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TELECOMMUNICATIONS

A new law in the telecommunications field – Law No. 304/2003 on the universal service and the users rights with respect to the electronic communications networks and services, published in the Official Gazette No. 551 of 31st June, 2003 – regulates the relationship applicable for the legal framework between the suppliers of electronic communications networks and services and the final users.

Access supplying to the public telephone network, information service on the subscribers, providing of the subscribers registry, as well as the access to pay telephones are regulated as being part of the new established concept of “universal service” and object of the relevant policy and strategy to be issued by the Ministry of Communication and Information Technology (“MCTI”).

The new law expressly grants additional powers to the National Regulatory Authority in the Communication field (“ANRC”) with a view to meet its main obligation – ensuring of the access right to the universal service all over the Romanian territory

For the supplying of services meant to the public to be covered by at least one supplier of electronic communication networks and services, ANRC is to draw up the conditions and procedure necessary for appointing one or more suppliers of universal service who

provide the services that make the object of the law in certain areas or all over the Romanian territory.

For the same purpose, ANRC shall impose on the universal service suppliers specific obligations, such as (i) settlement of all the final users applications within the term and under the conditions that are to be established by ANRC – for the suppliers of access services to the public telephone network at a fixed point, (ii) ensuring a certain pay public telephones over a definite geographical area – for the suppliers of access services to the pay public telephones.

The ANRC shall monitor the evolution and the level of the services’ tariff in the sphere of the universal service, having additional obligations and rights in this sense

The authority has the right to impose on the suppliers to apply common tariffs over geographical areas or over the entire national territory which must comply with certain tariff limits or a formula meant to control the increase in tariff, to offer to the consumers several options or tariff packages different to those practiced under normal commercial conditions and adapted to grant the possibility to certain categories of disfavoured persons to benefit from the telephone services meant to the public, to modify or renounce to certain tariffs or tariff schedules.

The suppliers of universal service may be compelled to grant incentives for invoice payment to the persons with low income or persons with special social needs

The categories of persons entitled to benefit from these incentives will be decided only by MCTI. The incentives provided shall be: exemption from interests, penalties on the accrued debts or for payment delay; disconnection from the public telephone network shall not be effective before the expiry of the term priory agreed by ANRC; the reconnection shall be free of charge.

In all the cases, the temporary disengagement of the telephonic service at a fixed point due to invoice failure to pay shall be made only after the subscriber notification by the supplier and the disconnection after the expiry of 60 days as from such date of temporary disengagement.

ANRC may impose on the supplier of universal services the fulfilment of certain services quality objectives, as well as the compensation of the net cost required to reach such objectives

Data transmitted to ANRC and published by the suppliers regarding reaching these objectives would be verified through an independent audit, on the supplier of universal service expenses. In case that it is estimated that the supply of universal services would constitute an unreasonable obligation for the suppliers, the new law provides methods for setting the supplying net cost.

Such cost shall be set off under the condition established by ANRC through setting the suppliers of electronic communication networks and services that would contribute

to the compensation, the amount of due contributions, payment method and term, as well as other elements necessary for compensation.

Contributions due for the net cost compensation shall be considered as budgetary debts

Therefore, these contributions shall comply with the provisions of the Government Emergency Ordinance No. 61/2002 on the collecting of the budgetary debts. Furthermore, if within 90 days as from the payment date the supplier does not pay the contribution due, ANRC can suspend or withdraw the right of supplying electronic communication networks and services performed by the supplier under the general authorisation.

ANRC shall control the tariffs used by the market significant suppliers

In the case that, following a market analyse, ANRC has established that on a certain market there is not effective competition with respect to the supplying of retail services, the above mentioned authority may impose on the market significant suppliers, under certain conditions, tariff ceilings or control formula for the increase in tariffs, control measures for the individual tariffs, etc. Unfortunately, the law does not include provisions related to the absence of effective competition or of significant suppliers.

The agreements concluded between the service suppliers and the final users must contain a series of minimal clauses

A new element is the obligation of the service supplier to notify the final user in connection with any intention to unilaterally modify the agreement, as well as the possibility of any subscriber to unilaterally denounce the agreement, without no damage, in case he does not agree with the proposed amendments.

