GLG

Global Legal Group

# The International Comparative Legal Guide to:

# Telecommunication Laws and Regulations 2008

## A practical insight to cross-border Telecommunication Laws and Regulations


## Published by Global Legal Group with contributions from:

Arculli Fong & Ng
Bär & Karrer
Brinkhof
CCdM&A - Cugia Cuomo de Marco & Associati
Čechová & Partners
Cocalis & Psarras
Corrs Chambers Westgarth
Djingov, Gouginski, Kyutchukov & Velichkov
Dr. Norbert Wiesinger, Law Offices
EsinIsmen Hukuk Bürosu
Forgó, Varga & Partners
Gencs Valters Law Firm
Gilbert + Tobin
Gómez-Acebo & Pombo Abogados
Greenberg Traurig LLP
GVTH - Advocates
Harbottle & Lewis
Heuking Kühn Lüer Wojtek
Jadek & Pensa
Kim & Chang
kines
King & Wood
Kromann Reumert
LG@vocats
Mannheimer Swartling
MGF Webb
Mundie e Advogados
Norton Rose
Olswang
PLMJ - Sociedade de Advogados
Poovaya & Co.
Prieto & Carrizosa Attorneys at Law
Rios Ferrer, Guillen-Llarena, Treviño y Rivera, S.C.
Roschier, Attorneys Ltd.
Saladžius & Partners
Sanchez Elia - Abogados
Sorainen
Traple Konarski Podrecki
Țuca Zbârcea & Asociații
Webber Wentzel Bowens
Wikborg, Rein & Co.
William Fry

www.ICLG.co.uk

# Hungary


János Tamás Varga

Viktor Vasi

Forgó, Varga & Partners


## 1 Framework

### 1.1 When did Hungary first liberalise telecommunications networks and/or services?

The liberalisation process of telecommunications networks and services started at the end of 2001, when Act XL of 2001 on Communications (not effective since 1 January 2004), implementing, *inter alia*, Directives 97/51/EC, 97/66/EC, 98/10/EC, 98/61/EC, 1999/5/EC and 1999/64/EC, came into force.

### 1.2 Has Hungary fully implemented the EU 2003 regulatory framework? If Hungary has not fully implemented the new regulatory framework, have proceedings been brought against Hungary by the European Commission and if so, for which contraventions?

Hungary has fully implemented the EU 2003 regulatory framework. The implementation took place by the Electronic Communications Act (Act C of 2003, "ECA"), which is effective since 1 January 2004.

### 1.3 Please give an overview of the different laws and regulations governing the operation of electronic communications networks and the provision of electronic communication services.

The fundamental legislation of electronic communications in Hungary is the ECA, which regulates the activity of the national regulatory authority, the National Communications Authority of Hungary (*Nemzeti Hírközlési Hatóság*, "**NCAH**"), provides for special procedural rules in respect of proceedings carried out by NCAH, and determines the basic rules of providing electronic communications services.

In addition to the ECA, a large amount of subordinate legislation, Government Decrees and Minister Decrees provide for detailed rules of particular fields of electronic communications. Important subordinate regulations are the following:

- Government Decree 346/2004. (XII. 22.) on the establishment of national allocation of frequency bands;
- Government Decree 46/2004. (III. 18.) on rules of number portability;
- Government Decree 164/2005. (VIII. 16.) on the national allocation plan of electronic communications network identifiers;
- Government Decree 73/2004. (IV. 15.) on carrier selection applicable in the course of using electronic communications services;
- Government Decree 277/2003. (XII. 24.) on reference offers, network contracts and detailed rules of related procedures;
- Government Decree 345/2004. (XII. 22.) on requirements for the quality of electronic communications services in connection with the protection of consumers;
- GKM Decree 55/2007. (V. 31.) on the number portability central reference database;
- IHM Decree 3/2004. (III. 4.) on rules applicable to the designation of universal electronic communications service providers;
- IHM Decree 16/2003. (XII. 27.) on detailed rules of electronic communications subscriber contracts and on their conclusion;
- IHM Decree 35/2004. (XII. 28.) on the establishment of rules relating to the use of frequency bands;
- KHVM Decree 29/1999. (X. 6.) on licensing and supervising telecommunications structures; and
- KHVM Decree 6/1997. (IV. 22.) on frequency reservation and usage fees.

### 1.4 Please describe the regulatory framework, in terms of regulatory authorities and associated agencies, e.g. national competition authority (where different).

