[DK] Implementation of EU 2002 Telecoms Package

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Søren Sandfeld Jakobsen
Aalborg University

On 7 March 2002, the EU adopted a new European regulatory framework for the communications sector, comprising 5 Directives (see IRIS 2002-3: 4). The Directives were to be transposed into national law no later than 24 July 2003. In Denmark, the Directives have been implemented by Act No. 450 of 10 June 2003 (“the Act”), amending the main Danish Telecoms Act, Act No. 418 of 31 May 2000 on Competition and Consumer Issues in the Telecommunications Market (the Competition and Consumer Act), as well as a number of other regulations within the field of communications.

It should be noted that in the 2000 Competition and Consumer Act Denmark already took a significant step towards the fundamental principle of the EU Telecoms Package to alter the overall regulatory regime from a vertical sector specific approach, where regulation is based on the character of the technological platform, to a horizontal approach, where the regulation is technology-neutral, i.e. the same provisions apply to all kinds of communications networks and services, whether it be telecoms, IT or broadcasting. Under the new Act, the main changes due to the Telecoms Package are:

Access and Interconnection:

Previously, the regulation of competition in the telecommunications sector was goverened directly by statutory legislation. Pursuant to the EU Package, the new Act introduces a more flexible approach in that the key competition law concepts (assessment of SMP, market definitions etc.) are determined on the basis of current market analysis and as such can be altered concurrently with market changes. Moreover, the key competition law concepts have been adapted to the concepts applied in general competition law. As regards the National Telecom Agency's powers, the Agency is now entitled in each specific case to choose from a variety of measures.

Universal Service:

As regards universal service the Act states that universal service obligations, in addition to the existing obligations under Danish law, also comprise the obligation to provide a printed or electronic telephone number directory.

Data Protection:

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Due to Directive 97/66, Danish telecoms legislation has for some years contained sector specific provisions regarding data protection that supplement the provisions in the general data protection Directive (Directive 95/46). Under the new Act, a set of rules allowing the processing of location data is introduced, i.e. data processed in an electronic communications network, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service.

Unsolicited Calls:

Since 2000 Denmark has had a so-called “opt in” provision regarding unsolicited calls via electronic networks, prohibiting unsolicited calls from companies unless the recipient has granted prior consent. Due to the Telecoms Package Denmark has now been forced to soften the prohibition, so that prior consent is not required in cases where the unsolicited call regards the sale of goods or services similar to a good or service that the recipient has previously purchased from the same company.

The Act came into force on 25 July 2003.

Lov om ændring af lov om konkurrence- og forbrugerforhold på telemarkedet med flere love (implementering af direktivpakken ”99-review”) - Lov nr. 450 af 10. juni 2003

http://www.itst.dk/wimpdoc.asp?page=tema&objno=101532922

Act No. 450 of 10 June 2003 amending the Competition and Consumer Act and other related Acts - implementation of the EU's “99-review”

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