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GAZDASÁGI VERSENYHIVATAL

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KEY ISSUES OF TELECOMMUNICATIONS MARKET LIBERALISATION:

THE COMPETITION POLICY POSITION OF THE HUNGARIAN COMPETITION AUTHORITY

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Key Issues of Telecommunications Market Liberalisation: The Competition Policy Position of the Hungarian Competition Authority

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Editor in charge: Nagy Zoltán

Editor of the series of Competition Office Bulletin: Hargita Árpád

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The prevailing of any competition policy position of the GVH is determined by the opportunities provided by competition law.

Please send your possible comments to the email address: gvhfuzetek@gvh.hu

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1. Introduction

In Hungary, as elsewhere in the world, telecommunications moved towards an open market much earlier than the other public services traditionally considered natural monopolies. Hungary is halfway towards full liberalisation, in a peculiar transitory stage. However, it will be a long while before the former monopoly market is replaced by an efficient competitive market, and the time required for the transition depends partly on whether the state promotes this process with further measures.

We can safely say that the deed and scheduling of the liberalisation of this market is already a fact; the real question is the identification of areas where the intervention of the state will be needed to nudge along the process. Such intervention will consist in "holding in check" the previous monopolies that are permanently dominant actors in the market (though their dominance is declining) as well as in improving the potential for new market actors to gain a foothold. Such government policies may result in the evolution of effective competition and the manifestation of its beneficial effects in the economy within a relative short time.

Naturally an effective competitive market is not an end in itself; instead, it serves to makes us competitive on the global and increasingly open telecommunication market and to create conditions where, as our telecommunication infrastructure improves, the range of services expands and their quality improves, the Hungarian telecommunication sector can improve the competitive position of the whole of the economy on domestic as well as international markets. The most natural and obvious side-effect of market liberalisation is the lowering of prices; the extent of this, however, depends largely on the intensity of the emerging competition.

Some of the market in Hungary is still monopolistic where, in the absence of market mechanisms, the activities of service providers must be regulated in detail, while another segment is already competitive with unregulated prices. As a characteristic of the current situation, the revenues generated on the market increasingly come from liberalised services; on the other hand, this market is also dominated by the service provider with exclusive rights on the other markets. The dynamic technological development of telecommunication poses ever new challenges for regulators, who must identify the optimal tool for intervention that will promote the effective exploitation of new technologies in the economy without undermining the achievements of market liberalisation and even create the conditions for effective competition.

"Holding in check" the former monopoly does not mean its artificial and wanton weakening; rather, it entails the prevention of the application of strategies through which the former monopoly would lock in its position based solely on its inheritance. In this respect key issues include: the appropriate operation of price regulation; the setting of interconnection fees; the effective management of the issue of access; temporary restriction on the former monopolist's expansion in other sectors of telecommunication; limitation of its ability to expand on its old markets by simple take-overs. Improving the opportunities of new market actors is not a goal to be achieved at any price; rather, it must entail the opportunistic exploitation of changes to make structural decisions.

Market liberalisation also fits in with our international commitments, including our adoption of the WTO convention on the liberalisation of telecommunication services and the process of accession to the European Union, where the full legal liberalisation of the sector has been completed already. Furthermore, there is a programme under the auspices of OECD to review

and reform the regulatory systems of the member states. In 1999 Hungary is one of the member states that is screened under the regulatory reform; this review dedicates a separate chapter to the regulation of telecommunication.

The first steps towards liberalisation include the Telecommunication Act that came into effect in 1993, then the concession and privatisation process in the subsequent years, which undoubtedly brought about significant developments in Hungarian telecommunication. The capital of foreign strategic investors yielded beneficial results: the general shortage of telephone lines was eliminated in 5 years, bringing Hungary from the ranks of countries with underdeveloped telecommunication systems to the average development level in terms of penetration (of main lines). As far as coverage indicators are concerned, the conspicuous development of telecommunications is a success story. However, the situation is not as simple as that, which is indicated to the whole economy, business and household consumers by the continuously increasing telephone rates (which undermines the competitive position of the economy), and to telecommunications professionals by the heated debates on tariff changes each year.

This paper endeavours to present the key issues of regulatory controversies, the weaknesses of regulations as well as the tasks for the future. As for the government's role under the heading of "tasks for the future" we should emphasise that targeted and firm intervention is essential but it must not be excessive; in this respect competition cannot be "planned".

The paper devotes a separate section to the current deficiencies in the regulation of cable television services. The regulatory requirements outlined in that section are different from those in a competitive environment evolving in the telecommunication sector as explained in the rest of the paper.

2. Telecommunications structure evolving against the legislative and regulatory background

2.1. Legislative background

In line with the provisions of the concession law, the telecommunication act called for partial market liberalisation: dividing telecommunications services into concession based and competitive service categories, it essentially took the first step towards the evolution of competition in the field of telecommunication. According to the law, public telephone services, public mobile radio telephone services utilising frequencies, national public pager services as well as national and regional radio and television transmission and broadcasting services may be provided only on the basis of concession agreements; any other public telecommunication services are subject to a licensing obligation, while non-public telecommunication services are subject to a simple notification obligation.

The telecommunication act contains the key provisions in respect of telecommunication services, irrespective of the infrastructure used by an undertaking to provide such services. This law can be considered the overall piece of legislation governing the sector, and it can be the basis for the drafting of a uniform communications law.

The law provides for appropriate authorisation for the Government and the Minister to issue detailed regulations. Such detailed regulations define the manoeuvring room for the enterprises operating in the sector. For successful market liberalisation, firms intending to enter the market must find a predictable legal framework. Other prerequisites include the up-to-date legal

regulations reflecting processes ongoing in the sector; besides, such regulations must be effectively created pursuant to the legal authorisation.

2.2. Concession agreements

2.2.1. Public telephone services

The Minister concluded concession agreements for public telephone services with the winning enterprises for 25 years, with exclusivity for 8 years. (Exclusivity provided in the concession agreements means that the Minister will not invite new concession tenders for the same geographic area and the same service until the end of 2001 in the case of MATÁV, and until October 2002 in the case of local concessionaires.)

As a result of the concession process and the concurrent privatisation, MATÁV has a national concession for international and domestic long distance telephone calls and is also present (directly or indirectly) as a local service provider in 39 out of the 54 primary areas.

In the field of wire telephony the former single market actor has been replaced by several firms but each of these retains a monopoly within its own geographic area. MATÁV was not sold in one piece because, first, adequate capital had to be raised for the large capital investments necessary, and, second, to create conditions for the evolution of a future multi-player communication market. Senior professionals reckoned with the possibility that the concessionaire enterprises licensed to provide only local services in small localities with limited solvent demand will not necessarily be viable. This is because the local telephone rates have traditionally been low compared to costs, failing to ensure profitability. Long distance and international telephone rates, on the other hand, have a high profit content. The key to a final resolution of this problem is in the approximation of tariffs to costs, the gradual balancing of tariffs, the elements of which have been incorporated in the regulatory system, though they are not fully consistent in their implementation. At this point we should mention the problem that the compensation attempts between the introduction of the concession system and 1999 were unfortunately not based on firm foundations because

- the government, when designing the price regulation system, failed to examine whether cost elements were justified

- therefore the process of balancing has not automatically lead to cost based pricing.

