The Technology, Media and Telecommunications Review

Third Edition

Editor
John P Janka

Law Business Research

The Technology, Media and Telecommunications Review

THIRD EDITION

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EDITOR'S PREFACE

The digital revolution continues to alter both local culture and the world in ways that few could have imagined when the seeds of the Internet were sown more than 40 years ago. The Internet allows ideas, news and other information to flow more freely than ever before, making it increasingly difficult for nations to control this flow at their geographical borders. Moreover, the Internet is forcing changes in many long-standing business models. It now serves for many as the preferred means of communication and media delivery, displacing or supplementing other means, such as traditional copper phone service, print media, subscription TV services and broadcast networks, in the process. The Internet now also serves as a new marketplace for goods and services, as well as a primary research tool for many.

New technologies place into our hands more computing power than was used by astronauts when the Internet was in its infancy. The proliferation of these mobile devices – smartphones and tablet computers – leads many to employ texting, e-mail and blogging instead of communicating by the spoken word. We expect to have constant access to the networks that we use in this manner to stay in contact with our social circles and the rest of the world. And our most intimate thoughts are often now memorialised for the long term, in ways that can be potentially used by third parties for purposes we have not truly anticipated.

The legal frameworks in many jurisdictions are now straining under these disruptive changes. The old adage that technology outpaces the law is more true today than ever. No doubt, the 'hands-off' approach to the Internet that many lawmakers and regulators once took has facilitated many of these developments. At the same time, policymakers are now struggling with new types of concerns, as broadband Internet access service becomes more and more essential to our lives. Is the marketplace responding to the needs of consumers? Are broadband networks being deployed everywhere that they are needed? Are the capabilities of those networks adequate? If not, how should government ensure that none of its citizens is left behind? Is it appropriate for government to invest in broadband infrastructure in a manner similar to its historical investment in roads,

bridges, and other critical infrastructure? Is it fair to liken broadband service to a utility, or does the state of competition make that an unfair analogy? Can government provide the best overall solution, or should it just fill in any infrastructure 'gaps' not closed by commercial providers? Should government establish 'ground rules' upfront, or should it intervene when it perceives that abuses of market power exist? How does government avoid skewing the competitive marketplace by (inadvertently or otherwise) preferring one type of technology over another and thus effectively picking the winners and losers who otherwise might emerge in the marketplace, and challenge the incumbents? Who are the new 'gatekeepers' in the Internet broadband distribution chain, and is it enough to focus on regulating the network operators when others further up the chain, such as application service and equipment providers, have more influence than ever before on what information we access and how we access it?

This expectation of instant and continuous mobile connectivity, and the development of bandwidth-intensive 'apps', create an increasing demand on the limited radio frequency spectrum asset. While digital technologies allow more efficient use of spectrum than ever before, the laws of physics still render some spectrum bands more valuable than others for mobile communications. The demand for wireless spectrum outstrips the supply in many markets, and regulators are increasingly being forced to 'refarm' spectrum bands that were designated for other purposes before the mobile broadband revolution was a glimmer in anyone's eye.

This third edition of *The Technology, Media and Telecommunications Review* provides an overview of the evolving legal constructs that govern these types of issues in 29 jurisdictions around the world. Although the authors cannot fully address each of these topics in the following articles, we hope this book provides a helpful framework for starting your analysis.

John P Janka
Latham & Watkins LLP
Washington, DC
September 2012

LIST OF ABBREVIATIONS

3G	Third-generation (technology)
4G	Fourth-generation (technology)
ADSL	Asymmetric digital subscriber line
ARPU	Average revenue per user
BIAP	Broadband Internet access provider
BWA	Broadband wireless access
CATV	Cable TV
CDMA	Code division multiple access
CMTS	Cellular mobile telephone system
DAB	Digital audio broadcasting
DDoS	Distributed denial-of-service
DoS	Denial-of-service
DSL	Digital subscriber line
DTH	Direct-to-home
DTTV	Digital terrestrial TV
DVB	Digital video broadcast
DVB-H	Digital video broadcast – handheld
DVB-T	Digital video broadcast – terrestrial
ECN	Electronic communications network
ECS	Electronic communications service
EDGE	Enhanced data rates for GSM evolution
FAC	Full allocated historical cost
FBO	Facilities-based operator
FCL	Fixed carrier licence
FTNS	Fixed telecommunications network services
FTTC	Fibre to the curb
FTTH	Fibre to the home
FTTN	Fibre to the node

