

# Cyprus

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# Cyprus

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## Introduction

The legal system of Cyprus, modelled on the English Common Law system since independence in 1960, is harmonised with the *acquis communautaire* of the European Union (EU), and the fiscal and regulatory regimes of Cyprus are fully aligned with EU norms. The island is a signatory to a large number of international conventions and treaties, including an extensive network of more than 40 double-taxation treaties.

In Cyprus, telecommunications is an area that has developed rapidly over recent years and is undergoing many changes in its structure; both in terms of participation of more electronic communication providers in the market and modernisation of the services offered, with 4G soon to be available.

The original law governing the telecommunications sector in Cyprus was the Telecommunications Service Law<sup>1</sup> that granted the Cyprus Telecommunications Authority the exclusive right to provide all telecommunication services in Cyprus. The EU regulatory framework was fully implemented in Cyprus by the enactment of the Law on the Regulation of Electronic Communications and Postal Services (the ‘RECPS Law’). As a result of Cyprus joining the EU, relevant EU Directives have been implemented, including:

- Directive 1999/5/EC, regarding radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity;
- Directive 2002/19/EC, on access to, and interconnection of, electronic communications networks and associated facilities;
- Directive 2002/20/EC, on the authorisation of electronic communications networks and services (the ‘Authorisation Directive’);
- Directive 2002/21/EC, on a common regulatory framework for electronic communications networks and services (the ‘Framework Directive’);
- Directive 2002/22/EC, on universal service and users rights relating to electronic communications network and services (the ‘Universal Service Directive’); and

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<sup>1</sup> Cap 302 of 1954.

- Directive 2009/140/EC, on the new EU regulatory framework for electronic communications networks and services.

The Cyprus Telecommunications Authority is a semi-governmental organisation<sup>2</sup> that offers its customers a complete range of telecommunications services adapted to market needs and uses the equipment, tools, and applications that modern technology offers. Its governing board comprises not more than seven members who serve for a five-year term and are appointed by the Council of Ministers.<sup>3</sup> Section 12 of the Telecommunications Service Law Number sets out the functions that the Cyprus Telecommunications Authority must perform in order to comply with its obligations under the RECPS Law, to provide a universal service for consumers, and to ensure that it promotes the development of the telecommunications service in accordance with international practice and public demand.

The Cyprus Telecommunications Authority has the power to issue regulations to control the telecommunications service in accordance with the provisions of the RECPS Law.<sup>4</sup> The Cyprus Telecommunications Authority also has been declared as an organisation with significant market power in the following markets:

- The voice telephony market;
- The land public networks market;
- The mobile telephony market;
- The mobile telephony networks market;
- The interconnection market; and
- The leased lines market.

The Cyprus Telecommunications Authority had enjoyed a monopoly on the Cyprus telecommunications market until the sector was liberalised in line with EU policy and requirements and private firms and companies were allowed to compete in the market. Further to public consultations and hearings, the Republic of Cyprus had undertaken all relevant necessary initiatives in order to complete the liberalisation process in the electronic communication sector and harmonisation with the *acquis communautaire* within the period of 2002 and 2003. The procedure was primarily instituted in Cyprus by the establishment of the Office of the Commissioner of Telecommunications and Postal Regulations (OCTPR) in 2002, pursuant to Law Number 19(I)/2002.

The essential goal and purpose was to conduct its obligations in Cyprus in connection with its accession to the EU in May 2004 and at the same time to create the prerequisites and conditions for the development and maintenance of healthy competition. The year 2003 was a milestone in the development of a competitive

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2 Cap 302 of 1954, s 3.

3 Cap 302 of 1954, s 5.

4 Cap 302 of 1954, ss 42 and 43.

environment in the telecommunications sector in Cyprus, as it saw the entry of new companies providing telecommunications networks and services into the local market. Parallel to this, legislation was enacted in order to ensure full compliance and harmonisation with the applicable EU framework regarding telecommunications.

The RECPS Law lays down rules for the harmonisation of Cyprus law with EU law,<sup>5</sup> and section 2(2)(c) of the RECPS Law clearly states that competition must be encouraged along with the elimination of the monopoly. In order to ensure competition, section 5 of the RECPS Law establishes a Commission and defines its obligations<sup>6</sup> regarding supervision of service providers in order to monitor their compliance with the RECPS Law.

The Commission has its own separate legal personality and was established in 2002 under the initial 2002 legislation, ie, the Office of the Commissioner of Telecommunications and Postal Regulation (OCTPR).<sup>7</sup> This law was later repealed and replaced by the RECPS Law and the regulator was renamed the Office of the Commissioner of Electronic Communications and Postal Regulation ('the OCECPR'). The OCECPR is headed by the Commissioner of Electronic Communications and Post<sup>8</sup> who is appointed by the Council of Ministers for a period not exceeding six years upon consultation with the Parliamentary Committee for European Matters. The RECPS Law also provides for the appointment of a Deputy Commissioner and an Advisory Committee to support the Commissioner.

As the National Regulatory Authority in Cyprus, the OCECPR is responsible for the *ex-ante* regulation of electronic communication matters apart from spectrum management, which is regulated by the Department of Electronic Communication of the Ministry of Communication and Works. The RECPS Law in general determines the procedures for granting licences for electronic communication and post services to fulfil the government's plans. A good example is the award of a mobile telecom licence to Scancom, which traded under the trade mark of 'Areeba'.<sup>9</sup> Since the RECPS Law was passed, competition has arisen among firms,<sup>10</sup> but the 2004 Law ensures that competition among firms proceeds in a fair manner, subject to the requirements of competition law. While the OCECPR deals

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5 RECPS Law, s 2.

6 RECPS Law, s 18.

7 Law Number 19(1)/2002.

8 The functions, powers, and duties of the Commissioner are set out in Part 5 of the RECPS Law (sections 20–24).

9 Scancom is a private firm that made its appearance in the Cyprus market on 12 July 2004 and trades as a company under the name 'MTN'. Areeba, which was taken over and renamed 'MTN', Cyprus, was the final bidder for the first commercial licence in 2005 (removing at that time the Greek bidder OTE which was also participating in the bidding).

10 A price war began in 2005 between the Cyprus Telecommunications Authority and its competitor Areeba when the Cyprus Telecommunications Authority refused to accept a Commission ruling that it should reduce higher prices, but the Supreme Court ruled in favour of Areeba.

with *ex-ante* competition matters relating to the provision of electronic communication services, all ex-post competition issues relating to the activities of service providers are dealt with by the Commission for the Protection of Competition.

Following the decision of the Commissioner of Electronic Communications and Postal Services Law in 2011<sup>11</sup> in line with legislation,<sup>12</sup> the Cyprus Telecommunications Authority was designated by the Commissioner as the provider of Universal Service for three years, starting from the publication date of the decision, for the entire set of services in the field of Universal Electronic Services Provider as defined in the RECPS Law.<sup>13</sup> As a condition of international financial support provided to Cyprus in 2013, intensive talks have commenced on the possible privatisation of the Cyprus Telecommunications Authority.

## Legal Sources of Regulation and Enforcement

### Primary Legal Sources

Under Cyprus law, telecommunication activities and services fall under the umbrella of electronic communications and are regulated under the RECPS Law, which establishes the terms of regulation in relation to networks and services required for the implementation of electronic communication as well as the associated services and facilities that are required for the application of a harmonized regulatory framework of regulation within the EU with the objective to facilitate the convergence of the branches of telecommunication, information technology, and electronic media sectors. The main statutes relating to electronic communications in Cyprus are:

- The Regulation of Electronic Communication and Postal Services Law, Law Number 112(I)/2004, as amended in 2012, and secondary legislation and Orders (the ‘RECPS Law’),<sup>14</sup>
- The EU Regulatory Package 2002,<sup>15</sup> as implemented by the RECPS Law;

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11 Decision for the Determination of the Cyprus Telecommunications Authority as the Provider of Universal Service in the Sector of Electronic Communication 2011, published in the *Cyprus Gazette* on 4 March 2011 as Individual Administrative Act Number 170.

12 Subsidiary Administrative Acts Number 138/2005 and Number 88/2007 and sections 108 and 109 of the RECPS Law.

13 Regulation of Electronic Communications and Postal Services Law, Law Number 112(I) of 2004, as amended.

14 The Law abolished and replaced the Office of the Commissioner of Telecommunications and Postal Regulation; Law Number 19(I)/2002.

