



New EU-Framework for electronic communication

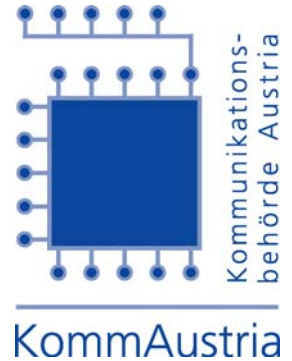
Implications for Broadcasting

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16th EPRA-Meeting Ljubljana

Broadcasting: Content + Transmission

- Regulators need to safeguard public interest – most important: freedom of expression / freedom of information
- 3 important areas:
 - Content
 - Media concentration
 - Transmission networks
- Programming *power is nothing without control* of the transmission path

From “telecommunication” to “electronic communication”



- **Convergence:**
 - it might not be what we expected 4 years ago
 - but it is apparent on the network level
- **Regulation of networks – whether broadcasting or telecommunication – will have to follow the same path**
- **Instead of telecommunication networks and services, we now speak of electronic communication networks and services**

The new regulatory framework in the EU

- Five directives
 - Framework
 - Universal Service
 - Access
 - Authorisation
 - Privacy (data protection)
- Radio Spectrum Decision
- “Ancillary Documents” – Decision on European Regulators Group, Radio Spectrum Policy Group, Recommendation on Markets

„Basics“ of the new framework (1)

- Horizontal Approach – harmonized regulatory framework for all electronic communication networks and services
 - Important role for NRAs – „toolbox“ of regulatory instruments
 - Market definition and market analysis, based on competition law approach, interdependence of EU-Comm. and NRAs
 - Consultation and Transparency
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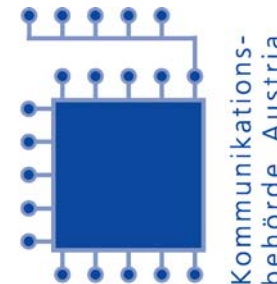
„Basics“ of the new framework (2)

- General authorisation regime extended (esp. also to broadcasting networks)
 - Individual authorisations reduced to rights of use for radio frequencies (and numbers)
 - Broadcasting content is out of the scope of the new framework:
„If it's content, it's not covered“
 - But there are specific links to broadcasting expressly stated
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National Regulatory Authorities (NRAs)

- one or more authorities
- responsibilities must be clearly stated
- consultation and cooperation between authorities, also internationally: ERG, Communications Committee,...
- broadcasting regulators will in many cases also be NRAs
- have to conform to the NRA-requirements
 - e.g. redress, transparency, independence from operators, ...)

Market Definition and Analysis



- **Commission Rec. on Relevant Markets**
 - will include broadcasting transmission services (wholesale level)
 - no segmentation (cable, terrestrial, satellite)
- **Commission Guidelines on Market Analysis**
- **Market Analysis to be undertaken by NRA**
 - To determine operators with significant market power (“dominance” acc. to competition law)
- **Specific ex ante obligations on SMPOs**
 - e.g. transparency, non-discrimination, price control, access to specific network facilities, ...

Markets related to Broadcasting Transmission

Retail

**delivery of radio and TV broadcasting to
end-users**

**may include free-to-air; subscription, pay-
services; interactive**

Wholesale

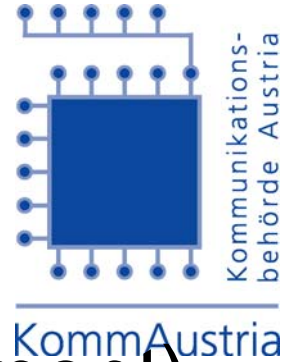
**broadcasting transmission services and
distribution networks to deliver
broadcasts to end users**

**ancillary technical broadcasting services
(including conditional access systems)
Member state discretion in accordance with
Article 6 Access directive**

Authorisation of networks and services

- No individual licence for network operators
- Broadcasting networks are also subject to “general authorisation” regime
- Authorisation to provide network and to provide content must be separated – content is not covered by framework
- Possible conditions on network operator are laid down in an exhaustive list
 - E.g. must carry, illegal content, electromagnetic fields, facility sharing, rights of way,...

Radio Spectrum



- Rights of use for frequencies (assignment)
 - May be granted either to network operator or to broadcaster (even if not network-operator)
 - When rights have to be limited:
objective, transparent, non-discriminatory and proportionate selection criteria
 - Without prejudice to specific criteria and procedures of Member States with a view to pursuing general interest objectives for radio and TV-content services
- Exhaustive list of conditions,
 - eg designation of service, including exclusive use for transmission of specific content

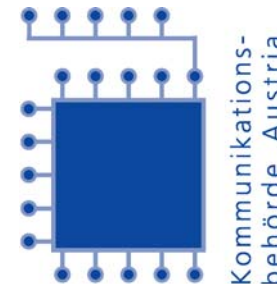
Access to networks and associated facilities (1)

- Specific regime for CA-Systems remains
 - Fair, reasonable, non-discriminatory access
 - All providers are covered, not only SMPOs
 - Possibility for Member States to roll back access obligations for CAS to SMPOs, following market analysis
- NRA can impose access obligations to other associated facilities (APIs, EPGs)
 - When necessary to ensure accessibility
 - Fair, reasonable, non-discriminatory
- Other access remedies only for SMPOs

Access to networks and associated facilities (2)

- prominence/visibility of programme on EPG is not covered by access regime, but remains a content-issue
- No mandatory obligations concerning interoperability, but States are required to encourage open APIs
- Review within one year of application: if interoperability/freedom of choice is not achieved, mandatory standards possible

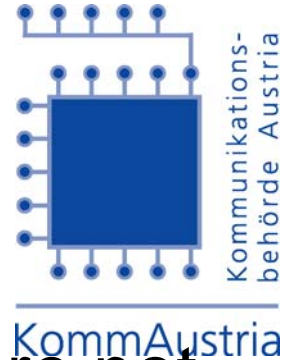
Must Carry



KommAustria

- **Must-carry in the new framework**
 - a possible obligation on a network operator
 - the right of the content provider is not part of the framework, but remains a content-issue
 - **Must-carry obligations on NOs have to be**
 - Reasonable, proportionate, transparent
 - For specified radio and TV channels/services
 - Necessary to meet clearly defined general interest objectives
 - Subject to periodical review
 - Only in networks used as “principal means” by significant number of end-users
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Conclusions for broadcasting regulators



- Cooperation with Telecom-Regulator (where not integrated) will have to be intensified – clear separation of tasks, e.g. who carries out market analysis concerning broadcasting-market?
- Review of existing licences (general authorisation for networks!)
- Review of all broadcasting legislation that might also cover network issues (eg must carry)
- Deadline: 25th July 2003
- Review of policy towards networks (transparency, technology neutral, harmonized with “telecom”)