

## Disputes and their Resolution in the Electronic Communications Market

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### Abstract

*This short treatment introduces the concept of potential disputes in the electronic communications market, their typology and the background in which exist premises to arise disputes in this market. Broadly represents the forecast of domestic regulatory and legal framework for the treatment of disputes existing in this market, approximation of legislation with EU directives, ways to resolve disputes arising in the potential levels of the market in which those disputes arise. As a summary is treated the concept of internal market/markets structure as domestic part of the electronic communications market, identifying the importance of "treatment" of state and regulatory policies, and their impact on the design, planning and management strategies of the market players. The case of Albania is broadly treated regarding to the aspects referred in topic, closely linked with disputes and their treatment, paying a special importance administrative settlement in procedural terms. Identification of regulatory effect, as potential to be measured and compared with analog markets, and services offered in these markets with other countries, regional, of EU, or wider and mainly in the aspect from they derive, which highly propable are connected to services offered - their tariff - quality products / services. Briefly on the importance of effective competition and its impact on the number of disputes arising in such a market, considering liberalization as factor of market as fundamental aspect in the development of the market, increasing the number of providers of products / services and legal remedies forecast with specific criteria that maximize protection of users of products / services offered.*

**Keywords:** Market, electronic communications, disputes, service providers, users, products/services, regulator, administrative solutions.

### Introduction

Despite dimensions that may have a country economy, from the structural point of view it must function and be managed without any difference that occurs as a result of its dimensions.

The concept of economic freedom, of effective competition and the performance in its entirety constitute the core of the development of the economy and therefore also to our daily life.

The trunk of the national economy is healthy if its constituent parts will function in a healthy way or in other words if markets component of the national economy function based on an efficient legislation, drafted and clearly oriented by the rules of good practice, in consultation with market stakeholders and interested parties, and oriented toward increasing competition, creating in this way a field of interaction between state institutions and regulatory as well as market players and consumers products and services derived from it.

Proper harmonization, interoperability and efficiency of the above mentioned links or not, constitute the potential premise for the existence or not of possible disputes, not claimed for any occasion for their nonexistence, but with the final goal to minimize them, because tendency to perfection and harmonization of appropriate instruments and interactive links in specific markets, integral parts of the national economy, which are operated with special material laws, they can lead as their product, reduce disputes, which can be eliminated early in their genesis.

In the final it would result as a strong impetus for the efficient development of such markets, which will be favored by the elimination of additional costs that will be created by the possible solutions of disputes arising, with indirect effect even in the trunk of the national economy.

### 1. Market/Markets structuring and their long-term strategies

The concept of development of market strategies, of innovative models of technology and the market itself, which in their entirety substantially affect the product itself or services provided to the customer, affect itself market development process,

which is related to the phase in which is the legislation "treatment" of the relevant field, and it is also connected directly with regulatory effects that are produced in the respective field.

Appropriate approach to minimize additional external costs for market/markets that have significant weight in the trunk development of the national economy, should first invest and stimulate through state regulatory policies, as the growth and perfection of these policies, convey the direct impact even in the design of strategic decisions affecting their durability, and determine the proper focus in the relevant area favoring proper identification of the competitive advantages of actors in the field and the overall impact on improving the environment of doing business.

Governmental and regulatory policies must be seen how much they impact in terms of "catalyst or not", as they convey their direct impact and how they reflect on the weight of "strategies in action" of the market / markets" because it is sure that state and regulatory policies impose a "mix" between intended strategies and planned strategies, with "emergency" ones, or otherwise dictated by state and regulatory policies.

It is inevitable that the quality of "curing" of state policies and regulatory, not to convey reflections up management strategies by transforming in necessity changes into strategies in action.

The complexity of such a combination presents to the market/markets taking into account and also an extra attention to "potential risk" from the implementation of new strategies, dictated and reflected in pressure conditions that dictate governmental and regulatory policies.

According to the language of the market, this entails the need to see in detail the activities involved in strategy, human resources involved in implementing the "strategy in action" and kind of methodology they use for implementation.

The complexity of the market in identifying strategic skills, for conservation and good use of cost efficiency, the efforts of market players to achieve and sustain competitive advantages, the need for proper diagnosis of strategic skills and perfection of their management, are closely linked to sectoral and intersectoral policies.

E steadfastly summarized, despite the preceding stipulations, all this will be reflected in the additional costs.

Communication Language of the market/markets is related to the impact on "efficiency", is organically linked with careful state and regulatory policies which have for objective the development of effective competition in order diminution of complexity in the normal development of the market, eliminating situations of uncertainty, and to avoid such interventions which would impose the touch of operational decisions to the maximum extent possible, because it is clear that will be produced significant changes in this way.