We should also add that real cost based pricing must be ensured when designing the interconnection fees detailed below. Subscription fees must be made cost oriented, which of course also necessitates the assessment of costs.

In accordance with the provisions of the laws on extra-budgetary funds and on public finances, the Telecommunication (later Communication) Fund was established as a temporary tool for overcoming the absence of access; this fund was financed from concession fees and it had the objective of supporting disadvantaged local providers in meeting the capital expenditure obligations undertaken in their concession agreements and of promoting the provision of public services. However, the amounts collected by the fund (a total of 38 billion HUF) were regularly reallocated by the annual budget laws and mini-budgets, then the fund was closed down as of 1 January 1996. The concession fees paid by the communication service providers after this date were moved to the appropriation managed by the Ministry, which works pursuant to the Ministry of Transportation, Communication and Water Management Decree No. 20/1996. (VII.19.) KHVM. This measure of the government, which was attributable to budget deficit

pressures, undermined its credibility and considerably weakened its position in enforcing contractual obligations and in bargaining for the review of regulations.

Every time the telecommunication government was in a decision making position, short term budgetary interests prevailed over longer term public interest in competition. The whole regulatory process is characterised by the unassertive behaviour of the regulator; this will be described below.

The exclusivity ensured by law and by the contract creates a very convenient situation for service providers; and is especially valuable today when in the EU member states the telephone market has been liberalised. In Hungary, due to the monopoly created by law, there is a barrier to entry on the telephone market until the expiry of the exclusivity; service providers need not continuously take into consideration the responses of their potential competitors, at least not for a while. The price of this exclusive right is the concession fee, some of which was paid when the contract was awarded, and another part is defined in the agreement as 0.1% of the annual gross income, generating regular revenues for the government budget.

Concession providers have a service provision obligation; temporarily MATÁV must also step in in the event any local concessionaire is unable to honour its obligations, though no such cases occurred so far. (MATÁV's incremental costs or potential losses would have been reimbursed by the Telecommunications Fund).

In the agreement, concessionaires undertook a quantitative development obligation amounting to annual 15.5% between 1994 and 1999; failure to meet this obligation results in the imposition of default penalties. The agreement also specifies qualitative requirements for the service. Service providers must prepare annual written reports on how contractual obligations have been met. Though the report is public in accordance with Art. 32 Section (5) of the TA, disclosure of the subsequent regulatory measures has been inadequate in a number of occasions.

2.2.1.1. Price regulation– subscriber fees

On the subject of the rates for public telephone services, the telecommunication concession agreement states that the terms and conditions of the application of rates shall be determined by the Tariff Decree.

In case of an incontestable market guaranteed by an exclusive right, regulation focuses on the technique of pricing. The regulation is successful if it can arrive at the hypothetical competitive price that would evolve if the price on the market were driven by the demand and supply of effective competition.

In regulating the prices charged to final consumers (subscribers), the government selected the price cap method from among the established price regulation techniques. The Competition Office considered this arrangement adequate in theory, and it still not questions its validity. Essentially, with price regulation the price level that the service provider is allowed to charge follows the general price increase prevailing in the economy, but this index is reduced by a so-called efficiency increase factor. This so-called (-x) factor not only passes on a fair share of the incremental profits resulting from increased efficiency to the consumer but it also reflects the fact that inflation recognised in a given sector is not identical with inflation experienced in competitive sectors. In developed countries its range is adjusted to the average rate of inflation: the higher the annual rate of inflation, the greater the adjustment factor. In Hungary the price cap technique was introduced in a rather half-hearted manner, thus it could not exert its regulatory influence. To put it bluntly, **regulation continuously legalised monopoly prices.** This claim is supported by the following evidence:

- When the regulation was introduced, the single consideration to enforce was the requirement that capital expenditure, no matter how sizeable, must yield a return within the period of exclusivity, therefore any cost or revenue necessary to this end must be incorporated in the price cap technique. Costs were indiscriminately include, and the **reasonableness of the various cost elements** was not examined. Under such conditions the price cap regulation has very limited incentives to increase efficiency and reduce costs. As a result of the absence of this step, the gradual tariff reform still ongoing in 1999 has lacked the fundamental element of a progress towards a cost based and cost oriented system (I.e., what are we approximating?), it can be best described as approximation based on assumptions.

- No analysis has been prepared concerning the regulator's productivity expectations resulting from economies of scale and technological modernisation, which should have been taken into consideration for the downward adjustment of the index. Accordingly, the (-x) factor was not incorporated into the price formula upon the introduction of the regulation or upon the first tariff review set forth in the agreement. Actually, this tariff review never happened as the government, in view of the Initial Public Offering of the MATÁV shares, surrendered this right originally granted by the agreement in 1996.

  We should note that as a result of lengthy professional controversies the factor adjusting price levels downwards was eventually incorporated into the price formula in the 1998 tariff regulation, at 2%, thus MATÁV, in line with legal regulations, could raise (could have raised) its rates 2 percentage points less than the rate of inflation in the previous year. However, the (-x) factor introduced in 1998, which was fixed at 3% for three years by the tariff regulation of the time, was deleted from the regulation governing tariff increases in the year 2000. The Ministry justified this move by saying that they intended to enforce considerations of tariff modernisation from 2000. We should want to emphasise that the existence of productivity expectation is a central element in price cap regulation, but the effective use of the –x factor would require the availability of productivity studies or comparative analyses. In the absence of such, we should at least have information about changes in productivity or the pertaining estimates. The Communication Superintendence is conducting a substantial survey this year, which is certainly laudable after the deficiencies experienced hitherto, but this will have to be followed by extensive work to achieve a price cap type regulation of cost oriented subscriber fees and cost based interconnection fees, which is very time consuming. Though this survey is not aimed at the productivity factor, it may contain additional information that may be useful in future for controlling subscription prices.

As a result of the deficiencies of price regulation there are controversies each year around the amendment of the tariff decree, which is practically inevitable given the Hungarian regulatory practice. The reasons are manifold: the regulatory technique is seemingly simple but the fair price level calculation would require **a permanent price structure, the annual changes of which makes the effects of the increases of individual price components intransparent**.

2.2.1.2. Price regulation – interconnection fees

Another focal point of regulation is the **accounting separation of the network and service costs** of the vertically integrated MATÁV. Vertical integration means that the other providers must also use MATÁV's network, and the costs and fees of this has considerable influence over the profitability of other providers. The separation of costs would be an essential prerequisite of the evolution of competition as well as the reliable regulation of prices charged to consumers. Rather optimistically, the concession agreement gave one year for the accounting separation of the costs of services belonging to the competitive sector from those provided under exclusive rights, but the issue was not resolved in 1995; instead, it is still waiting to happen. Admittedly, the separation of costs in telecommunication is far from easy and no more than 30% of the cost of services can be clearly attributed to a single activity; still, in the past few years the issue could have been resolved relying on international experiences and the contribution of consultants. We are convinced that we would be closer to finding a solution if MATÁV had set

up separate enterprises to provide the local services in primary areas which were awarded to it in concession tenders and for the operation of networks.