The suppliers non-fulfilment of the obligations provided by the Law No. 304 or established by ANRC according tot his law constitutes contravention and is sanctioned by fines

In accordance with the gravity of the non-observance of the obligations, the amount of the fines ranges between ROL 3,500,000 and ROL 3,500,000,000. The ANRC's agents authorized in this purpose carry out finding and levying of fines.

The level of tariffs for retail services supplying shall be established through a decision of ANRC's president

The new law expressly repeals the provisions of the Government Ordinance No. 36/2001 with respect to the setting of prices and tariffs for the main telephone services, for the main postal services and for the radio communication and telecommunication services. Such prices and tariffs shall be set only with official approval of the Competition Council.

Until the issuance of the relevant decision of the ANRC's president, the tariffs for retail services used by Romtelecom shall be increased only upon ANRC's approval.

ENERGY LAW

In the Official Gazette No. 511 of July 16th, 2003 the Law on electricity No. 318/2003 has been published. This law unifies the provisions Government Emergency Ordinance No. 63/1998 on the electricity and the thermal energy and those of the Government Emergency Ordinance No. 29/1998 on the establishing, organizing and functioning of the National Authority for Regulation in the Energy field - ANRE, expressly repealed.

The new law extends the sphere of the principles applicable to the development of the electricity and thermal energy field

Promotion of the new and regenerable energy resources utilization, ensuring the transparency in tariffs, prices and taxes of electricity within the tariff policy, ensuring the interconnected functioning of the electricity national system with the electricity systems of the neighbour countries and with the electricity systems of the Union for the Coordination of Transmission of Electricity (UCTE), as well as ensuring the security measures against the terrorism and sabotage acts are expressly provided by the new law.

Simplification of the necessary authorisations in the electricity field

The new law limits its provisions related to the authorisations through the reference to the possibility of issuing the functioning authorisations and licences. Delivery of the setting up authorisations is provided for implementation of new energy capacities producing electricity and thermal energy in co-generation or for equipping with new technology the existing capacities having a power of over 10 MW, for implementation of electricity transmission lines and stations or for equipping with new technology of those already existing and for implementing or for equipping with new technology of the electric networks having a nominal line equal to or over 110 kV.

The commercial exploitation of the capacities producing electricity or thermal energy in co-generation, of the electricity transmission and distribution capacities, the activity of electricity market operator and the activity of the system services supplying, the electricity and the system technological services shall be performed only upon relevant licences.

It has been established the setting up of a electricity market, made up of the regulated market and the competing market

The opening of the electricity market, within which the transactions are performed by wholesale and by retail, shall be carried out by the progressive increasing of the competing market quota, according to the

provisions of the energy policy and strategy and shall be approved by Government Decision.

The participants in the electricity market and the operational structures associates, regulated by the above mentioned law, are: the producer, the transmission and system operator, the self producer, the market operator, the distribution operator, the supplier, the eligible consumer and the captive consumer.

ANRE may propose to the relevant ministry to limit the prices used by the economical agents who are abusively take advantage of their dominant position on the market

A price shall be declared as being regulated only by a Government Decision, initiated by the relevant ministry for limited periods and only upon approval of the Competition Council

For the produced electricity trade on the domestic market shall be set the following prices and tariffs categories resulting from the competing market mechanisms, regulated prices for the thermal energy produced in co-generation, regulated tariffs for the electricity transmission and distribution services, considered as activities having a natural monopole character, regulated tariffs for electricity supplying to the captive consumers, regulated tariffs for ensuring the system technological services until the setting up of a competing market, regulated tariffs for the transforming and interconnection services, regulated tariffs for

connecting to the network, tariffs used by the transmission and system operator and the electricity market operator for the services provided to the participants in the market.

The Law 318/2003 shall come into effect within 30 days as from its publication, and within 6 months as from its coming into force, the competent ministry and ANRE shall prepare regulations for its implementation (regulation on the electricity supplying to the consumers, regulation on the statement, notification and punishment of misdemeanours of specific norms, regulation on the users connecting to the electricity networks of public interest, regulation on delivery of authorisations and licences etc.) which are approved by Government Decisions.

