidates, the implementation of the EC- telecommunications regime will also be a chance to regulate communications innovatively. An innovative regulatory framework taking up the challenge of the 'competition of jurisdictions' particularly discernible in the sector of telecommunications could place the new Member States in an advantageous position in the European Community and might even set the pace for a future European Community framework.

I. Telecommunications - the backbone of the Information Society

Globally, telecommunications have been liberalised on an unprecedented scale[2]. The rationale behind these liberalising efforts is that an improvement in the field of the rapidly advancing telecommunication technology increases general welfare by aggrandising economic prosperity. Modern communication structures are the backbone not only of the telecommunications industry as such, but of every sector of society, from business activities to private life. Therefore, a sophisticated communication infrastructure is the modern toolkit of European integration. Vice versa, an outdated telephone system can act as a brake on society as a whole. The European buzzword referring to present and future developments in communications is not simply the 'Information Superhighway' focussing on the transfer of information, but the 'Information Society'[3] encompassing all sectors of society. The ‚long-promised future of digital interactive everything'[4] has been initiated by increasing digitalisation and the consequent possibility of a whole new range of services, from Internet Service Providers to e-commerce. Thus, it is important for the prospective Member States[5] to adjust to the liberalised and harmonised telecommunications regime of the European Community. However, it would be even more advantageous for them if they were not only to implement the present status quo, but to anticipate present and future developments - mainly the trend of converging markets and networks[6] - and to elaborate a new communications regime encompassing the Community rules and simultaneously accommodating the demands of the dawning Information Society. Sketching the main features of the present Community telecommunications regime, the authors point to specific problems the prospective Member States will face and to the scope left for innovative regulation.

II. Telecommunications in the EC and in the prospective Member States

1. The telecommunications markets in the European Community and the CEEC

The set-up of telecommunication service providers in the EC and the prospective Member States is the result of an evolutionary process stimulated by the change of the legal background. In the beginning of the liberalisation process, there had usually been only one National Telecommunication Organisation in a monopolistic position[7]. These monopolies were held to be natural monopolies because monopolies were deemed to be essential in making the costly telecommunication network workable from an economic as well as from a technical point of view. Nowadays, there is a multitude of telecommunication providers, even if the actual situation differs from Member State to Member State. In Germany, for example, there are at the moment more than sixteen hundred telecommunication service providers. More than 120 companies from all over the world have obtained voice telephony licenses here[8]. Obviously, even with this increase in the number of providers, telecommunication networks have not collapsed, proving that the theory of a natural monopoly has failed at least in the telecommunication sector. All over the European Community, we have witnessed an unprecedented decrease of prices for telephony services. Contemporarily, digitalisation of the telephony networks is on the rise and technological innovations, esp. the internet, have initiated changes on the markets of telecommunications and induced the convergence of previously separated markets and networks. The Commission has taken up the discussion on the effects of this trend[9] and initiated several legislative [10].

As the prospective Member States strive for the implementation of the *acquis communautaire* and for fulfilling their obligations under GATS[11], a similar trend has started[12]. However, a lot remains to be done. E.g. in the market for long distance and international calls, the sole provider is still quite often the national telecommunications carrier[13]. Competitive markets can usually be found in the local fixed networks and mobile communication services. Yet even with competition in these sectors; the incumbents can be seen to be favoured over the new entrants by additional obligations for the new entrants[14].

Regulation of Telecomms in the European Union

According to the EC Commission, coverage in the fixed network in the prospective Member States has presently reached in between 19 percent of the population in Poland and 33 percent of the population in Slovenia. In comparison: in the Member States with the lowest coverage, Ireland, Portugal, and Greece, the average coverage is about 44 percent. All the prospective Member States prognosticate increases in coverage, albeit with differences in extent. A relatively modest 25 to 30 percent coverage can be expected in the year 2000 according to the Polish Ministry of Communications, and an about 45 percent are the target for the Czech Republic. Concurrently, investments in the internet are on the rise and some of the prospective Member States can be expected to reach and maintain European Community level quite soon[15].