15 The European Union Regulatory Package 2002: Directive (2002/21/EC) on a common regulatory framework, Directive (2002/19/EC) on access and interconnection, Directive (2002/20/EC) on the authorisation of electronic communications networks and services, Directive (2002/22/EC) on universal service and users’ rights relating to electronic communications networks and service, Directive (2002/59/EC) on privacy and electronic

- EU Directive 2006/24/EC on Data Retention;
- The Law on Preservation of Telecommunications Data for the Purpose of Investigating Serious Criminal Offences, Law Number 183(I)/2007 (the ‘POTD Act’);
- The Order Stipulating Organisations with Significant Market Power (Telecommunications) of 2003,<sup>16</sup> under which significant market power obligations have been conferred in the telecommunications sector;<sup>17</sup>
- The Decision on the Methodology of the Determination of the Electronic Communications Market of 2005;<sup>18</sup>
- The Order for the Determination of the Setting of Procedures and Analysis of the Electronic Communications Market of 2005;<sup>19</sup>
- The Radiocommunications Law Numbers of 2002-2013, as amended;
- The Radiocommunications (Competition and Negotiation Procedures) Regulations of 2002-2012, as amended;
- The Radiocommunications (Radioequipment) Regulations of 2003-2011, as amended;
- The Radiocommunications (Fees) Regulations of 2004-2012, as amended;
- The Radiocommunications (Authorisations) Regulations of 2004-2012, as amended;
- The Radio and Television Broadcasting Stations Law (Law Number 7(I)/1998), as amended 1998-2013; and
- The Radio and Television Broadcasting Regulations 2000.

### **Enforcement Agencies and International Institutions**

#### *National Regulatory Authority*

The OCECPR is the National Regulatory Authority (NRA) for telecommunications, is a member of the Body of European Regulators in Electronic Communications (BEREC), and is a founding member of the Euro-Mediterranean Regulators Group<sup>20</sup> (EMERG). The OCECPR also is a member of the European Network and Information Security Agency (ENISA).<sup>21</sup>

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communications, and Directive (2002/77/EC) on competition in the markets for electronic communications services.

16 Order of the OCECPR, Number 1/2003 of 24 April 2003.

17 In accordance with the Order, the OCECPR sets out to identify which organisations and enterprises have significant market power, as provided by Law Number 19(I)/2002.

18 Subsidiary Administrative Act Number 148/2005 of 24 March 2005.

19 Subsidiary Administrative Act Number 147/2005 of 24 March 2005.

20 The EMERG was established on 1 July 2008 and has as its main focus specialised regulation matters of Electronic Communication with the participation of regulatory authorities of Greece, Italy, France, Spain, Switzerland, Malta, Lebanon, and Israel.

21 ENISA is a European Union agency created to advance the functioning of the internal market. ENISA is a centre of excellence for the European member states and European

Section 53 of the RESCP Law, setting out the powers and responsibilities of the Commissioner of the OCECPR in relation to access and interconnection matters, requires the Commissioner to encourage and, where appropriate, ensure adequate access and interconnection, and interoperability of services. In so doing, the Commissioner is required to exercise his responsibility in a way that promotes efficiency, sustainable competition, and provides maximum benefit to end-users. In particular, and without prejudice to any measures that may be taken with respect to undertakings found to hold significant market power, the Commissioner may impose:

- To the extent that it is necessary to ensure end-to-end connectivity, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect networks which are not already interconnected; and
- To the extent that it is necessary to ensure accessibility for end-users of digital radio and television broadcasting services in Cyprus, obligations on operators to provide access on fair, reasonable, and non-discriminatory terms to the following facilities: (a) Application Program Interfaces (APIs) and (b) Electronic Program Guides (EPGs).

When imposing obligations on an operator to provide access, the Commissioner may prescribe technical or operational conditions that must be observed by the provider and beneficiaries of such access, in accordance with EU law, where this would be necessary to ensure the normal operation of the network.<sup>22</sup> These include conditions relevant to the implementation of specific technical standards or specifications developed by European standards organisations such as CEN, CENELEC, or ETSI. Where no relevant European standards exist, the Commissioner may refer to relevant standards established by international bodies, such as the ITU (International Telecommunications Union), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation<sup>23</sup> (ISO), or the International Electrotechnical Commission (IEC).<sup>24</sup>

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institutions in network and information security, giving advice and recommendations and acting as a switchboard of information for good practices. Moreover, the agency facilitates contacts between the European institutions, the member states, and private business and industry actors.

22 RESCP Law, s 53(3)(a).

23 The International Organisation for Standardisation is the world's largest developer of voluntary International Standards. International Standards give state of the art specifications for products, services, and good practice, helping to make industry more efficient and effective. Developed through global consensus, they help to break down barriers to international trade.

24 The International Electrotechnical Commission is the leading global organisation that publishes consensus-based International Standards and manages conformity assessment systems for electric and electronic products, systems, and services, collectively known as electrotechnology. IEC publications serve as a basis for national standardisation and as references when drafting international tenders and contracts.

### **Cyprus Radio and Television Authority**

The regulation of electronic communication services does not extend to the regulation of broadcasting and media organisations, for which the relevant authority is the Cyprus Radio and Television Authority (CRTA). The CRTA is an independent body comprising an Executive Chairman, a Vice Chairman, and five members who are appointed for a term of six years by the Council of Ministers.

It was established by the Radio and Television Broadcasting Stations Law, Law Number 7(I) of 1998. The Law, which regulates matters such as the establishment, installation, and operation of private radio and television bodies in Cyprus, endows the CRTA with wide powers and responsibilities and protects its independence and freedom from interference. Its regulation of the broadcasting sector aims at safeguarding the public interest by protecting fundamental rights and democratic principles, such as the right to freedom of expression, the right of free and pluralistic information, and transparency in the ownership of broadcasting bodies. The CRTA maintains close relations and cooperates with foreign organisations with a view to closely observing international developments in the field of radio and television. It is a member of the Mediterranean Network of Regulatory Authorities and the European Platform of Regulatory Authorities (EPRA).

The CRTA appoints a consultative body, the Radio Television Advisory Committee, which reflects public opinion, the views of government services and various interested organisations and associations, and the positions of private radio and television broadcasters. The CRTA is solely concerned with private radio and television stations broadcasting in Cyprus. Its remit does not cover the Cyprus Broadcasting Corporation (CyBC), which is a state-funded public service broadcasting organisation. The responsibilities of the CRTA, as laid down in the Radio and Television Broadcasting Stations Law, Law Number 7(I) of 1998, and Regulations of 2000, encompass the following:

- Issuing and renewing broadcasting licences for radio and television;
- Monitoring the ownership of radio and television stations so as to avoid media concentrations, monopolies and oligopolies, and so as to ensure pluralism;
- Monitoring the content of radio and television programmes to ensure compliance with the Radio and Television Broadcasting Stations Law and Regulations by broadcasters;
- Safeguarding the editorial independence of media professionals from any kind of pressures and interferences;
- Ensuring the equal treatment of political parties, particularly during pre- election periods;
- Monitoring international developments in the media field and making proposals or suggestions to the Council of Ministers as regards the need to adopt, amend, or update relevant legislation;
- Examining complaints about the content of radio and television programmes and commercials;

- Examining breaches of the law and regulations and of the code of conduct by broadcasters, and imposing sanctions, which may include recommendations, warnings, fines, and the suspension or withdrawal of licences;
- Issuing circulars and directives regarding observance of the code of journalistic conduct; and
- Implementing clauses of the European Convention on Transfrontier Television with regard to the content of the private broadcasters' programmes.

The Radio and Television Broadcasting Stations Law not only empowers the CRTA to regulate the audio-visual media but also sets out the guiding principles it is to follow, and general rules and regulations governing the broadcast of radio and television programmes and commercials. As regards the latter, the CRTA is responsible for monitoring adherence to the advertising code regarding the length, content, and placement of commercials, and the rules governing programme sponsorship, in order to ensure the editorial independence of broadcasters.<sup>25</sup>

### **Department of Electronic Communications**

The Department of Electronic Communications, part of the Ministry of Communications and Works, is the regulatory authority for spectrum management and the implementation of the framework of electronic signatures. The Radio Communication Law<sup>26</sup> assigns the Department of Electronic Communications executive powers and responsibilities for the management of the radio spectrum and coordinates and manages the government's activities on all telecommunication technical issues such as satellite communications and broadcasting networks. The Department of Electronic Communications advises the Minister of Communications and Works on all electronic communications matters and represents Cyprus in international organisations and EU committees.

