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1. ACCESS TO PUBLIC SECTOR INFORMATION

SWEDEN CITIZENS' RIGHT OF ACCESS TO PUBLIC DOCUMENTS

In a report from the Swedish Ministry of Justice, published in January 2001, the principle of access to public documents and the new Information Technology was scrutinised.

Under existing provisions in the Swedish Freedom of the Press Act, citizens have a constitutional right to receive a transcript or copy of public documents. However, authorities are only obliged to make public documents available in printed form, even if the document is stored in electronic form.

The appointed committee's main assignment was to review these rules, with the purpose of investigating the needs and possibilities of amendments in the age of the Information Society.

The committee pointed out that today's public administration is more or less completely electronic, at least concerning the creation and processing of documents within the public sphere. This means that public documents are generally becoming significantly more easy to locate and make available to the public.

As compared to the somewhat complicated and time consuming task of requesting (by mail, phone or in person) and receiving a public document in paper-based form, electronically stored public document can often easily and quickly be found and transferred to a citizen requesting the document. The transferral could be performed by the use of e.g. e-mail or by downloading a specific document-file from the authority's server. Some Swedish authorities already provide that kind of service, although they have no legal duty to do so.

In the report the committee recommends that the Freedom of the Press Act should be changed, or complemented, so that the citizens' right to access public documents also includes the right to request and receive public documents in electronic form. This proposal would not only mean that both citizens and companies would find it considerably easier to access public documents. It would also put a substantial pressure on authorities to create functional IT systems and routines for the processing of public documents.

The report *Offentlighetsprincipen och den nya tekniken* (with a summary in English) can be found at :

<http://justitie.regeringen.se/propositionerm/sou/>

Several publications from The Ministry of Justice on the right of access to official documents in Sweden can be found at :

<http://justitie.regeringen.se/pressinfo/pdf/access/pdf>

2. COMPETITION

ARGENTINA NEW PROCEDURE AGAINST MONOPOLISTIC CONDUCTS

On 1st January 2001, the Decree 89/2001 (the "Decree") established a new dispute procedure before the Federal Court for Defence of Competition (*Tribunal Nacional de Defensa de la Competencia*, the

"FCDC"). The Decree set forth –among other things– the formalities and timeframes for presentations and decisions, the appointment of the parties entitled to participate in such procedure, the powers of the FCDC, the existing appeal recourses, the penalties applicable and the different stages of the procedure.

The Decree regulates one part of law 25.156 enacted on 20th October 2000, which is the federal Non Competition Law of Argentina. The Decree will facilitate lawyers and FCDC's tasks in addressing competition issues.

To access the text of Decree and for more information see :

<http://infoleg.mecon.gov.ar/txtnorma/60016.htm>

or contact : gonzaloz@mille.com.ar

ITALY COMPETITION AUTHORITY DECISION ON THE ENEL-INFOSTRADA CASE

On 28th February 2001, the Italian Competition Authority (the "Authority") authorised Enel, the Italian dominant electricity operator, to acquire Infostrada, the main alternative telecom operator, subject to a number of specific terms and conditions. Such conditions have been deemed to be necessary to prevent the acquisition from restricting competition on the Italian market for the supply of electric power.

Enel still occupies a dominant position on the electric power supply market, and it will retain its dominant position on the electric power generation market with a market share of less than 60 % of the aggregate gross generating capacity. For these reasons, the Authority has resolved to authorise the acquisition, but subject to Enel disposing of at least 5.500 MW of its generating capacity within three months from the date of a disposal required by the liberalisation process.

The decision highlighted the current view of the Authority on the telecom market, which is considered to be on his way to full liberalisation, while raising concerns in public utilities, which have invested strongly in the multi-utility business model.

The text of the decision may be found on the Italian Competition Authority's Web site at : <http://www.agcm.it>

ITALY DECISION ON THE SEAT-TMC OPERATION

On 23rd January 2001, the Italian Competition Authority (the "Authority") adopted a measure relating to the merger between SEAT (the Italian Yellow Pages company, owned by the incumbent operator Telecom Italia), and TMC (a television company owning two national licenses).

The Authority noted that the operation could not proceed at present in view of the refusal of the Italian Communications Agency ("AGCOM"). However, the Authority deemed that it had to take action, because the law required the proceeding to be completed within 45 days from the beginning of the investigation. Failure to act by that deadline would, if the prohibited effects were to be removed, prevent the Authority from using its powers subsequently.

The Authority therefore resolved to authorise the merger only if the Telecom Group complied fully with the following conditions :

- as of 1st April 2001, Telecom Italia must permit any telecommunications carriers who so requests, on non-discriminatory terms and conditions and for a cost-based price, to gain access to all infrastructure (currently being installed or already installed on the date on which the merger is approved) which Telecom Italia is entitled to use, in order to lay fibre-optic cables for the supply of interactive and multimedia services;

- Telecom Italia must include in the general terms and conditions of contracts for the gathering of television commercials a provision prohibiting television advertisers from making any reference to consulting the Yellow Pages in their TV commercials broadcast by televisions owned by TMC;
- For a period of three years from the date on which the merger is authorised, no exclusive rights may be included in contracts concluded by the Telecom Group with the Cecchi Gori Group (current owner of TMC) to acquire commercials for transmission via the Internet, and it must guarantee that the same items are also available to any competitors which may request them;
- TMC may only proceed to tests or market interactive television services if Telecom Italia or other operators place the same transmission band capacity at the disposal of any competitors requesting it.

The text of the decision may be found on the Italian Competition Authority's Web site at : <http://www.agcm.it>

SOUTH AFRICA AMENDMENTS TO THE COMPETITION ACT

The South African Competition Act, 1998 (the "Act") has recently been amended in a number of material aspects. Of particular importance to entities operating in the telecommunications industry and other regulated sectors is the deletion of section 3(1)(d), which provided that "all acts subject to or authorised by public regulation" were exempt from the application of the Act.

This meant that industries which were subject to industry-specific public regulation were not covered by the provisions of the Act and that the bodies created in terms of the Act, namely the Competition Commission and the Competition Tribunal (the "Competition Authorities") did not have jurisdiction over such industries. The deletion of section 3(1)(d) has the effect that the Competition Act will apply to all industries in South Africa, save for merger activity occurring in defined areas of the banking industry.

Unfortunately, the deletion of section 3(1)(d) of the Act has not removed the uncertainty regarding the respective jurisdictions of the Competition Authorities and other regulatory authorities in relation to competition matters. The amended Act provides that where industries are subject to the competition jurisdiction of an industry regulatory authority, there shall be concurrent jurisdiction between such authority and the Competition Authorities. The exercise of such jurisdiction is managed in terms of agreements to be concluded between the regulatory authorities and the Competition Commission.

To date, no such agreements have been concluded. This presents a number of practical difficulties, including :

- the relevant regulatory authorities are not defined;
- what is the situation in the interim until the agreements are concluded ?
- what is the position where regulatory authorities and the Competition authorities cannot agree on the terms of the agreements ?

A copy of the Act (as amended) is available at : www.compcom.co.za

3. CONTENT OF INTERNET, AUDIO-VISUAL AND INFORMATION SERVICES

EU REPORT ON THE PROTECTION OF MINORS AND HUMAN DIGNITY

On 27th February 2001 Commission submitted a report to the European Parliament and the Council on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity (the "Report").

The Report is based on the results of a questionnaire sent to all the Member States. It analyses the measures taken in the field of Internet, broadcasting and videogames. The Report compares the situation in the different Member States in regard of self-regulation and codes of conduct, handling of illegal content, filtering and education measures and co-operation with other Member States or third countries.

As the recommendation was addressed to the Member States, the industries and the Commission, the Report of the Commission analyses the effort made by these three groups.

Its findings are that :

Member States "have applied the Recommendation in a heterogeneous way". This results from the cultural differences and the differences of the development of the Internet in the Member States. Nevertheless, the Commission stresses that two years is a short time period and that the results are encouraging;

the Industry is developing filtering and rating systems, but the report notes that the effort is much more important concerning the Internet than regarding the digital broadcasting and videogames;

the Commission has contributed to the security of minors, by creating the INHOPE European network of hotlines as well as links between the INHOPE and third countries. It also has encouraged the creation of European filtering and rating systems;

efforts have been less important in the field of broadcasting and videogames. With regard to convergence, this finding is very important and the Commission calls for renewed efforts in order to adopt a more coherent approach.

