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DEVELOPMENTS IN TELECOMMUNICATIONS: AN UPDATE

-- Poland --

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-- Poland --

1. The Polish Communications Act enacted in 1990 has broken the state monopoly in telecommunications. The newly created legal person - Telekomunikacja Polska S.A. (hereinafter referred to as TPSA - joint stock company in which State Treasury is a single shareholder) as the national operator was granted exclusive rights for international services of universal character and, due to restrictions for foreign capital shares in long distance services, had actual monopoly of long distance traffic. Besides statutory operators, such as TPSA and operators subordinated to sectoral ministers (National Defence, Home Affairs and Administration, Foreign Affairs) any other business entity had to apply for a licence to the Minister of Communications.

Legal changes

2. The above Act was amended in 1995.

3. Significant changes were related to the procedures of granting permits for the construction of telecommunications infrastructure and for performing services. TPSA is allowed to construct telecommunications networks and render services by virtue of the law, any other business entity must apply for a permit or licence to the Minister of Communications - provisions of the 1995 amendment oblige the Minister to organise a tender in view of selecting entity to which a licence may be granted. Any derogation from this provisions is permitted only under conditions stipulated by the law (e.g. only one applicant responded to a tender or a number of licences for rendering services on the relevant market is not restricted).

4. Regulations on relationship between telecommunications operators were also changed. Any operator of the public network (among them TPSA is the biggest) is obliged by the law to interconnect his network with any other telecommunications network provided it was legally established. General conditions of the interconnection of network and rules for settlement of accounts between operators are regulated by the Minister. Detailed conditions are to be stipulated by operators in the respective contracts. In case the parties are unable to come to an agreement within 3 months from the interconnection request or the contract does not settle necessary conditions of co-operation, the Minister, on request of each party, decides upon controversial conditions by way of an administrative decision after consulting the President of the Office for Competition and Consumer Protection.

5. The above amendment to the Communication Act introduced significant restrictions in granting permits for establishing and operating cable TV networks. At present, such a permit may only be granted to the business entities in which the foreign capital share and voting share of foreign subjects on a shareholder's meeting or in a general assembly does not exceed 49% and additionally, in which the majority of members of management and of the board of directors are Polish citizens. This provisions prohibit to give permission for establishing and operating a multimedial network (cable TV and other telecommunications services including telephony) to any entity which doesn't comply with specified conditions.

Changes in the market structure and competition conditions

6. The Minister of Communications elaborated draft programme entitled "Telecommunications development policy" which was adopted by the Council of Ministers in May 1996. This document, intended as presentation of the main directions of the activities aimed at development of the telecommunications sector, and in particular further demonopolisation of the market, privatisation of TPSA and liberalisation of licensing policy, practically didn't bring any significant changes in the hitherto policy.

7. The government approved the preliminary concept for the privatisation of TPSA, consisting in gradual privatisation, starting in the third quarter of 1998 by way of public sale of shares in domestic and international offer and on further steps the possibility of sales of shares to the strategic investor was to be considered. Further, as another element of the scheduled structural changes, the Minister of Communications was commissioned with the responsibility to make by January 1, 1999 the long distance traffic accessible for other than TPSA operators. At present, the realistic time limit for demonopolisation of this segment of the market is difficult to be foreseen.

8. In 1996 the market for mobile telephony was subject to significant changes. The hitherto monopolist, PTK Centertel Ltd. (now entity dependent on TPSA, operating analogue NMT system), was faced with two competitors, i.e. Polska Telefonii Cyfrowa Ltd.-Era GSM and Polkomtel S.A. - Plus GSM, winners of the tender for nation-wide digital system networks. Nevertheless the structure of this segment will be subject to further changes as in August 1997 PTK Centertel was given a licence for the third mobile system (DCS-1800). Due to the restrictions in subjective criteria in the tender for this network other potential investors were discouraged and Centertel was the sole applicant.

9. Two decisions were of great importance for the competition level on telecommunications market :

- verdict of the Main Administrative Court imposing more liberal conditions in licensing conditions for GSM network operators, i.e. allowing use of different networks than those belonging to TPSA;
- administrative decision of the Minister of Communications establishing conditions of the settlement of accounts between TPSA and GSM operators, more favourable for the competitors of the dominant entity.

10. The local telephony network is gradually developing. Till the end of 1996 20 local operators were servicing about 70 thousand subscribers - generally the local network is limited to the part of a voivodship (territorial unit), capital excluded. The present policy is aimed at granting operating licences for the territory of the whole voivodship, with object to create a duopoly: TPSA and independent operator. In September 1996 as a result of capital transformations a holding group Netia was created, composed of 12 local operators (out of which the majority having already permits and licences for local networks). This group, with about 30 thousand subscribers, is the biggest private investors constructing telephony networks in Poland.

11. The substantial structural changes relate to the dynamic cable TV market. Gradually cable networks are being consolidated and big networks develop. The biggest on this market segment is Polska Telewizja Kablowa, joint stock company with American capital participation. The development of cable TV towards multimedial services can be observed (e.g. getting permits for data transmission, Internet

access services, aiming at licences for telephony services). The functions of network owner and network operators are being separated : foreign business entities become network owners, operators are subject to the legal requirement of 51% of the Polish capital participation.