The responsibilities and functions of the Department of Electronic Communications include enforcing the Radiocommunications Law and accompanying Regulations, planning and managing the National Frequency Plan, establishing provisions for the rights of use of the broadcast spectrum, issuing authorisations for the use of frequencies by all radiocommunication systems, setting relevant fees, evaluating and introducing new technologies into Cyprus, monitoring the use of radio spectrum by authorised users and detecting illegal transmissions, conducting measurements and studies regarding the exposure of the public to electromagnetic fields, managing the geostationary satellite orbit, and carrying out market surveillance regarding radio equipment in order to verify that the equipment being used and placed in the market complies with the Radio Communications (Radio Equipment) Regulations 2003.

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25 See <http://www.moi.gov.cy/moi/pio/pio.nsf/All/C111B7FD1A982578C2256D710021C3E2?OpenDocument&print>.

26 Radio Communications Law, Law Number 146(I)/2002, as amended 2002-2013.

In addition, the Department of Electronic Communications regulates the enforcement of the provisions of the Radio and Television Broadcasting Stations Law Number of 1998, relating to the signal distribution network of radio and television broadcasting stations and regulates the provision of consulting services on telecommunication matters to various government departments including the National Guard and the Departments of Civil Aviation and Merchant Shipping regarding all technical radiocommunications issues.

The Department of Electronic Communications also represents the Cyprus government in relevant international and regional telecommunications organisations and is the responsible authority for managing and implementing international obligations under conventions or other legal instruments of such organisations on technical, regulatory, management, and other related issues.

These organisations include the International Telecommunications Union (ITU), the European Conference of Postal Telecommunications Administrations (CEPT) and its Committee (European Communications Committee (ECC)), the European Radio Communications Office (ERO), the International Maritime Satellite Organisation (INMARSAT), the International Telecommunications Satellite Organisation (INTELSAT), and the European Telecommunications Satellite Organization (EUTELSAT). In addition, the Department of Electronic Communications represents Cyprus in relevant EU committees. Since 2009, the Department of Electronic Communications also has been responsible for the formulation and implementation of a comprehensive national strategy for the information society.<sup>27</sup>

## **Licensing of Telecommunications Systems**

### **Licensing Policy**

As noted earlier, while electronic communication networks and services are regulated by the OCECPR, the OCECPR is not responsible for regulation of content, which is the function of the CRTA. Under the RECPS Law, it is specified that there is no need for a licence for content services only and the provision of content type services only (without meaning that the means of provision of access to such content is excluded) such as broadcasting, radio, video on demand, and websites, except to the extent that the information can be related to the identifiable subscriber or user receiving the information; and where these services are not offered to the public.

The same also may apply where no electronic communication services are provided, expressly the transmission<sup>28</sup> of signals through the operator's own network or another licensed operator's network that are destined for public

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<sup>27</sup> See [http://www.mcw.gov.cy/mcw/mcw.nsf/mcw12\\_en/mcw12\\_en?OpenDocument&print](http://www.mcw.gov.cy/mcw/mcw.nsf/mcw12_en/mcw12_en?OpenDocument&print).

<sup>28</sup> 'Transmission' is defined as transmission which is wire line or wireless, direct or by satellite, with or without a code, and generally the transmission in any way of a radio or television signal destined for reception by the public.

reception. As stated above, telecommunication services fall into the main group of ‘electronic communication services’ that are defined under section 4 of the RECPS Law as services that are normally offered in exchange for remuneration and the provision of which constitutes, as a whole or in part, the transfer or conveyance of signals to networks of electronic communication, including telecommunication and services of transmission in networks that are used for broadcasting, but excluding services that provide or exercise editorial control over content transmitted with the use of electronic communications networks and services. In addition, information society services as defined in article 1(b) of Directive 98/34/EC, as amended or replaced, which do not wholly or mainly consist of the conveyance of signals on electronic communication networks, also are excluded from the requirement for licensing.

In addition, it is provided under Order Number 851/2004 that no general authorisation is required under Cyprus law for the introduction, provision, distribution, commercial exploitation, installation, and operation of terminal equipment of electronic communication.

### **Grant of Licences**

Under section 4 of the RECPS Law, an ‘electronic communication network’ is defined as the transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical, or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

Based on the definitions in the RECPS Law, an electronic communications service provider is a person<sup>29</sup> who, on a wholly or partly commercial basis, provides an electronic communication service, or *de facto* contributes to the provision of such service.

The RECPS Law, section 4, introduces the concept of a ‘general authorisation’ that permits an undertaking to provide a postal or electronic communications network or service under the Law, subject to compliance with its terms and conditions, and subject to specific obligations that may apply to all or specific types of postal or electronic communications networks or services. Any person who intends to provide an electronic communications network or an electronic communications service is required to notify the Commissioner of their intention to do so on the appropriate form, accompanied by the prescribed supporting documents, as provided by section 38 of the RECPS Law.

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<sup>29</sup> A ‘person’ is defined in the RECPS Law as a natural or legal person and includes a company, a branch, a foundation, an association or any other union or collaboration of persons with a legal personality or not.

According to Order Number 851/2004,<sup>30</sup> a general authorisation is sufficient for any activity of electronic communication that concerns the creation, installation, operation, administration, exploitation, and provision of networks or services of electronic communication, except where individual numbers are required or radio frequencies are involved (in which case separate authorisations are required). A general authorisation must be renewed annually by payment of the prescribed fee. An applicant for authorisation must be an established legal entity in Cyprus. The usual corporate form is a limited liability company incorporated under the Companies Law.<sup>31</sup>

In accordance with section 40(1) of the Regulation of Electronic Communications and Postal Services Law, an undertaking operating pursuant to a general authorisation may: provide electronic communications networks or services, as described in its notification; and apply for the necessary rights to be granted by the competent authorities including the Commissioner to install facilities on, over, or under public or private property for the purposes of providing public communications networks or electronic communications networks other than those supplied to the public.

In accordance with section 40(2) of the Regulation of Electronic Communications and Postal Services Law, where an authorised undertaking is providing an electronic communications service or network to the public, the general authorisation also gives them the right to negotiate interconnection with and where applicable obtain access to or interconnection from other undertakings licensed in Cyprus or in another member state to provide a publicly available electronic communication network or service, and be given an opportunity by the Commissioner to be designated to carry out Universal Services.

Section 40(4) of the Regulation of Electronic Communications and Postal Services Law requires the Commissioner to provide applicants with a standardised statement of the provisions regarding the submission of applications for provision of rights for establishment of facilities and negotiation of access and interconnection.

#### **Fulfilment of Notification Requirement for General Authorisation**

As noted above, section 38 of the RECPS Law requires any person who intends to provide an electronic communications network or an electronic communications service to notify the Commissioner. The following details are required:

- The name of the notifying undertaking including, in the case of a body corporate, the company registration number;
- The names, addresses, and contact numbers of relevant contact persons;
- The business address of the undertaking concerned and, in the case of a body corporate, where that address differs from the address of its registered office, the address of its registered office;

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30 RECPS Law, ss 38(2), 41(2), and 152.

31 Companies Law, Cap 113.

- A short description of the network or service the subject matter of the notification, including a statement as to whether the relevant network or service is to be publicly available; and
- The estimated date of commencement of the service.

Any changes in the proposed activities (including discontinuance of services) or other details must be notified to the OCECPR within 30 days. Section 38(3) of the RECPS Law requires the Commissioner to maintain a register of licensed providers. The register is available on the OCECPR website.

### **Telephone Networks and Services**

Under Cyprus law,<sup>32</sup> a public telephone network (PSTN) is defined as an electronic communications network used to provide publicly available telephone service; which supports the transfer between network termination points of speech or other audio communication, and other forms of communication, such as facsimile and data.

A publicly available telephone service (PATS) is defined as a service available to the public<sup>33</sup> for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services:

- The provision of operator assistance, directory inquiry services, and directories;
- The provision of public pay phones,
- The provision of service under special terms;
- The provision of special facilities for customers with disabilities or special social needs; or
- The provision of non-geographic services.

VoIP services may be considered by the OCECPR as PATS, if such service is not confined to mere termination of calls to other VoIP subscribers via internal extensions. By extension, where an undertaking provides service configurations that include the above, it may be considered a PATS provider. Providers of Publicly Available Telephone Services must comply with the additional obligations of:

- Providing a public directory;
- Providing one comprehensive telephone directory enquiry service available to all end users, including users of public pay telephones (applicable under the universal service provider obligations); and
- Enabling portability of assigned numbers.