2. *The development of the law of telecommunications in the European Community*

The present market situation in the EC is the result of a legal process initiated in 1987 with the Green Paper on the development of the common market for telecommunications services and equipment[16]. This has in turn led to a gradual process, leading to full liberalisation of telecommunications in the EC since 1 January 1998, with extensions for some Member States[17]. This result has been approached gradually. First, the terminal equipment market was opened for competition introducing the principle of full mutual recognition of type approval for terminal equipment[18]. After liberalising the market for terminal equipment, step by step the Commission abolished monopoly rights, starting with non-voice services and voice services for closed user groups [19]. The legal basis in the EC Treaty proved fortuitous for the Commission: The EC-Treaty provides for the reduction of special and exclusive rights of public undertakings, especially state monopolies[20]. The Commission is entitled to address on its own Directives and Decisions to Member States in order to reduce these special and exclusive rights. It is here in the field of the abolishment of special and exclusive rights of public undertakings and monopolies that liberalisation as such is taking place.

Concurrently to the legislative activities of the Commission, Council Directives were adopted. First, alternative network infrastructures, e.g. cable television networks, were opened for the provision of telecommunication services. The Council of Ministers issued the Open Network Provision Directive[21] establishing the basic principles for transparent and non-discriminating network access[22]. The legal basis entails the adoption of the Directive in question by the Council of the European Community and the European Parliament[23]. This leads to harmonisation of the Member States' laws – not necessarily to liberalisation. Finally, at the beginning of last year, voice telephony was fully liberalised within the EC[24]. The difference between the power of the Commission to act on its own and the harmonisation procedure according calling for legislative activity of the Council of Ministers and the European Parliament led to the basic dualism[25] at the heart of EC telecommunication laws: On the one hand, the liberalising abolition of public monopolies, on the other hand, the shaping of a harmonised general framework for a liberalised market. Nowadays, when envisaging a regime for the Information Society, the emphasis is more on harmonisation than on liberalisation due the fact that most services are not offered by former monopolies[26].

III. Implementation of the telecommunications law in the prospective Member States

1. *A general Framework*

A fundamental duty of the accession candidates is the adoption of the *acquis communautaire*[27]. As the general framework of EC-telecommunications rules is laid down in Directives, there is a margin of discretion as to how the EC rules should be implemented in the law of the new Member States. According to the Art. 189 EC-Treaty, Directives are binding for the Member States addressed only as to the result to be achieved[28]. There is some leeway – depending on the wording of the Directive – as to how precisely this final result is to be brought about through domestic implementation in the Member States. It is the Member States' duty to make the Directives applicable through acts of the national authorities ensuring that the Directives' objectives are efficiently accomplished[29]. In the telecommunications sector, it is crucial to create a general national framework flexible enough to allow for rapid technological changes, for instance due to the digital convergence of information technologies. Consequently, the technical rules being especially prone to change should be dealt with in administrative ordinances.

2. *Open Network Provision*

One of the core concepts in the new legal framework is the so-called concept of Open Network Provision (ONP)[30]. The aim of ONP is twofold. First, the optimisation of the technology involved and the facilitating of the Europe-wide offer of services is aimed for. This is to be achieved by harmonisation of technical interfaces, usage conditions, and tariff principles on the basis of European standards adopted by ETSI[31]. Second, the ONP rules state that networks have to be opened to other providers of services. In order to bring this about, basic principles and essential requirements for these conditions are laid down. If Member States frame conditions for ONP, these have to contain objective criteria, transparent conditions, and they have to provide for equality of access in a non-discriminatory way[32]. Only essential requirements can constitute exceptions to the ONP-rules, which are enumerated, e.g. the

Regulation of Telecomms in the European Union

security of network operations and the network integrity[33].

Seeing that so far the ONP-rules are only partially implemented in the prospective Member States, changes are still necessary in this area. Implementing the ONP-rules will imply a more competitive treatment of the dominant players in most of the prospective Member States. It should be kept in mind, that these laws have to be made workable.