The accurate identification of network costs would provide the basis for the **cost based definition of interconnection fees**. Instead of a cost based interconnection fee, an estimate based revenue allocation, then a fee sharing arrangement was adopted between MATÁV and the local concessionaires and the mobile phone operators. However, the system lost its funding base as the Government closed down the Communication Fund established to compensate for inequalities in revenue generation potentials. According to local concessionaires, the former income allocation system clearly favoured MATÁV.

The final legal regulation concerning interconnection fees for 1999 was adopted only in mid-February 1999. The fee allocation arrangement for 1999 apparently represents some improvement for local concessionaires but interconnections fees are specified based on estimates rather than cost data. We should emphasise that **the structure that ties interconnection fees to the rates charged to subscribers is detrimental and outdated**. In its present form this system is unable to promote real cost-based pricing. The introduction of cost based pricing requires a long time as indicated by the experience of European countries with more sophisticated telecommunications markets. Therefore we should not forget that we have barely started along the road leading there.

For the strategic management of the sector the interconnection fee issue entails more serious problems than those of subscriber fees; this is reflected in the intensity of professional controversies around the issue. The related complaint of local concessionaires reached the competition authority of the EC in 1997. Due to its magnitude, MATÁV has overwhelming capacity to enforce its interests against local concessionaires and mobile phone providers independent of MATÁV, thus typically the recommendations originating from the market leader provider prevail. As a result of this year's change, the local concessionaires obtained some additional revenues but this does not mean that the problems and distorted development path encoded into the income sharing system based on interconnection fee estimates can be eliminated.

Real cost based prices can be determined only after the comprehensive assessment of costs, an objective that the professional government set for January 1, 2000. The consistent enforcement of the reporting application necessary for establishing real cost based prices promotes the full scale understanding of costs. It is only after this exercise is completed that determinations can be made as to which cost elements are justified and which are not, that is, which ones can be built into the prices charged. The telecommunications government designed the substantive and structural **requirements** for the aforementioned **reporting obligation** by March 1999. Pursuant to law, the concessionaire telephone service providers must meet their reporting obligation by August 31, 1999. In respect of the design of the reporting system we should emphasise the following:

- It is a welcome development worthy of our unqualified support that the communications government has taken the **first step** towards the appropriate monitoring and control of prices. This is the alpha and omega of any price regulation that sets the objective of cost based pricing (in the first stage the assessment of costs is indispensable for the effective operation of the price cap system as well as the operation of an approval system based on price notification.)

- We should note, however, that this step should have been taken **in 1993**, even considering the fact that service providers did need some time to evaluate their costs after their market entry; in accordance with the concession agreement of MATÁV, the national concessionaire, this should have been completed by the end of 1994.

- This first step does not mean that we are anywhere near achieving transparent, cost based pricing by the service providers (in terms of subscription fees or interconnections fees).

2.2.1.3. Shortening the period of exclusivity – "the bargaining process"

We welcome the development that the Ministry and MATÁV are negotiating about the shortening of the exclusive period. We must note, however, that these negotiations are also part of a bargaining process for which we have seen other examples in the relationship of the two entities (e.g. the introduction of time based rates one year prior to the original deadline of January 2000), and which may appear desirable at first glance, but due to their intransparent format they may entail considerable jeopardy. We consider it detrimental that the negotiations result in "sets" of bargains devoid of any **transparency**, where we have no way of knowing what consideration the communications government offered to the service provider in exchange. The absence of transparency in itself may be harmful, but what is even worse is that in the absence of knowledge about consideration it is impossible to assess whether the benefits of the result **exceed its costs**, which would be the minimum requirement for responsibly concluding and supporting any agreement.

We must also emphasise that shortening the period of exclusivity or any other achievement apparently promoting the evolution of competition may actually have a **restraining effect** if at the same time we fail to create conditions essential for the appropriate regulation of an open market, such as the consistent enforcement of the reporting obligation, ensuring the transparency of cost allocation necessary for the efficient operation of the enterprises, sufficient tariff equalisation etc. We must be properly prepared before we fully liberalise the market.

2.2.2. Mobile phone services

2.2.2.1. GSM services

To introduce GSM mobile phone services in Hungary, in 1993 the Minister awarded two national concessions on the 900 Megahertz frequency for a duration of fifteen years, with exclusive rights for ten years. The Minister gave an undertaking to refrain from awarding concessions to other providers on 900 MHz during the exclusive period. The two mobile service providers fulfilled, and indeed overfulfilled their obligations undertaken in the contracts; in terms of the proportion of mobile phone subscribers to total population, Hungary is close to western countries. Due to the saturation of the frequency range the number of subscribers can barely be increased any further in Budapest and in large cities. Two thirds of the frequency band available on 900 MHz was given to the two GSM providers upon the contract award, while the remaining one third was made available to MATÁV and the local concessionaires as well as for other proposals so that they can meet their required developments with cheaper technologies. This technology is the RLL (Radio Local Loop), which allows for the establishment of fast and cheap telephone networks, though for some of the consumers the quality of services it offers is below that of traditional wire telephony.

The two national GSM concessionaires are keen competitors. Consequently, the price regulation of mobile phone rates was lifted in 1997 and even in the environment of duopoly competition is a more effective regulator than the previous loose regulatory system.

2.2.2.2. DCS 1800 services

The Ministry issued a tender for DSC 1800 public mobile phone services on February 25, 1999. The deadline for the submission of bids was May 7, the deadline for evaluation June 7. The Ministry announced the results on June 15, 1999, the winner being the Primatel consortium consisting of AirTouch-Vodafone, a leading global mobile provider and the German RWE Telliance. In Hungary the consortium also has holdings in Novacom Kft. through the RWE.

The opening of the 1800 MHz frequency band to mobile phone providers may offer potentials for developing the service and intensifying market competition as well as for the introduction of a new technology that represents a necessary step towards the transition to the UMTS, the third generation, broad-band high speed information forwarding system.

The DCS 1800 mobile phone system is advantageous over short distances, in densely populated urban centres; in this environment the quality of sound transmission is better than in the 900 mobile phone system, and its local use facilitates cheaper rates. It cannot be required to achieve the same level of coverage as the 900 system because the installation of networks in large areas is more expensive. Therefore the new mobile phone system can be profitable mostly if it can utilise the 900 MHz network and/or the network is installed concentrating on individual cities. In an environment where GSM providers already cover the whole country this solution can be realised.

For considerations of economy and competition policy the government awarded three concessions. Two of these went to incumbent GSM providers, thus the concession tender essentially decided the identity of the third bidder. The task now is to ensure that the new entrant on the mobile phone market may compete with the incumbent providers on a level playing field. To this end the GSM providers must ensure access to the fundamental infrastructure; furthermore, the telecommunications government also provides timing advantage to the new entrant in accordance with the invitation to tender.

Based on the invitation to tender, the aforementioned requirements seem to have been satisfied. Further issues may arise in the area of problems around the gradual relinquishing of the 900 MHz frequency required by the new entrant, as well as the mandatory participation of Antenna Hungária and the Hungarian Post Office in the new concessionaire enterprise.