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<sup>32</sup> RECPS Law, s 4.

<sup>33</sup> There is no set definition of the meaning of the word 'public' in the RECPS Law.

The provision of an electronic communications network is defined as the establishment, operation, control, or making available of such a network; furthermore, an electronic communications network (as noted above) is defined under section 4 of the RECPS Law to mean transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical, or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

Depending on the services being provided, additional licences may be needed. For example, if the undertaking is providing wireless services, then authorisation is required from the Ministry of Communication and Works.

#### **Conditions and Terms of Licences and Fees**

The OCECPR regulates the matter of licences and their pricing, as well as regulating the prices charged by significant market power service providers. Undertakings must file the general authorisation application with the OCECPR and pay the relevant fee.

In the case of new applicants, in relation to which no income information is yet available, there is a minimum initial fee of €850 for registration. However, in determining the relevant fee, the OCECPR may take into account any income projections submitted with the application.

The first administrative fee is payable at the latest during the submission of the relevant documents and their filing by the OCECPR. Where registration is made after 30 June, the fee is reduced by 50 per cent. Every subsequent annual administrative fee is usually payable on 30 November of each year and this fee is calculated on the gross annual income of the company from electronic communication activities.

Section 61 of the RECPS Law requires undertakings to keep separate accounts for the activities associated with the provision of electronic communications networks or services. Service providers' gross income must be certified and notified to the Commissioner annually by an independent certified public accountant, no later than 30 June of the following year. Separate charges apply in relation to any authorisations from the Department of Electronic Communications or CRTA that may be required.

#### **Modification of Licenses**

Service providers must keep accurate and up to date information regarding the quality of their services and submit a summary to the Commissioner every three months. Under sections 42 and 43 of the RECPS Law, the Commissioner may require service providers to provide information necessary to verify compliance

with the conditions of the general authorisation or other licence according to the timeframe and the extent of detail determined by the Commissioner.

Service providers may notify the Commissioner of any changes in the relevant information within 30 days (section 38(4) of the RECPS Law). Section 38(5) requires service providers ceasing to carry on business in Cyprus to notify the Commissioner within 30 days.

### **Revocation of Licenses**

The Order for the Collection of Information and Imposition of Administrative Penalties 2008<sup>34</sup> contains a general requirement for all service providers to comply with the terms and conditions of the general authorisation or individual rights for use of numbers or frequencies. As noted earlier, the OCECPR monitors and evaluates due compliance with such terms and the Commissioner has the right to search any premises and collect any information in order to discharge this duty.

Where the Commissioner finds any undertaking to be in breach of any condition of its licence, the undertaking is informed of the breach and given a time limit for rectification. The Commissioner also may impose monetary penalties and may issue a Decision requiring the undertaking to cease certain activities.

In case of serious and repeated violations the Commissioner also may revoke or suspend such rights of use and disallow the continuation of further provision of electronic communication services or networks.

Failure to comply with the RECPS Law (eg, by operating an unauthorised service) is a criminal offence punishable by imprisonment for up to six months, a fine of up to €5,000, or both. The Commissioner also may impose an administrative fine of up to twice the amount of any unfair gain resulting from the failure to comply. If a company is found guilty of a breach, each shareholder may be fined individually.

In addition, knowingly participating in the operation of an unauthorised network in any way, including managing it, providing or repairing equipment, or rendering any other service, is a criminal offence punishable by imprisonment for up to six months, a fine of up to €850, or both. In addition, the OCECPR has the power to impose administrative fines of up to €300,400 depending on the gravity of the offence and whether it is a repeat offence.

### **Data Protection Obligations under General Authorisation**

Undertakings which acquire information from another undertaking before, during, or after the process of negotiating access or interconnection arrangements are required to use that information solely for the purpose for which it was supplied and to respect at all times the confidentiality of information transmitted or stored. The information may not be passed on to any party to whom it could provide a

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34 Subsidiary Administrative Act Number 300/2008.

competitive advantage, particularly other departments, subsidiaries, or partners of the party receiving the information.

Undertakings must also comply with privacy requirements in accordance with the Data Protection Law and the RECPS Law as regards traffic and billing data. Sections 98 and 99 of the RECPS Law require public electronic communications network or service providers to take all necessary technical and administrative measures in order to safeguard the security of their networks and services, at a level which is commensurate with the degree of risk having regard to the cost of implementation of such security systems and the latest technical capabilities. Undertakings and their employees must take appropriate technical and organisational measures to safeguard the security of their services and the confidentiality of any communication.

The use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a subscriber or user is allowed only on the condition that the subscriber or user concerned is provided with clear and comprehensive information about the purposes of the processing, and is offered the right to refuse such processing by the data controller.

This restriction does not apply to any technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

### **Special Licences**

In accordance with section 41(1)-(9) of the RECPS Law, the Commissioner will issue rights of use for numbers or a series of numbers to service providers for their own use and for allocation to their subscribers following a written request from the service provider. There is a charge, which is related to the type and number of numbers requested. In allocating scarce numbers the Commissioner is required to ensure that there is no unfair discrimination.

When issuing individual rights, the Commissioner may impose conditions that must be observed by the recipient. The RECPS Law<sup>35</sup> also sets out procedures for the award of licences to provide ‘universal services’ to which all citizens in Cyprus may have access, such as:

- Connection at a fixed location to the public telephone network and access to publicly available telephone services at a fixed location;
- Directory enquiry services, and directories in any form;
- Public pay telephones;
- Special measures for disabled or socially disabled end users;
- Operator assistance services; and

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<sup>35</sup> RECPS Law, Part 15.

- Free access to emergency services, using the call number ‘112’ or other emergency numbers.

### **Mobile Network**

In terms of revenue generation, the mobile sector maintains a lead and, according to the latest market report of the OCECPR for the period June 2009–June 2013, the total number of mobile telephone users in proportion to the population of Cyprus (mobile penetration rate) was 130 per cent, compared with the EU average of 124.2 per cent.

During the first half of 2013, pre-paid mobile telephony accounted for slightly more than half the market and subscription or monthly mobile telephony accounted for the remainder. The Cyprus Telecommunications Authority was the service provider with the highest market share (74 per cent), with MTN accounting for 24 per cent and PrimeTel two per cent.

PrimeTel became the third mobile telephony provider after concluding an MNVO access agreement in 2011 in line with the OCECPR's regulatory obligation to uphold competition and promote interconnectivity access, and conclusion of an amendment to the National Numbering Plan for the provision of numbers to operators that own the appropriate network structure.<sup>36</sup>

### **Satellite Services**

The Department of Electronic Communications is responsible for the administration of satellite resources and Cyprus satellite earth stations and the OCECPR is responsible for the provision of electronic communication services via satellite. A general authorisation is required in order to provide services.

### **Frequency Management**

Individual rights for the use of radio frequencies require separate authorisations and are not within the scope of general authorisations granted by the OCECPR. Licences for the use of frequencies are issued by the Department of Electronic Communications, the branch of the Ministry of Communications and Works that is responsible for the management of the radio spectrum and for advising the Minister of Communications and Works on radio spectrum policy issues.

The Department of Electronic Communications develops and maintains the National Frequency Plan, authorizes the use of the radio spectrum (including the assignment of frequencies to broadcasting stations) and monitors spectrum usage. In line with EU Decision 243/2012, establishing a multiannual radio spectrum policy programme, the Department of Electronic Communications carried out a

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36 European Commission, Information Society and Media Directorate-General, Electronic Communications Policy, Implementation of Regulatory Framework, ‘2011 Telecommunication Market and Regulatory Developments’.

public consultation on this matter<sup>37</sup> and organised the auction of the 900 MHz, 1800 MHz, and 2100 MHz radio frequency bands for the establishment and operation of a third electronic communications network for the provision of electronic communications services in Cyprus,<sup>38</sup> the deadline for which was set at 25 September 2013. Applications had also been invited for the 2600 MHz band but no applications were received and the sale was cancelled.<sup>39</sup>

## **Terminal Equipment**

### **Approval Procedures**

In Cyprus, the OCECPR is the relevant authority for matters relating to telecommunication terminal equipment, particularly certification and approval. The OCECPR's powers in relation to the regulation of terminal equipment are defined in the RECPS Law and the Telecommunications Terminal Equipment Regulations,<sup>40</sup> which are in line with the Radio Equipment and Telecommunications Terminal Equipment EU Directive 1999/5/EC and where all criteria and requirements relating to the specifications of terminal equipment are listed including, the need for the CE certification.