For more information see the Report at :

http://europa.eu.int/comm/avpolicy/regul/new_srv/ermin_en.pdf
or contact : LE_GOUEFF@vocats.com

FRANCE NEW PROVISIONS RELATING TO THE LIABILITY OF WEB SITE HOSTS

On 1st August 2000, France adopted a new law (n° 2000-719, *Journal Officiel*, 2nd August 2000, n° 117, p. 11903), amending the Freedom of Communications Act of 30th September 1986.

The drafting of the law took nearly four years, resulting in a 92 articles long text, covering 19 pages of the *Journal Officiel*! Here is yet another example of the "orgy of law making" that has taken over the –but not only– French legislator for several decades.

The purpose of the new law is very wide, i.e. to adapt the status of French audio-visual communications to the evolution of technology (e.g. taking into

account digital performances and online services) and to European legal requirements (implementing the Directive of 30th June 1997). Luckily for the author and the readers of this article, only a few provisions of this long and sinuous law are related to the Internet and its actors.

The new law has redefined the rules relating to the liability of Web site hosts by defining the limited cases in which they may be held liable. Henceforth, hosts may incur criminal or civil liability for the content of services of which they are not the authors if, having been so required by a legal authority, they have not acted promptly in order to prevent access to such content. Initially, the bill provided that hosts who, upon receiving a claim from a third party considering that the hosted content was unlawful or caused him damage, would be liable if they did not take the appropriate measures.

In a judgement of 27th July 2000 (n° 2000-433, JO 2nd August 2000), the *Conseil Constitutionnel* (i.e., the French Constitutional Court) declared that this provision was contrary to the Constitution on the grounds that by failing to specify the procedural requirements for filing claims with hosts by third parties and by not determining the essential characteristics of the faulty behaviour of hosts, the legislator had ignored the principle of legality of offences and sanctions (*"principe de légalité des délits et des peines"*) –that is, parties should be able to understand which behaviour is illegal.

Today, legal proceedings are thus the only means by which to obtain the banning of a Web site and to hold the hosts liable in this respect. French judges have already applied this new provision. Onetel sued Multmania for not having communicated the details of certain Web site authors deemed defamatory and hosted by Multmania.

The Paris' *Tribunal de Grande Instance* ("TGI") decided on last 20th September (Interim Order, TGI Paris, SARL Onetel vs. SA Multmania) that Multmania had fulfilled its obligations in relation to the provisions of the law of 1st August 2000. Multmania had, indeed, upon receipt of the Court order, decided to suspend access to the incriminated Web sites. This decision will no doubt be the first of many to come.

For more information see :
<http://www.admi.net/jo/20000802/MCCX9800149L.html>
or contact : fperbost@kahnlaw.com

4. CONVERGENCE

INDIA COMMUNICATIONS CONVERGENCE BILL APPROVED

On 17th January 2001, a group of Ministers has approved the Communications Convergence Bill (the "Bill") aimed at regulating the carriage and content of communications. The draft, consisting of about 100 clauses, has been released for public discussion. It is expected to be placed before the Parliament with the suggested revisions before the end of the year.

The object of the Bill is to provide a facilitative regulatory regime for the convergence of technologies and services, to promote competition among and provide equal access to these services.

The Bill envisages the setting up of the Communications Commission of India (the "CCI") which would be *inter alia* vested with the power to :

- grant licenses for the following categories of services : network infrastructure facilities, network services, application services and content application services (which includes broadcasting);
- resolve disputes; and

- lay down conditions for fair equitable and non-discriminatory access to network facilities and services.

Moreover, the Bill provides a Spectrum Management Committee for overall management of spectrum. This Committee would assign spectrum for allocation by the CCI for non-strategic/commercial purposes. The spectrum for allocation for strategic purposes, however, would be retained by CCI.

The Bill would repeal :

- the Indian Telegraphs Act, 1885.
- the Indian Wireless Telegraphy Act, 1933.
- the Telegraph Wire Unlawful Possession Act, 1950.
- the Cable Television Networks (Regulation) Act, 1995.
- the Telecom Regulatory Authority of India Act, 1997.

Source : Economic Times 17, 2001. www.dotindia.com

INDIA GOVERNMENT LIFTS BAN ON KU BAND

The Radio, Television and Video Cassette Recorder Set Rules, 1997 have been amended through a gazette notification on 9th January 2001, removing the prohibition that was in force, which restricted the use of Ku band frequency operating in the bandwidth of 4800 MHz.

This notification conclusively settles a long-standing debate as to the use of Ku band transmission/reception equipment. This debate was precipitated by several announcements made by the Department of Telecommunications that use of Ku band equipment was permitted for communication purposes (such as Internet services, VSAT services) despite the umbrella ban on all Ku band equipment.

Source : Economic Times 13, 2001. www.indiantelevision.com

MEXICO AMENDMENT TO FEDERAL TELECOMMUNICATIONS LAW IN STORE

The Mexican Ministry of Communications and Transportation has announced a regulatory overhaul to the Federal Telecommunications Law, in order to incorporate provisions congruent with the development of the technology in areas such as Internet, global networks and radio-electric spectrum, accelerate deregulation and eliminate bureaucracy.

The announcement was made by the under-secretary of the Ministry, Mr. Jorge Alvarez Hoth, in the opening of the National Chamber of the Cable Television Industry (the "CANITEC") Convention held in Mérida, Yucatán, Mexico earlier this month.

Considering that the Federal Telecommunications Law governs in essence the transmission means (i.e., the establishment, operation and exploitation of public telecommunications networks, the radio-electric spectrum and via satellite communications) the challenge before the Mexican Ministry of Communications and Transportation is of great importance.

It seems that it will be inevitable for Mexican authorities to commence regulating the services themselves instead of the transmission means. Whether or not such approach will tend to liberalise and open the telecommunications market in Mexico, will have to be addressed once the first drafts of the regulatory overhaul are in place.

For more information see : www.scti.gob.mx
or contact : aam@bstl.com.mx

5. DIGITAL SIGNATURE

ITALY DECREE ON DIGITAL SIGNATURES IN LEGAL PROCEEDINGS

On 26th January 2001, the Italian Council of Ministers has approved a Decree concerning the use of electronic means in the civil and administrative procedures and in the procedures before the Court of Auditors. The Decree provides the use of electronic means in the judicial proceeding, without having an impact on the general rules, especially in terms of obligations and contents.

The electronic procedure is an alternative to the traditional paper procedure and does not in any case substitute the traditional mean of managing the jurisdictional procedure. According to the Decree, all acts and judicial rulings can be drafted in electronic format and signed through digital signature. The electronic system is set up in order to ensure :

- identification of the judicial office;
- identification of the person in charge of the insertion, notification and modification of the judicial act;
- acknowledgement of receipt of the judicial act;
- automatic identification of the counsel and of the process server.
- Only counsels and process servers are entitled to access to the electronic jurisdictional system.

Moreover, according to the Decree, judicial acts can be notified in electronic means through the electronic jurisdictional system or to the counsel's e-mail, which is notified to the Bar Association.

More information and the text of the Decree can be found at the following address : <http://www.interlex.it/testi/proctele.htm>

6. DATA PROTECTION

US COURT BARS USE OF WEB SITE DATA IN VIOLATION OF WEB SITE TERMS

In another development involving online database access, a New York federal district court recently granted a preliminary injunction barring the automated collection of information from a database of Internet domain names. Verio, Inc., the defendant in this case, used an automated "robot" to collect contact details from the accredited domain name database maintained by Register.com, the plaintiff. It then used the information for mass marketing purposes, a use prohibited by the Register.com site terms of use.

Under its accreditation agreement with the Internet Corporation for Assigned Names and Numbers (the "ICANN"), Register.com must allow free public electronic access to its database. Verio argued that this gave it a right of access. The court disagreed, stating that the agreement was a private bargain between Register.com and ICANN, that it created no rights in third parties and that Register.com was not acting as a public utility.

Also, the court found that Verio was bound by Register.com's terms of use (which it subsequently breached) when it submitted a query to the site, even though it was not asked to click on an icon accepting the terms of use.

The court found that after Register.com informed Verio of its objections to Verio's actions, Verio knew its activities were unwelcome and future

searches exceeded Register.com's consent for Verio to use the site. In these circumstances, the court found that any diminishment of system capacity, or the risk of interruption to the service if the burden on system resources caused a malfunction, was likely to be sufficient for a claim of trespass to chattels to succeed.

It also found that these unauthorised searches were likely to violate the Computer Fraud and Abuse Act because if there were a malfunction as a result of the searches, the resulting losses would meet the Act's threshold of USD 5.000 in economic harm. The court also found that even if the automated means of access to the site were otherwise authorised, the unauthorised purpose rendered Verio's conduct unauthorised for purposes of the Act.

