

Universal Service & Consumer Protection

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Introductory remarks

- Achieving social policy objectives in a manner that does not distort market liberalisation
- Universal service
 - scope, obligation & financing in a competitive market
 - Ofcom: “most choices relating to any policy to deliver universal, affordable, decent broadband services *are for Government*” (December 2016)
- Consumer protection issues
 - Facilitating competition
 - Demand-side measures
 - Protecting consumers
 - Communications Privacy
- Content regulation

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UNIVERSAL SERVICE

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Defining 'Universal Service'

- Theodore Vail, AT&T (1907)
 - universal interconnection
 - Kingsbury Commitment, 1913: to prevent antitrust suit
- Universal access
- Broadcasting
 - e.g. 'must carry' and 'listed-events'
- Access to the Information Society
 - e.g. schools, libraries, hospitals (e.g. US e-Rate scheme)
- Developed & developing countries
 - 'digital divide'
- Covid pandemic

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Definitions

- Aspiration
 - European Declaration on Digital Rights and Principles for the Digital Decade (2022)
 - "Everyone, everywhere in the EU, should have access to affordable and high-speed digital connectivity."
- Minimum list
 - Access to (fixed) voice/fax/data services (inc. affordability)
 - Operator assistance, emergency & directory services; public pay telephones; special needs....
- Eligibility for USO status
 - Essential or of social importance
 - Practical implementation mechanism
 - Demand-driven, i.e. % of existing subscribers
 - Cost-benefit analysis
 - Impact on other policy goals

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Financing USO

- How has it been financed?
 - Cross-subsidisation
 - Line rental/call charges: 'access deficit charge'
 - Geographic averaging
 - International accounting rate system
- How should it be financed?
 - Independent fund, charge paid direct to operators or general taxation
 - e.g. Universal Service Administrative Company (US)
 - Commission proposal (September 2016): general budget only
 - Auctions (and USO contracts)
 - In cash or in kind
 - Nothing for 'additional mandatory services' (EECC, Art. 92)
 - Case 327/15, *TDC A/S v Teleklagenævnet* (21 December 2016) re: maritime safety & emergency services

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Financing USO

- Who should pay?
 - Incumbent, e.g. UK, Sweden
 - Networks and service providers (inc. VoIP?)
 - E.g. US – carriers providing interstate and international services
- What is the cost?
 - Issues of methodology
 - gross or long run avoidable costs (e.g. Australia)
 - valuation of intangible benefits, e.g. perception of ubiquity
 - EU Directive 02/22/EC, Annex IV
 - Net cost & forward-looking
 - Attributable costs: services “provided at a loss or provided under cost conditions falling outside normal commercial standards”

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EU Law (NRF)

- Directive 02/22/EC (universal service and users’ rights)
 - as amended by Directive 2009/136/EC (‘Citizens Rights’)
 - USO obligations (Chapter II)
 - access at fixed location (art. 4), directory enquiry and directories (art.5, art. 25), public pay telephones (art. 6), measures for disabled users (art. 7), affordability of tariffs (art. 9)
 - Designation of undertaking (art. 8)
 - “...no undertaking is a priori excluded from being designated...”
 - SMP Obligations (Chapter III)

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EECC, Part III, Title I

- Affordable access to
 - adequate broadband internet access service
 - Each Member State shall define & can extend to SMEs
 - e.g. minimum download speeds: 10 Mbps – 30 Mbps
 - Capable of delivering the services in Annex V
 - voice communications services at a (fixed) connection
- Affordability
 - Consumers on low incomes & special social needs
 - Provide support and/or require providers to offer options outside ‘normal commercial conditions’
 - e.g. geographic averaging
 - Obligation on a designated undertakings, on an exceptional basis
 - ‘Member States shall seek to minimise market distortions’