The Department of Electronic Communications is the responsible authority for market surveillance of radio equipment. According to the Market Surveillance Programme 2013,<sup>41</sup> published in February 2013, the Department of Electronic Communications market surveillance approach is based on consumer complaints, pan-European market surveillance campaigns organised by R&TTE ADCO, information from the Customs and Excise Department, CIRCA notifications through article 9 of the R&TTE Directive, and RAPEX notifications. The Department of Electronic Communications mostly performs administrative checks and basic technical tests. According to the same report, in 2013, the OCECPR will focus on tablet devices and smart phones.

### **Electromagnetic Compatibility**

Equipment that is regulated by Directive 1995/5/EC is excluded from the application of legislation relating to electromagnetic compatibility.<sup>42</sup>

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37 Public consultation for the authorisation of the frequency bands 800MHz, 900MHz, 1800MHz, 2100MHz, and 2500MHz, to and for amending existing rights of use of radiofrequencies (MTN and the Cyprus Telecommunications Authority) in the frequency bands 900MHz, 1800MHz, and 2100MHz issued by the Department of Electronic Communications of the Ministry of Communications and Works Public Consultation Document dated 28 February 2013.

38 Reference Code Number 1/2013.

39 The announcement was issued on 11 October 2013.

40 2003 Subsidiary Administrative Act Number II.332/2003.

41 See [http://ec.europa.eu/enterprise/policies/single-market-goods/files/market\\_surveillance/nmsp/cy-nmsp-2013\\_en.pdf](http://ec.europa.eu/enterprise/policies/single-market-goods/files/market_surveillance/nmsp/cy-nmsp-2013_en.pdf).

42 Basic Requirements (Electromagnetic Compatibility) Regulations 2007, Subsidiary

### **Domestic Resale Restrictions**

Assuming the compatibility and legality of such equipment under the relevant legislation of Cyprus, there are no prohibitions or restrictions on domestic resale in Cyprus, and the free movement of goods in Cyprus and between Cyprus and other EU member states is ensured under the Treaty on the Functioning of the European Union.<sup>43</sup>

## **Radio Communications and Broadcasting**

### **Licensing of Systems Using Radio**

In order for an interested party to submit an application to be granted a licence to establish, install, and operate a radio station there must first of all be an available frequency. The licence for a radio station may be specified to be for full national coverage, or local or limited local coverage.

According to section 13(1) of the Radio and Television Broadcasting Stations Law of 1998 (as amended), the number and coverage of radio stations are determined by the CRTA on the basis of the broadcasting scheme prepared by the Department of Electronic Communications, which specifies the frequencies, power, and location from which licensed radio and television stations may transmit.

The radio coverage scheme is published in the *Official Gazette* and a period of three weeks from publication is allowed for objections. Objections must be submitted to the CRTA and must set out the grounds on which they are based. The CRTA examines any objections and submits its report and recommendations to the Department of Electronic Communications.<sup>44</sup> If there are multiple objections, the Department of Electronic Communications refers the CRTA report and its own revised proposals to the Council of Ministers for a final decision. After the revised scheme has been published in the *Official Gazette*, applications for licences may be submitted to the CRTA. Applications are in a prescribed form, and consist of three parts:

- A description of the applicant in accordance with the form in Appendix II for broadcasting bodies;
- A description of the proposed services and staff in accordance with the form in Appendix IV for broadcasting bodies; and

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Administrative Act Number II.141/2007, s 3(1), harmonising Directive 2004/108/EC of the European Union Parliament and of the Council of 15 December 2004 on the approximation of the laws of the member states relating to electromagnetic compatibility and repealing Directive 89/336/EEC.

<sup>43</sup> Treaty on the Functioning of the European Union (Consolidated Version 30 March 2010), ch 3.

<sup>44</sup> See <http://www.crt.a.org.cy/default.asp?id=270>.

- A description of the proposed technical means and funding in accordance with the form in Appendix V.<sup>45</sup>

### **Broadcasting**

The common broadcasting points are determined by the Coverage Broadcasting Plan, which is prepared by the Department of Electronic Communications. A technical inspection, which includes measurement of the signal strength and *in-situ* measurement of the signal to broadcasting stations, is conducted by the Department of Electronic Communications. The CRTA may take action to stop interference with the signal of licensed broadcasters and in appropriate cases may request the Department of Electronic Communications to find an alternative frequency to which the CRTA may allocate the station.<sup>46</sup>

According to the Radio and Television Broadcasting Stations Regulations 2000,<sup>47</sup> each licensed station is responsible for establishing its own broadcast network<sup>48</sup> and may negotiate any co-location arrangements privately with other broadcasters. The OCECPR examines whether, and to what degree, the various services and networks offered in Cyprus fall within the relevant market, namely, the broadcasting of transmission services to deliver broadcast content to end users. In this respect, the OCECPR will evaluate the broadcasting services that offer terrestrial analogue, cable, xDSL networks, and satellite platforms using analogue or digital technology and examine the competition in the market. The platforms that provide transmission services to end users in Cyprus today are cable, satellite, digital, analogue, and xDSL networks.

On the retail level, the distribution of services is handled by the operator of the platform to the end user via an antenna (in the case of analogue transmission), cable connection with the use of a decoder (in the case of coded signal), satellite dish (in the case of DTH satellite), or via a transmitter (for MMDS, digital cable, and DTH satellite reception). In relation to the services transmitted via xDSL, the distribution is usually provided via a modulator (ADSL modem).<sup>49</sup> Cyprus discontinued analogue transmission of television in line with the target deadline recommended by the Commission, ie, 1 January 2012.<sup>50</sup>

The RECPL provides for the specifications required to be followed by sellers of television sets and includes the requirement for televisions to be capable of connection to a decoder whether via transcoder cards or interface connections such

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45 The order in which applications are examined is determined on the basis of criteria determined by the CRTA.

46 Radio and Television Broadcasting Stations Law Number of 1998, (Law Number 7(I)/1998), as amended.

47 Subsidiary Administrative Act 10/2000.

48 CRTA, ss 11–14; Radio and Television Broadcasting Stations Regulations 2000, regs 17–20.

49 Public Consultation Document on Market Analysis of Electronic Communication issued by OCECPR with reference number AA18/EK/2006.

50 COM(2009) 586 and C(2009) 8287.

as SCART,<sup>51</sup> HDMI, RCA, and S-video, or to have integrated MPEG-4 receivers via aerial cables. At the beginning of 2011,<sup>52</sup> the private consortium Velister Ltd (consisting of six private broadcasters and the distributors Primetel and Cablenet) launched a second multiplex, dedicated to private channels.

In June 2012, Velister was broadcasting nine free channels (with the addition of NRG-MTV) and a pay-DTT package composed of six channels and produced by LTV (Lumiere TV). The transition to DTT had a strong impact on the local television landscape in Cyprus. In the absence of a local DTT network, several local stations have begun to broadcast nationally, in some cases with a revised programme schedule, while others have had to cease broadcasting either temporarily or permanently.<sup>53</sup>

## **Competition Law**

### **In General**

The OCECPR is responsible for promoting effective competition in the market for the supply of networks and electronic communication services in Cyprus. It has the power to review the accounting records, information and other business documents of providers of electronic and postal services, and to carry out investigations at their offices and other facilities, and may consult with the Commission for the Protection of Competition.

### **Significant Market Power**

The current European regulatory framework<sup>54</sup> designates 18 specific markets requiring a detailed analysis in order to ascertain the extent to which any organisation enjoys significant market power, and, if so, to put in place appropriate regulatory obligations in order to ensure the development of a healthy competitive market and protect the interests of consumers. Section 46 of the RECPS transposes the European provisions into national legislation.

### **Organisations with Significant Market Power**

Order Number 1/2003 issued by the OCECPR classifies the Cyprus Telecommunications Authority as an organisation of significant power in six markets, namely voice telephony, fixed public networks, mobile telephony, mobile

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51 Official Prototype for the SCART Interface Being CENELEC Document Number EN50049-1.

52 According to the MAVISE country study: TV and on-demand audiovisual services in Cyprus. The MAVISE database is edited and published by the European Audiovisual Observatory; <http://mavise.obs.coe.int/country?id=8>.