FTT*x*	Fibre to the *x*
FWA	Fixed wireless access
Gb/s	Gigabits per second
GB/s	Gigabytes per second
GSM	Global system for mobile communications
HDTV	High-definition TV
HITS	Headend in the sky
HSPA	High-speed packet access
IaaS	Infrastructure as a service
IAC	Internet access provider
ICP	Internet content provider
ICT	Information and communications technology
IPTV	Internet protocol TV
ISP	Internet service provider
kb/s	Kilobits per second
kB/s	Kilobytes per second
LAN	Local area network
LRIC	Long-run incremental cost
LTE	Long Term Evolution (a next-generation 3G and 4G technology for both GSM and CDMA cellular carriers)
Mb/s	Megabits per second
MB/s	Megabytes per second
MMDS	Multichannel multipoint distribution service
MMS	Multimedia messaging service
MSO	Multi-system operators
MVNO	Mobile virtual network operator
MWA	Mobile wireless access
NFC	Near field communication
NGA	Next-generation access
NIC	Network information centre
NRA	National regulatory authority
OTT	Over-the-top (providers)
PaaS	Platform as a service
PNETS	Public non-exclusive telecommunications service
PSTN	Public switched telephone network
RF	Radio frequency
SaaS	Software as a service
SBO	Services-based operator
SMS	Short message service
STD–PCOs	Subscriber trunk dialling–public call offices
UAS	Unified access services
UASL	Unified access services licence
UCL	Unified carrier licence
UHF	Ultra-high frequency
UMTS	Universal mobile telecommunications service
USO	Universal service obligation

UWB	Ultra-wideband
VDSL	Very high speed digital subscriber line
VHF	Very high frequency
VOD	Video on demand
VoB	Voice over broadband
VoIP	Voice over Internet protocol
WiMAX	Worldwide interoperability for microwave access

Chapter 27

UNITED ARAB EMIRATES

Joby Beretta[1]

I OVERVIEW

The UAE has a developed TMT market with a high mobile penetration rate (around 150 per cent)[2] and the world's second-highest FTTH penetration rate (in excess of 55 per cent).[3] The incumbent telecoms operator (Etisalat) enjoyed 30 years of monopoly until the second operator (du) was awarded a licence in 2006. UAE consumers are already benefiting from convergence in the TMT sector with both operators offering quadruple-play services (fixed-line, mobile, broadband Internet and TV).[4]

During the transition from a monopoly to a duopoly in 2006, the UAE government issued an overarching policy for the ICT sector ('the National Policy'). The Telecommunications Regulatory Authority ('the TRA') is currently undertaking a consultation to update the National Policy and the new draft[5] contains the following seven policy objectives:

a to facilitate universal high-speed broadband access;
b to promote effective and sustainable competition;
c to facilitate access to converged services, applications and content;
d to enhance widespread ICT literacy;
e to drive ICT research and development;

1 Joby Beretta is a partner at SNR Denton & Co.

2 www.tra.gov.ae/latest_statistics.php.

3 www.ftthcouncil.org/en/knowledge-center/ftth-council-resources/chart-global-ranking-ftth-market-penetration-2012-0.

4 du is, however, currently restricted to offering fixed-line, Internet and TV services in designated areas.

5 The Draft General Policy for the Telecommunications Sector in the State of the United Arab Emirates (2013–2016). Available in full on www.tra.gov.ae/Consultations.php.

f to encourage environmental sustainability through ICT; and
g to ensure continuous effectiveness of the government role in the sector.

One key driver to achieve the policy objectives has been the establishment of various free zones in the UAE. There are now over 30 such free zones but one of the most established and popular is the Dubai Technology, Electronic Commerce and Media Free Zone ('TECOM'), comprising Dubai Internet City, Dubai Media City, International Media Production Zone, Dubai Studio City and Dubai Outsource Zone. Some other key free zones relating to the TMT industry are the Dubai Silicon Oasis and the Abu Dhabi Media Zone (twofour54). The free zones provide various benefits such as 100 per cent foreign ownership and tax exemptions, which have attracted many international TMT companies to the UAE. In covering the principal TMT regulations in the UAE, this chapter also briefly covers the applicable TECOM regulations.