## **2. Typology of potential disputes in the electronic communications market**

Disputes can be defined as a contradiction between the parties to a given situation, for a violated right or claimed as such, for an unfulfilled obligation etc.

Potential disputes in the electronic communications market, have the premise for their existence in non-compliance of contractual obligations derived from relationships built between the parties.

As a party to the dispute are considered users of market products/services and providers of these products/services, and thus typology of possible disputes in electronic communications market can be considered as:

- *Disputes between providers of products / services within the same market and in the same jurisdiction;*

Relationships built on electronic communications market creates the need for interoperability between communications networks that enable the delivery of products/services, and thus they have built their contractual relationship based on a set of rules that weigh equal in the best possible way interaction of individual networks of providers of products/services.

Electronic communications market in Albania similarly as other countries works with special organic law<sup>1</sup>, with presence of the regulator authority of the field<sup>2</sup>, which oversees and monitors the sequential development of this market.

Material Law No. 9918, dated 19. 05. 2008 " On Electronic Communications in the Republic of Albania" amended, is drafted in accordance with a set of EU Directives<sup>3</sup>, and has transposed almost completely the provisions of the regulatory framework that refers to contemporary electronic communications market, adapted to national circumstances.

Disputes arising between parties in the electronic communications market, have their basis for the resolution provided definitions of reference interconnection offers (RIO)<sup>4</sup>, which are approved by the national regulator authority of the field and serve as a basis for concluding bilateral contractual relations, and through specific regulatory acts<sup>5</sup> which have explicitly defined procedures for settling disputes between parties' service providers against service providers.

• *Disputes between providers and users of products / services;*

Primary and secondary legislation of the field has predicted that between providers of products/services and their users, the relevant relationship built on the basis of the contract agreement, which creates another potential background for birth "or not" of the disputes between the parties, depending on the discrepancy between the parties to a particular circumstance, violated right or claimed as such, or unfulfilled obligation etc, and through specific regulatory acts<sup>6</sup> which have defined procedures for settling disputes between service providers against service users.

• *Disputes between service providers in geographical territories with different jurisdiction (international);*

Another aspect which may serve as a potential space for the establishment of dispute, it is also necessary interaction between providers of products/services with their presence in different geographical territories regarding the jurisdiction of which they are subject. Despite the obligations deriving from the EU Directive (it is about unifying space in which these directives extend their effects) given the fact that the interaction in the field of electronic communications is also beyond these spaces, then it should be estimated that mainly their relationships built on a commercial basis according to the interests of interactive parties. Disputes arising in the cited background above it, practice solution up to the level of arbitration if other stages have not brought possible solutions or liked ones.

• *Disputes between providers of products/services and state institutions/regulatory.*

The requirements deriving from the market are constantly in search of their fulfillment of state and regulatory institutions, in their focus they aim perfection and materializing in primary and secondary legislation in order to eliminate legal and regulatory barriers that impede the proper development of effective competition. Noncompliance of this goal creates the right background for the emergence of disputes between the parties.

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<sup>1</sup> Law no. 9918, dated 19. 05. 2008 "On Electronic Communications in the Republic of Albania" amended;

<sup>2</sup> Authority of Electronic and Postal Communications (AEPK);

<sup>3</sup> European Commission Directives:

2009/140/EC - Amending Directives 2002/19/EC, 2002/20/EC and 2002/21/EC

2009/136/EC - Amending Directive 2002/22/EC and 2002/58/EC

2009/396/EC - On the regulatory treatment of fixed and mobile termination rates in the EU (In conjunction with SPEECH/09/218, Neelie Kroes - Cutting the price of phone calls new termination rules, Brussels, 7 May 2009)

2002/19/EC (Access Directive),

2002/20/EC ( Authorization Directive).

2002/21/EC ( Framework Directive).

2002/22/EC ( Universal Service Directive).

<sup>4</sup> Regulation of AEPK no. 19 dated 14.06.2010 on access and interconnection.

<sup>5</sup> Regulation of AEPK No. 18 date 11.06.2010 on Dispute Resolution Procedures.

<sup>6</sup> Regulation of AEPK No. 29 date 29.05.2013 "On the resolution of disputes between subscribers and electronic communications entrepreneurs "

### 3. Settlement of disputes in the electronic communications market

Despite the backdrop in which a dispute arises it aims to have its resolution and the possible links from which can result a possible solution can be classified as:

- a) solution produced by direct negotiations between the parties;

Disputes arising between the parties have the need for diligence on the causes and circumstances that have created dispute, internal analysis of the effects that produces the failure to resolve the dispute created, and identification of possible tools available for internal solutions without creating additional costs and bringing inter alia the economy of the time. Such a thing is realized mainly by the development of that, direct negotiation between the parties

- b) solution produced by the mediated negotiations;

Identification of non-compliance in achieving the settlement through direct negotiations, to increase reliability in potential solutions, can serve as the "mediation" instrument, which is essentially one of the alternative methods for the solution, considering the assistance of intermediaries in the position of "neutral" in order to overcome the differences identified in the background of the dispute. Despite as it is described above it should be understood that in the present case it is characteristic that the solution is again under the control of the parties to the dispute and is accepted as such only with their free will, but the product "solution" reached in this case, has probability to be efficient in the way of implementation by economise on time, not to produce cost for the parties.

