

The present status of telecommunications evolution in Europe

Alain Valle of the Directorate General of Posts and Telecommunications, France, expounds.

Before 1993, all telecommunications policy decisions were oriented towards building the single European market and opening up to competition.

In order to achieve this objective, European Directives were necessary. Thus, during 1990, the following Directives were adopted as the basis of the telecommunications policy for the coming years:

the "Services Directive" liberalising all telecommunications service provision except voice telephony offered to the public; and

the "Open Network Provision" (ONP) Directive, organising access to the public network.

then and now

During 1993, there were no spectacular developments. However, looking back to the "pre-1993" period, and then comparing it with the current situation, the two appear quite different. This is seen in the following three examples.

First. Today, in the French market, British Telecom (BT) is a major competitor of France Telecom on the big user segment, for all international services - VPN, VAN, data transmission. All national markets within Europe are more or less in a situation where the incumbent carrier is facing competition from dynamic international operators, for the most profitable segment of the market.

Second. In the mobile market, European countries have opened up the provision of Group Special Mobile (GSM) services to competition. In France, competition was introduced for analogue services in 1987, and for GSM services in March 1991. In February 1994, the Ministry issued a call for tender for a third cellular licence based on DCS 1800 technology. Furthermore, the international roaming arrangements should intensify competition. Mobile licences are granted on a national basis, but it is possible, within the European Union, to subscribe to a GSM service from a mobile operator authorised to operate in another Member State. The case appeared when a Danish operator proposed to German users to subscribe to the Danish service, and consequently to the service within Germany.

Third. For VSAT (Very Small Aperture

Terminal), France, Germany, the Netherlands and the UK have signed an agreement on the mutual recognition of licences. This means that a licence granted in one of these countries may automatically be extended to the others if the licensee so wishes.

Step by step, a competitive European telecommunications policy has taken root and is now quite active.

However, the market is evolving constantly and the policy makers frequently need to review the status of their policy. Consequently, in 1993, the European Commission decided to review its telecommunications policy: new objectives, a new agenda, new networks, new organisation of the industry are now on the table.

the new agenda

In 1993, the "White Paper on Growth, Competitiveness and Employment" filed by the European Commission, recognised that telecommunications policy will form an important component in integrating the continent, including the emerging markets in Central and Eastern European countries, and pulling Europe out of the current recession.

Then, the European Union's policy of opening up the telecommunication sector will be subject to further developments.

The European Union decided to fully liberalise telephone service provision within the Union, by 1 January 1998. This decision, and the January 1998 deadline, which now have been accepted by the whole industry, raise three major issues:

- the future of universal service. Competition means a new context for the provision of universal service. A common definition and common conditions governing the provision of universal service need to be agreed on in order to guarantee its provision throughout the community;
- the re-balancing of tariffs;
- the liberalisation of telecommunications infrastructure provision. The European Commission will file a Green Paper on this issue later this year (1994). The basic question is whether it is possible to liberalise the provision of all services whilst maintaining restrictions on infrastructure provision. Cable TV

systems, private networks, and utilities' telecommunications networks could rapidly be authorised to provide telecommunications services on their own infrastructure. This raises certain questions - is such competition sustainable? Would it be possible to have a common policy on this matter, and under which conditions?

the future network

The European Union plans to establish a pan-European interactive broadband network.

A report submitted to the European Council by the European Commission Vice-President, R. Bangemann, and industry representatives (the group is known as the High-Level Group on the Information Society), recommends:

- fully liberalising the telecommunications industry;
- removing all non-commercial constraints imposed on public telecommunications operators;
- creating a European regulatory authority;
- ensuring interconnection of networks and interpretability of service as a high priority;
- speeding up the standardisation process;
- ensuring reciprocity with non-European countries.

In such a context, the private sector would be ready to invest in new telecommunications infrastructures.

Intellectual property rights, privacy and media ownership will be key issues for the development of multimedia services. Specific applications should speed up the development of the multimedia market - including - teleworking, teletraining, research networks, applications for small and medium sized businesses.

At the European level, this report is the first building block for European Information highways.