II REGULATION

i The regulators

To understand the TMT regulatory framework in the UAE, it is imperative to understand its Constitution. The UAE was formed in 1971 and comprises seven emirates (Abu Dhabi, Ajman, Dubai, Fujairah, Ras al-Khaimah, Sharjah and Umm al-Quwain). The Constitution established the Supreme Council as the main federal authority in the UAE. A sheikh, commonly known as the ruler, rules each emirate and has authority to pass its own laws on matters not assigned to the exclusive federal jurisdiction of the UAE. Regulation of the TMT sector in the UAE is therefore a patchwork of federal laws and decrees, emirate-specific laws and decrees and free zone regulations.

The UAE regulatory framework for the TMT sector can be subdivided into two main categories: telecommunications and technology, and media, albeit with an increasing amount of overlap due to the convergence of technologies.

Telecommunications and technology

The predominant regulator of the ICT sector in the UAE is the TRA, which was established by Federal Law No. 3 of 2003 Regarding the Organisation of the Telecommunications Sector ('the Telecom Law'). The TRA is obliged to exercise its functions and powers in accordance with the Telecom Law, the Executive Order[6] and the National Policy. Its objectives include:

a ensuring the telecommunications services provided throughout the state are sufficient to satisfy the public demands of those who wish to make use of such services;
b enhancing the level of service provided by the telecommunications sector to promote the interests of such services;

6 The Decision of the Supreme Committee for the Supervision of the Telecommunications Sector No. (3) of 2004 issuing the Executive Order of the Telecom Law.

c ensuring licensees meet quality standards of performance and adhere to the terms and conditions of the licences granted to them;

d encouraging, promoting and developing the ICT industries in the state; and

e promoting and enhancing the telecommunications system in the state as indicated by the development and the establishment of industry-related training institutions and through the availability of the latest apparatus, equipment and facilities provided by telecommunications technologies.

Media

In relation to media, the National Media Council ('the NMC') was established by decree in 2006 to oversee media development in the UAE and regulate content.[7] The NMC's main source of law is the Federal Law No. 15 of 1980 on Printed Matter and Publications ('the Media Law').

In addition to the federal regulators mentioned above, each emirate may appoint its own regulators for matters not assigned to exclusive federal jurisdiction such as the Dubai Department of Economic Development ('the DED'). One example of cooperation between the regulators at federal and emirate levels is the signing of a memorandum of understanding between the NMC and the DED. The parties agreed to work together to unify the classification of media-related activities and cooperate in the field of joint inspections and compliance.

Further, each free zone has its own authority, which has the power to set regulations such as TECOM for Dubai Media City.

There is no specific regulator for data protection issues at a federal level in the UAE.[8]

ii Regulated activities

Telecommunications and technology

In the UAE, provision of telecommunications services to subscribers through a public telecommunications network is prohibited without a licence from the TRA.[9] The Executive Order clarifies that the provision of Internet services to subscribers also requires a licence.[10]

The general licensing requirements are set out in a TRA resolution,[11] which clarifies that the TRA issues two types of licences:

a individual licences where scarce resources are used (e.g., spectrum and numbering) or where the nature of the activity requires substantial regulatory supervision (e.g., GSM networks); and

7 Prior to this the role was undertaken by the Ministry of Information and Culture.

8 Some free zones such as the DIFC and Dubai Healthcare City have, however, appointed data commissioners and ombudsmen.

9 Article 37 of the Telecom Law.

10 Article 66 of the Executive Order.

11 Resolution No. 6 of 2008 Regarding the Licensing Framework.

b class licences where there is no requirement to use scarce resources or the nature of the activity requires less regulatory supervision (e.g., WLAN).

The process for obtaining a licence is set out in another TRA resolution[12] and includes seeking approval from the board of the TRA.[13]

The information requirements vary depending on the type of licence but all applicants will need to provide evidence of eligibility, copies of corporate documents (e.g., memoranda and articles of association and shareholder structure) and management team qualifications. In addition, for individual licences a business plan and details of any benefits to the UAE economy are required. Upon receipt of an application the TRA will make a recommendation to the board within 30 days.