- c) solution produced by the judiciary.

Unsuccessfully closure of two stages mentioned above to resolve the dispute created, imposes on the parties as possible solutions that solution that generates the judiciary, considering the parties in dispute as factors that will translate in additional costs for settlement between the parties to the dispute.

### 4. Administrative solutions to disputes and regulatory effect

Background to the dispute in the field of electronic communications, naturally that is connected with the entirety of the services and/or products offered at different levels of users, as the service provider- service provider level, otherwise known as interconnection services, as well as the level service user - service provider.

Regulatory supervision and its mission to maximize the benefits for users of electronic communications services, necessarily considers the possibility for the existence of the disputes, for which administratively are provided possible administrative solutions, anticipating specific administrative procedures for settling disputes regulated by normative acts and regulations, through public relevant permanent structures or temporarily "*ad hoc*" structures set up specifically.

In the field of electronic communications, material legislation guides administrative dispute solution arising in the market to the relevant body, depending on their typology.

For disputes arising in the level of "service providers - service providers", the regulatory effect is primary because the essence of the dispute between service providers, can be focused with highly probable in the granting/ or refuse of access required for services between parties, in charging of services, or in the quality of them. For each case submitted the regulatory effect is first hand, not only from the legal authority that supervises and regulates the field of electronic communications directly, but also by the fact that the possible solution has a high premium to be highly professional and of a high level of expertise.

Quality of the settlement offered, with high probability increased the possibility of agreement between parties, but even when agreement is not obtained, regulatory effect is first hand, because it imposes solutions application by the parties, without depriving them of the right of judicial review. Regulatory imposition on application of resolution of disputes provided for level "service provider - service provider" aims not to miss the service for users as the last link in the supply chain with services and it is in compliance with regulatory mission and purpose of the substantive law of the field which provides such a mission.

Functioning of the relationship at this level "service provider - service provider" has the hand of the regulator and its effect on the drafting of reference offer for the respective services, and regulation of bilateral relations through interconnection agreements which are based on the definitions of the reference offer, which plays the role of "constitution" in the field of electronic communications for the functioning of commercial relations between the parties. Therefore, it is precisely this interaction space between the parties which also entails potential disputes at the level "of service provider - the service provider" but that administrative solutions offered constitute the main basis in this regard by increasing the role of the regulator in the field.

Regulatory effect is not only measurable and possible to monitor, but also comparable with analog markets and services offered in these markets in other countries, regional, EU or beyond, since each of the potential elements for space dispute as access – charges and respective quality of service is comparable. Monitoring for each of the elements cited above as opportunities for access dispute - tariffs<sup>1</sup> - quality<sup>2</sup>, done through regulatory acts which are prepared by the regulator through a public consultation process with interested parties who mostly are service providers, but not excluding other parties such as the Competition Authority or other government departments that have direct connection with the field of electronic communications, with the final goal to guarantee services to end-users and increasing the maximum safety for consumer protection.

### **Conclusions:**

Treatment and resolution of disputes occupy an important place in the electronic communications market, and considered as such by the relevant legislation of the field, because it is considered that the potential background for disputes in this market, exists in its two levels:

- At the level of wholesale markets, relations service provider - service provider;
- At the level of retail markets, relations service providers and users of products / services.

Regulatory approach in disputes resolution considers :

Normalization of contractual relations two or more lateral, and the use of regulatory instruments that enable effective administrative solutions on time, closely related to the degree of development of effective competition in markets where they offer products / services which are contracting subject between the parties.

- Regulatory supervision mission is closely linked with particular attention to maximizing the benefits of users for products / services available in the market of electronic communications, supporting the market through domestic regulatory framework and the approach to analogous practices in other countries of the region and the EU development of competition in the market.

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- 2009/136/EC - Amending Directive 2002/22/EC and 2002/58/EC
- 2009/396/EC - On the regulatory treatment of fixed and mobile termination rates in the EU (In conjunction with SPEECH/09/218, Neelie Kroes - Cutting the price of phone calls new termination rules, Brussels, 7 May 2009)
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<sup>1</sup> Regulation of AEPC no. 27 dated 21.09.2012 on the publication of information on tariffs and conditions of access and use of public electronic communications services ;

<sup>2</sup> Regulation of AEPC no. 16 dated 16.04.2010 "On the quality of service indicators "

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