The court found a sufficient likelihood of success in each of these claims to grant the injunction. The case is significant because it continues the trend of court decisions giving legal recognition under principles of federal and state law to the right of Web site operators to control and condition third party access to, and use of, Web site data.

The court's decision is available at :

<http://www.icann.org/registrars/register.com-verio/order-08dec00.htm>

7. ELECTRONIC COMMERCE

FRANCE THE YAHOO ! CASE

The Yahoo! case involved the offer of Nazi related objects (films, uniforms, daggers, medals, battle flags, etc.) by the auction section of the US Web site of Yahoo! Inc. Web surfers could access these sales via the Yahoo! France Web site or directly on the Yahoo! US Web site.

In April 2000, the International League Against Racism and Anti-Semitism (the "LICRA") and the Union of French Jewish Students (the "UEJF") –two Paris based human rights groups– took Yahoo! Inc. and Yahoo! France to court on the grounds that, under French law, exhibiting, promoting and selling objects with racist overtones is illegal (article R. 645-1 of the French Criminal Code).

After judicial proceedings lasting eight months, the French judge held, in a decision of 20th November 2000, that, "by allowing Internet users residing in France to view such objects and to participate in the exhibition/sale", Yahoo! Inc. had breached the provisions of French criminal law prohibiting nazi and racist propaganda in France.

The French judge held that insofar as the "Yahoo Auctions" were accessible by French Web users from computers located in France, the nexus with France was sufficient and French courts had full jurisdiction to enforce the provisions of the French Criminal Code.

Therefore, the judge ordered Yahoo! Inc., within a period of three months from the notification of the judgement, to "take measures of a nature to dissuade from, and prevent the viewing of auctions for nazi objets on Yahoo.com and any other site or service constituting an apology of nazism or a negation of the Nazi crimes".

The court also stated that insofar as the American company already prohibits the online sale of human organs, works relating to paedophilia, cigarettes, animals or drugs, it would not be very difficult to extend its prohibitions to nazi symbols. At a practical level, this means that Yahoo! Inc. will pay a FRF 1.000 penalty per day of violation of the law if it does not prevent French Web users from accessing its US auction pages by the end of the three month period.

In order to be enforceable in the US, this decision now needs to be approved by a US judge. In this respect, Yahoo! Inc. filed a complaint for declaratory relief on 21st December 2000 before an American judge in

order to overturn, on the one hand, the jurisdiction of the French judge with respect to an injunctive measure in relation to an American company, and, on the other hand, to determine the compatibility of the French judgement with the first amendment of the American Constitution which guaranties freedom of speech. Next episode : in San Jose before the Federal Court of Appeal of California.

For more information see :

<http://www.juriscom.net/txt/jurisfr/cti/tgiparis20001120.htm>

or contact : fperbost@kahnlaw.com

GERMANY

DRUGS DISTRIBUTION VIA THE INTERNET

According to a recent judgement by the Regional Court of Frankfurt A.M., the distribution of drugs (medicines) via the Internet is illegal in Germany. In the case at issue, a Dutch pharmacy operated a mail order business selling drugs via the Internet to end consumers. For German clients the company's offer was retrievable in German.

Responding to the legal actions brought by several pharmaceutical companies and associations, the Court held that the commercial distribution of drugs via the Internet is not compatible with the provisions of the German Pharmaceutical Products Act.

Prohibiting the direct mail selling of drugs, the German legislator intends to ensure that the end consumer who acquires a drug can take advantage of the personal and professional advice of a chemist. According to the Court's decision, the distribution of drugs via the Internet cannot guarantee the same protection to human health as the distribution of drugs by a chemist on the premises of a pharmacy.

For further information please go to : www.bblp.de

HONG KONG

TRUST ON THE INTERNET

Trust on the Internet, particularly concerns relating to the protection of personal information and security of doing online businesses, are becoming key barriers to the rapid growth of electronic commerce. In response to consumers' fears and concerns, the American Institute of Certified Public Accountants and the Canadian Institute of Chartered Accountants have jointly developed "WebTrust", a comprehensive e-commerce assurance service that provides businesses with e-commerce "best practice" designed to build trust and confidence in this new electronic marketplace.

WebTrust is currently being offered by certified public accountants ("CPAs"), chartered accountants, and their equivalents in 17 countries in North America, Europe and Asia including the US, Canada, Australia, England, France, Germany, Puerto Rico, Scotland, Spain and Wales. On 27th February, WebTrust was launched in Hong Kong by the Hong Kong Society of Accountants (the "HKSA").

WebTrust provides a world-wide professional assurance standard for e-commerce "best practice" which covers online privacy, security, confidentiality, availability, business practices and transaction integrity, non-repudiation and customised disclosures. These standards cover business to consumer and business to business sites as well as service providers and certification authorities.

The WebTrust Programme is modular by design, giving online businesses the flexibility to select those modules that best meet their unique e-commerce and assurance needs.

Besides, WebTrust offers bundled packages of modules that are designed to meet special needs. Online businesses receive on-site review by specially trained and licensed CPAs to see if they comply with e-commerce

best practice. Then at least once every six months the CPA firms shall test the Web sites again to verify that they continue to comply with the WebTrust principles and criteria.

A Web site that complies with all the WebTrust requirements for the modules it has selected earns the right to display a WebTrust Seal of Assurance on its Web site. Web site visitors can click on the Seal to view the independent CPA's report, the site management's assertions and disclosures related to the particular WebTrust modules.

In order to foster public trust in the WebTrust Seal, a CPA or CPA firm in Hong Kong that wants to provide WebTrust service must obtain a service licence from the HKSA.

The licence agreement provides, in particular, the engagement to be performed in accordance with the standards established by the HKSA, timely procedures to refresh the Seal at least every six months, participation in the HKSA quality assurance system and the meeting of specific training and competency requirements.

For more details, see : http://www.jsm.com.hk/ls/e_business/026.htm

NEW ZEALAND

ELECTRONIC TRANSACTIONS BILL

New Zealand's Electronic Transactions Bill (the "Bill") was introduced before the Parliament on 9th November 2000, and referred to a Select Committee for consideration. The Bill is part of the Government's strategy to build an "enabling regulatory environment" for electronic commerce in New Zealand.

Prior to inception of the Bill, New Zealand has not had any laws or regulations specifically governing electronic commerce.

The Bill is similar to a number of Acts already in place elsewhere. It is modelled on the Australian Electronic Transactions Act, 1999, which is in turn modelled on the United Nations Committee for International Trade Law Model Law of Electronic Commerce 1996 (the "UNCITRAL Model Law"). Most of New Zealand's major trading partners already have or are in the process of enacting legislation based on the UNCITRAL Model Law.

The main features of the Bill are :

- no transaction will be denied legal effect merely because it took place using electronic technology;
- information which must be provided "in writing" pursuant to a statutory requirement may be provided in electronic form if certain conditions are met;
- a statutory requirement for a signature may be satisfied by an electronic equivalent if the electronic method is sufficiently reliable;
- certain statutory records may be made and kept in electronic form subject to requirements designed to ensure the integrity and continued availability of those records;
- there are default rules relating to the time and place of despatch and receipt of electronic messages (this is particularly important in the context of contract formation).

The Bill is designed to apply to all legislation. It will apply to all acts and regulations requiring writing, signatures or retention of records unless specifically excluded.

The Select Committee will report back to Parliament on the Bill before 8th May 2001.

For more information on the Electronic Transactions Bill, see :

<http://www.med.govt.nz/irdev/elcom/transactions/index.html>

or contact : david.boswell@bellgully.com

SWEDEN

IMPLEMENTATION OF e-COMMERCE DIRECTIVE

In a report from the Swedish Ministry of Industry, Employment and Education, published in March 2001, a proposal for the implementation of the Directive 2000/31/EC (the "Directive"), is presented (the "Proposal").

The aim of the Proposal is that the implementation of the Directive will principally be performed by the adoption of a new act on "electronic commerce and other services in the Information Society". "Other services in the Information Society" is to be understood any activity performed online and with an economic signification. Certain economic activities and matters, e.g. tax issues, e-mail advertisement and online gambling, are exempted from the scope of the Proposal.

As a general rule, the new Proposal gives all e-commerce companies and other providers of Information Society services, established within the EC, the right to provide their services in Sweden. For service providers established in Sweden, the Proposal means that Swedish law will apply to their business, even if their services are only provided in other EC countries. As a consequence, certain rules and regulations, e.g. the Marketing Act, will need to be amended.