Although there are currently only two public telecommunications licensees in the UAE (du and Etisalat), it is worth noting that there is one licensee of a TETRA public access mobile radio network (nedaa) and various broadcasting satellite services licences including those recently granted in July and August 2011 to twofour54 and Yahsat respectively.

Media

Pursuant to the Media Law, the following activities are prohibited without an appropriate licence:

a operating a printing press;
b circulating, selling or distributing printed material;
c publishing a newspaper;
d working as a media correspondent;
e importing or exporting publications, newspapers or films; and
f performing theatre or operating a cinema.

The licence requirements vary depending on the type of activity but generally require an application to be made to the NMC.[14] In 1980 when the Media Law was enacted, it was primarily aimed at the more traditional print media industry but its wording is wide enough to cover newer forms of media. In 2009 a draft revised media law was circulated by the NMC but it has not yet been implemented.

In addition, the various free zones have their own licensing requirements. TECOM, for example, has specific licensing categories for media activities such as publishing, broadcasting etc.[15] Depending on the type of licence there are various requirements such as minimum capitalisation and a scale of licence fees.

12 Resolution No. 7 of 2008 Regarding the Licensing Regulations.

13 The board of directors manages the TRA and comprises five members including the chairman of the board and the director general.

14 The Media Law specifies that application should be made to the Ministry of Information and Culture but this was abolished in 2006 and replaced with the NMC.

15 Decision 1/2011 concerning Licensing Categories.

iii Ownership and market access restrictions

Telecommunications and technology

Applicants for both individual licences and class licences must have a company incorporated under the Commercial Companies Law[16] and a shareholding complying with the relevant resolution.[17] Although the Commercial Companies Law acknowledges seven forms of business entity, a TRA resolution[18] confirms that foreign shareholdings in either global mobile personal communications services licences or public access mobile radio services licences shall be a maximum of 49 per cent. Further, the shareholding must comply with any relevant TRA board resolution and the TRA may set limits on the number of shares of any licensee that could be owned by any other licensee.[19]

In this respect it is worth noting that the UAE joined the WTO on 10 April 1996 but negotiated various concessions relating to full liberalisation of the telecoms market. In a recent WTO Trade Policy Review carried out in March 2012, it was noted that the UAE telecoms market could benefit from increased competition[20] and there have been rumours in the press about potential new licences being granted in 2015.

Media

Under the Media Law, most of the licensed activities (e.g., owning a printing press or a newspaper or importing or exporting publications or films) require the owner of the company to be a UAE national. These ownership restrictions 'onshore' have been a major driver for most international media companies and broadcasters to set up in Dubai Media City or one of the other free zones that allow 100 per cent foreign ownership.

iv Transfers of control and assignments

Telecommunications and technology

The Executive Order specifies that a licence may not be transferred or assigned to any third party unless the licence contains a provision permitting such transfer or assignment and prior consent of the board is obtained.[21] The board has the power to determine the form and substance of each licence[22] and in exercising this power has set out restrictions on transfers and acquisitions. For example, under the terms of the Etisalat licence any change of control of Etisalat or assignment of the licence shall require the prior written approval of the board.[23] The licence does not specify the procedure for review or the typical timing for this approval.

16 Federal Law No. 8 of 1984.

17 Articles 2 and 3 of Resolution No. 7 of 2008.

18 Resolution No. 8 of 2009 Regarding the Approval of Acquisition Fees and Licensing Applications.

19 Article 29 of the Executive Order.

20 www.wto.org/english/tratop_e/tpr_e/tp362_e.htm.

21 Article 31 of the Executive Order.

22 Article 32 of the Telecom Law.

23 Public Telecommunications Licence No. 1/2006 (Etisalat).

Media

The Media Law specifies that ownership of a printing press, newspaper or other such licensed business can only be transferred to other UAE nationals who fulfil the necessary requirements and with the consent of the NMC. The licensee must submit an application to the NMC containing all relevant details and confirming that all requirements are met. The Media Law does not, however, specify the approval process.

Any changes to the shareholding of a broadcaster located in Dubai Media City will also require the prior approval of TECOM.[24] Broadcasters must provide information about proposed share transfers to the authority and seek its consent before completing any transfer.