53 According to the MAVISE country study: TV and on-demand audiovisual services in Cyprus. The MAVISE database is edited and published by the European Audiovisual Observatory; <http://mavise.obs.coe.int/country?id=8>.

54 Directive 2009/140/EC.

telephony networks, interconnection, and leased lines. In these markets the Cyprus Telecommunications Authority is under a series of obligations, including an obligation to provide access and interconnection to network providers, to account separately for the activities, and to offer co-location and leased line services. Its retail prices are controlled and determined by the OCECPR.

### **Media Cross-Ownership Restrictions and Foreign Participation**

There are no rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite, or other wireless operations. There is no discrimination between local and foreign ownership so long as the required provisions of the law are upheld.

### **Licence Conditions: Exemptions from General Law on Anticompetitive Agreements, Special Procedures, and Restrictive Practices**

In respect of any requirement for proper authorisation to provide electronic communications networks and services other than particular situations requiring an individual right of use or authorisation in relation to the use of radiofrequencies, no administrative act is required on the part of the Commissioner of the OCECPR as a precondition for the provision of electronic communications networks and services within the Republic of Cyprus. There is merely a requirement for the service provider to notify the Commissioner of the OCECPR in advance of taking steps to provide an electronic communications network or an electronic communications service.

Nevertheless, the service provider will be required to obtain the necessary local permits and other rights to install facilities from government bodies competent to grant such rights. The grant of individual rights of use will be necessary where an applicant needs to use scarce resources such as radio frequencies or numbers, including short codes, from the Cyprus Numbering Plan. If those individual rights of use must be restricted in number because of unavoidable scarcity of such resources, any restrictions must be managed in an objective, transparent, non-discriminatory, and proportionate manner. The assignment of numbering resources falls within the exclusive competence of the Commissioner of the OCECPR.

Exceptionally, and exclusively for reasons of public order, health, and safety, the OCECPR may at any time restrict or prohibit a specific undertaking from providing electronic communications networks or services. Therefore, any restrictions on the provision of electronic communications networks and services may only be imposed on the grounds of safeguarding public order, public security, and public health.

## **Network Interconnection**

### **Regulatory Background**

Among the key functions of the Commissioner of the OCECPR set out in section 20 of the RECPS Law is the responsibility ‘to regulate by Order or Decision access and interconnection, consistent with the principle of proportionality, by ensuring

that appropriate, proper and adequate levels of access and interconnection are available, as well as ensuring that interoperability of services is achieved, in a manner and method which also pursues and achieves the aims of economic and financial efficiency, viable healthy competition and provides maximum benefit to end users’.

### **Factors in Interconnection Agreements**

Where an authorised undertaking provides an electronic communications service or network to the public, its general authorisation also gives it the right to negotiate interconnection with and obtain access or interconnection from other undertakings or enterprises authorised in Cyprus or in another member state to provide a publicly-available electronic communication network or service.

In addition the Commissioner of the OCECPR may confer rights and impose obligations on undertakings and enterprises in relation to access and interconnection, in order to achieve the interoperability of electronic communications services and create sustainable effective competition.

The Commissioner of the OCECPR resolves issues relating to access and interconnection either on its own initiative or following the submission of a complaint. When it receives a complaint, the OCECPR informs the respondent and is generally able to broker a mutually acceptable solution between the complainant and the respondent. If the OCECPR is unsatisfied with the respondent’s response or if the complainant gives notice in writing that the complaint has not been satisfactorily dealt with, the Commissioner of the OCECPR may issue a decision which is binding on the respondent.

The Commissioner of the OCECPR has issued two orders, which derive from the implementation of Directive 2002/19/EC of the European Parliament and Council of 7 March 2002, in relation to access to electronic communications networks and related facilities, as well as their interconnection. The Order on Calculation of Interconnection Charges of 2005<sup>55</sup> sets out the framework for calculating interconnection charges based on the relevant costs and establishes a framework for segregating costs. The order also outlines the general principles for imposition of costs in interconnection services and the consultation process regarding segregation of costs.

The Order on the Process of Imposing Amendments on Model Interconnection Offers of 2007<sup>56</sup> aims at the evaluation and analysis of the process of imposing amendments on Model Interconnection Offers, which must be published by the interested organisations following the issuance of a relevant order of the Commissioner of the OCECPR.

Following the adoption of the new European legislative framework, particularly Directive 2009/140/EC of the European Parliament and of the Council of 25

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55 Subsidiary Administrative Act Number 16/2005.

56 Subsidiary Administrative Act Number II.112/2007.

November 2009,<sup>57</sup> the RECPS Law was updated and amended in order to incorporate the new provisions in relation to access to and interconnection of electronic communications networks, services, and affiliated facilities. The OCECPR has issued a number of Regulations under the RECPS Law clarifying practical aspects of implementation, including:

### **Interconnection**

Organisations with significant market power are obliged to interconnect their networks with the networks of new providers. To this purpose, they are obliged to publish a Reference Interconnection Offer (RIO).

The minimum content and rate of charge are regulated by the Commissioner who has extensive powers to amend the RIO. The content and procedure for amendment is provided by regulations and includes public hearings, costing systems, and methods for determining rates as well as the framework of charges.

### **Unbundling Local Loop and Sub-Loop**

The RECPS Law requires significant market power organisations to provide fully unbundled access to the local loop and sub loop to new entrant undertakings in this particular field of activity, under the same terms, with the same quality and with the same time frames as those applicable to them. significant market power organisations are obliged to publish a Reference Unbundling Offer (RUO) and LLU costs and the OCECPR has the power to impose amendments in the same way as for RIOs.

### **Co-Location**

Co-location is obligatory subject to feasibility and the relevant regulations set out the methodology for determining compensation and for reservation of space available for co-location purposes.

### **Leased Lines**

Organisations with significant market power are obliged to make leased lines available and to publish Reference Offers, which are subject to approval by the OCECPR.

### **Market Analysis**

The RECPS Law requires a market analysis to take place at least every three years. This market analysis forms the basis for the identification of providers with

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<sup>57</sup> The Directive amends Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, Directive 2002/19/EC on access to, and interconnection of electronic communications networks and associated facilities, and Directive 2002/20/EC on the authorisation of electronic communications networks and services.

significant market power and the imposition of regulatory requirements and obligations on them.

The Regulation deals with the procedures for market analysis in detail, including consultation requirements. Any obligations imposed on organisations found to have significant market power must be proportionate, and the Regulation provides a dispute resolution procedure. Other Regulations provide for a National Numbering Plan and number allocation, universal service (content and cost), terminal equipment, and terrestrial digital television.

### **Impact of Competition Law**

Section 18(1) of the RECPS Law imposes responsibility on the Commissioner to promote effective competition as regards the provision of electronic communications and postal services. The national legal framework relating to protection of competitive markets is set out in the Protection of Competition Law, Law Number 13(I)/2008, and the Control of Concentrations between Undertakings Law 1999–2000 (the ‘Merger Law’) and enforced by the Commission for the Protection of Competition.

### **Antitrust Matters, Anticompetitive Agreements, Decisions, and Concerted Practices**

Section 3(1) of the Competition Law prohibits all agreements between undertakings, decisions by associations of undertakings, and concerted practices that have as an object or effect the prevention, restriction, or distortion of competition within the Republic of Cyprus, particularly those which:

- Directly or indirectly fix purchase or selling prices or any other trading conditions;
- Limit or control production, market, technical development, or investment;
- Share markets or sources of supply;
- Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
- Make the conclusion of contracts subject to acceptance by other parties, of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Section 4(1) of the Competition Law provides an exemption for arrangements that would otherwise be prohibited by section 3(1) if they satisfy the following conditions:

- They contribute, with the reasonable participation of consumers in the resulting benefit, to the development of production or distribution of goods or in the promotion of technical or financial development;

- Restrictions are no more than are absolutely necessary for the achievement of the above-mentioned purposes; and
- They do not allow the participating undertakings to eliminate competition from a substantial part of the market for the product concerned.

### **Abuse of Dominant Position**

In accordance with section 2 of the Competition Law, dominant position in relation to an undertaking means the position of market power that an undertaking holds that enables it to obstruct the maintenance of effective competition in the market for a particular product and to act independently from its competitors and customers and ultimately from consumers.