The new entrant will have gradual access to the 900 MHz frequency necessary for the provision of the combined 900 and 1800 MHz service; this will have to be relinquished mostly by MATÁV, and in a smaller part by the Army. As the transfer of frequency by MATÁV belongs to the “bargaining scope” mentioned in the first section, we are not in a position to comment on the details; we should reiterate, however, that ensuring the transparency of these processes would be desirable.

We should also mention that in addition to the GSM digital mobile phone providers there is also an analogue service provider, WESTEL 450 Rádiótelefon Kft.

(Two concessions have also been awarded for the national public pager services. With the progress of telecommunications technology, the significance of this service appears to be on the wane.)

2.2.2.3. The future of mobile telecommunication

New types of mobile services are expected to evolve as the UMTS (Universal Mobile Telecommunications System) system is introduced in Hungary. In the Decree No. 1071/1998.

(V.22.) Korm. the Government reckons with the introduction of the system in 2002-2003. This date may be premature considering that the process is in the initial stages of licensing in sophisticated telecommunications markets and also that we would have to make this move with the experience of a mere one or two years of liberalised market. Of course the decision will have to be made depending on the conditions prevailing at the time. Market conditions are not necessarily the same for this type of service and the DCS 1800 system, therefore the validity of the view that the incumbent mobile telephone market actors must be automatically reckoned with for the UMTS as well is questionable. This type of service allows for a broader scope of application, which may appreciate the role of radio based telecommunication on the whole of the communication market.

In the future development of the telecommunication market the interconnection of mobile and fixed telecommunication, or mobile-fixed convergence offers high hopes. Most of the companies wanting to succeed on the market try to be present in both areas, thus ensuring the possibility for combined services. Integrated services require the dismantling of organisational and co-operational boundaries between enterprises (mobile and fixed). The absolute limitation of this process would erect unnecessary constraints to the progress of technology and would eventually jeopardise consumer interests. This means that the differentiation in the regulation of mobile versus fixed services will have to be gradually eliminated though the potential anti-competitive effects of convergence must not be disregarded. Moves towards technological neutrality must be made in light of this.

3. Government measures promoting liberalisation and competition

In certain cases government measures interfering in the natural market processes are necessary. As described in the introduction, during the transformation of the monopoly market into an effective competitive market the potential scope of government intervention goes beyond regulation; however, the extent of this must decline as the process of liberalisation progresses. Essentially, in regulating monopolies the consumer must be protected through enforcing the efficient operation of service providers and through price regulation, while temporary regulation promoting transition to competition must protect both consumers and new, weaker market entrants.

The protection of new entrants must of course not go beyond ensuring the best possible regulatory environment necessary for their efficient operation. The protection of inefficient entrants with other means would lead towards a mechanical, “planned” market, which cannot be the objective of regulation in a market economy.

In protecting new efficient entrants the old monopoly must be treated carefully as due to its inherited position it is capable of hindering the evolution of competition. This means that the market actions of the dominant service provider must be limited by some additional obligations. This should be achieved by providing a favourable environment to efficient entrants rather than by artificially “holding back” the dominant provider, though in case of severe market failures event the latter may be an option. We should emphasise that dominant market actors have this “additional obligation” under any sophisticated competition regime as they are prohibited to abuse their dominance. Just as other markets in transition from monopoly to effective competition, the telecommunications market also requires a **special level of detail of rules concerning dominance** within the regulatory framework of the sector, containing provisions for the conduct of the dominant market actor. Artificial interference in the market structure can only be the last resort; in most cases this can be satisfactorily resolved by the enforcement of the general competition rules.

To promote competition, the number of new entrants must not be limited in any manner through government imposed ceilings (except where limited resources must be allocated) even if the state has a significant ownership stake in one of the entrants. The number of market participants must be determined by performance on the market rather than by some regulator, even if the size of the market constrains the potential number of market actors.

Government intervention may be justified by the fact that a large segment of telecommunication is typically the realm of public service; the **availability and affordability** of at least some of the services must be ensured to everyone.

The entry of new participants and the evolution of effective competition entails the requirement of **transparent operation** of market actors, which transparency requirement in turn heightens their public service character. The transparency of the licensing and regulatory procedures of the regulatory authority to the market and the public must be a cornerstone of transparent operation.

The government must be involved only in creating a level playing field adhering to the principle of equal opportunities. In the context of liberalisation this may also mean that the incumbent former monopoly has to be restrained and the new entrants must be assisted. Such asymmetrical regulation may typically entail only temporary measures to be enforced until the *level playing field* is achieved. The objective is to ensure that the largest possible number of **alternative market actors enter, and stay in**, the temporary market of the liberalisation process, as their presence will result in effective competition as soon as possible. Asymmetrical regulation may be introduced only to promote effective competition; it must not develop into a tool for the wanton protection of new entrants, nor should it disregard the requirement of effective operation for alternative market actors.

The processes on the Hungarian telecommunications market reveal that a few large alternative participants show considerable interest in the market, and they will enter the business of services open to competition in 1999. (Examples include *Pantel*, a consortium of the Dutch KPN, MÁV and KFKI, or *Novacom*, founded by ELMÜ and the German RWE and Telekommunikations Südwest). The government has great responsibility in ensuring that the new entrants can become strong competitors to the former monopoly service provider.

3.1. Regulatory requirements

3.1.1. Licensing

After the exclusive period, new entrants will be able to provide services in possession of a licence, while the incumbent providers may do so pursuant to the authorisation in their concession agreements. This means that the current system of licensing will have to undergo considerable changes.

The form of entry of new participants into the market, the type of regulatory system in place to monitor their market activities and the success of enforcement of exit rules are critical for the development of the new market structure. Providers procure the right to participate in the market through a regulatory act, which may take the form of **individual or general licences**. **Concession agreements** provide a less suitable framework for the effective regulatory work of authorities as they place the state on equal plane with the regulated market actor. This far this situation has not been conducive to the appropriate enforcement of the interests of citizens, i.e., the public interest, by the state. Under conditions of free market competition public interest is best enforced through the efficiency pressure generated by competition. This competitive

pressure can be exerted equally on all market actors if regulatory control is also identical. Attempts should be made to ensure that the rights and obligations the current concessionaires acquire in future are not manifested in the concession agreements; instead, they should be subject to the terms and conditions of individual or general licensing that are applicable equally to every market actor; furthermore, monitoring compliance with the current concession agreements should also move towards regulatory control. The state must not be in a co-ordinate relationship with one market actor while the others are subordinated to it in respect of regulatory supervision.

3.1.2. Universal services

In the environment of a competitive market the universality of services must be guaranteed, that is, **adequate quality and scope** of telecommunication services that are **accessible and affordable** to every citizen, irrespective of their residence or living conditions. The minimum range of services and the related general rules are set forth in the EU directive, but the system in which services operate and the level of affordable price must be defined by the Member States, thus they will have to be defined by Hungary in future. The scope of services more or less coincides with the current scope of concession services; no extension of this scope is expected in the short term.