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and Internet protocol regulation

As mentioned above, the TRA is responsible for managing every aspect of the ICT sector in the UAE including the Internet. The Telecom Law is technology-agnostic and as such there is no separate regulatory regime for Internet or IP services, although the TRA has issued various policies and regulations relating specifically to such services.

The TRA has, for example, issued a VoIP Regulatory Policy,[25] which clarifies that VoIP services offered to subscribers are 'regulated activities', as per the Telecom Law, which require a licence or an exemption. The policy exempts certain 'closed group networks'[26] that either exist solely for a public interest purpose (e.g., UAE recognised academic institutions and governmental bodies) and where calls originate and terminate within the UAE or provide calls only between users of that closed group network.

Etisalat and du are therefore entitled and technically able (as the licensed ISPs) to block any non-exempt VoIP services operated by non-licensed third parties, unless instructed by the TRA otherwise; this is the reason why VoIP services such as Skype are currently blocked in the UAE. This does not, however, prevent such third parties collaborating with the licensees to provide their services in the UAE legally. There were a number of reports in the media back in 2010 that VoIP services would be offered by the licensees, but since then there have been no announcements.

24 Article 8.2 of Decision 1/2011.

25 Version 2.0 issued on 30 December 2009.

26 A closed group network is defined as a telecommunications network that is (1) operated exclusively for the benefit of users of that network, which users are either employed by or are a part of one entity or group of entities with a common ownership, or which are connected, related or associated with each other for a public interest purpose beyond the mere exchange of telecommunications; and (2) not interconnected with any other closed group network or public telecommunications network, in such a way as to allow real time voice communications to be carried between a user connected to or on the first network and a user connected to or on a public telecommunications network.

ii Universal service

The TRA, by its mandate, is entrusted with ensuring that the telecommunications services provided throughout the UAE are sufficient to satisfy the public demands of those who wish to make use of such services. The TRA also aims to encourage, promote and develop the ICT industries, including by way of developing and establishing industry-related training institutions and through the latest infrastructure, apparatus, equipment and facilities.

Although there are no direct government subsidies for developing broadband infrastructure or encouraging consumer use, the licensees (both of which are majority owned by the government[27]) are investing heavily in broadband. In 2011 Etisalat announced it would be spending $15 billion on overhauling its networks to deliver the fastest possible broadband speeds and would allocate $5 billion of the funding to expanding its fibre-optic network.

On the back of such investment, in February 2012 the UAE leapt into second place in the global FTTH ranking in market penetration, ahead of all European and American economies and behind only South Korea.[28] By May 2012, broadband Internet subscriptions in the UAE reached nearly 930,000. At the same time, the number of dial-up Internet subscribers fell to less than 5,000 as more customers opted for the faster broadband packages.[29]

There are also TRA initiatives to promote higher-speed networks such as the launch of the broadband performance test in November 2010, which allows Internet users to test their connectivity speed provided by their ISP.[30] In addition, the UAE has other initiatives such as the establishment of the ICT Development Fund, designed to fuel innovative research and development projects within the ICT sector.

iii Restrictions on the provision of service

In the UAE, there are a variety of restrictions on the provision of ICT services including pricing, universal access obligations and geographical restrictions.

The TRA issued a Price Control Regulatory Policy in 2008,[31] which prevents licensees putting into effect any prices that:

a are anti-competitive and could restrict, distort or prevent competition in the short or long term; or

b could restrict, distort or prevent the growth and development of the telecoms sector.[32]

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27 In 2011, Emirates Investment Authority (which is the sovereign wealth fund of the federal government of the UAE) owned 60 per cent of Etisalat and 39.5 per cent of du. In addition, the Abu Dhabi government, through its ownership of Mubadala, indirectly owns 19.78 per cent of du.

28 www.ftthcouncil.org/en/knowledge-center/ftth-council-resources/chart-global-ranking-ftth-market-penetration-2012-0.

29 TRA statistics available on www.tra.gov.ae/latest_statistics.php.

30 The test is available on www.tra.gov.ae/broadband_test.php.

31 Regulatory Policy Price Control. Version 2.1 issued 23 September 2008.

32 Article 3 of the Price Control Regulatory Policy.

Further, in accordance with the Price Control Regulatory Procedure,[33] licensees need prior approval from the TRA before amending their pricing. Licensees also need to comply with the Price Transparency Policy[34] in terms of disclosing details of pricing and other applicable conditions.