The emergence of a Personal Communications environment is also a key factor of the development of this new network. The Green Paper on Mobile and Personal Communications proposes market structures which will transform the role of wireless-based services from today's premium services to mass market

deployment, alongside the fixed network, by the end of the decade. The launch of the DCS 1800 services in the UK, Germany and France and the new digital systems such as DECT and HERMES, will build Europe's technological strength in digital mobile technologies.

restructuring the European telecommunications industry

Privatisation and international alliances are high priorities in telecommunications policies in Europe.

Danish Telecom and PTT Nederland have been partly privatised and were floated in early 1994. Portuguese Telecommunications should be privatised next year after a complete reorganisation of the industry. DBP Telekom and France Telecom privatisations are on the table although political problems are slowing down the process. However, due to the consequences on the financial market of the privatisation of very big corporations, it is evident that small operators are more easily "privatisable".

After the BT - MCI deal last year, France Telecom and DBP Telekom reached a parallel agreement with Sprint late in June 1994. Then, soon after, Unisource signed with AT&T. This is evidence of European operators' intentions to be involved in the globalisation of the telecommunications market.

conclusion

Three years ago, the 1993 single market deadline was the major issue for policymakers. Now, trans-continental stakes have to be taken into account to fully understand European telecommunications policy. This is the case for:

- competition policy, where the issue of reciprocity will be a key factor in the future international trade negotiations;
- operators' strategy within the alliances mentioned above;
- multimedia services market development where the issue of intellectual property rights, royalties and any other form of "content ownership control" will be a major topic. Clearly, lawyers will have to deal with this, but I am convinced that politicians will also have to address the question in order to promote, and even protect national identity and culture.

This is an edited version of a presentation to the Communications and Media Law Association in Sydney by Alain Vallee, PhD.

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CAMLA comes to Brisbane

Wednesday, November 9 saw the first-ever CAMLA function to be held in Brisbane, expected to be the first of many such get-togethers for Brisbane-based CAMLA members and others interested in communication/media law and policy.

More than 50 attendees enjoyed the opportunity for informal discussion with old friends and new acquaintances, a passable luncheon and a wide-ranging overview of the future of converged communications by luncheon speaker, Brian Johns, Chairperson of the Australian Broadcasting Authority.

Organized by a small steering committee comprising Brisbane barrister Lorenzo Boccabella, solicitor John Gariand and Brisbane-based CAMLA committee member Dick Rowe (with substantial and much appreciated support from John's firm, Freehill Hollingdale & Page), the lunch was an occasion for Brisbane's communications industry and media law community to get together.

On the basis of the success of this first up effort, it seems certain that further CAMLA activities in Brisbane will follow in 1995.

Performers' Rights: some recent developments

Libby Baulch outlines the 1994 Copyright Bill and the MIAC report on performer's copyright.

Except for a reference to meeting Australia's obligations under the GATT TRIPS agreement (Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods which forms part of the General Agreement on Tariffs and Trade), the issue of performers' rights was notably absent from the Federal Government's cultural statement Creative Nation, released in October. The Government's intention regarding further review of performers' rights is thus unclear.

This article briefly discusses the amendments affecting performers in the Copyright (World Trade Organisation Amendments) Bill 1994 ("the Bill"), and the report on performers' copyright released by the Music Industry Advisory Council ("MIAC") in August.

The Bill

The Bill was introduced into Parliament on 21 September 1994. It is one of a number of pieces of legislation intended to put Australia in a position to join the World Trade Organisation, the body which will administer the GATT. The Bill has been considered by the Senate Economics Legislation Committee, which was due to provide its report on 28 November. Following the report, the Bill will be scheduled for debate, and is intended to be proclaimed by the end of 1994.

The three main changes for performers as a result of the Bill will be:

- a longer period of protection for certain performances;
- change to the "connecting factors" for protection, so that more performances will be eligible for protection; and

- new criminal provisions relating to certain unauthorised recordings made in the past.

In relation to the second and third aspects, the Bill does more than the minimum required by the TRIPS agreement.

In addition to the amendments to the Copyright Act, the Government will also need to amend the Copyright (International Protection) Regulations ("the Regulations") to provide the protection for foreign performers required by TRIPS. The ambit (as opposed to the duration) of protection for performers in the TRIPS agreement is lower than that required by the Rome Convention (International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations - Australia became a party to the Convention in 1992), and the protection of foreign performers required by the TRIPS agreement is different to that