Electronic communications activity is supervised by NCAH. NCAH consists of the Board and the Office.

The Board (*Tanács*), consisting of seven members, is responsible for the implementation of legal regulations and government decisions relating to electronic communications, and is also vested with the power to make certain high-level decisions, such as defining relevant markets and obligations of service providers with significant market power ("SMP") or adjudicating legal disputes in connection with the breach of electronic communications regulations.

The Office (*Hivatal*), headed by the Director General, performs regulatory functions relating to the notification of electronic communications services, civil-purpose frequency management, identifier management, as well as keeps the records prescribed by law, supervises the market, and also acts as licensing authority in relation to electronic communications buildings and other structures etc.

The Representative of Consumer Rights in Communications (*Hírközlési Fogyasztói Jogok Képviselője*), is a special officer within the organisation of NCAH, whose primary function is to investigate complaints received from subscribers, consumers and consumer protection associations, inform the complainant of his/her rights and obligations provided by the electronic communications regulations, advise the service provider to cease the infringement of

electronic communications regulations, and request NCAH or other competent authorities to take measures.

Competition-related matters of the electronic communications market are handled by NCAH in close co-operation with the Hungarian Competition Authority (*Gazdasági Versenyhivatal*).

In matters regarding consumer protection, the consumer protection authority is involved.

**1.5 Which principal aspects of electronic communications regulation fall under the supervision of the national regulatory authority for electronic communications?**

The supervision activity of NCAH covers all aspects of electronic communications, the following in particular:

- Radio frequency: granting the right to use a radio frequency (frequency assignment and radio licence); assigning frequencies for broadcasting purposes.
- Market supervision: supervising services from technical and legal points of view, including supervision of subscriber contracts, general terms and conditions, market practices etc. NCAH obliges non-compliant service providers to comply with the relevant norms. In the framework of this activity NCAH investigates customer complaints.
- Market analysis: regularly analysing the relevant electronic communications markets; identifying SMP service providers and imposing obligations on them etc.

**1.6 In order to be properly authorised to provide electronic communications networks and services, is a registration, declaration or notification required and if so to whom and for which purposes? What rules or conditions, if any, may be attached to a registration, declaration or notification?**

Any company, legal person or private individual is entitled to operate electronic communications networks and/or to provide electronic communications services. Prior to commencing the provision of services, NCAH has to be notified. The notification shall contain (i) the name and address or registered seat of the service provider; (ii) the company registration number or other registration or identification number of the undertaking; (iii) the representative and the contact person of the service provider; (iv) a brief description of the electronic communications services and - if the service provider operates an electronic communications network - a brief description of such network, and the geographic area of the services; (v) the planned date of commencing the services (if the service provider does not specify the date of commencing the services, an additional notification shall be made within 30 days from the date of commencing the services).

Simultaneously with notifying NCAH, the service provider shall inform the National Security Service (*Nemzetbiztonsági Szakszolgálat*) as well.

**1.7 Are any network operators or service providers subject to rules governing their operations over and above rules and conditions governing authorisations and imposing SMP obligations, for example under competition law?**

No, they are not.

**1.8 How and to what extent is content delivered over electronic communications networks regulated and by whom?**

The ECA does not regulate content delivered over electronic communications networks, moreover, the ECA stipulates that service providers may obtain information on the content of forwarded communication to the extent as it is absolutely necessary for providing the services due to technical reasons.

There are special legal rules providing for certain requirements regarding content, e.g. the Information Society Act (Act CVIII of 2001, "**ISA**") provides for minimum content for e-commerce websites.

**1.9 Which (SMP) markets have been notified to the European Commission under Article 7 of the Framework Directive?**

16 markets (markets No. 1-16) have been notified so far to the European Commission from the 18 recommended markets. Notification of market No. 18 is under preparation and shall take place shortly, whereas market No. 17 (international roaming) is not expected to be notified as a separate market.

## 2 Licensing

**2.1 If a licence or other authorisation is required to install or operate electronic communications networks or provide services over them, please briefly describe the process and timescales.**

Provision of electronic communications services is not subject to licensing. However, the service provider shall submit a notification to NCAH prior to the commencement of providing services (see question 1.6).