Network operators are generally required to provide access to anyone who seeks access to their network. Etisalat is, however, obliged by the TRA to provide certain services (such as dial-up Internet services) as part of the TRA's universal access policy. du has no such obligation and has elected to offer only broadband Internet services.

In addition, the fixed-line and Internet market is currently delineated geographically, restricting competition for these services.

iv Security

Personal data and privacy

Although there is no general data protection legislation in the UAE (other than in certain free zones such as the DIFC and Dubai Healthcare City), the principle of a right to privacy of personal information is enshrined in the Constitution and other UAE laws. Article 31 of the Constitution confirms the right to privacy of communications and Articles 378-379 of the Penal Code prohibit publication of private affairs and disclosure of confidential information.

In 2005, the TRA exercised its power afforded by the Telecom Law to issue a Policy on the Privacy of Consumer Information.[35] This policy is applicable to all telecommunications licensees and any entity that has access to personal information for the purpose of providing telecoms services. It requires licensees to take measures to prevent unauthorised disclosure, limit access to only trained and authorised staff, and obtain consent before sharing any information with affiliates or third parties not directly involved in supplying the services.

In 2012, the TRA launched the 'My Number, My Identity' campaign to highlight the importance of mobile subscribers protecting their SIM cards to maintain their privacy. As part of this campaign, subscribers are expected to update their data to ensure that the SIM cards they are using are registered under their names.

Monitoring and interception of communications

Licensees are obliged under the licence terms and conditions to comply with any directions that the TRA, or other competent authority, may issue from time to time on matters relating to public security, safety or national security. Each licensee must maintain certain subscriber information and install any equipment required to allow access to its telecoms network and retrieval of data for reasons of public interest, safety and national security.[36] Similar duties exist for ISPs whereby the TRA shall be entitled to monitor

33 Regulatory Procedure Price Control. Version 2.1 issued 23 September 2008.

34 Policy Price Transparency. Version 1.0 issued 24 June 2007.

35 Version 1.0 issued 31 May 2005.

36 Article 8.3 of the Public Telecommunications Licence No. 1/2006.

the services offered by the licensee.[37] The responsibility for achieving a balance between the constitutional right of privacy and the interests of public security, safety or national security will ultimately fall to the UAE courts.

Cybersecurity

Regarding cybersecurity, the UAE enacted the Cybercrimes Law in 2006,[38] which regulates unlawful access to and use of the Internet and relevant computer systems. In addition, the TRA has undertaken several initiatives to address cyber threats including establishing the UAE Computer Emergency Response Team ('aeCERT') back in 2008.

Protection of children

Although there are no specific UAE laws relating to protection of children online, children are afforded certain protection under the UAE Civil Code and other general UAE laws. There have also been several TRA and aeCERT initiatives such as the recent 'Children Protection Against ICT Crimes' forum. Children are also protected from inappropriate content by the restrictions mentioned below.

IV SPECTRUM POLICY

i Development

The TRA issued a National Spectrum Plan and National Frequency Table in conformance with the International Telecommunication Union's Radio Regulations and a Co-ordination Committee was established to consider any changes to the plan from time to time.

The Spectrum and International Affairs business unit of the TRA facilitates the introduction of new and innovative technologies by proactively reviewing spectrum use, encouraging wireless technology trials and optimising frequency spectrum use through efficient planning.

ii Flexible spectrum use

As applies in many countries, the UAE National Spectrum Plan specifies that certain services can only be provided within certain bands. The TRA has, however, exhibited some flexibility in this regard by allowing use of short-range devices (e.g., Bluetooth, keyless car entry) and WLAN[39] on a secondary basis[40] in the 2.4 GHz and 5 GHz ranges. These bands are allocated for other wireless use but short-range devices were allowed on the basis that they do not claim any protection or cause any interference.

There is currently no established spectrum trading or leasing regime but the TRA does issue temporary authorisations for up to 90 days. The TRA is also actively involved in international flexible spectrum policy discussions.