Among other provisions, the act will establish rules on the kind of information service providers must give to customers, and also places a duty on the service providers to provide certain technical aid and to confirm customer orders.

Further, the Proposal will limit the liability of intermediary service providers, which supply services such as "caching" or "hosting". This means that an intermediary service provider, under the conditions specified in the act, will not be held responsible for any information that is stored, cached or transferred when it acts like a mere conduit.

It is proposed that the new act will take effect in January 2002.

To read the proposal (in Swedish) see :

<http://naring.regeringen.se/index.htm>

or contact : erik.bergenstrahle@lindahl.se

US

COUNTING THE CLICKS

Internet performance has turned out to be slightly more complicated than expected, particularly when it comes to measuring Web site traffic and valuing Internet companies. Early Web site related contracts often defined whether the provider of the Web site had performed its obligations by measuring the number of "unique visitors" to the site over a specified time, as determined by an independent firm.

Now that e-businesses are entering a more sober phase, parties to transactions are even more intent on accurately determining whether they have received value for their money. Unfortunately, there may be little certainty or agreement about how many visitors have actually visited a Web site. In the end, the typical questions of sampling and defining the proper base of measurement, which are crucial in any statistical exercise, are just as important in gauging the performance of the new economy.

Site traffic has been extremely important to the negotiation of co-branded arrangements and joint ventures between old and new economy companies. Parties that question the value of a particular relationship may claim that the contract has not been performed due to an insufficient amount of site traffic. These sorts of questions will arise more frequently as performance measure events in contracts signed over the past few years start to occur.

Alternatives, however, can be used to measure site performance; whether the need is to resolve a dispute, to renegotiate a contract, or to value a new business. Instead of looking only at the raw number of visitors,

performance can turn on the number of visitors who actually complete an application, view the relevant content, or purchase a product. These measures may more closely indicate the actual effectiveness of the Web site's design and operation, but they may also raise regulatory issues in the financial services industry where payments are shared or referral fees are paid.

It may also be useful to examine the usage statistics in the hands of the site operator. Although it is often feared that these statistics are subject to manipulation (as opposed to independently measured data), the internal statistics can be a much richer source of information, when examined in detail.

For more information see :

<http://www.ffhsj.com/bancmail/21starch/010220.htm>

8. ELECTRONIC DEMOCRACY

MEXICO

NEW GOVERNMENT SEEKS WAYS TO PROMOTE e-COMMUNICATIONS

The Mexican Ministry of Communications and Transportation is working on an ambitious plan that will presumably be incorporated into the National Development Plan of the administration of President Vicente Fox, that will seek to promote the development of electronic communications.

For such purpose the Government is analysing the possibility of setting public booths where all Mexicans would be able to have access to a computer. At first, Mexicans would have access to databases containing information on health, education and commerce. Additionally, the Mexican Government would seek to establish electronic mechanisms for the filing of applications before the Mexican Government.

Not only passports, tax returns and other similar procedures would be able to be electronically processed but also the judicial branch could be impacted by establishing the necessary technical means that would allow hearings to take place through videoconferences and other electronic means.

For more information see : www.sct.gob.mx

or contact : aam@bstl.com.mx

9. INTELLECTUAL PROPERTY

AUSTRIA

LANDMARK DECISION ON DOMAIN NAME DISPUTES

On 17th August 2000, the Austrian Supreme Court issued another landmark decision in a domain name dispute case. In 1998, the publisher of the business magazine "Gewinn" held the rights of the domain "gewinn.co.at" and of the trademark "Gewinn".

He intended to register the domain name "gewinn.at" to promote the magazine via the Internet. However, "gewinn.at" was already registered for another company offering prize competitions. The publisher therefore sued for forbearance and transfer of the domain "gewinn.at" to his company.

The Supreme Court had to deal with two issues involved in the case. The main issue was to decide whether the Internet user could potentially mistake "gewinn.at" and "gewinn.co.at" as well as the sign "Gewinn". The Court replied to this question in the negative for two reasons.

The Court referred to the nature of the domain name system, the possibility to register a domain name only once and the awareness of Internet users that each letter of a domain name is significant to reach a specific Web site.

Taking into account this specificity and the fact that the business areas of the companies involved were different, the Court concluded that Internet users could not potentially mistake the almost identical domain names "gewinn.co.at" and "gewinn.at".

The second issue involved a potential domain grabbing by the appellant. Since the First Instance Court did not decide whether the appellant registered "gewinn.at" merely for the purpose to impede the magazine publisher from the registration of this domain name, the Supreme Court referred the case back to the first instance for re-decision.

For more information see : www.Internet4jurists.at

BELGIUM

BELGIAN DOMAIN NAME AUTHORITY HELD TO ABUSE DOMINANT POSITION

On 8th November 2000, the President of the Brussels Commercial Court ruled that the refusal by the Belgian domain name authority ("DNS BE") to register domain names because of their generic character constituted an unlawful refusal to supply. Because DNS BE holds a dominant position for the registration of domain names under the ccTLD ".be", the President condemned such refusal to supply as abuse of dominant position and contrary to fair trade practices.

On 21st February 2001, the President of the Brussels Commercial Court again condemned DNS BE for the refusal to grant generic domain names. DNS BE recently changed its rules for the registration of domain names under ".be". Under the new rules, the registration of generic domain names is free. However, the principle that ".be" domain names cannot be sold, is maintained. As a result, DNS BE expects that, as a consequence of this liberalisation, domain name disputes will increase.

For more information, please see : <http://www.dns.be>
or contact : g.vandendriessche@dbmlaw.be

CANADA

COPYRIGHT ROYALTIES FOR TRANSMISSION OF MUSIC BY PAY AND SPECIALISED TV SERVICES

On 16th February 2001, the Copyright Board of Canada (the "Board") reached a decision on Tariff 17A for royalties to be collected by the Society of Composers, Authors and Music Publishers of Canada ("SOCAN") for the communication to the public by telecommunication of musical or dramatico-musical works by specialised and pay television services.

These royalties have to be paid by the transmitters of the works, and not by the services themselves. According to the Board, the market for conventional television and the market targeted by Tariff 17A are one and the same.

The Board stated in its decision its intention to move towards the convergence of tariffs applicable to conventional television and pay and specialised services. For the Board, setting a different price for a specific sector would necessarily lead to a market imbalance.

The rates set out in Tariff 17A are the same as the rates established in Tariff 2A for commercial television for the years 1996 and 1997, namely 2.1 % and 1.8 % of subscription revenues respectively.

There is as yet no certified tariff for commercial television for the years from 1998 until now.

Still, the Board decided to establish a rate of 1.8 % under Tariff 17A for the years 1998, 1999 and 2000. Finally, the Board agreed that the Direct-to-Home satellite service operators should be entitled to the French speaking market discount.

For more information see :

<http://www.cb-cda.gc.ca/decisions/ml6022001-b.pdf>
or contact : cmorgan@mccarthy.ca

GERMANY

USE OF "RECHTSANWAELTE.DE" DOMAIN NAME HELD TO VIOLATE COMPETITION LAW

In a recent decision by the Regional Court of Munich, the use of the domain name "rechtsanwaelte.de" ("lawyers.de") was held to violate competition law.

Rechtsanwaelte is a generic term generally used to designate the profession of solicitors. In the case at issue, a German law firm used this generic term as a domain name although the term does not correspond with the firm's name used outside the Internet, on letterheads and cards. Consequently, a prohibitory action was brought by a competing law firm business.

The Court took the view that the law firm used the domain name in order to obtain potential clients who are in search for a lawyer and lead them to their own Internet offer. According to the Court's decision, the generic term *rechtsanwaelte* is particularly attractive and leads to an increased number of accesses, as many Internet users who search for a lawyer will enter this domain name.

By using the domain name "rechtsanwaelte.de" without any distinctive appendices, the law firm obtains a competitive advantage. Therefore the Court held, that the use of the domain name constitutes an infringement of the German Unfair Competition Act.

It is expected that the Federal Supreme Court will render, in the near future, a final decision concerning the issue of generic terms in the *Mitwohzentrale* case.