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Annex V

- (1) email
- (2) search engines enabling search and finding of all type of information
- (3) basic training and education online tools
- (4) online newspapers or news
- (5) buying or ordering goods or services online
- (6) job searching and job searching tools
- (7) professional networking
- (8) internet banking
- (9) eGovernment service use
- (10) social media and instant messaging
- (11) calls and video calls (standard quality)

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EECC

- Availability
 - Impose USO, *only* if cannot be ensure under normal commercial conditions or other potential policy tools
 - e.g. Public funding, coverage obligations & state aid (Recital 229)
 - USO designation on objective, transparent & non-discriminatory basis
 - No entity is excluded
 - Review every 3 years
 - Only 9 Member States have designated to date
 - Consumers must be able to monitor and control expenditure
 - Annex VI, Pt. A: itemized billing, selective barring, pre-payment systems & deactivate 3rd party billing (e.g. PRS)

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- Cost
 - ‘unfair burden’
 - C-273/23 *AGC v Telecom Italia* (19 September 2024)
 - ‘net cost’
- Financing
 - Public funds, or/and
 - Share with other providers (majority of MS)
 - Annex VII, Pt. A: calculation of net costs
 - Identified services that can only be provided at a lost or outside normal commercial standards
 - e.g. emergency telephone services, public pay phones or equipment for users with disabilities
 - Specific end-users or groups
 - Annex VII, Pt. B: compensation mechanism
 - Least distortion to competition & user demand
 - Administered by an independent body (mainly NRAs – 20 MSs)

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CONSUMER PROTECTION



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General EU Consumer Law

- Substantive rights
 - Consumer rights Directive (2011/83/EU)
 - Unfair commercial practices (2005/29/EC)
 - Contracts for the sale of goods (2019/771)
- Advertising
 - Misleading & comparative advertising (Directive 06/114/EC)
- Enforcement
 - Injunctions (Directive 2009/22/EC)
 - Better enforcement (Directive 2019/2161)
 - Representative actions (Directive 2020/1828)

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End User Rights

- Contractual information (Art. 102)
 - in a clear, comprehensive on a durable medium (or downloadable)
 - Consumer rights directive, Art. 5 & 6
 - Annex VIII
 - + SMEs, unless explicitly waived
 - Contract summary
 - Commission Implementing Regulation 2019/2243
 - ‘an integral part of the contract’
 - Facility to monitor time or volume consumption & limits
- Published information (Art. 103)
 - Annex IX
 - Contact details, service description & dispute resolution mechanisms
 - Independent comparison tool
 - e.g. Ofcom accredited schemes (7):  
 - Obligation to distribute ‘public interest information’

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End User Rights

- Quality of service (Art. 104)
 - NRAs *may* require providers to publish QoS information
 - Impact of external factors
 - Annex X & BEREC Guidelines (BoR (20) 53)
 - Measures to ensure equivalence of access for end-users with disabilities
- Contract duration (Art. 105)
 - ‘a disincentive to changing service provider’
 - Maximum period 24 months for services
 - Not handsets
 - Automatic roll-overs required notification
 - Provision of best tariff information annually
 - Termination for contractual changes
 - Unless purely for the benefit of end-users; administrative nature and no negative effect or directly imposed by law

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End User Rights

- Provider switching & number portability (Art. 106)
 - Provision of adequate information & continuity of service (unless not technically feasible)
 - NRAs must ensure an efficient & simple process: one working day
 - Right to retain number
 - Geographic numbers can be limited to specific locations
 - Right to port a number with no direct charge
 - NRF: C-99/09 *Polska Telefonia Cyfrowa* [2010] ECR I-06617
 - Wholesale on cost-orientated basis
 - Within one working day
 - Receiving provider leads the process
 - Transferring providers must act in good faith
 - Prevent ‘slamming’
- Bundled offers (Art. 107)
 - Each element