Section 6 of the Competition Law prohibits the abuse of a dominant position within the local market or in a substantial part of it, specifically where the conduct concerned may directly or indirectly impose unfair purchase or selling prices or other unfair trading conditions; limit production, markets, or technical development to the prejudice of consumers; apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which by their nature or according to commercial usage have no connection with the subject of such contracts.

Section 6 also prohibits the abuse of a business dependency between undertakings (for example, the dependency of a small supplier on a large organisation that is its only or principal customer). Abuse may include the imposition of arbitrary terms of business, discriminatory treatment, the discontinuance of commercial relations by the assumption or transfer of the activities developed in a way that substantially influences competition, or the sudden and unjustified discontinuance of long-term commercial relations.

In 2012, the Commission for the Protection of Competition imposed a fine of more than €2 million on the Cyprus Telecommunications Authority for infringing section 6(1)(a) of the Competition Law following a complaint by PrimeTel, a competitor. In its Decision of 10 December 2012,<sup>58</sup> the Commission concluded that the Cyprus Telecommunications Authority held a dominant position in the retail and wholesale markets for broadband access and was using it to disadvantage its competitors in the market for the provision of retail broadband access and to reinforce its position in the market for retail pay television.

The Commission considered the infringements were particularly serious because the Cyprus Telecommunications Authority's conduct was intended to discourage other businesses from operating within the electronic communications sector. The Cyprus Telecommunications Authority has indicated that it intends to challenge the Commission for the Protection of Competition's Decision in the Supreme Court. In other complaints regarding abuse of dominant position in the mobile telephony

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<sup>58</sup> Commission for the Protection of Competition Decision Number 58/2012.

sector, the Commission has concluded that, although the Cyprus Telecommunications Authority held a dominant position, its conduct in the particular instances did not amount to abuse.<sup>59</sup>

### **Mergers, Acquisitions, and Control of Concentrations**

The general law dealing with the prevention of anticompetitive consequences of business mergers and takeovers, namely the Control of Concentrations between Undertakings Law 1999–2000, applies to the telecommunications sector. Under the Merger Law, proposed concentrations of businesses meeting certain criteria must be reported to the appropriate competition authority and approval must be obtained before the concentration proceeds.

A concentration takes place if two or more previously independent undertakings merge, if one or more persons already controlling at least one undertaking, or one or more undertakings acquire, directly or indirectly, control of the whole or parts of one or more of another undertaking, or if a joint venture is established, which permanently carries out all the functions of an autonomous economic entity.

Under section 3, the Merger Law is applicable if at least two of the undertakings merging have a total turnover of more than €3.4 million each, at least one of them engages in commercial activities within Cyprus, and at least €3.4 million out of the aggregate turnover of all the participating undertakings relates to activities within Cyprus. In addition, the Minister of Energy, Commerce, Industry, and Tourism may declare a proposed concentration to be of sufficient significance as to fall within the scope of the Merger Law.<sup>60</sup>

The provisions of the Merger Law follow Council Regulation (EC) 139/2004 on the control of concentration between undertakings. The parties to the proposed merger are required to submit information to the Competition Service of the Commission for the Protection of Competition. On the basis of the report submitted by the Competition Service the Commission for the Protection of Competition determines whether the concentration is capable of being declared compatible or not with the demands of the competitive market.

The Commission for the Protection of Competition may determine that the proposed concentration does not come within the scope of the Merger Law, or that

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<sup>59</sup> Commission for the Protection of Competition Decision Number 8/2011; Commission for the Protection of Competition Decision Number 22/2013. The complaint was made by Areeba Ltd against the Cyprus Telecommunications Authority concerning the national tariffs (margin squeeze) in mobile telephony. On the basis of the evidence gathered during the investigation, the Commission concluded that retail prices provided by the Cyprus Telecommunications Authority for these services were high enough to yield a markup for applicants (ie, Areeba) intended to access and use the Cyprus Telecommunications Authority's network and retail services. The Commission, on the basis of the evidence before it, unanimously concluded that there is no infringement of section 6(1)(a) of Law Number 13(I)/2008.

<sup>60</sup> Law Number 22(I)/99), s 36.

it comes within its scope but does not raise serious doubts as to its compatibility with the competitive market, or that it comes within the scope of the law and raises serious doubts as to its compatibility with the competitive market. In the final case the Commission for the Protection of Competition will initiate a full investigation in which all stakeholders may express their views in relation to the proposed concentration. The investigation must be completed within three months of the date of notification, or the date that all the requisite information was submitted. The Commission for the Protection of Competition then has a further month to decide whether to declare the concentration compatible, failing which the concentration will be deemed to be compatible with the competitive market by default. The Commission for the Protection of Competition may give an unconditional clearance of the proposed concentration, may approve it subject to certain conditions, or may prohibit it. Anyone aggrieved by the decision of the Commission for the Protection of Competition may apply to the Supreme Court of Cyprus for review.

### **Property and Environmental Issues**

As noted earlier, the Commissioner of the OCECPR may grant rights and impose obligations on persons regarding access to and interconnection of networks and services in the interest of end users.<sup>61</sup> The RECPS Law envisages that electronic communication service providers will acquire property contractually, but if this is not possible the property may be acquired under the provisions of the law in force in relation to the compulsory acquisition of ownership.<sup>62</sup>

The CRTA is the relevant authority that grants licences for the establishment, installation, and operation of radio or television transmitters based on the Radiotelevision Coverage Plan, which is prepared by the Department of Electronic Communications.<sup>63</sup> This prescribes all the relevant technical parameters including frequencies, power output transmitters, transmission location points, acceptable height of antennas, antenna installation, maximum radiated power, and connection methods, which the licensee must observe.<sup>64</sup>

The licence that is granted by the CRTA includes the broadcasting points as determined by the Director of the Department of Electronic Communications of the Ministry.<sup>65</sup> The licence granted by the Authority includes the procedure and method of delivery of radiotelevision signals from the booth of the licensed broadcasting station at designated points of transmission as well as actual transmission of these signals, as they are determined by the Director of the Department of Electronic Communications of the Ministry of Communication and Works under the Radiocommunications Acts 2002 and 2003, as it may be amended or replaced. The manner and method of transmission of the signal may be provided via third parties,

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61 RECPS Law, s 51.

62 RECPS Law, s 81(1).

63 Radio and Television Broadcasting Stations Law of 1998, s 13.

64 Radio and Television Broadcasting Stations Law of 1998, s 15.

65 Radio and Television Broadcasting Stations Law of 1998, s 15(1).

including licensed stations, based on conditions determined by the CRTA upon the recommendation of the Director of Electronic Communications of the Ministry of Communications and Works under the relevant Law and the applicable relevant Regulations,<sup>66</sup> furthermore, provided that possession of a licence for the establishment, installation, and operation of a broadcasting organisation does not relieve the licensee from the obligation to fully comply with their provisions of the Radiocommunications Acts 2002 and 2003, as it may be amended or replaced.<sup>67</sup>

Following authorisation by the CRTA, the licensee may operate a radio or television station only after the submission of conformity certificates issued by all the relevant departments (in relation to the integrity of the building and technical installations of the station both in terms of its studio as well as its facilities at the points of broadcasting), which are required under article 21(4) of the Radio Television Law.<sup>68</sup>

As provided in the OCECPR Electronic Communication Market Analysis Document,<sup>69</sup> issued in accordance with Directive 2002/21/EC,<sup>70</sup> there is no framework in place regulating the establishment of radio or television station premises nor a responsible body for the supervision of construction. Each licensed station is obliged to install its transmitters and antennas on sites specified in its licence. Responsibility for securing the requisite space and acquiring the necessary permits rests solely on the station. In practice, these regulatory and supervisory matters are usually delegated to relevant professionals in order to ensure that the station is compliant with the provisions of the relevant laws.

## **Intellectual Property**

### **Copyright and Infringement**

The protection of intellectual property rights in Cyprus concerning the transmission and retransmission of works is regulated by the Intellectual Property Rights and Related Rights Law of 1976–2012. The Law provides the following definitions:

- ‘Transmission to the public’ — Any live performance or show and every method of visual or acoustic presentation, including the presentation of shows with the assistance of a reception device, but does not include a broadcast;
- ‘Satellite’ — A satellite that transmits frequencies which, in accordance with the telecommunications law, are destined exclusively for the transmission of signals for reception by the public or for closed communication between two signals; and

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66 Radio and Television Broadcasting Stations Law of 1998, s 15(2).