3. *Interconnection*

Interconnection means the linking, physical as well as logical, of telecommunications networks in order to allow the users of one organisation to communicate with users of another organisation, or to access services provided by another organisation[34]. Interconnection rules are a prerequisite for establishing competition in markets with a network structure. The EC interconnection rules state that network providers with a market share above a certain threshold have to offer interconnections, i.e. to let competitors use their networks charging only the expenses incurred plus an adequate return on investment. Thus, competitors are enabled to offer services competitively without having to build their own network. This is crucial as the former national carriers control a bottleneck between the services market and the customer.

The relative position in the market is taken into account in order to compensate for an imbalance in negotiating power. The player has to have 'significant market power', in order to face specific obligations. This is the case for public telecommunication network operators and public telecommunication services providers having more than 25 percent market share. These obligations relate to the granting of network access, non-discriminatory treatment of competitors demanding access to the network, the publication of IC terms and prices, the cost orientation of IC prices, and cost accounting requirements[35]. The rule that telecommunication companies with significant market power face more duties than those companies with a smaller market share is known as the principle of asymmetric regulation[36]. All players, even those without significant market share, have the obligation to negotiate interconnection agreements.

In the prospective Member States, the former monopolists have a much lower share of a possible future total of phone lines due to the present low coverage. Thus, one of the reasons for asymmetric regulation in the EC regime - putting more obligations on carriers with significant market power specifically in order to expose the market position of the ex-monopolist - is not as compelling in the prospective Member States as it has been in the present Member States. When implementing the interconnection rules into domestic laws, the thrust of the competition rules should rely less on asymmetric regulation and more on the general rules on competition.

4. *Universal Services*

Correlating to the extended freedom of the telecommunications companies, the EC established a universal services regime to guarantee a minimum of telecommunication services which must be available for everyone within the EC. To be precise, universal services designate a defined minimum set of services of specified quality which has to be made available to all users independent of their geographical location and at an affordable price[37]. The idea behind the universal services concept is to prevent the market participants from picking out the raisins in the telecommunications market: all regions of a Member State, be they densely or loosely populated, should be provided with basic telecommunication services, even though the expenses per line of providing the less populated areas with this basic level of telecommunication services will be higher than the expenses per line in the densely populated areas.

The provision of universal services can be financed in two ways. On the one hand, a mechanism could be established for sharing the net cost of the universal service obligations. Also here, the principles of transparency, non-discrimination and proportionality in setting the contributions to be made have to be considered. The setting up of such a mechanism is allowed for if the provision of universal services is not commercially viable and represents an unfair burden for the universal services provider. On the other hand, universal services can be financed by supplementary charges paid by undertakings interconnecting with the universal service provider[38].

Unfortunately, the Universal Services concept has not been framed in a systematic way, let alone set out in a single Directive. The rules defining the Universal Services are spread over several Directives[39]. There is no final enumeration of services which are part of the universal services concept. The definition of such a list depends on the technical change in the telecommunications sector and its influence on society[40]. Whether a telecommunication service is important enough so that every citizen of the European Union should have access to it, is subject to social change. By now, the universal services within the EC are defined as the traditional (plain-old) telephony service with the additional capability for fax and data transmissions, directory services, and public pay phone services[41]. As the Internet has become part of today's life, it is not surprising that some Member States are interested in adding Internet-access to the list of universal services.

Universal Services put a major burden on the players having to finance them. Considering that universal services imply the possibility of voice, fax and data transfer for the general population, major investments into the network structure will be needed. The costs for all players will increase significantly - the benefits accrued by liberalisation could be lost through the high

Regulation of Telecomms in the European Union

costs for extending the network structure. Thus, it might be in the interest of the new Member States to negotiate an exception to the universal services regime. Several options should be envisaged: first, a different definition of universal services could be used for a certain time, cutting the services which have to be offered to a minimum. However, this might entice investments into old networks, which are not adequate in the digital age, and therefore hinder network innovation. Therefore, a second option appears more appealing: the universal services rules could be suspended for a period of transition. Finally, it could be negotiated that for a period of transition the network infrastructure can partially be financed by the new Member States, thus leading to an exemption from the EC rules on state aid[42]. This financing scheme could possibly be supported by the EC via the funds for Trans European Networks[43] or regional aid. As the exact delineation of universal services is subject to change, it would once again be better to lay down details in ordinances[44].