The pivotal problem of identifying universal service providers is the fact that the "affordable price" can be determined only after an appropriate level of tariff equalisation is reached, and even then only following the introduction of a transparent accounting system and a viable cost allocation mechanism. Otherwise we cannot answer the question whether the costs of the obligation place such unreasonable burdens on the universal provider that would require the introduction of some compensation mechanism. All this means that in the absence of an adequate accounting system and transparent cost allocation technique regulation cannot control cost oriented subscription fees, thus it cannot assess the net costs of universal service provision. In addition, decisions must be made on the type of price regulation: whether to apply a specific maximum regulated price or a viable price cap mechanism. The price cap ensure the flexibility that is vital for regulation in a competitive market, but it may be rendered inoperable by the absence of sufficient background information. In the absence of such conditions the liberalisation of the Hungarian telecommunications market and the identification of the universal provider would result in an intransparent, confusing system that would for a long time hinder the manifestation of the advantages competition offers to subscribers.

3.1.3. Transparency of costs

The transparency of the accounting system and the introduction of a **cost allocation mechanism** are also prerequisites for the proper handling of other issues that will arise in the future. Such measures must not be delayed until a future market liberalisation or our accession to the European Union. If we want regulation to guarantee the equality of opportunity in future, the various government agencies must take firm and radical action prior to full legal liberalisation to ensure that they have adequate information to make decision about any problem that may arise. The principles laid out in regulation, which are in a number of ways similar to the ones highlighted as deficiencies in interconnection with the MATÁV concession agreement and its implementation, must be equally applicable to each and every market actor.

- The participants on the telecommunications market must **separate the costs** relating to their various activities. In particular, cost relating to services and the underlying infrastructure must be identified and separated in the accounting system.

- In respect of cost data, we deem it necessary to set **reporting obligations** for market actors and to consistently enforce such obligations. Consideration should be given to the introduction of the requirement in the EU telecommunication regulations, where the various levels of obligations are defined depending on the market power of the service provider. The current regulation is unclear enough that the Communications Authority does not have access to the broadest possible range of data sets necessary for its work. The Telecommunications Act provides that "the authority may request the telecommunications providers to supply other information necessary for discharging of its duties as specified in a separate legal regulation". This section is not unambiguous enough to fully enforce the obligations of providers, who are in any event rather "low key" in their data reporting. To make matters worse, the Supervision often encounters the excuse of reference to business secrets of service providers, though the data concerned are clearly necessary for the consistent enforcement of regulations, taking into account secrecy rules. Hopefully the consistent enforcement of the reporting system outlined in the previous chapter will move us closer to the solution of the problem. However, such system must be introduced by law, and must be supplemented with cost allocation requirements.

- Strict enforcement of the reporting obligation is conducive to the consistent control of the pricing policy of firms with considerable market power. In the course of this subscription prices must be taken into account, where in certain cases the maintenance of **price regulation** may need to be considered, for instance by the application of a price cap system, and interconnection fees must also be monitored and potentially regulated. Price regulation is also fundamental for the regulation of universal services as mentioned above.

- In possession of the appropriate cost data the illegal cross subsidisation of activities on the competitive market from monopoly revenues can be prevented.

3.1.4. Access (limited resources, bottlenecks)

Access to **limited resources** with uniform terms and conditions must be guaranteed by the state. The Telecommunications Act defines as natural (limited) resources the frequency range necessary for the operation of radio communication facilities and the number domain available for telecommunication services. These resources cannot be expanded without limitations; disposal over them is the exclusive right of the state and their allocation is necessarily subject to regulation.

The **allocation of numbers** must happen in a competition neutral manner; the regulator must reasonably be expected to participate in this. Providers in the same category must have a similar number domain to be effective competitors to each other. The portability of numbers must be ensured, which would in the long term mean personal telephone numbers belonging to consumers irrespective of their geographical location or service provider. Charges for the use of the number and address ranges must also be imposed in a competitively neutral manner, and foundations for charging the incumbent provider for the ranges it uses before and after the market liberalisation must be laid so that established use does not result in a competitive advantage for the future.

The competition neutrality of **frequency allocation** is also necessarily safeguarded by regulatory control. Services requiring the use of frequencies should be subject to individual licensing; the concession arrangement must be abandoned in this area. Market actors should have access to frequencies on a normative basis; in the course of allocation, solutions promoting efficiency and a wider selection of services must be favoured through the application of new technologies.

However, in telecommunications there are a number of **bottlenecks**, such as certain network elements, substructures etc. that provide bottlenecks in access for market participants, with the proviso that in the medium or long term such bottlenecks may be used more efficiently as a result of technological advances.

The provision of equal opportunity to access the above resources is complicated because the "key" to access, i.e. some element of the public telecommunication network and services are owned or held by the incumbent monopoly or ex-monopoly, or is used exclusively by such monopoly; furthermore, they cannot be substituted economically or technically. For alternative market actors to be viable on the market, their access must be ensured to bottleneck elements such as cable tunnels, radio towers or local access networks.

However, the obligation to ensure access **restricts** the **ownership rights** of the market actor in possession of such resources. In such a situation it is important to consider whether the benefits from infringing the constitutional ownership rights exceed the concomitant disadvantages. This does not mean the wanton limitation of ownership; rather, it entails a carefully regulated mechanism conducive to the enforcement of the public interest in competition. Unlike in the case of limited resources, where the state is able to guarantee competitive neutrality (as it has exclusive rights to dispose of the assets in question), in this case the asset in question is owned by a competitor, and in the absence of regulatory compulsion this market actor would not give access to its property. This is not a simple right of way; rather, access after payment of a price appropriate for the market conditions. Pricing must be adjusted to the costs determined with the Long Run Average Incremental Cost technique. The regulation of access prices is being designed in countries where the telecommunication market has been liberalised. A sound and flexible regulatory structure must be designed that can respond on a case by case basis to pricing problems related to access and interconnection, and prevents any abuse of the potential dominance of firms in possession of such assets.

Naturally general competition rules could provide the most flexible solution because many of the access problems that may arise on the market are impossible to foresee and address with regulatory tools. The theoretical foundations do exist in competition law; accordingly, market participants possessing **essential facilities** must ensure access to such resources. In telecommunications the term 'essential facility' is used to describe an asset or infrastructure that is vital to reach consumers and/or makes competitors capable of conducting their business, meaning that without them they would be unable to engage in such business, and they cannot reasonably be duplicated or substituted. In the application of competition law enterprises in possession of such facilities are deemed to have economic dominance, which imposes additional obligations on such enterprises in comparison with other market players. In order to maintain undistorted and unrestrained competition firms holding such facilities may be obliged to provide access to them. Competition law can handle potential problems on a case by case basis, which ensures flexibility but due to its general nature it is not suitable for remedying permanent market failures. However, the total liberalisation of the telecommunication sector creates a number of situations that can be considered market failures and that need to be resolved. This must be addressed with sector-specific regulation until competition reaches a certain intensity.

The key to regulating access to bottleneck facilities, which are not necessarily essential facilities at the same time, is knowledge of the appropriate cost data. This requires the enforcement of the reporting obligation described in the previous sections, the introduction of an appropriate cost allocation system, the prevention of cross subsidisation between revenues from monopoly or dominant markets and competitive market activities. (Let us not forget: the firm possessing the facility is a competitor of the other firm requiring access to such facilities, while it also holds the

asset that cannot be duplicated economically on the market; in other words, it is in a monopoly position on some distinct market or market segment.)

