

IMPLEMENTING THE NEW EU DIRECTIVES

Oftel's draft Project Plan - June 2002

The new regulatory package for electronic communications networks and services

- 1.1 Agreement has now been reached between the Council of Ministers and the European Parliament on a new package of Directives that will establish a framework for the regulation of electronic communications networks, services and associated facilities throughout Europe. The Directives entered into force when they were published in the Official Journal of the European Community on 24th April 2002.
- 1.2 The new package of Directives consists of:
 - Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services [Framework Directive (FD)];
 - Directive 2002/20/EC on the authorisation of electronic communications networks and services [Authorisation Directive (AD)];
 - Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services [Universal Service Directive (USD)];
 - Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and services [Access and Interconnection Directive (AID)]; and
 - the Communications Data Protection Directive (CDPD).
- 1.3 Agreement was reached on the CDPD on 30th May 2002. It will be formally adopted and published in the Official Journal within a few months to be applied by the end of 2003.
- 1.4 The FD sets the overall framework, including objectives and principles which Oftel must take into account when making regulatory decisions. In addition, the FD sets out the principle that, in most cases, market reviews must be carried out before regulation is imposed and that regulation is only to be imposed where the market is not effectively competitive. That is, where one or more operators has Significant Market Power (SMP). SMP has been newly defined so that it is equivalent to the competition law concept of dominance.
- 1.5 The AD requires the abolition of the existing telecommunications licensing regime which will be replaced by the concept of 'authorisation'. The providers of electronic communications networks and services will no longer be required to obtain explicit approval before they can offer networks and services although, where NRAs require it, operators may be required to submit a notification of their intention to offer networks and services. The AD sets out a maximum list of obligations that can apply to all providers of networks and services. These 'general conditions' will replace existing licence conditions. On 22 May 2002, Oftel published a draft of general conditions of entitlement that set out the requirements that operators will need to meet in order to provide electronic communications networks and services under the new regime. The draft document is available on Oftel's website at:
www.oftel.gov.uk/publications/licensing/2002/enti0502.htm
The AD also makes separate provisions for the prior authorisation of use of radio frequencies and telephone numbers.

- 1.6 The USD sets out a procedure for designating providers of universal service and a minimum set of services that these operators must provide. In addition to dealing with universal service, the USD details specific obligations that may be imposed on particular providers that are found to have SMP in retail markets, much as the AID does for wholesale markets. Also included in the USD are provisions covering consumers' contracts with telecoms providers, number portability and procedures for providing consumers with an out of court dispute resolution process.
- 1.7 The AID deals with wholesale relationships between providers of networks and services and associated facilities. The AID places general obligations on network operators to negotiate interconnection. This Directive also sets out the responsibilities of NRAs and the limits of their discretion in imposing obligations related to access or interconnection. For the most part, such obligations can be imposed only on those found to have SMP in the relevant wholesale market. Oftel is currently consulting on the way it intends to impose access obligations under the AID. This consultation can be found at: www.oftel.gov.uk/publications/ind_guidelines/acce0402.htm
- 1.8 The other parts to the package include:
- Decision 676/2002/EC on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision);
 - Consolidated Directive on Competition in the market for communications services (Competition Directive);
 - Guidelines on Market Analysis and the calculation of Significant Market Power (SMP);
 - Recommendation on Relevant Product and Service Markets.
- 1.9 The aim of the Radio Spectrum Decision is to establish a policy framework in the EU for the coordination of policy approaches on radio spectrum, and establish a legal framework in order to ensure harmonised conditions with regard to the availability and efficient use of radio spectrum. The Decision was published in the Official Journal on 24th April 2002.
- 1.10 The Competition Directive aims to replace, by a single text, all existing «liberalisation» Directives in the telecommunications sector previously adopted by the Commission. The draft was submitted to public consultation. It consolidates, without adding any new obligation, Directive 90/388 which set the first foundations for the liberalisation of the telecommunications market and which has been amended five times since its adoption in 1990. Only those provisions which to date are still necessary for attaining the objectives of full competition in the telecommunications sector will be maintained. The final adoption of the new Directive (by the Commission itself under Article 86 of the EC Treaty) will take place at a later stage, in order to maintain the link with the package of the legislative proposals on telecommunications approved today by the Commission
- 1.11 The Commission Guidelines on market analysis and the calculation of Significant Market Power (under Framework Directive) to be adopted under Article 15 of the Framework Directive provide MS with guidance as to how to apply the new SMP concept in an ex ante environment and for the purposes of the Directives. The Guidelines refer to Article 14 of the FD which aligns the competition law concept of dominance to the ex ante notion of SMP. The Commission should publish the final version of the Guidelines by the end of June 2002.
- 1.12 The Commission Recommendation on Relevant Product and Service Markets (under

Framework Directive) will give a list of market definitions. NRAs will use these market definitions for the market reviews (described in paragraph 1.4). The Commission is expected to publish the Recommendation by the end of June 2002 for consultation before adopting a final Recommendation later in the year.