For further information please go to : www.bbip.de

10. MARKET ACCESS

BRAZIL MOBILE LICENCES

After a turmoil caused by lawsuits challenging its rules, the National Telecommunications Agency ("ANATEL") finally auctioned last February new licenses for mobile services in the 1.9 GHz frequency in Brazil, generally referred to as PCS (see the i.i.n.k., issues 3 and 4). Altogether, nine new licenses would be granted; three (called bands C, D and E) per region ! For that purpose the country was divided into three large regions :

- C band licenses : the auction was initially scheduled for 30th January. It was then postponed in view of lawsuits and eventually cancelled for lack of bidders. The auction should be resumed after the auctions for bands D and E are completed. Currently, ANATEL is expected to announce the new model for the C Band licenses on April;

- D band licenses : the auction was successfully completed on 13th February. Telemar won the licence for Region I for BRL 1.102.007.000 (17.23 % over the minimum bid price) and Telecom Italia won the licenses for Region II and Region III for BRL 543.000.000 (0.56 % over the minimum bid price) and BRL 997.000.000 (40.42 % over the minimum bid price), respectively;
- E band licenses : the auction was held on 13th March and only the E band licence for Region I was sold. Telecom Italia paid BRL 990.000.000 (5.31 % over the minimum bid price) for the licence. According to ANATEL, the new invitation to bid for the E band licenses for Region II and III will be published in the Official Gazette of the Federal Executive on 15th March. The prices and rules previously established will remain unchanged, i.e. BRL 540.000.000 for Region II and BRL 710.000.000 for Region III.

For further information please see : <http://www.anatel.gov.br>

INDIA

GOVERNMENT PERMITS 100 % FOREIGN INVESTMENTS IN VOICE MAIL SERVICES

The Government opened up Voice Mail and Audiotext services to 100% foreign direct investments ("FDI"), without any restrictions in the form of licence fee or entry fee for service providers.

Although 100 % FDI had been allowed since the past few months, the latest announcement has abolished the annual fee and reduced the one time performance guarantee to INR 300.000 making a licence for Voice Mail and Audiotext cheaper by about 80 %. The proposal for the licence is to be submitted along with a demand draft of 20.000 as a processing fee (non-refundable).

The service area for licenses has been defined as the short distance charging area on the basis of local dialling.

Any government or public service agency offering public utility services such as railway, broadcasting, news and media is permitted to provide Audiotext services without obtaining any licence.

The Government has also permitted Voice Mail and Audiotext services to be provided as a value-added service by basic, cellular and cable service providers. However, the entry of private operators is subject to certain financial conditions.

Existing Voice Mail and Audiotext services are allowed to migrate to a new licensing regime from 1st April 2001.

Source : Economic Times 18th February 2001. www.dotindia.com

INDIA

TELECOM SERVICES FURTHER LIBERALISED

On 26th January 2001, the Department of Telecommunications (the "DoT") made few announcements of sweeping liberalisation measures with regard to the telecom services (the "Guidelines"). Following are the key provisions of the Guidelines :

basic services liberalisation : the basic telecom services sector has been thrown open and all restrictions on the number of operators have been removed.

Basic service operators can provide all types of services except those for which a separate licence is required. Operators in basic telecom services can now provide limited mobility services within the local area, i.e. short distance charging area in which the subscriber is registered.

The Basic service operators are required to charge the tariff, including for wireless local loop ("WLL") subscribers, for services as per the Telecom Regulatory Authority of India (the "TRAI") tariff orders issued from time to

time. Presently incoming calls by WLL subscribers may be charged at INR 1.20 per unit call, while outgoing calls will be charged at INR 2.70 per unit call. Rental for WLL subscribers is yet to be fixed by TRAI.

The Guidelines prescribe norms as regards to the net worth of applicants, the financial criteria to be met by applicants, including bank and performance guarantees, entry fee, shareholders track record, etc.

The licence fee to be paid by the basic operators has been fixed at the rate of 12 %, 10 % and 8 % respectively of the annual gross revenue for the three categories of telecom circles A, B and C, respectively. In addition, a revenue share of 2 % of annual gross revenue earned from WLL subscribers shall be levied as spectrum charge.

For wireless operations in subscriber access network, the frequencies shall be allocated by the Wireless Planning and Co-ordination Wing from the designated bands prescribed in National Frequency Allocation Plan, 2000 (the "NFAP-2000").

Cellular services : cellular mobile service operators may also be permitted to provide fixed phones based on their mobile network infrastructure in the licensed service area. It is not clear from the text of the Guidelines if this is permissible immediately. It appears that a further notification or an amendment to existing licence agreements would be required.

Interconnection : direct interconnectivity among all service providers in a service area is permitted. The number of points of interconnection between cellular mobile service operators and basic service operators shall be as per mutual agreement subject to compliance of prevailing determination, regulation or direction issued by TRAI under the TRAI Act, 1997.

Until now, all operators were required to go through the DoT network to ensure interconnection and have expressed concern about the same. The provision of direct interconnection would enable better services.

Source : Economic Times, 26th January 2001. www.dotindia.com

LUXEMBOURG

CONDEMNED FOR FAILING TO IMPLEMENT LICENSING PROVISIONS

On 18th January 2001 the European Court of Justice declared that the Grand Duchy of Luxembourg has failed to fulfil its obligations under the Directive 97/13/EC on a common framework for general authorisation and individual licences in the field of telecommunications services (the "Directive").

Art 25 of the Directive sets the deadline for the adoption by Member States of the required provisions to 31st December 1997.

The Commission considered that :

- art 8(3) of the Directive providing that the Member States shall ensure that information concerning the conditions which will be attached to any individual licence is published in an appropriated manner and to provide easy access to that information, had not been fully implemented as no regulation concerning the conditions governing specifications for the operation of paging services had been adopted;
- Grand Duchy of Luxembourg had implemented incorrectly a provision of the Directive by laying down a three and a half months period for the granting of licences despite of the 6 weeks period laid down by the directive.

The Court decided that the Commission's action was well founded and that the Grand Duchy of Luxembourg had failed to fulfil its obligations under the directive 97/13/EC.

For more information see the ruling at :

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

or contact : LE_GOUEFF@vocats.com

LUXEMBOURG RULING AGAINST CLOSED USERS' GROUP VOICE PROVIDER CONFIRMED

In this specific case, the Luxembourg Institute of Regulation (the "Institute") and the service provider ("Happycom") had agreed that the closed users' group voice services were submitted to a declaration and not to a voice telephony licence. The Institute required that Happycom submits its advertisements in order for the Institute to ensure that they clearly expressed that service offered were limited to closed users' groups.

The Institute considered that Happycom did not comply with these conditions and that its advertisements were not clear enough for the public to make the distinction between the offered services and voice telephony services as defined by the law of 21st march 1997.

The Institute imposed a fine on Happycom and gave Happycom and his manager a reprimand. Happycom filed an appeal against this decision. The administrative Court of Grand-Duchy of Luxembourg ruled that :

- the manager of Happycom, who was not personally operating the service, could not be considered as an operator as defined by the law of 21st march 1997. The Institute can only impose a fine on a manager in cases defined in the law or in cases where the manager had personally committed an offence. The Court considered that in the given case, the reprimand on the manager was not justified;
- according to the law, the Institute had no obligation to justify its decision in this given case. The Court notes that, in any event the Institute had justified its decision;
- the Institute was right to require Happycom to submit advertisement before its publishing. This measure enabled the Institute to control Happycom's activity and ensure that it offered the services for which it had an authorisation. This was a part of the Institute's duty to control the telecommunication sector;
- the advertisement was not clearly making a distinction between the offered closed users' group voice service and a licensed voice telephony service, consequently the Institute could impose a penalty on Happycom in order to prevent unfair competition with licensed voice telephony operators.

For more information see the ruling at : <http://www.etat.lu/ILT/>
or contact : LE_GOUEFF@vocats.com

11. MEDIA

EU ECJ DECISION ON "EUROTICA RENDEZ-VOUS"

The Danish Satellite Television ("DSTV") A/S retransmitted the television service "Eurotica Rendez-Vous" to viewer in various Member States, including the UK. The UK considered that DSTV had infringed the article 22 of Directive 89/552, known as the "Television without frontiers Directive".

This article allows Member States to take measures in order to prevent the television broadcasts to include programmes "which might seriously impair the physical, mental or moral development of minors".

The UK adopted an order that made it an offence to supply equipment or goods in relation with the given service, or to advertise that service or to indicate the time of its programmes. This order entered into force on 10th September 1998.

On 15th September 1998 the UK informed the Commission of the order. The Commission adopted on 22nd December 1998 a decision (the

"Contested Act") in which it took the view that the UK's order was justified and compatible with Community law, which was contested by DSTV before the European Court of First Instance.