However, simple accounting separation does not always yield the desired results, therefore in certain cases, where activities can be separated reasonably, consideration should be given to obliging market actors with significant market power to establish **separate companies**. (E.g. until the exclusive rights expire, separation of competitive and monopoly activities, then separation of certain key activities such as mobile services, internet services, wire telephony services, infrastructure-capacity services etc.) In some cases the integration of the various activities of the dominant or monopoly provider may lead to such serious competitive concerns that under certain market conditions even this is not a satisfactory solution, and structural separation, total divestment may also be called for.

Local access network affords a typical example for the problem of bottleneck facilities following the liberalisation of the telecommunication market. The introduction of competition in telecommunication is supposed to bring benefits not only to large business consumers but also to small enterprises and residential consumers. The problems arising from potential anticompetitive effects from the bottleneck of local access networks must be resolved before such benefits can be passed on to a wide range of consumers. Internationally there are various solutions for promoting this segment of competition; examples worth highlighting include the resale of telecommunications services, the unbundling of network elements and ensuring access as well as the promotion of competition between assets, i.e. infrastructure. Chronic problems can be resolved eventually only by the evolution of competition between different infrastructures. Of course in many cases this is not economical –this is when a natural monopoly exists–, in other cases it requires long term development, substantial investment and further technological progress. Therefore the regulation of market liberalisation must take into account the fact that the evolution of competition must be supported from several sides; competitive structures can best be promoted by the combination of solutions and creating the best balance between them in line with the pace of development of competition.

Resale creates competition between telecommunication providers in the short term and only as a temporary measure, which may promote the entry of other providers but in itself it does not guarantee the evolution of a competitive market in the market segment containing the bottleneck.

Access to the various network facilities (**unbundling**) can be ensured by requiring the lease of the network or ensuring access to capacities (bit-stream access). Naturally, access must be compensated for by appropriate pricing; in setting this price the costs (including capital expenditure) of the owner of the network must be covered, and the arrangement must not act as a disincentive to network development. The temporary character must be reflected in the pricing of access as well, as in the short term prices must ensure the fast entry of the highest number of new market actors while in the long term they must not be counterproductive to the development of new network infrastructure.

Based on the above it is clear that the eventual objective is the promotion of **competition between different infrastructures**. In the long term this is a realistic objective, but even in the present situation regulation can do a great deal to ensure that no market structure that could undermine or significantly delay the process can emerge. This means that the owners of alternative networks that can serve as realistic alternatives to the bottleneck network facility must be monitored closely, taking restrictive action in the market if necessary. The restriction in the regulation of cable network provision by telecommunication operators was introduced

exactly to lay the foundation of an infrastructure competition that will necessarily develop in future.

3.1.5. Business restrictions in cable television

Cable programme distribution network (CATV) and public switched telephone networks ensure taking into consideration the current advanced stage of telecommunication and its exceedingly rapid future development as well as providing a realistic alternative, the potential capacities of new technologies, so that future telecommunications providers reach consumers with a diverse selection of services. (This is true primarily for residential customers, because telecommunications providers install access network facilities separately for large business consumers.) These two separate networks ensure access to consumers. If these are owned by separate firms, any prospective entrant not possessing networks will have a real alternative between the operators of networks ensuring access to consumers.

The former telecommunication monopolists, i.e. the former owners of the telephone monopoly enjoy substantial advantages because they have the essential infrastructure for providing services; naturally further advantages are provided by the market experience accumulated, the technical skills, access to subscribers etc. The combined ownership of the aforementioned two types of network access facility could create even more severe disadvantages to new entrants because all the infrastructure that would give alternative market actors direct access to consumers is concentrated in one hand.

Both networks could be made suitable for forwarding an enormous volume of signals in an interactive manner as a result of a certain degree of development and investment. The CATV network facilitates broadband data transmission, though currently it is generally only one way. In contrast, the access element of the PSTN network forwards signals in two directions, but in most cases (up to the local switching) only in a narrow frequency band. At the current level of technological development both networks can be made suitable for meeting broadband interactive requirements. Certainly the objective is to provide the broadest possible scale of continuously developing telecommunications services on the existing networks. In a situation where

- both networks are concentrated in one hand,
- both networks must be developed due to increased requirements from new telecommunications services,
- following the liberalisation of the telecommunications market the market structure necessary for effective competition has not emerged yet,

the potential of achieving the above requirement is reduced. Joint ownership:

- Hinders the development of the CATV networks into two-way mode, which would utilise the full range of possibilities for interactive services. The telephone provider has no incentive to develop another network for the business that provides the bulk of its revenues to a standard that would allow another competing provider that does not own any infrastructure to have access to consumers.

- Hinders the evolution and development of competing infrastructures, which, on the liberalised market, may have the consequence of

- limiting the choice of consumers among service providers;
- reducing competition on the long distance domestic service market;
- delay the development of broadband interactive services.

- Restricts competition on the level of services, which means that
  - there will be a long term requirement to regulate the monopolist infrastructure provider;
  - new entrants may be at a disadvantage even if fair interconnection agreements are concluded;
  - the prices charged to subscribers, instead of declining as a beneficial result of competition, will decline at a slower pace, stagnate or even increase.
- Hinders innovation, thus in practice sub-optimal standards will be employed.

After the analysis of the domestic market we concluded that the relationship between the cable television market and the telephone service providers must be effectively regulated as soon as possible. Reviewing the legal and market environment it became evident that

- currently telephone providers engage in this business on an exclusive basis, which means that cable television companies independent of the concessionaires may not play a role on this market;

- the installation of the infrastructure that may in future create competition for the PSTN network may proceed unhindered; concessionaires had to obtain a service licence for engaging in cable transmission activities, but the licensing authority could not refuse such licence if the normative (financial and technical) criteria were satisfied;

- however, concessionaires did not have an overwhelming ownership of CATV infrastructure. Apart from the transformation started in the past two years, only one small concession company was present on the cable television market. However, the market restructuring prior to the upcoming market liberalisation – with the expansion of the National Concessionaire (MATÁV) – moved towards a direction that may in the long term hinder the evolution of effective competition.

In this case the legislator decided to remedy the serious competition problem with a certain format **line** of **business restriction**. Pursuant to the limitation set out in the Act No. LXVI of 1999 amending the Telecommunication Act, telecommunication operators or enterprises controlled by them may not procure disposal rights over a cable network suitable for programme distribution parallel with their own public telephone network. This limitation approaches the issue specifically from the direction of infrastructure, setting forth no limitations concerning the services themselves. Thus, following appropriate technical development, there is no legislative obstacle to engaging in transmission. Of course such development may only occur in the long term as it has significant cost implications; however, the real issue here is not programme distribution but access to the **alternative infrastructure** that will be capable of forwarding a wide range of sophisticated services as a result of the competition emerging between the two

networks. Legislators also realised that this restriction may achieve its goal only if entry into the market of operating cable television networks is economical for market actors independent of the concessionaires. Entry can realistically be expected only in high population density areas, thus the restriction does not apply to towns with fewer than 30,000 inhabitants.

Naturally the above example is not a panacea for all the problems arising upon market liberalisation, or even for the issue of the local access network, as the optimal balance between various solutions must be struck.