37 Article 66 of the Executive Order.

38 Federal Law No. 2 of 2006.

39 Use of 2.4GHz and 5.8GHz bands for WLAN and RLAN Regulations. Version 1.0, 5 August 2009.

40 Short Range Devices Regulations issued 5 August 2009.

iii Broadband and next-generation mobile spectrum use

The TRA has prioritised broadband access and has set out various potential plans to improve access to certain parts of the spectrum for mobile broadband use (including 2,500–2,690MHz). The TRA has also indicated that it plans to allow network access to the 790–862MHz band after completion of the switchover to digital television planned for the end of 2013 (see below) and issued a public consultation in this regard in March 2012. Some operators have expressed concerns that appropriate measures would need to be taken to protect the relevant spectrum from potential interference from some remaining analogue transmitters in other countries in the region.[41]

iv Spectrum auctions and fees

When assigning licences for spectrum the TRA has the option of using a comparative process based on objective criteria, auctions or a beauty contest.[42] In addition to any fees raised from the licensing process there are yearly spectrum user fees. These are calculated in accordance with the TRA's Spectrum Fees Regulations[43] depending on the type of device and extent of spectrum licensed.

V MEDIA

i Restrictions on the provision of service

Telecommunications and technology

In 2008, after consultation with the ISPs, the TRA issued a policy on Internet access management ('IAM') relating to content on the Internet. The policy must be taken into consideration by ISPs to ensure the security of the Internet and protect end-users from harmful websites containing materials that are contrary to religious and ethical values of the UAE. Such sites include those that encourage crime, phishing sites, and sites that contain content relating to hacking or malicious codes, illegal drugs, pornography, gambling, etc.

In conjunction with the release of the IAM regulatory policy, the TRA instructed licensed ISPs to unblock access to more than 1,000 websites that did not conflict with the policy. The TRA and the ISPs publish the 'prohibited content categories' on their websites[44] so that end-users are aware of the reasons behind certain websites being blocked. From January to May 2012, 84 per cent of the websites blocked contained content contravening the ethics and morals of the UAE, including nudity and dating, and 11 per cent related to phishing, hacking and spyware.[45]

41 The Geneva 2006 (GE-06) Agreement set a deadline of 2015 for all Arab countries to convert to digital TV.

42 Article 2 of Resolution No. (6) of 2008.

43 Spectrum Fees Regulations. Version 2.0, 30 December 2009.

44 See for example www.etisalat.ae/assets/document/blockcontent.pdf.

45 www.tra.gov.ae/IAM_Statistics.php.

Media

The Media Law also contains certain content restrictions, including the following:

a criticising the rulers of the emirates or the UAE;
b instigation against Islam or harm to the state interests or society values;
c opinions violating public discipline, insulting children or circulating subversive ideas;
d inciting criminal activity, hatred or dissension;
e publishing confidential official or military communications;
f publishing in bad faith or misinterpreting minutes of meetings, deliberations or court hearings;
g blemishing the president of an Arab, Islamic or any other friendly state or causing agitation to relations between the UAE and such states;
h defaming Arabs, their civilisation and heritage; and
i reporting news on ongoing criminal investigations if the judge orders investigations to be kept confidential.

At the end of 2010,[46] the NMC issued a resolution which stated that all media, audio-visual and print institutions in the UAE, including those located in the free zones, shall comply with the standards for media content contained in the Media Law. The resolution restated some of the content restrictions similar to those in the Media Law set out above but also extended the list to cover respecting intellectual property rights and compliance with the code of ethics of the media industry. The resolution also stated that, without prejudice to any penalties already provided for, the NMC may impose certain sanctions on violators, including warnings, requiring apologies and corrections, rectifying any damage caused and suspending or cancelling licences.

In addition to the federal laws above, some free zones have additional restrictions such as the TECOM Codes of Guidance 2003 (comprising a code on fairness and privacy and a code on standards) ('the Codes'). Although the Codes are primarily aimed at broadcasters and publishers operating from Dubai Media City, they apply to all companies operating from any of the TECOM free zones. The Codes are drafted in a descriptive rather than prescriptive manner and are based closely on the codes published by the Broadcasting Standards Commission in the United Kingdom. Interpretation of the Codes is left to the discretion of companies, which must take into account the prevailing social and religious morals of the UAE. All complaints regarding content will be heard by the TECOM Broadcasting and Publication Disputes Tribunal.[47]

ii Digital switchover

On 30 December 2009, the TRA issued a plan outlining the transition process from analogue to digital transmission ('the Digital Switchover') by the end of 2013.[48] On 26

