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Legal Issues of Services of General Interest

Universal Service in WTO and EU Law

Liberalisation and Social Regulation
in Telecommunications

Olga Batura



Springer

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Legal Issues of Services of General Interest
ISBN 978-94-6265-080-0 ISBN 978-94-6265-081-7 (eBook)
DOI 10.1007/978-94-6265-081-7

Library of Congress Control Number: 2015946094

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

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Printed on acid-free paper

Springer Science+Business Media B.V. Dordrecht is part of Springer Science+Business Media
(www.springer.com)

Series Information

The aim of the series *Legal Issues of Services of General Interest* is to sketch the framework for services of general interest in the EU and to explore the issues raised by developments related to these services. The Series encompasses, inter alia, analyses of EU internal market, competition law, legislation (such as the Services Directive), international economic law and national (economic) law from a comparative perspective. Sector-specific approaches will also be covered (health, social services). In essence, the present Series addresses the emergence of a European Social Model and will therefore raise issues of fundamental and theoretical interest in Europe and the global economy.

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Foreword

Universal service in telecommunications is a topic that over the years has stimulated a considerable body of literature, both practical and scholarly. This volume is a valuable addition to that literature: it both summarises a large amount of previous work and addresses the topic from new angles.

I have been continuously involved with universal service and related issues since 1989—first in the UK, later in Europe and now in a range of developing countries. As a consultant and consumer advocate, I have tried to keep abreast of relevant academic and policy debates. Most contributions reflect economic and/or social policy perspectives, and this author’s legal perspective makes a welcome change.

Clearly, modern electronic communications are of immense and growing importance for societies around the world, indeed for mankind as a whole. I share the author’s concern for careful thought about how far their provision is best left to market forces, and in what circumstances, and by what means, governments should intervene to achieve outcomes that seem beyond market forces—in particular, to ensure that communications services reach and include everyone.

By their very nature, electronic communications have the potential to boost social inclusion—despite concerns about data tracking, it remains largely true that on the Internet, nobody need know what you look like, what your abilities are or how you speak. And the facilities offer huge potential benefits—both personal and economic—to anyone who is connected. Ensuring that everyone eventually can be connected is a concern for practically all governments, whether or not they have anything that can be identified as a universal service policy.

This book offers a meticulous legal analysis of the motivations for, and the detailed provisions of, legal frameworks for universal service formulated by two international organisations—the World Trade Organisation (WTO) and the European Union (EU). The book’s special value is in highlighting areas where those frameworks could be improved. In some cases this is because of loose or unfortunate initial drafting, which could perhaps be fixed with relative ease.

The main burden of the argument, however, is that both technology and markets have changed radically in the decades since the frameworks were first conceived,

and that they now need equally radical review. Review would apply both to the objectives of legislation, and to the legal provisions which aim to fulfil those objectives. Both these should be worded in the most future-proof ways possible, so as to remain useful at least for another decade or two. As the author stresses, reviews of this kind are already challenging at national level, and reaching international agreement (as will be necessary in each of the two case study organisations) will be even harder.

I believe that reviews are nonetheless worthwhile endeavours, and they may become indispensable if, as is not unlikely, the weaknesses highlighted in the book lead to growing problems. The book will be of great assistance to policy-makers, as well as to scholars and students of universal service and the information society more broadly.

I am naturally pleased that the idea of evolving objectives for universal service, which I put forward in an article published in 1998, has proved useful to the author. We are already seeing many of the changes in focus that the article mentioned, as well as many more that it overlooked. In particular, concerns for universal service policy are getting ever broader—moving both upwards and outwards from their traditional base of physical networks infrastructures. They are moving up logical hierarchies, to encompass service and content as well as physical infrastructures, and at the same time outwards, from network operators to service providers and other intermediaries, and ultimately to end users.

Without interest and competence on the part of end users, facilities will not be used to full effect. Sectors such as health and education must be involved for societies to achieve the potential offered by universal connectivity. Thus the book may be influential way beyond the rather specialist readership who are most likely to pick it up. I commend it to potential readers, whether thorough or casual.