6. *The National Regulatory Authority*

Corresponding to the regulatory framework, the Commission provided for an institutional framework. The Member States are obliged to separate the regulatory and entrepreneurial players in the telecommunications markets[45]. The structural separation between the National Regulatory Authority and activities associated with ownership or control of organisations providing telecommunications networks, equipment or services has to be effective[46]. This demand leaves a wide margin of discretion. In the present Member States, the separation of functions has been achieved by the creation of government departments or independent agencies to handle regulatory matters[47]. The powers of these bodies comprise the granting of licenses, dispute settlement between market players, the distribution of frequencies, and the power to regulate prices on all distributive levels. While the National Regulatory Authorities in the Member States have to be independent from market participants, their duties could be carried out by a ministry. This would however necessitate that the state is not a major shareholder of the companies providing telecommunication services. One of the crucial powers the National Regulatory Authorities can be granted is a sectoral special competition power. This leads to the peculiar situation in which the EC Commission deals with infringements of the rules on competition with EC-wide consequences, while in the Member States a national general competition authority and a sectoral competition authority cover general competition rules and sector specific competition rules respectively.

There are a couple of ways the powers of the National Regulatory Authority can be delineated. For example, competition could be dealt with by the general competition authority, leaving the National Regulatory Authority with licenses, determination of charges, distribution of frequencies etc. Furthermore, the National Regulatory Authority could be equipped with further powers than merely those concerning telecommunication. A model which could bear fruit in the long run would be the integration of the telecommunication powers, plus the powers on broadcasting, plus the power on distributing frequencies. With regard to convergence of telecommunications and digital broadcasting, this model could prove to be suitable also in the long run[48].

IV. The future of Telecommunications in Europe – a Case for the Competition of Jurisdictions

1. *Competition of Jurisdictions*

After stressing the need for full harmonisation in the early years, the integration of the European Community has then been advanced as well by minimum harmonisation and mutual recognition. This has been due to the fact that there has been a lot of political noise in the context of further harmonisation. An open discussion of further integrationist projects has to keep in mind that there is also an economic argument for letting different jurisdictions compete and therefore come up with the best regulatory solution. Like companies in the private markets, jurisdictions compete for the influx of resources[49]. Though this line of thought is comparatively new, there are suitable legal bases in EC law. A case in point is the principle of susbsidiarity, introduced by the Treaty of Maastricht[50]. The principle of subsidiarity seems to de-integrate Europe at first glance, introducing conditions on when the Commission may act. However, a correct reading of the text shows that it does not introduce new powers for the Commission, but outlines the correct use of the given powers[51]. Yet, regardless of the precise way the principle of subsidiarity is to be interpreted, it indicates a trend: Solutions should be found as close to the problem as possible – i.e. wherever possible, the Member States or parts thereof should legislate. This in turn leads to competition of these jurisdictions. The notion indicated by the explicit inclusion of the principle of subsidiarity in the EC Treaty has been strengthened by the introduction of new rules on closer co-operation[52] in the European Community in the EC and EU Treaties by the Amsterdam revision[53]. These encourage the competition of jurisdictions in an unprecedented way by inviting the Member States to rethink their approach to European integration and to come up with innovative ideas on how to integrate further. Now the choice is not only for solutions on the level of the Member States (or parts thereof) or on the level of the Community, but also on the level of several Member States.

2. *Telecommunications – harmonisation for competition*

The telecommunications policy appears not to be a case in point for the competition of jurisdictions. After all,

Regulation of Telecomms in the European Union

the main drive next to liberalisation of the markets has been the harmonisation of rules, so neither the principle of subsidiarity nor the closer co-operation of some Member States appear pertinent. However, in the context of telecommunications services, harmonisation has paved the way for the competition of jurisdiction. Economic players are only endowed with the necessary mobility, where common technical and commercial standards are in place[54]. Moreover, as has been pointed out above, the main rules have been laid down in Directives. Even though not all of the Directives leave the same margin for implementation, there is still room for Member State initiatives, as the legal European Community framework leaves scope for different interpretations. The prospective Member States should make use of the margins pointed out above. Especially the institutional framework should be framed in a way which anticipates future developments[55].