46 President of the NMC Resolution No. 20 of 2010 on the criteria for media content.

47 Established under the TECOM Broadcasting and Publication Standards Tribunal Regulations 2003.

48 The Terrestrial Digital TV Switchover Plan, www.tra.gov.ae/spectrum-policies-regulations.php.

April 2011 the TRA confirmed that the Digital Switchover would be accomplished on schedule. The impact of the Digital Switchover on consumers in the UAE is unlikely to be as profound as in some other countries due to the already high penetration rate of digital HDTV (via satellite or broadband). Market analysts think the greatest impact will therefore be felt in more rural and remote areas.

iii Internet-delivered video content

The high broadband user penetration rate in the UAE has created a platform for IPTV to flourish. All licensees have IPTV offerings (such as e-life by Etisalat and du TV) as well as many satellite broadcasters (such as OSN Play). Subscribers to IPTV channels are increasing (Etisalat reported 80,000 IPTV subscribers in its 2011 annual report) but they tend to be offered in conjunction with traditional TV subscriptions rather than as an alternative.

Regardless of whether video content is distributed via traditional subscription packages or via the Internet, in the UAE the same players (du and Etisalat) control the content. In 2006, for example, Etisalat blocked access to YouTube for a month on the basis that the website breached aspects of the UAE content restrictions.

iv Mobile TV services

Mobile TV services were first introduced in the UAE in 2008 by trials of DVB-H. In 2009, the TRA announced that a consortium comprising Etisalat, du and others (together, the Emirates Mobile Television Corporation) had been granted a licence to provide mobile TV broadcasting services. The consortium, however, failed to launch broadcasts and in May 2011 it was announced that the initiative has been put on hold because of the rapidly changing technology in telecommunications. Both du and Etisalat currently offer mobile TV services but do not report the number of subscribers separately.

UAE operators are witnessing a general shift from voice revenue to data revenue. du, for example, posted a 72 per cent increase in mobile data revenue in 2011 from the 2010 figures.[49] Accordingly, as mentioned above, the TRA is taking action to prioritise mobile broadband.

VI THE YEAR IN REVIEW

The TRA has clearly had regulatory reform on the agenda over the past 12 months with the issuance of 13 public consultations. The consultations ranged from the new National Policy, exemptions for Internet access providers, space telecommunications, the National Spectrum Plan, mobile spam and green ICT practices.

In relation to M&A activity, the sector was fairly slow, with one notable transaction being the combination of Virgin Mobile with Middle East regional MVNO FRiENDi in June 2012 to become Virgin Mobile Middle East & Africa (VMMEA).

In terms of UAE-based operators' international plans, in February this year Etisalat announced it had decided to pull out of India in the wake of the spectrum issues

49 http://phx.corporate-ir.net/phoenix.zhtml?c=199506&p=irol-reportsannual.

and in May du announced that it was considering setting up MVNOs outside of the UAE.

On the technology side, both Etisalat and du rolled out 4G networks in the past 12 months – Etisalat opted for FDD-LTE in the 2.6GHz band in December 2011 and du launched a network in the 1,800MHz spectrum in June 2012. Etisalat also rolled out an NFC payment service in October 2011.

There were no major court cases, decisions or judgments of note. In this respect it is worth noting that the concept of binding precedent does not exist in the UAE, although judgments of the Court of Cassation or Federal Supreme Court may have some persuasive influence over rulings made by lower courts. Further, there is no developed system of reporting of court judgments.

VII CONCLUSIONS AND OUTLOOK

The UAE has been very successful in establishing itself as a regional ICT hub but still faces some challenges in moving towards full liberalisation of the TMT market. Looking ahead, some of the key issues may arise in the areas of infrastructure sharing, local loop unbundling, VoIP, the potential introduction of MVNOs and foreign ownership restrictions of telecom operators.

The delayed mobile number portability service is due to be launched imminently, which, in conjunction with the network sharing, should be beneficial to competition. Without number portability, many subscribers are currently deterred from changing operator because of the inconvenience of changing numbers and associated stationery, business cards, etc.

In relation to the anticipated new media law, the draft prepared by the NMC has been reviewed and amended by the Federal National Council and the Cabinet, but no information is available on whether or when it may be introduced.

Appendix 1

ABOUT THE AUTHORS

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