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End User Rights

- Availability of services (Art. 108)
 - Catastrophic network breakdowns
 - Uninterrupted access to emergency services & transmission of public warnings
 - e.g. BT 999 call disruption (25 June 2023)
- Emergency calls (Art. 109)
 - Single European emergency call number: 112
 - Routed to most appropriate public safety answering point (‘PSAP’)
- Public warning system (Art. 110)
 - Major emergencies & disasters
 - Mobile providers
- Equivalent access/choice for end-users with disabilities (Art. 111)

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End User Rights

- Directory enquiry services (Art. 112)
 - Traditionally an element of the USO
 - Provision of information in relevant format
 - Directory enquiry services as an access obligation?
 - Privacy implications
- Interoperability of car radio receivers and consumer digital television equipment (Art. 113)
 - Annex XI
- ‘Must carry’ obligations (Art. 114)
 - Specified radio & television broadcast channels
- Provision of additional facilities (Art. 115)
 - NRAs may require the provision
 - Annex VI, Parts A & B
 - e.g. calling line identification (‘CLI’) & email access after termination

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Communications privacy

- Communications content & attributes
 - ITU, art. 37
 - EU Directive 02/58/EC *Privacy and Electronic Communications*
- Privacy relationships
 - Service provider-subscriber
 - e.g. security breach notification
 - Subscriber-user
 - e.g. itemised bills
 - User-user
 - e.g. Cookies & unsolicited communications
 - User-state
 - e.g. interception

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CONTENT REGULATION



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'Net neutrality'

- Open Internet Access Regulation (2015/2120)
- End-users: consumer, enterprises & cloud providers
 - right to “access and distribute information and content, use and provide applications and services, and use terminal equipment of their choice”
- Providers of ‘internet access services’
 - Treat all traffic equally: commercial or technical conditions should not limit the right
 - ‘zero-rating’ & application agnostic
 - Reasonable traffic measures: objective QoS requirements
 - *Except for:* Legal requirements; security & network congestion
 - Specialised services
 - Necessity & capacity requirements
- Transparency

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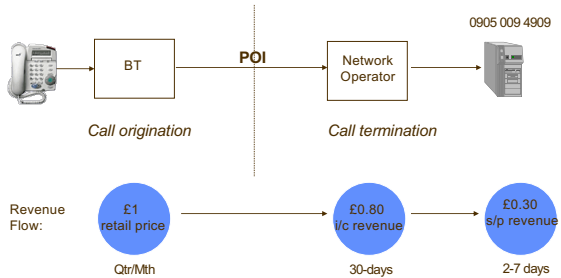
Premium Rate Services

- Communications Act 2003, s. 120 *et seq.*
 - content made available via electronic communications service
 - charge paid to provider of electronic communication service in form of usage charge
- ‘Premium rate services’
 - e.g. 084, 087, 090, 091, 098, 118
 - e.g. sexual entertainment live services, broadcasters (e.g. ‘I’m a celebrity...get me out of here!’), games
 - £2bn+ turnover industry, with shift to global tech platforms
 - e.g. Apple Direct Carrier Billing & iTunes, DCB & Google Play 
 - Decline in voice-based services
- Regulatory concerns 
 - Lack of information, difficult to obtain redress (foreign providers), offensive or inappropriate content

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PRS commercial arrangements

- Where is the value ?



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Regulating PRS

- Office of Communications (OFCOM)
 - imposition of PRS condition
 - ‘controlled PRS’
 - over 10 per minute & chat line service
 - breach of condition (s. 94 *et seq.*)
 - withdrawal of right to use number (s. 61)
 - consumer protection order (s. 55)
- Phone-paid Services Authority 
 - Code of Practice (15th ed., April 2022)
- Regulation of Premium Rate Services Order 2024 (SI No. 1046)
 - PSA ceases to operate from 1 February 2025

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Concluding remarks

- Universal service
 - From obligation to opportunity
 - Evolving scope
 - Declining cost
- Consumer protection
 - Need for special rules?
 - Commission proposal (2016): ‘where they are no longer needed or are adequately covered by general consumer law’
 - Future of ‘net neutrality’?
 - Content-related communication issues
 - UK: Online Safety Act 2023

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