1.13 Other elements related to the new framework include:

- Decision setting up the European Regulators' Group for Electronic Communications (ERG);
- Decision setting up the Radio Spectrum Policy Group (RSPG).

1.14 The Commission will issue a Decision establishing the European Regulators' Group (ERG). The main function of this group will be to advise the Commission on the requirements of the new framework and to promote its harmonised application through effective dialogue between the relevant authorities of all Member States. The Decision may be published during June 2002.

1.15 The Commission will issue a Decision establishing the Radio Spectrum Policy Group (RSPG). Its main function will be to advise the Commission on the requirements and on the co-ordination of policy approaches and harmonised conditions related to radio spectrum. The Decision may be published during June 2002.

Timing

1.16 Member States have 15 months in which to transpose the provisions into national legislation and to bring regulation into line with the new Directives. The Directives are designed to be implemented in all Member States (MS) on the same day (15 months plus one day namely 25th July 2003). The transposition provisions in the Directives prevent MS from applying measures before 25th July 2003. Market reviews must start as soon as possible after 24th April 2002 (and publication of the Commission's final Recommendation on Markets) and regulators must bring all processes and procedures into line with the new Directives ready for 25th July 2003.

Oftel's project plan

1.17 The purpose of this document is to provide stakeholders with visibility of Oftel's work on implementing the new EU Directives. Oftel's plans are subject to change and it is inevitable that as work progresses and projects define the scope of the work, timings given here will change. Oftel expects to publish updates to the information provided from time to time.

1.18 Table one shows identified implementation tasks mapped to Oftel projects. The full details of the projects mentioned in table one can be found in Oftel's latest management plan at www.oftel.gov.uk/publications/about_oftel/2002/map10402.htm. Oftel is currently adding to the list shown in table one. This list is expected to continue to grow over the implementation period.

Table One Oftel's activities, projects and contacts

Ref	Implementation activity	Oftel project and contact
1	Mapping existing obligations to the new framework	Implementing the new EU Directives, Rachel Coldeboeuf (tel: 020 76345306, email:

		rachel.coldeboeuf@oftel.gov.uk)
2	Input to the DTI on transposing the new EU Directives	The Communications Bill and Implementing the new EU Directives, Neil Buckley (tel: 020 7634 5356, email: neil.buckley@oftel.gov.uk)
3	New general conditions	General conditions of entitlement, Lucy Byers (tel: 020 7634 8892, email: lucy.byers@oftel.gov.uk)
4	Training and communications for the new EU Directives	Implementing the new EU Directives, Rachel Coldeboeuf (tel: 020 7634 5306, email: rachel.coldeboeuf@oftel.gov.uk)
5	EU Market Reviews	EU Market Review Programme, Elaine Axby (tel: 020 76348915, email: elaine.axby@oftel.gov.uk)
6	Consultation with other NRAs and the Commission	Implementing the new EU Directives, Rachel Coldeboeuf (Tel: 020 76345306, email: rachel.coldeboeuf@oftel.gov.uk).
7	Defining new framework for accounting separation	Implementing accounting separation under the new EU Directives (new project as of May 2002) , Chris Rowsell (tel: 020 7634 8890, email: chris.rowsell@oftel.gov.uk)
8	Defining an “electronic communications network”	Future framework for interconnection (project due to complete by end Q1-2002), Frank Phillips (tel: 020 7634 8871, email: frank.phillips@oftel.gov.uk)
9	Collecting fees	Ending the licensing regime, Peter Davies (tel: 020 7634 8923, email: peter.davies@oftel.gov.uk)
10	Future of the telecoms code and transitional arrangements	Communications code and funds for liabilities, Peter Davies (tel: 020 7634 8923, email: peter.davies@oftel.gov.uk)
11	Revoking the current licences	Ending the licensing regime, Peter Davies (tel: 020 7634 8923, email: peter.davies@oftel.gov.uk)
12	Publishing guidelines on access under the AID	Heather Clayton (Tel: 020 76348979, email: heather.clayton@oftel.gov.uk)
13	Publishing information and respecting confidentiality	Industry data collection programme, Kenny Osborne (tel: 020 76348973, email: kenny.osborne@oftel.gov.uk) and Electronic Records Management, Laura Dawson (tel: 020 7634 8950, email: laura.dawson@oftel.gov.uk)
14	Harmonisation with other NRAs	Implementing the new EU Directives, Rachel Coldeboeuf (tel:

		020 76345306, email: rachel.coldeboeuf@oftel.gov.uk)
15	Allocation of numbers	Numbering programme, Nicholas Good (tel: 020 7634 5333, email: nicholas.good@oftel.gov.uk)
16	Provisions relating to sharing of facilities	Ending the licensing regime, Peter Davies (tel: 020 7634 8923, email: peter.davies@oftel.gov.uk)
17	Dispute resolution between undertakings	Interconnection (new dispute resolution timeframe), Andrew Walker (tel: 020 7634 8909, email: andrew.walker@oftel.gov.uk)
18	Universal Service (designation, obligations, costs and finance)	Universal service obligation, Alan Pridmore (tel: 020 7634 8910, email: alan.pridmore@oftel.gov.uk)
19	Quality of service and publishing QoS statistics on USO	Comparable performance indicators, Chris Smithers (tel: 020 7634 8876, email: chris.smithers@oftel.gov.uk)
20	Consumer information requirements	Raising consumer awareness, Chris Rowsell (tel: 020 7634 8890, email: chris.rowsell@oftel.gov.uk)
21	Quality of service statistics	Comparable performance indicators, Chris Smithers (tel: 020 7634 8876, email: chris.smithers@oftel.gov.uk)
22	Out of court dispute resolution for consumers	Implementation of Independent Telecoms Ombudsman Scheme, Chris Rowsell (tel: 020 7634 8890, email: chris.rowsell@oftel.gov.uk)
23	Input to the RA on spectrum provisions	Access to the radio spectrum, Roberto Ercole (tel: 020 7634 8905, email: roberto.ercole@oftel.gov.uk)
24	Guidelines on enforcement, appeals and incentives to comply	Heather Clayton (tel: 020 76348979, email: heather.clayton@oftel.gov.uk)
25	Implications of the new Directives for Internet Service Providers	Internet and e-commerce, Lucy Rhodes (tel: 020 7634 8836, email: lucy.rhodes@oftel.gov.uk)
26	Implications of the new Directives for Service Providers	TBC
27	Implementation of the Data Protection Directive	Data protection in telecoms, Nigel Humberston (tel: 020 7634 8824, email: nigel.humberston@oftel.gov.uk)
28	Information gathering under the new EU Directives	TBC

1.19 Table two shows the public consultation and communication activities that are planned as of June 2002. This list does not yet cover all of the activities listed in table one as plans for some projects are still being developed. Oftel will publish an update as soon as more information is available.

- 1.20 Please note that the detailed arrangements for market reviews under the new EU Directives will be the subject of another short information paper expected after the Commission has announced the markets to be reviewed.

Opportunities for stakeholder input

In addition to publishing information, consultations and statements, Oftel hosts a Policy Focus Group (PFG) on the implementation of the new Directives. Industry players and consumer representatives are welcome to attend this group. Indicative timings of the meetings throughout the implementation period are:

Mid June 2002
August 2002 (focus on consumer issues)
October 2002
December 2002
February 2003 (focus on consumer issues)
March 2003
May 2003

At the PFG, Oftel aims to present information on a range activities and provide stakeholders with the opportunity to comment and input. It is expected that some of the larger implementation projects (such as the EU market reviews) will, in addition to attending the PFG, hold separate stakeholder meetings.

Oftel intends to maintain a list of all upcoming activities connected to the implementation of the new EU Directives on its website: www.oftel.gov.uk/ind_info/eu_directives/index.htm

Links to other OFCOM partners

The Radiocommunications Agency and Independent Television Commission are members of Oftel's PFG on the new EU Directives. Information on the RA's and the ITC's activities can be found at:

- www.radio.gov.uk; and
- www.itc.org.uk

Comments on this document

Oftel is publishing this document to provide information to stakeholders, it is not a formal consultation. However, comments are welcome and should be sent to:

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