London, July 2015

Claire Milne

Acknowledgements

I would like to thank all friends and colleagues who, knowingly or unknowingly, mentored and supported me and made the publication of this book possible.

First and foremost, I would like to express my deepest gratitude to my PhD supervisor, my Doktorvater and esteemed colleague Prof. Dr. Josef Falke, for his guidance by knowledge and example, fatherly understanding, ceaseless encouragement and support.

For invaluable scholarly discussions and activities I am very grateful to the Collaborative Research Center “Transformations of the State” at the University of Bremen and in particular to my dear colleagues Henning Deters, Carola Glinski, Christian Joerges, Markus Krajewski and Dieter Wolf. Special thanks for the institutional support and homely atmosphere are due to the Centre of the European Law and Politics (ZERP) of the University of Bremen and my colleagues there.

I am much indebted to the Konrad Adenauer Foundation for the financial assistance, to the employees of the Sponsorship Program for Foreign Students and especially to Dr. Detlev Preusse for their support.

A special word of appreciation is due to my beloved friends Volkan Duman, Fatma Akin, Tatjana Evas, Hanna Flick, Lena Freigang, Malte Gerhard, Ulrike Liebert, Roberta Maria Neves, Reinhold Osterhus, Katrin Pecker, Eliza Sardaryan, Lesley Jane Smith and Alla Sokolova.

Last but not least, I would like to thank the T.M.C. Asser team and especially to Marjolijn Bastiaans and Peter Morris.

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Abbreviations

APEC	Asia-Pacific Economic Cooperation
ATC	Average Total Costs
AVC	Average Variable Costs
BEREC	Body of European Regulators for Electronic Communications
BTA	Agreement on Basic Telecommunications
CEPT	European Conference for Post and Telecommunications Administrations
COCOM	Communications Committee
CPC	UN Central Product Classification
EC	European Communities
ECFR	Charter of Fundamental Rights of the European Union
ECJ	European Court of Justice
ETSI	European Telecommunications Standards Institute
EU	European Union
FCC	US Federal Communications Commission
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNI	Gross National Income
ICT	Information and Communications Technology
INTUG	International Telecommunications Users Group
ISDN	Integrated Services Digital Network
ITU	International Telecommunications Union
MIIT	Ministry of Information Industries and Technology of China
NGBT	Negotiating Group on Basic Telecommunications
NGN	New Generation Network
NGO	Non-governmental Organisation
NRA	National Regulatory Authority
OECD	Organisation for Economic Co-operation and Development
ONP	Open Network Provision

PSTN	Public Switched Telephone Network
PTT	General reference to government agencies responsible for the provision of post, telephone and telegraph services
RP	Reference Paper on regulatory principles
SGEI	Services in General Economic Interest
SOGT	Senior Officials Group on Telecommunications
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UNICE	Union of Industrial and Employers' Confederations of Europe
USA	United States of America
USD	Universal Service Directive
USO	Universal Service Obligations
VoIP	Voice over Internet Protocol
WTO	World Trade Organisation

Chapter 1

Introduction

Abstract This theoretical chapter explores the general necessity for the regulation of telecommunications services markets with a focus on the universal service instrument. It argues that telecommunications has always been a service of public interest and this status has required some special regulatory arrangements. Testing this assumption, first, the notion of services of public interest is investigated, in particular what this public interest consists of, as well as what kinds of regulation have been employed in relation to such services and why. To explain this last point, the theory of the social embeddedness of markets by *Karl Polanyi* is employed. Second, the theoretical framework of services of public interest to telecommunications services is applied in order to establish whether they can indeed be classified as such. Third, the nature and special features of telecommunications services are described that are useful for understanding their uniqueness among other commercial services, and to justify particularities of their provision and regulation. This allows one to present telecommunications services and the specifics of their regulation in terms of *Polanyian* theory.

Keywords Telecommunications service • Universal service • Service of public interest • Regulation • Social embeddedness of markets • Commercial services • Polanyi • Polanyian theory

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