DSTV claimed that the Court should annul the Contested Act. The Commission and the UK, who intervened in the proceeding asked the Court to declare DSTV's application inadmissible or unfounded.

In the given case, the Court considered that :

- the Contested Act was limited to state ex post facto the Commission's position in regard to an order that the UK adopted independently by exercising its discretionary power;
- the Contested Act could not be analysed as a retrospective authorisation, "consequently, it did not replace that measure and therefore did not retrospectively render it valid";
- the Contested Act was not stating the Commission's prior authorisation to adopt national measures;
- as a conclusion, the DSTV was not directly concerned by the Contested Act and was not entitled to seek it's annulment;
- DSTV could refer the order to the High Court and was therefore not deprived of protection.

Accordingly, the Court dismissed the DSTV's application.

For more information see the ruling at :

<http://europa.eu.int/jurisp/cgi-bin/gettext.pl?lang=en&num=79998786T19990069&doc=T&ouvert=T&seance=ARRET>
or contact : LE_GOUEFF@vocats.com

INDIA DTH BROADCASTING NORMS

After the removal of the prevalent ban on Ku band, the Government of India has decided to open up the Direct-to-Home ("DTH") broadcasting services in India.

The DTH services sector has been liberalised under a licensing framework, where every operator is required to obtain a licence from the Ministry of Broadcasting. The guidelines, terms and conditions for grant of licence for the DTH Broadcasting Services have been announced on 15th March 2001.

The salient features are as follows :

- any applicant company shall be registered under the Indian Companies Act, 1956;
- the total foreign investment in the applicant company including Foreign Direct Investment ("FDI") and investment by non-resident Indians ("NRI"), Overseas Corporate Bodies ("OCB") and Foreign Institutional Investors ("FII") shall not be more than 49 % of the equity of the company providing DTH services ("Company"). In particular, the FDI shall not exceed 20 % of the total equity capital.
- no broadcasting company and/or cable network company shall be eligible to own more than 20 % of the total equity of an applicant company at any time during the licence period;
- the applicant company shall be required to pay an entry fee of INR 100 Million, in the beginning. In addition, 10 % per year of the revenue collected by the platform owner shall be payable to Government as annual fee. The licensee would also be required to execute a bank guarantee of INR 400 Million valid for the duration of the licence. Licensee will be required to pay the licence fee and royalty for spectrum used, as prescribed by the Wireless Planning Co-ordination Authority, under the Department of Telecommunications;
- the licensee shall establish the up-link Earth Station in India within 12 months from the date of issue of licence. All content provided by the DTH platform to the subscribers, irrespective of its source, to pass

through the common encryption and conditional access system, located within the Earth Station, situated on Indian soil;

- the licensee shall ensure adherence to the Programme Code and Advertisement Code, laid down by the Ministry of Information and Broadcasting, from time to time;
- the licensee shall provide access to various content providers/channels on a non-discriminatory basis. The licensee shall not carry any channels prohibited by the Ministry of Information and Broadcasting;
- though licensee can use the bandwidth capacity on both Indian as well as foreign satellites, proposals envisaging use of Indian satellites will be extended preferential treatment;
- the licensee shall ensure subscriber's interests through Single Conditional Access Technology, Single Subscriber Management System, an Open Architecture (non-proprietary) Set Top Box, a Cast Iron Encryption System and an efficient, responsive and accurate billing and collection system. The Licensee shall not use any equipment, which is identified as unlawful;
- the DTH facility shall not be used for other modes of communication, including voice, fax, data, Internet, etc., unless specific licence for these value-added services has been obtained from the competent authority;
- the DTH licensee will be bound to carry channels of Prasar Bharati (the public broadcast channel) on the most favourable financial terms offered to any other channel.

Source : www.economicstimes.com, 9th March 2001

Contact : www.mib.nic.in

INDIA

PROPOSED AMENDMENT TO CABLE NETWORKS ACT

The Information and Broadcasting Ministry of India is in the process of amending the Cable Network Regulation Act, 1995 to make conditional access mandatory. Industry analysts feel this would mark the onset pay television in India. Hence, broadcasters would be able to map out their subscriber base and specifically cater to their target audience.

This would in turn, help broadcasters enhance and reinforce their subscription-based revenues. This has been a long-pending demand of the broadcasting industry. The ministry would make the necessary amendments in consultation with cable operators.

Source : Economic Times 3rd February 2001

MEXICO

AMENDMENTS TO RADIO AND TELEVISION LAW

As part of the strategy being followed by the Mexican Ministry of Communications and Transportation under the presidency of Mr. Vicente Fox, the Secretary of the Ministry, has indicated that the amendment to the Mexican Federal Radio and Television Law is one of the main goals of this administration for the year 2001.

For such purpose, the round table that has been appointed to define the new regulatory framework for radio and television, commenced its activities on 8th March 2001. This commission is headed by Mr. Santiago Creel, Minister of the Interior, and is further comprised by members of the Mexican government particularly, of the Ministry of Communications and Transportation, by legislators and the private sector.

For more information see : www.gobernacion.gob.mx
or contact : aam@bstl.com.mx

12. NUMBERING

FINLAND

OPERATOR PRE-SELECTION FOR LOCAL SERVICES

Finland has belatedly adopted a regulation requiring operators identified as possessing significant market power ("SMP operators") to provide operator dialup operator selection and operator pre-selection for local services with effect as of 1st March 2001.

Operator selection and pre-selection are not, however, new in Finland as SMP operators have been required to offer such functionality for long distance and international services since 1994.

Finland's regulator apparently did not think necessary in 1994 to impose dialup selection and pre-selection obligations for local services due to Finland's segmented services markets and the lack of local operator choices for subscribers.

It was felt that since SMP operators are required to provide access and termination services to operators at cost-oriented pricing as well as subscriber services at cost-oriented prices, dialup operator selection and operator pre-selection for local services arguably benefit only non-SMP vertically integrated operators with large corporate subscriber bases. Finland's reluctance to adopt pre-selection obligations for local services had been addressed by the EU Commission in the 1999 Telecommunications Review.

Under the new regulation, SMP operators are required to offer to subscribers the opportunity to choose through call-by-call operator selection the local Tele-service it wishes to use as well as choose when using mobile communications the local Tele-service it wishes to use. SMP operators are also required to offer operator pre-selection for the aforesaid Tele-services against payment of a reasonable one-off charge and presentation of a valid and express power of attorney from the subscriber.

These operator call-by-call selection and pre-selection obligations do not apply with respect to local Tele-services when interconnecting mobile telecommunications services. SMP operators must set a price for the use of its network to transport traffic to the network service or Tele-service of the interconnection requesting operator (access traffic).

This obligation does not apply to inter-Tele-district traffic transported without an operator prefix or an operator pre-selection arrangement nor to traffic transported from a mobile network to a local fixed network or Tele-service or to another mobile network or mobile Tele-service.

Additionally, a SMP operator must set a price for the use of its network to transport to a subscriber access point on its network traffic from the network service or Tele-service of the interconnection requesting operator (terminating traffic).

This obligation does not apply to traffic transported from local network to a mobile network or to a mobile Tele-service. The prices charged for access and terminating traffic must be public as well as the same regardless of the amount of traffic transported.

See : <http://www.mintc.fi/www/sivut/suomi/tele/televiestinta/index.html>

13. PROTECTION OF PRIVACY

GERMANY INTERNET PUBLICATION OF SEX OFFENDER'S DATA

In a decision of a lower court in Berlin, not subjected to appeal, it was held that a convicted sex offender, whose name, picture and list of convictions were published on the Internet page of a victim support group, could not claim any non-pecuniary damages for the violation of his personal rights.

Whereas the plaintiff was successful in applying for an injunction due to the –legally indisputable– infringement of his right to privacy by the “naming and shaming” publication, the court considered the violation of the plaintiff’s personal rights as being not serious enough to grant non-pecuniary damages as well, especially as the paramount purpose of the publication was not to gain a commercial advantage, but to warn and inform the public.

Consequently, the court did not find any reprehensible motive on part of the victim support group that could justify paying any non-pecuniary damages to the plaintiff.

For further information please go to : www.bblp.de

14. TARIFFS

INDIA LOWER TARIFFS EXTENDED TO ALL OPERATORS

The Telecom Regulatory Authority of India (the “TRAI”) has directed Bharat Sanchar Nigam (BSNL) and Mahanagar Telephone Nigam (“MTNL”) to extend concessional tariffs for inter-circle calls ranging between 50 to 200 km to all subscribers irrespective of the service provider.