3.1.6. The regulation of cable television services

As we mentioned in the introduction, we consider urgent steps necessary in the field of regulating the **market of cable television services** even apart from the general regulation of market liberalisation. In their own areas cable television (or in the terminology of the Media Act and the Telecommunication Act, programme distribution) networks are generally dominant. In most cases this means a monopoly as their services cannot reasonably be substituted by another television arrangement, be it individual satellite dishes, individual indoor aerials or the AM Mikro service of Antenna Hungária. (In addition, AM Mikro can be received only in certain parts of Budapest and its environs.) The aforementioned reception alternatives have such cost features, technical maintenance characteristics and qualitative differences (e.g. indoor aerials can be used exclusively for the reception of ground stations) that they do not represent substitutes for consumers. In the overwhelming majority of cases cable television service providers have a natural monopoly; yet there is no detailed and specialised regulation for their activities. The provisions for programme distribution systems in the Media Act are incomplete, often mistaken and their enforcement is less than perfect. The Telecommunications Act also has provisions concerning operators of programme distribution systems as their business qualifies as public telecommunication service. However, such provision give only technical supervision powers to the Communications Authority. The Media Act does require that a separate law be adopted on the detailed rules of programme distribution, but this has not happened to this date. According to the current concept, cable television would constitute a specifically regulated subsector within the framework of the uniform communications law. In the course of drafting this regulation the problems encountered in this area must be resolved in such a manner that any future market changes can also be managed either by proactive regulation or by a flexible legislative framework allowing for fast changes.

In the regulation of this sector special emphasis must be placed not only on technical considerations but also on consumer protection and competition aspects, in particular the issue of price. Control of the pricing of firms in a natural monopoly **cannot be permanently and fully resolved with the dominance provision of competition law as it does not substitute for the missing regulations**. The Office of Economic Competition has addressed the pricing practices of such firms in a number of competition procedures, however, due to the nature of competition law this is an ex post action; second, in individual cases the necessary cost data are more difficult to obtain; third, each competition supervision decision pertains only to the specific pricing policy of a particular firm, thus it does not offer a generic solution.

3.2. Other issues requiring government intervention

3.2.1. Institutional background – the issue of independence of the regulatory authority

Appropriate enforcement of the various provisions can be achieved only if supervision is provided by a **regulatory authority independent** in all respects. On the one hand, the independence of the regulator from market actors must be assured; in other words, it must be

separated from service providers in its activities. This has already been done in Hungary.. Furthermore, the independence of the regulatory authority from the sectoral government must also be assured.

This is especially important in cases where there are significant undertakings with state ownership in them on the market. The participation of the state as an owner on the market and its role as supervisory authority over market actors must be separated. Currently regulatory control entails mostly technical supervision, but even this may have substantial influence on market competition. However, in future this technical nature of regulatory work will be increasingly replaced by economic regulation, under which the regulatory body will sometimes have to resolve specific competitive issues. This function can be performed only by an authority independent of the current sectoral and political government. The present status of the Communications Authority, the regulatory authority, does not resolve this problems as they report directly to the Ministry of Transportation, Communication and Water Management, thus they are part of the government in power. Beyond the independence guaranteed by the institutional position of the regulator, its independence from the position of the budget must also be assured – this may be achieved through fees or contributions collected from market participants. (This does not mean that additional costly technical supervision procedures would have to be designed wantonly.) The professional skills and human resources of the regulator also constitute an important factor in achieving real independence.

The experiences described above as well as a number of international examples indicate that such a situation may have undesirable effects even if the government sets up some separate entity to exercise its ownership rights.

3.2.2. State owned undertakings on the communications market

There are still some 100% state owned companies on the communications market, and maintenance of a significant holding in such companies has been decided. The state's attitude to such market actors is an especially sensitive area of competition policy, therefore we will briefly discuss topical issues related to them.

Antenna Hungária, a majority state owned service provider with a national broadcasting and transmission network is in theory a potential partner for the alternative DCS 1800 supplier because it has at least part of the sites and transmission towers necessary for the network.

AH also lays claim to the installation and operation of TETRA, the government telecommunication system; however, in our opinion the project can only be implemented according to the rules of the Public Procurement Act except if the relevant Parliamentary committee provides exemption on grounds of national security.

The firm has been badly affected by the ongoing management crisis and the protracted privatisation process subject to continuously changing conceptions, but the most severe weakness is the severe shortage of capital that could not be eliminated even by the sale of a minority stake in the firm. Its participation in the DCS 1800 mobile telephone market increases its market value.

The **Hungarian Post** does not belong to the telecommunication sector but we need to mention its future as a communication subsector, all the more so as the convergence of communication services is an ongoing process today, therefore it has been considered as a realistic partner in the context of the DCS 1800 mobile phone service.

The Post is a 100% state owned firm established to provide basic postal services. The Act on the post provides exclusive rights to the Post for basic services, which have regulated maximum prices. Postal services defined as non-basic services, which have unregulated prices, may be provided by anyone in possession of a licence. The Post may also engage in other than basic services providing this does not jeopardise the quality of the basic service. For competition policy purposes it is an important requirement that the Post , when providing services belonging to the competitive sector relying on its exclusive services, must not drive out other market actors by employing illegal cross subsidisation. In other words, even at the current level of liberalisation cost allocation is a requirement, but the issue is unresolved as testified by the calculations attached to annual tariff increases. (A typical tendency is the increase of the regulated prices of basic services in excess of price increases in the competitive sector.) In the event of the participation of the Post in mobile telephone services, the absence of accounting separation of the costs of network elements and of the various services would give rise to concerns about further illegal cross subsidisation.

The Post may be a valuable partner to the DCS 1800 mobile phone provider in that it has a network of sites covering the whole country, while the uncertainties surrounding its privatisation as well as the capital requirement of developments necessitated by EU accession places a heavy burden on the leader of the consortium.

3.3. Uniform communication act – the fundamental law of the liberalised communications market

By defining the expiry of the period of exclusivity in the concession agreements at 2002, by accession to the WTO convention on the liberalisation of telecommunication services and by its commitments undertaken during the EU accession negotiations the Hungarian government has firmly committed itself to market liberalisation. This measure has already set the direction that necessitates the regulation of the competitive market and the creation of the related institutional system.

During the preparation of the uniform communication law the above considerations must be taken into account, as must the fact that telecommunication in the international arena as well as in Hungary has undergone considerable technical transformation. The technical development of Hungarian telecommunication has set the sector on course towards the international vanguard, but regulation must also keep pace with this considerable progress. In the course of this, clearly defined objectives must be kept in mind.

The drafting of the law was commenced this year. Apparently the law will regulate the sectors covered by the acts on telecommunication, frequency management and the Post in a uniform manner, considerably improving the regulatory framework in line with the aforementioned expectations. We consider it necessary that in future certain areas covered by the Media Act are also represented in this law, in particular the regulation of programme distribution networks. In respect of the other provisions of the media law, maximum consistency between the two legal regulations must be assured.

During the preparation of the communications law special attention must be paid to one feature of modern telecommunication, namely that the intensity of service level competition is considerably influenced by the underlying infrastructure, and to the fact that, as a result, regulatory problems and issues of competition regulations will emerge in the context of **access to infrastructure**.