67 Law Number 97(I)/2004, s 8.

68 Radio and Television Broadcasting Stations Law of 1998, as amended.

69 Public Consultation Document on Market Analysis of Electronic Communication issued by OCECPR, Number AA18/EK/2006.

70 Directive 2002/21/EC, art 7.

- ‘Retransmission’ — Transmission of a radio broadcast either in Cyprus or abroad, including cabled transmission of such a broadcast.

The Law provides protection of intellectual property rights regarding the exclusive right of control within the Republic of Cyprus of the transmission to the public, transmission to the public via satellite and cable retransmission.

### **Nature of Intellectual Property Rights over Transmissions**

The Law recognises the rights of owners to protect their work which is transmitted within the Republic and this includes registration, reproduction, retransmission, transmission to the public, or retransmission in places where there is an entrance fee of a whole or substantial part of the show, material incorporation of the show, renting or lending, distribution, or downloading photos from the show.

A broadcasting agreement, unless otherwise agreed, may not give the right to the counterparty of the broadcaster to permit third parties to transmit or retransmit the work to the public by way of electromagnetic waves or via other channels or in any other way, parallel to the surface or via satellite.

### **Satellite Transmission**

In the instance of the transmission of a work to the public via satellite, the RECPS Law provides that permission can be granted only by an agreement. If the work transmitted to the public via satellite is conducted in a state not a member state of the EU, the RECPS Law provides that, if the signals are transmitted to the satellite by a broadcasting station in Cyprus, the communication to the public will be deemed to be made within Cyprus, and such rights can be actionable against the person operating a broadcasting station to the satellite. If no broadcasting station is used with a satellite situated in a member state of the EU, but the communication to the public via satellite is allocated to a broadcaster whose main station is in Cyprus, such an act may be actionable against the broadcaster.

### **Cable Retransmission**

Cable retransmission of broadcasts by member states of the EU are effected on the basis of individual or collective agreements between the creators of the broadcasts and the right of holders of related rights, on the one hand, and the cable operators on the other hand, who are obligated to enter into a mutually beneficial agreement.

### **Cyprus Courts**

The District Courts have sole jurisdiction to adjudicate copyright infringement cases at first instance. Appeals are heard by the Supreme Court of Cyprus. There are no specialised courts in Cyprus that deal with infringement of copyright cases.

## Security of Communications

### In General

As recognised by the OCECPR, the systems and the technologies relating to information and communication are important elements of financial and social development and important factors in the operational and social structures of any country. The OCECPR recognises the imperative need for these technologies to offer security and safety to their users, which it defines as the protection of the principles of confidentiality, integrity, and availability of information during the process of its transfer, processing, and storage.

For the OCECPR, these principles lead to the building of trust in information systems and electronic services that is considered a vital element of the continuous development of what is characterised by the OCECPR as a ‘precious sector’ of the economy.<sup>71</sup> As a result, the OCECPR has issued a Policy Document<sup>72</sup> on the strategy on Cybersecurity for the Security of Networks and Information and the Protection of Critical Infrastructure of Information, in line with European Commission guidelines.

This document sets out the OCECPR's plan to achieve a safe electronic environment in Cyprus emphasising the high targets set by the European Commission through its consolidated work on these matters in cooperation with the member states and ENISA<sup>73</sup> in light of the new EU framework on Electronic Communication, which also strongly promotes the sector of protection of personal data. The European Commission also has set the need for the creation of national CERTs (Computer Emergency Response Teams) that would be ready to act upon breaches of electronic security. The relevant authorities in relation to CERTs are the Department of Information Technology Services of the Ministry of Finance, under the supervision of the OCECPR and the Cyprus Research and Academic Network Security.

Order Number 358/2010 established a national Computer Security Incident Response Team (CSIRT) under the auspices of the OCECPR.<sup>74</sup> In addition, in 2011 legislation was passed<sup>75</sup> which sets out the minimum requirements in relation to the security of networks and information which must be observed by all providers and

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71 See [http://www.ocecpr.org.cy/nqcontent.cfm?a\\_id=3510&tt=ocecpr&lang=gr](http://www.ocecpr.org.cy/nqcontent.cfm?a_id=3510&tt=ocecpr&lang=gr).

72 On 23 April 2012, OCECPR issued a Policy Document on the ‘Strategy on Cybersecurity of the Republic of Cyprus’.

73 European Network and Information Security Agency.

74 The University of Cyprus, in collaboration with the Research Promotion Foundation and the Planning Bureau, in an effort to enhance the research activities in Cyprus, have created the Cyprus Research and Academic Network (CyNet) whose aim is the creation of a network infrastructure and the provision of advanced Internet services to the research and academic community of Cyprus. The network infrastructure connects CyNet to the European research and academic network GEANT at 1+1Gbps, and internally at very high connection speeds.

75 Order on Security of Networks and Information 2011, Number 253/2011.

operators of public electronic communication networks in Cyprus with the objective of protecting users and consumers in cases of destructive malfunction or *force majeure*, and sets out requirements for the provision of critical infrastructures. Continuous, uninterrupted access to emergency services such as emergency calls must be maintained and all licensed providers must take steps to ensure the proper and effective operation of their facilities in the event of natural disaster or malicious damage, and must prepare an annual risk assessment of networks and submit it to the OCECPR, together with an action plan to deal with any areas of concern.

In October 2013, subsidiary legislation<sup>76</sup> was passed in order to bring Cyprus in line with Directive 2009/140/EC and the document issued by ENISA on ‘Technical Guidelines on Incident Reporting’,<sup>77</sup> which imposes an obligation on all public network providers or providers of public electronic communication services to report every breach of security or compromise of integrity of their networks which had a serious effect on the operation of the facilities.

### **Tapping into Cables**

Section 149 (8) of the RECPS Law<sup>78</sup> makes it a criminal offence punishable by imprisonment for up to six months, a fine of up to €1,700, or both, for any authorised undertaking or employee or contractor of an authorised undertaking to prevent or obstruct the sending, conveying, or delivery of any message, to intentionally amend or interfere with the content of any message, to intentionally intercept any message, or to intentionally disclose or use the content of any message, information, or document that relates to the content of any message or to the affairs or personal particulars of any person.

Public electronic communications network and/or services providers must take all necessary technical and administrative measures in order to safeguard the security of their networks and services and the confidentiality of any communication, at a level which is commensurate with the degree of risk having regard to the cost of implementation of such security systems and the latest technical possibilities.<sup>79</sup> If there is a particular risk of a breach of security of the network, the providers must inform their subscribers of such risk and of all available counter-measures, including the cost involved.<sup>80</sup>

No person other than users communicating between themselves from time to time may listen to, tap, store, intercept, or undertake any other form of surveillance of communications without the consent of the users concerned,<sup>81</sup> except for interceptions of communication that are provided for by law and with the authorisation of a court.<sup>82</sup> A legally authorised recording of electronic

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76 Subsidiary Administrative Act Number 371/2013.

77 Version 2.0 issued January 2013.

78 RECPS Law 2004.

79 RECPS Law 2004 s. 98(1) and 99(1).

80 RECPS Law 2004 s. 98(2).

81 RECPS Law 2004 s. 99(2).

82 RECPS Law 2004 s. 99(3).

communications in the course of lawful business practice, for the purpose of providing evidence of a commercial transaction or of any other business communication, is not prohibited.<sup>83</sup>

### **Supply and Use of Counterfeit Decoders**

The matter of decoders is jointly regulated by the OCECPR and the Department of Electronic Communications. Section 149 (9)(a) of the RECPS Law<sup>84</sup> makes it a criminal offence, punishable by imprisonment for up to six months, a fine of up to €5,000, or both, to sell, provide, or offer to provide or circulate in the Cyprus market any telecommunications terminal equipment destined for direct or indirect connection with an electronic communications network terminal point, unless the terminal equipment complies with the terms, conditions, and specifications set out in the RECPS Law.

Section 87 empowers the Commissioner to take all appropriate measures with non-compliant equipment, including the issuing of Orders for the withdrawal of the equipment from the market or from service, prohibition of its placing on the market or putting into service, and restriction of its free movement. In addition, the use of counterfeit decoders for the illegal receipt of television broadcasts where such decoders allow for the free access to subscriber or paid television channels by non-subscribers is illegal under the Protection of Intellectual Property and Copyright Law, Law Number 59/1976, as amended.

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83 RECPS Law 2004 s. 99(4).

84 RECPS Law 2004.