On 25th January, TRAI issued a directive to BSNL stating that the revised tariff structure should be made available to private telecom operators as well. Subsequently, TRAI had received a representation from private basic operators as well as cellular operators that they were not receiving the aforesaid benefit. BSNL’s contention was that the revised tariff structure could not be made available to private operators due to technical reasons.

TRAI has reconsidered the issues with intent of providing a level-playing field to all the operators directed BSNL to extend the benefits to all subscribers.

BSNL is required to implement the directives by 20th February. The new lower tariffs become applicable from 26th January.

However, BSNL has challenged the TRAI jurisdiction to issue such a directive. BSNL has contended that TRAI had violated rules of natural justice by denying them the right to be heard. The directive was passed in BSNL’s absence after hearing the cellular operators, alone. BSNL has contended that TRAI’s powers with regard to the matter were purely recommendatory and was not entrusted with any power to issue the directive.

TRAI has been vested with powers to facilitate competition and promote efficiency in the operation of telecommunications services so as to facilitate growth in the services by virtue of the erstwhile Section 11 (g) of the Telecom Act, 1997.

However, the TRAI (Amendment) Ordinance, 2000 has reduced the powers of TRAI under section 11 of the TRAI Act, providing recommendations with regard to the above issues.

The Telecom Dispute Settlement and Appellate Tribunal is hearing the above dispute between the operators.

Source : Economic Times, 10th February 2001, & Economic Times, 16th March 2001. www.economicstimes.com

PORTUGAL INTERNET ACCESS : PRICES FOR FLAT RATE TARIFFS DETERMINED

As decided by the Portuguese Regulator (the “ICP”) on 21st February 2001, the transition of the present model of sharing Internet access telephone traffic revenues to a model based upon payment at the point of call origination is to occur. As a result, ISPs will now be responsible for defining the price to be charged to the end consumer for Internet access via the fixed telephone network in accordance with their commercial strategy in an open and competitive market.

This transition of Internet traffic to the interconnection regime is to be completed by 31st March 2001 at the latest.

The ICP has determined that for local access the maximum prices that will generally apply to flat rate Internet connections, will be of PTE 2.000 (off peak) and of PTE 4.000 (peak hours) for unlimited access.

These prices form part of a set decisions that will alter the regime of Internet access and thus regulate the pricing system applicable to the provision of services. The new model will also bring lower prices for Internet access connections when compared to prices charged for voice traffic and is aimed to safeguard consumer interests and to guarantee economic sustainability, thus promoting Internet penetration in Portugal, in accordance with resolutions of the Council of Ministers concerning the Information Society and the “eEurope” initiative approved in the Lisbon summit.

The incumbent, as an entity with significant market power in the interconnection markets, fixed telephone networks and leased lines, has published a Reference Internet Access Offer, a document that shall serve as the basis for its provision of commercial services in this area.

See : http://www.icp.pt/interligacao/uk/interligacao_Internet.html

SPAIN REDUCTION OF TARIFFS FROM FIXED TO MOBILE

On 23rd January 2001, the Board of the national regulation authority (the “CMT”) issued a report addressed to the Spanish Government regarding the convenience of modifying the Agreement of the Delegated Commission of the Government for Economic Affairs, of 27th July 2000, whereby the Prices Regulatory Framework based on the price cap system for the services provided by the incumbent operator, Telefónica, was regulated.

In its report the Spanish regulator proposed a more flexible tariff system which would permit different prices for different mobile operators and which would not have to be amended in case of future modifications of the regulatory framework in order to respond to the necessities resulting from an especially dynamic sector.

The CMT considered that including different prices for the termination of the phone calls in mobile networks of different operators would have positive effects and that it would help to increase competition in the mobile market.

Finally the CMT has ratified the selective reduction of tariffs in fixed to mobile calls –from PTE 44 to 39 per minute– by means of a Resolution dated as of 1st February 2001.

For more info please see :

<http://www.cmt.es/cmt/document/decisiones/RE-01-02-01-26.pdf>

or contact : Almudena Arpón de Mendivil at

aam@gomezacebo-pombo.com

SPAIN TARIFF REBALANCE

The incumbent operator, Telefónica, submitted a complaint before the European authorities requesting for a rebalance of prices. According to Telefónica, this company has lost, since 1998, approximately EUR 1.800 Million for the maintenance of the basic telephony service without being able to increase its access quota, fixed by the Spanish Government.

Following a review of the situation, the European Commission has issued a report reinforcing the position of Telefónica, encouraging the Spanish Government to approve the increase of the access quota. The Spanish Government is currently studying the different alternatives to compensate the incumbent operator for these losses.

For more info please see :

<http://es.biz.yahoo.com/001221/18/p58q.html>

or contact : Almudena Arpón de Mendivil at

aam@gomezacebo-pombo.com

15. TELECOMMUNICATIONS

AUSTRIA REORGANISATION OF COMMUNICATIONS REGULATORY AUTHORITY

On 1st March 2001, the Austrian Parliament enacted the *KommAustria-Gesetz* or Communication Organisation Act (the "Act"). However, the Act is not based on the initial government proposal issued on 5th December 2000.

The opposition votes were required in order to establish an independent authority, which should have –taking into account the increasing convergence of media, telecommunications and IT– performed far-reaching tasks under the government proposal.

However, the opposition denied their support for political reasons. The legislator therefore finally passed a new law that no longer provides for an independent communication authority and does not take into account the increasing convergence of the communications markets.

The Act established a new communication authority, *KommAustria*, which is bound by the instructions of the Government. This authority is exclusively competent for the regulation of broadcasting, but not of the telecommunications market.

For more information see : www.austria.gv.at/regierung/VD/medien.htm

BRAZIL CREATION OF A UNIVERSAL SERVICE FUND

The main objectives of the privatisation of the Brazilian telecommunication system that took place in 1998 were to introduce competition and increase supply of telecommunication services, the latter being commonly known as the universal telecommunication services.

In order to achieve the universal service, the privatised incumbents also undertook commitments to expand the number of telephone terminals offered to the public, including public pay phones, within a given time frame.

In order to finance the achievement of the universal service that is outside the scope of the incumbents or other private telecommunications companies, a fund called *Fundo de Universalização dos Sistemas de Telecomunicações* or Universal Telecommunications Service Fund ("FUST") was created on 16th August 2000 by Law n° 9998 (the "FUST Law"). The FUST Law was subsequently regulated by Decree n° 3624 of 5th October 2000 (the "Decree").

Under the FUST Law and the Decree, as of January 2001, all Brazilian telecommunication service providers must pay 1 % of their monthly gross income to the FUST.

For further information please see : <http://www.anatel.gov.br>

IRELAND LICENSING AND USE OF RADIO SPECTRUM

The legislative basis for the management and use of the radio-communications spectrum in Ireland is the Wireless Telegraphy Act, 1926 which has been amended on numerous occasions by primary and secondary legislation.

For some time, it has been recognised that legislation, which is almost eighty years old, is inadequate for the 21st Century radio-communications environment, due to the constant evolution of electronic communications and information exchange, in particular mobile communications.

The Department of Public Enterprise (the "Department"), which is responsible for communications policy in Ireland, has begun a consultation and review procedure in relation to the legislation, focussing in particular on issues associated with the licensing and use of radio spectrum. The Department invited comments from interested parties. Among the first to reply was the Office of the Director of Telecommunications Regulation (the "ODTR").

The ODTR welcomed the review initiative on the part of the Department, which it said provided the opportunity to develop a new legislative framework more suited to the needs of a modern, dynamic economy.

The ODTR said that deficiencies in the current legislation have hampered the efficient management of the spectrum, particularly in relation to the introduction of new services and enforcement activities.

It also said that the rate at which radio-communications is evolving places increasing strains on the legislation in terms of its lack of flexibility and capacity to deal with fast developing markets and convergent technologies.

The ODTR in its response to the invitation makes recommendations on key features that should be included in any new legislation.

For more information, see :

www.irgov.ie/tec/communications/spectrum.htm

For ODTR documents, visit : www.odtr.ie

IRELAND LOCAL LOOP UNBUNDLING

Following the adoption of the EC Local Loop Unbundling ("LLU") Regulation, the Office of the Director of Telecommunications Regulation (the "ODTR") set about taking steps to set the regulatory environment for the implementation of LLU in Ireland.

In December 2000, eircom, the former telecom monopoly, submitted a Reference Offer for LLU, which the ODTR was unable to accept.