3. *The Green Paper on Convergence*

Finally, the sector of telecommunications is one of the fastest changing sectors in the European Community. Not only the evolution initiated by liberalisation, but also the technological revolution induced by digitalisation can be felt here. Acknowledging the digital revolution, driving all communications sectors towards the convergence of information technologies, the EC-Commission is nowadays debating new ways of regulating all areas of communications, deliberating the integration of telecommunication and other forms of electronic communications, like interactive digital broadcasting, in a single regulatory framework. The Commission published a Green Paper on the Convergence of the telecommunications, media and information technology sectors[56]. For the time being, the regulatory situation is open to the competition of jurisdictions. The EC-Commission has not proposed a convergent regulatory option so far. Rather, it is up to the Member States to discuss, and maybe devise and implement their own solution. This in turn means that the Member State with the best solution might expect that it is this solution which will form the basis of a future European regulatory framework. Thus the players in the Member State with the best framework will be able to enjoy the benefits of their Member State's first-mover-advantage.[57]

V. Summary

To put it in a nutshell, the regulation of telecommunication services in the EC strives for the liberalisation of *all* telecommunication markets in the Community and the harmonisation of the general framework for telecommunications. A modern communication structure is the backbone not only of the telecommunications industry as such, but of every sector of society, from business activities to private life and thus of the Information Society. A sophisticated communication infrastructure is a step to real integration into the Community. Even though exceptions to the rules may be necessary for the immediate time after accession, it is also in the interest of the prospective Member States to get things on a working level as soon as possible.

(1) Adopting the *acquis communautaire*, i.e. the implementation of the EC-rules on telecommunication, should not present a major problem for the Accession Candidates.

(2) However, the need for huge network infrastructure investments will be a challenge for the implementation of the EC-universal services regime in the new Member States. In order to avoid disturbances regarding investments in modern network infrastructure, some of the universal services obligations invoking high costs, especially for network providers, should be suspended for a short period of transition. Afterwards, the universal services network infrastructure could partially be financed by the new Member States, thus necessitating an exemption to the EC rules on state aid. This financing scheme could be supported by the EC via the funds for Trans European Networks or regional aid.

(3) Acceding Member States should anticipate the digital revolution instead of merely implementing the European status quo. Given the time horizon of the Accession and the very fast change of technology the communication sectors will converge the current information technologies. Accomodating the competition of jurisdictions, Community law leaves enough room to the Accession Candidates for ways of regulating all areas of communications, integrating the technical platform of telecommunication and all contents of electronic communications, like interactive digital broadcasting, in a single regulatory framework. This leapfrog model, which will bear fruit in the long run, calls for an integration of the regulatory authorities' powers over telecommunications with those over (interactive) broadcasting and other forms of electronic communication. The Accession Candidates can strengthen their attractiveness to foreign investments through an innovative regulatory approach building up a high speed ramp to digital superhighways and thus take their place in the European Information Society.

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2 Cf. eg. The agreement in the WTO as part of the GATS, http://www.wto.org/eol/e/wto06/wto6_32.htm

3 Cf. recently, Council Resolution of 19 January 1999 on the Consumer Dimension of the Information Society OJ C 023 28.01.99 p.1.

4 The Economist, ‚Beware the Gatekeeper', May 1st 1999, p. 16.

5 The prospective Member States in the first round are the Czech Republic, Estonia, Hungary, Poland, Slovenia, and Cyprus, which

Regulation of Telecomms in the European Union

has a somewhat special position due to the unresolved territorial disputes with Turkey.

6 On the terminology cf. e.g. Blackman, Colin; Convergence between tlecommunicatinos and other Media, Telecommunications Policy 1998, p. 163 ff.