FOREIGN CITIZENS REGIME

The Government Emergency Ordinance No. 194/2002 on the foreign citizens regime in Romania has been approved with amendments and completions by Law No. 357 published in the Official Gazette No. 537 of July 25th, 2003, referring mainly to the conditions on long and short stay visa granting and extension, to the misdemeanours and sanctions regime.

The foreign citizens who are nationals of the European Union member states and of the European Economic Area member states benefit from a more favourable regime upon obtaining the right to enter the Romanian territory

Therefore, it is expressly provided that these citizens **do no longer need** to provide evidence and produce (i) documents attesting the purpose and conditions of their stay, as well as the existence of appropriate support means for the stay period and for the return in the country of origin or for the transit to another state in which it is certain that they will be allowed to enter and (ii) guarantees that they will be allowed to enter the territory of the destination state or that they will be allowed to leave the Romanian territory, in case of foreign citizens on transit.

To the same extent, the foreign citizens who do not need visa for enter in the European Union member states territories may obtain from the Romanian diplomatic missions and consular offices from abroad a short stay visa without obtaining beforehand the approval of the Romanian Foreign Affairs Ministry.

Certain conditions on stay visa granting and extension have been eliminated

For granting a short stay business visa it is no longer compulsory to provide evidence attesting the trader capacity in the country of origin.

Foreigners whose parents are Romanian citizens or who are holding a stay permit in Romania valid for at least 90 days are exempted from the invitation procedure.

For obtaining the long stay visa, the foreigner whose ancestor is or was a

Romanian citizen no longer need to provide evidence of support means.

For extension of the temporary stay right, the foreigners carrying out economical or professional activities do not need to provide evidence for the payment of the debts towards the state, including towards the budgetary creditors.

In certain cases, the conditions on stay right granting and extent have been supplemented

Temporary stay right in Romania may be successively extended for periods up to one year, only if evidence of medical insurance is provided corresponding to the entire period for which the extension of the temporary stay right is requested.

The Law 357 sets up a distinction between the companies' shareholders and associates as regards the amount of the investment, the personal income and the number of jobs created which have to be proved in order to obtain the extension of the temporary stay right.

The same distinction is also made for obtaining the authorisation of the Romanian Agency for Foreign Investments, that is the available funds necessary for carrying out the activity should amount to Euro 70,000 for shareholders and Euro 50,000 for associates.

The Law 293 for the approval of the Government Emergency Ordinance No. 15/2003 on the modification and completion of the Government Ordinance No. 16/2002 concerning the public - private partnership agreements, published in the Official Gazette No. 501 of July 10th, 2003 brings few amendments with respect to the documentation that has to be submitted for participating in a public - private project assignment procedure.

The documentation that has to be submitted in order to participate in a public - private project assignment procedure has been supplemented

For this purpose, a document attached to the letter of interest has to be submitted, including all information and documents requested by the public authority through the announcement of interest attesting the investor's eligibility and capacity to carry out the project.

Simultaneously with the examination of the letters and documents attached submitted by the investors, the public authority prepares the feasibility study for the project that is the exclusive property of the public authority.

Concluding the project agreement

After finishing the selection of the attached documents and of the letters of interest expressed, the public authority concludes,

within 15 days, a project agreement with each investor who meets the conditions mentioned in the announcement published.

STATE AID

In order to establish if the sale of lands and/or buildings by public authorities may be considered as state aid, the Competition Council has issued a series of Instructions put into practice through the Order No. 136 published in the Official Gazette No. 541 of July 28th, 2003.

Obligation to notify the Competition Council

In order to establish the existence of a state aid, as well as the manner in which it affects the international agreements to which Romania is a party, the providers of the

state aid must notify to the Competition Council the following transactions:

- a) any sale that has not been concluded according to an open and unconditioned offer procedure including/providing the sale to the best offeror ;
- b) any sale that has taken place in the absence of such a procedure, for a value under that of the market, as set up by independent experts.

The Instructions expressly provide that the sale of lands and/or buildings by public authorities within an open and unconditioned offer procedure that has made the object of an advertisement and that has an appearance of a public sale within which the best or sole offer is accepted is not considered as state aid, as it is carried out at the market value.

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