Further negotiations, which were undertaken in the early part of this year, focussed on three specific service issues that were of immediate concern, namely :

- the definition of space available for collocation;
- restrictions on equipment that can be collocated; and
- the prohibition of collocation space sharing.

In mid-January, the ODTR issued an Information Notice (ODTR 01/01), noting that, while some progress had been made, further work by eircom (and access seekers) was required. In the most recent Information Notice (ODTR 01/15) the ODTR outlines the following key steps which will be undertaken by the ODTR over the coming months in order to expedite the provision of an initial service which can be developed and extended in accordance with demand :

- provision of information : the process on information supply set out by eircom in the Reference Access offer has not proved effective, and the ODTR intends to intervene and complete an examination of this area by the end of March 2001. The objective is to ensure that access seekers can obtain the information they need to prepare their requests for access;
- pricing : the ODTR indicated that further analysis of Eircom's pricing proposals was necessary, as some elements seemed high in comparison to preliminary results of ODTR analysis and international comparisons. In its December 2000 Notice, the ODTR said that results from the ODTR historic cost model indicated a range of EUR 15.90 to EUR 17.10 for fully unbundled loop monthly rental. At that time, eircom's proposed prices were at significantly higher levels.
- In its March 2001 Notice, the ODTR states that progress has been made in this regard, in particular on the LRIC pricing announced by eircom, but that information is still required from eircom on both Historic and LRIC bases to complete the ODTR assessment. A further update will be issued by the end of March 2001. In the interim, the indicative price range for monthly rental of fully unbundled loop, on a historic basis, provided in the December 2000 Notice still stands;
- process development : the ODTR has engaged specialist consultancy support to work with the industry to develop new process documentation to support, for example ordering and maintenance, and expects to present this to industry for approval before the end of March;
- types of unbundling : the ODTR expects to focus on inclusion of high priority services and facilities in the Reference Access Offer. Its intention is to fast-track arrangements for an initial implementation of services with immediate commercial relevance.

For more information about the above documents, see : www.odtr.ie

ISRAEL

PANEL DECIDES TO RETURN SNAPPLE.CO.IL TO SNAPPLE BEVERAGES

An ISOC-IL Advisory Committee Panel has decided 25 February 2001 to cancel the allocation of the domain name SNAPPLE.CO.IL to Mrs. Sara Vidal and to transfer the allocation of the domain name to Snapple Beverages.

The decision provides that the allocation is to be transferred because Vidal failed to show it was making bona fide use of the domain name. The decision further provides that Vidal use of the domain name infringes the intellectual property rights of Snapple Beverages. Vidal also failed to provide ISOC-IL with full and accurate details in its application for the domain name.

This, the panel said, constituted bad faith in contradiction of the Rules now in force between ISOC-IL and Vidal. It finally notes that the first to file first served principle is technical in nature.

The decision can be found at:

<http://www.isoc.org.il/docs/2001-02-Snapple.pdf>

The Rules currently in force can be found at :

http://www.isoc.org.il/fs_isoc_domain.html

LUXEMBOURG

TELECOM ACT AMENDED TO ADD DISPUTE SETTLEMENT PROCEDURES

A draft on an amendment of the Telecommunication law of 21st march 1997 has been published. The purpose of this amendment is to introduce a dispute settlement procedure regarding interconnection and local loop unbundling negotiations. According to this amendment, the Luxembourg Institute of Regulation (the "Institute") could, in order to bring negotiations to a successful conclusion, impose procedures and terms that parties have comply with. If the negotiations between the two parties fail, then the Institute could set the terms and conditions (including financial terms) to be complied by the parties. In exceptional cases, the Institute could also amend existing agreements. The involvement of the Institute would be justified in three circumstances :

- in case of breach of competition law;
- where required for services interoperability requirements;
- where accounting obligations are imposed on one of the parties.

In case of dispute concerning negotiations, one party could refer the matter to the Institute. After hearing both parties the Institute must issue its ruling within three months.

For more information see the draft amendment at :

<http://www.etat.lu/SMA/text-sma/protdon/DECISIONS-ILR.htm>

or contact : LE_GOUEFF@vocats.com

SWITZERLAND

VODAFONE / SWISSCOM MOBILE AG

On 19th March 2001 the shareholders of Swisscom Mobile AG gave their approval to a partnership announced on 8th November 2000 with the British Vodafone Group.

According to press releases, 755 shareholders, representing 71.35 % of the voting shares, attended this extraordinary meeting of Swisscom Mobile AG which was held for the sole purpose of voting on this transaction. The shareholders approved the 25 % participation by Vodafone in Swisscom Mobile AG for which Vodafone, Europe's largest Mobile Phone provider, will pay CHF 4.5 billion.

The payment can take the form of shares and/or cash. From the total amount CHF 2.2 billion will be payable on conclusion of the transaction and CHF 2.3 billion no later than 12 months after it. Swisscom Mobile AG will be entitled to dispose of the shares offered by Vodafone as payment immediately after receipt.

Swisscom Mobile AG has said to intend to invest the funds primarily in growth segments of its core business, for example, setting up the UMTS Network, upgrading the fixed network for broadband services and expanding the area of its e-commerce. Surplus Funds will be used to reduce debt and Swisscom Mobile AG will also consider a share buy-back.

According to information publicly available, the Vodafone Group and its partner companies are clearly focused on mobile voice and data services and serve about 173 million customers in 30 countries. Hence, in future Swisscom Mobile AG will be able to distribute proprietary products Europe-wide. The partnership is said to allow Swisscom Mobile AG to offer its customers an attractive pan-European roaming tariff.

For more information, contact : M.Bernasconi@BaerKarrer.ch

UK BROADBAND RADIO SPECTRUM LICENCES TO BE SOLD AGAIN

The UK Government announced on 3rd February 2001 how its plans to sell those 28 GHz broadband fixed wireless licences which were left unsold at the end of the auction held in November 2000.

The Government intends to make the licences available in summer 2001. A company will be able to bid for an unsold licence at the existing reserve price when it decides that market conditions are right. This will then trigger a new auction for that licence only if other companies are interested in bidding for the licence.

If no other company is interested, the bidder will be awarded the licence at the reserve price. This process will continue until all the licences are taken up or the Government decides to withdraw the offer.

Further details can be found at the Radio-communications Agency Web site : <http://www.radio.gov.uk>

UK JUDICIAL REVIEW OF 3G AUCTION PROCESS

Applications brought last year by One 2 One Personal Communications and BT3G for judicial review of a decision made by the Secretary of State for Trade and Industry during the UMTS auction process were rejected.

The applicants had argued that the decision made by the Secretary of State whereby Orange Personal Communications and Vodafone were granted their licences after One 2 One and BT3G constituted state aid and/or meant that the Secretary of State had acted in a discriminatory way.

The applicants based their argument on the fact that, because of the delayed grant, Vodafone and Orange did not have to pay the licence fees until Vodafone had divested itself of Orange in accordance with the decision of the European Commission in the Vodafone/Mannesmann merger review.

The court acknowledged that the applicants had lost money by being obliged to pay their licence fees at an earlier date than Orange and Vodafone, and that this could indeed constitute state aid under Article 87.

The court decided, however, that no state aid had in fact been given and the Secretary of State had not acted in a discriminatory way because his decision was made as a consequence of a normal application of auction rules established in compliance with the Directive 97/13/EC (the "Licensing Directive") and Decision 128/1999 EC ("the UMTS Decision").

Further information on the UK third generation mobile phone auction can be found at : <http://www.olswang.com/telecoms>

UK LOCAL LOOP UNBUNDLING

Despite a number of operators recently pulling out, and allegations of discrimination by British Telecom ("BT") in favour of its BT Ignite and BT Openworld divisions, some operators have continued to try to secure space in BT's exchanges and be in a position to provide unbundled services. Over 700 sites have been surveyed, and BT has announced it is now able to provide up to 100 co-location sites and 100 distant co-location connections per month.

In relation to the complaints made by operators to the Director General of OfTel that BT's reference offer was unreasonable, OfTel, on 21st February 2001, published a determination setting out certain required terms and conditions of the Access Network Facilities agreement between BT and other operators.

BT and the operators have been given until 30th April 2001 to agree service levels and how compensation for breaching them will be paid. If there is still disagreement, OfTel may step in to decide what these levels should be.

Further information on local loop unbundling can be found at : <http://www.olswang.com/telecoms>

16. WEB SITES

www.codex-online.com

is a global forum for legal publication and information exchange. Memberships gives the possibility to publish online in five languages or to use the site's evolving services to access legal commentaries online.

17. EDITOR / EDITORIAL BOARD

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