7 For a more elaborate overview, cf. Scherer, Telecommunications Laws in Europe, 1998, No. 1.2 ff.

8 Cf. the data of the German National Regulatory Authority at http://www.regtp.de/Fachinfo/Anzeige/teil2.PDF (as of 18.1.1999, updated every 6 months)

9 Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation. Towards an Information Society Approach, [COM(1997)623] at http://www.ispo.cec.be/convergencegp/greenp.html
cf. for a summary of the results of the discussion of the Green Paper cf. Working Document [Sec(98)1284] at http://www.ispo.cec.be/convergencegp/gpworkdoc.doc

10 The most important legislative proposal is the European Parliament and Council Directive on certain legal aspects of electronic commerce in the internal markets, COM (1998) 586 final, O.J. 1999, C 30/4

11 Currently, only Estonia is merely an observer state, all the other prospective Member States are Members of the WTO.

12 Cf. for Commission's analysis of the situation in the prospective member states
EC Commission, Communication of the Commission, DOC 97/6 Strasbourg, 15 July 1997
(Agenda 2000), Volume 2: The Effects on the Union's Policies of Enlargement to the Applicant Countries of Central and Eastern Europe, available at http://europa.eu.int/comm/dg1a/enlarge/agenda2000_en/opinions/opinions.htm

13 In Poland eg still the TPSA. TPSA also is the sole provider of a fixed network for voice telephony services. In Hungary MATAV etc.

14 In Poland, eg the mobile telephony providers are obliged to relay their local calls through the fixed network of the TPSA.

15 For EC-projects with the CEEC in the field of e-commerce cf. http://www.ispo.cec.be/ecommerce/ceecs.htm

16 COM (87) 290 final, 30.07.1987

17 The Member States who were originally granted additional periods for implementation are: Greece (Commission Decision 97/607/EC of 18 June 1997, *OJ L 245 09.09.97 p.6*), Ireland (Commission Decision 97/114/EC of 27 November 1996, *OJ L 041 12.02.97 p.8*), Portugal (Commission Decision 97/310/EC of 12 February 1997, *OJ L 133 24.05.97 p.1*), and Spain (Commission Decision 97/603/EC of 10 June 1997, *OJ L 243 05.09.97 p.48*).

18 Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunication terminal equipment, *OJ 131/73, 27.05.1988*, later amended by Commission Directive 94/46/EC, *OJ L 268 19.10.94 p.15*

19 Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, *OJ L 192/10, 24.07.1990*, later amended by Commission Directive 94/46/EC of 18 October 1994, *OJ L 268 19.10.94 p.15*, by Commission Directive 95/51, *OJ L 256 26.10.95 p.49;* by Commission Directive 96/2/EC of 16 January 1996, *OJ L 020 26.01.96 p.59;* and by Commission Directive 96/19 *OJ L 074 22.03.96 p.13*

20 Previously Art. 90 (3) EC, now Art. 86 (3) EC.

21 Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision *OJ L 192 24.07.90 p.1;* later amended *by OJ L 295 29.10.97 p.23*).

22 Based on Art. 100a; now Art. 95 EC

23 Before the entry into force of the Maastricht Treaty on 1 November 1993, the Council of the European Community adopted Directives based on Art. 100a EC on its own.

24 Cf. Commission Directives at footnote .

25 Scherer, Telecommunication Laws in Europe, 1998, No. 1.17 f.

26 An exception are broadband services offered by the former National Telecommunications Operators in some Member States.

27 Countries desiring to become members of the Union have to be able to assume the obligations of membership by satisfying the economic and political conditions. One of the obligations is the implementation of the acquis communautaire.