We must also remember that communication is a service that has some segments – the services provided under exclusivity regulated in detail –that have been removed from the scope of

competition regulations. Under conditions of a competitive market the specialised **communication regulations and competition regulations** are applicable **concurrently**, which requires the close co-operation of the enforcement authorities. The interconnection of the two areas of law and the legal foundations for the co-operation of the authorities must be ensured in the uniform Communications Act.

Certain communication services qualify as basic services. The public service nature of this area gives rise to **universal service provision obligation**; in regulating these, the considerations explained in the previous chapter must be kept in mind. Universal service provision obligation is not part of the government's social policy, therefore the obligee firms must be allowed to operate on a market basis. However, in creating the market basis – i.e., funding – maximum transparency and non-discrimination must be assured.

Budapest, July 1999

Annex
The legislative framework of the telecommunications market

Laws containing specific provisions for the telecommunications market include the Act No. XVI of 1991 on concession, the Act No. LXXII of 1992 on telecommunication (TA) amended by the Act No. LXV of 1997 and the Act No. LXVI of 1999, the Act No. LXII of 1993 on frequency management, the Act No. XLV of 1992 on the Post , and the Act No. I of 1996 on radio and television services.

The TA also contains appropriate authorisation for the government and the Minister to issue detailed rules. The authorisations and the status of their implementation, in the order of appearance in the TA:

TA Art. 2 (3) Rules pertaining to private purpose telecommunication networks shall be defined by the Government. (Decree No. 50/1998. (III.27.) Korm.)

TA Art. 4. (6) The rules and rates of concession tenders shall be defined by the Minister, in agreement with the Minister of Finance in case of the rates. (Decree No. 35/1993. (IX.9.) KHVM)

TA Art. 7. (4) The terms and conditions of the interconnection of telecommunication networks or the partial or total temporary surrender of their use for service provision shall be specified by the Government in the form of a Decree. (Pursuant to a former authorisation, the Decree No. 158/1993 (XI.11.) Korm. on the interconnection of telecommunication networks, the licensing of their co-operation as well as network agreements has been adopted. The above provision was inserted into the law upon the amendment of the TA in 1999. A new decree needs to be issued.)

TA Art. 9 (1) The terms and conditions of subscriber contracts related to consumer protection and quality of service shall be specified by the Minister. (Decree No. 29/1997. (XII.20.) KHVM)

TA Art. 9. (4) The fundamental rights and obligation of the parties as set out in the subscription contract shall be specified by the Government in the form of a Decree. (Decree No. 243/1997. (XII.20.) Korm. on telecommunication subscriber contracts)

TA Art. 10 (2) The rules of the prioritisation of applicants shall be specified by the Government. (The Government incorporated the prioritisation rules into the aforementioned decree No. 243/1997. (XII.20.) Korm.)

TA Art. 11. (3) Specification of the technical requirements concerning performance of the subscriber contracts shall be the responsibility of the Minister. (Regulated in the aforementioned Decree No. 29/1997. (XII.20.) KHVM)

TA Art. 17. (1) The various telecommunication networks as defined in Article 16 of the Act shall be installed and operated under uniform technical specifications so that in cases specified in law they may constitute an operational system capable of co-operation with each other, following the insertion of appropriate units (network elements, equipment, tools etc.). To ensure co-operation, the Minister shall specify the fundamental technical designs in a Ministerial Decree. (The Decree No. 23/1994 (IX.9.) KHVM specifies eleven types of technical designs, of which three has been completed. The three decrees will be described in detail in connection with Articles 33 and 35 of the TA. These decrees, however, were adopted prior to the amendment of the TA, and are applicable exclusively to public telephone networks. However, the "public communication networks" existing in the country cover a much broader range than "public telephone networks". It is necessary to reconsider what depth of technical regulation is necessary, beyond public telephone networks, in the context of future problems with interconnection and access.)

TA Art. 19. (2) The scope of responsibilities and authority of the Regulator shall be specified by the Government. (Decree No. 232/1997. (X.13.) Korm.)

TA Art. 19. (4) a) The Minister shall specify the terms and conditions of establishing, commissioning, transformation, reclassification or elimination of telecommunication structures (interconnections). (The law has not been created yet).

TA Art. 19. (4) b) The Minister shall specify the terms and conditions and procedures for the regulatory licensing of the technical specifications of network and subscriber access points and, in agreement with the Minister of Finance, the procedural fee for the regulatory activities identified in subparagraphs a) and b). (The law has not been created yet).

TA Art. 19/A (2) The procedure of certification of adequacy, the authorisation and activities of the inspection or certification agencies, the terms and procedures of issuance of adequacy certificates, adequacy representations, type test certificates as well as the substantive criteria of adequacy shall be determined by the Minister in the form of a Decree. (Inserted into the Act upon its amendment in 1999; the law has not been created yet.)

TA Art. 20 (1) The terms and conditions of licensing for the provision of public telecommunication services shall be determined by the Government in the form of a Decree. (Decree No. 48/1997. (III.14.) Korm.)

TA Art. 20/A The rules pertaining to numbering and addressing, the allocation of the number and address domains among the various services and the rights and obligations of users shall be specified by the Government in the form of a Decree. (Amendment in 1999, not implemented yet.)

TA Art. 31. The international standards concerning the approximation or crossing of line type telecommunication facilities by other special types of structures (line type facilities, public utilities) may be declared mandatory by a ministerial decree. (No such law has been adopted; to facilitate the advance of telecommunication and the interconnectivity of networks as well as in view of the progress of EU law approximation the adoption of such law should be considered.)

TA Art. 32. (6) Telecommunication service providers and authorities shall provide data necessary for public security, defence or national security considerations under the terms and conditions specified by the Government. (Decree No. 75/1998. (IV.24.) Korm.)

TA Art. 33. (1) f) For the purposes of this Act, government responsibilities include economic and technical regulation and legislation to ensure the technical and traffic uniformity of the national telecommunications network and the satisfaction of requirements for the use thereof. (Pursuant to this provision, the Decree No. 24/1993. (IX.9.) KHVM on the numbering plan of public telephone networks and the Decree No. 9/1994. (III.4.) on the traffic schedule of public telephone networks were adopted. See also the comments on TA Art. 17. (1).)

Art. 35. (1) d) Within his authority conferred by this Act, the Minister shall specify the structure of the telecommunication backbone network (nodes) and the primary areas. (Decree No. 26/1993. (IX.9.) KHVM on the structural design of public telephone networks.)

Art. 40 **(**2) The Minister, in agreement with the Minister of Finance, shall specify in a Decree the terms and conditions of the payment and reimbursement of the entry fee for the public telephone service and the level of such access fee. (Decree No. 11/1995. (VII.12.) KHVM on the establishment of access points for public telephone services.)

TA Art. 30 (3) To promote the management of limited resources, a fee specified by the Minister in agreement with the Minister of Finance shall be payable for the commitment and use of number and address domains used for performance of public telecommunication services, unless the law provides otherwise. (Amendment in 1999, the liberalisation of the market presupposes the adoption of a Decree.)