28 Cf. Art. 249 EC.

29 Koenig/Haratsch, Europarecht (1998), No. 251 f

30 Cf. Council Directives at Fn..

31 More information about the ETSI at http://www.etsi.org/

32 Art 3 (1) of the ONP Directive 90/387/EEC, fn. .

33 Art. 3 (2) of the ONP Directive 90/387/EEC, fn. .

34 Art. 2 No 1 lit a of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) *OJ L 199 26.07.97 p.32* and Art 2 No 7 of the ONP Directive 90/387/EEC, fn. , as amended by Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications *OJ L 295 , 29/10/1997 p. 0023 - 0034*

35 It should be noted that the general rules on competition in the ECT, particularly art. 86 EC Treaty, do not refer to 'significant market power', but to the well-established concept of a 'dominant market position'.

36 On the different positions in the discussion of asymmetric regulation of telecommunications, cf. Perrucci/ Cimatoribus, Competition, convergence and asymmetry in telecommunications regulation, Telecommunications Policy 1997, pp. 493 ff.

37 cf. Art. 2 (2) of Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment, *Official Journal L 101 , 01/04/1998 p. 0024 – 0047* and Art. 2 (1) of the Interconnection Directive 97/33/EC, fn. .

38 Commission, Assessment Criteria for National Schemes for the Costing and Financing of Universal Service in Telecommunications, and Guidelines for the Mebor States on Operation of such Schemes, COM (96) 608 final; Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets *Official Journal L 074 , 22/03/1996 p. 0013 – 0024;*, Interconnection Directive 97/33/EC fn ; ONP Directive 98/10/EC, fn .

39 Cf. e.g. fn .

40 In the Czech Republic, e.g., the Postal Act of 1946 defines written communications and (temporarily) parcels and money orders as universal services obligations, cf. Commission opinion at http://europa.eu.int/comm/dg1a/enlarge/agenda2000_en/op_czech/b32.htm

41 Art 2 (2) lit. Of the ONP Directive 98/10/EC, cf. Fn .

42 Art. 87 ff. EC.

43 Art. 154 f EC.

44 In Poland, this has unfortunately been neglected.

Regulation of Telecomms in the European Union

45 Cf. Fn. , esp. Article 5a of Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications, *Official Journal L 295 , 29/10/1997 p. 0023 – 0034.*

46 Cf. Fn.

47 Status Report on European Telecommunications Policy, Update: March 1999, available at http://www.ispo.cec.be/infosoc/telecompolicy/en/tcstatus.htm

48 Cf. for a proposal for German legislation Koenig/Röder, Converging Communications - Diverging Regulators, IJCLP, http://www.digital-law.net/IJCLP/1_1998/ijclp_webdoc_1_1_1998.html, for a similar proposal for a single economic/social regulator for electronic communications sector in the UK cf. OFTEL's response to the UK Green Paper - Regulating communications: approaching convergence in the information age, January 1999, available at http://www.oftel.gov.uk/broadcast/gpia0199.htm

49 For a discussion of the concept of competition of jurisdictions and some of its implications cf. Kerber, Kerber, Zum Problem-einer Wettbewerbsordnung für den Systemwettbewerb, Jahrbuch. für Neue Politische Ökonomie, S.. 109 ff. and Kerber, Interjurisdictional competition within the European Union, Fordham International Law Journal, forthcoming, both giving further sources.

50 As Art. 3b, now Art. 5 EC.

51 There is still disagreement on the exact scope of application of the subsidiarity principle, cf. e.g. Steiner, 'Subsidiarity under the Maastricht Treaty' in O'Keeffe/Twomey, *Legal Issues of the Maastricht Treaty, (1994)* at pp. 55 ff. and Toth, 'The Principle of Subsidiarity in the Maastricht Treaty' (1992) CMLRev. 1079 ff.

52 Also known as multi-speed Europe, on terminology and background, cf. Röder, Integration at Multiple Speeds in the European Union, http://www.uni-bonn.de/~usi00067/integration.doc

53 Art. 40, 43, 44 EU, Art. 11 EC.

54 Similarily Kerber, Interjurisdictional competition within the European Union, Fordham International Law Journal, forthcoming.

55 Cf. examples at Fn. .

56 Green Paper on the Convergence, fn.

57 Koenig, Regulierungsoptionen für die Neuen Medien in Deutschland, Beilage zur MMR 12/1998, S. 2.