The construction of electronic communications infrastructures is, as a general rule, subject to licensing by NCAH. In certain cases, NCAH involves a number of specialist authorities (e.g. fire protection authorities, environment protection authorities, transportation authorities). The constructor may, and, in certain cases (e.g. if construction works are planned to be carried out in several phases and are expected to take longer than two years) has to apply for preliminary construction permit before applying for construction permit.

Plans and other documents are to be attached to the construction permit application and the applicant shall prove its right to carry out construction works on the affected land. NCAH holds an on-site visit at the location of planned construction works.

NCAH issues its decision within 60 days of submission of the construction permit application. NCAH may extend this deadline by additional 30 days. The constructor shall, within 30 days from the date of completing construction works, apply for a usage permit from NCAH. The deadline for issuing the usage permit is also 60 (90) days.

In construction licensing procedures the following fees are payable: (i) HUF 20,000 (~ €80) for preliminary construction permit; (ii) HUF 20,000 - 600,000 (~ €80 - 2,400) depending on cable length for construction permit; (iii) HUF 10,000 - 300,000 (~ €40 - 1,200) depending on cable length for usage permit.

**2.2 What other requirements, permits or approvals must be met or obtained before networks may be installed or operated and services provided?**

If provision of services involves the use of radio frequency spectrum, frequency assignment and radio licence are to be obtained (see question 9.4).

**2.3 May licences or other authorisations be transferred and if so under what conditions?**

Provision of electronic communications services is not subject to

licensing. However, the service provider shall submit a notification to NCAH prior to the commencement of providing services (see question 1.6). Such notifications may not be transferred; however, any person may submit a new notification at any time.

### 2.4 What is the usual or typical stated duration of licences or other authorisations?

The validity of a preliminary construction permit is one year; the validity can be extended for an additional one-year period. The validity of the construction permit is two years and can also be extended for an additional one-year period. The construction permit remains valid if the construction works have been commenced within two years from issuance and completed within five years.

## 3 Public and Private Works

### 3.1 Are there specific legal or administrative provisions dealing with access to public and private land in order to install telecommunications infrastructure?

The ECA provides that, as a general rule, electronic communications equipment shall be installed on public land or by way of sharing existing electronic communications facilities or in facilities owned by public utility service providers. If that is not possible, the installation may also take place on private land.

Electronic communications facilities may be installed on public land owned by the local municipality if no state-owned public land is available for such purpose, or if the installation on the latter is not possible because of technical reasons or prohibitive legal regulations. The local municipality may reject consent to the facilities to be installed on public land it controls or to grant permission for use of land only if granting consent is likely to cause harm to any particularly important interest of the municipality or its population, or if granting permission to use the land is prohibited by statutory provisions.

### 3.2 Do any specific rules exist which assist in securing or enforcing rights of way over public or private land, for the installation of network infrastructure?

If it is not possible to install electronic communications facilities on public land or by sharing existing electronic communications facilities or in facilities owned by public utility service providers, and no agreement was concluded between the owner (user) of private land or the public utility service provider and the electronic communications service provider, the electronic communications service provider may refer to NCAH. Upon such request, NCAH may restrict the owner's right to use the land by establishing a right of way or other usage right.

The service provider applying for such restriction shall evidence before NCAH that (i) it had used its best efforts to conclude an agreement with the landowner; and (ii) it is not possible to place the electronic communications facility on public land or by sharing existing electronic communications facilities or the facilities of public utility service providers due to environment protection, public health, public security, construction reasons or due to the nature of the electronic communications network.

NCAH shall, as a result of the above proceedings, pass a resolution including (i) indication of the electronic communications service the restriction serves; (ii) the content of the right of way or other usage right including particularly the right of the service provider's authorised representative to enter the land with the purpose of checking, maintaining or troubleshooting regarding the electronic communications facility; (iii) the location and way of placing the electronic communications facility; (iv) technical specification of electronic communications facilities that can be placed on the land, and the respective environment protection, public health, public security and construction norms.

The landowner (except for state-owned public land and in case of facility sharing) shall be entitled to fair compensation and the service provider, after completion of the installation of the electronic communications facility, shall restate the original status of the environment.

### 3.3 Is there a specific planning or zoning regime that applies to the installation of network infrastructure?

There is no general zoning regime that applies to the installation of network infrastructure. Zoning plans are prepared locally by municipalities in line with statutory provisions relating to construction and regional development. It is stipulated in the ECA that town and country planning and development, road and public utility construction and rehabilitation projects, as well as implementation and renovation of buildings and structures shall be executed so as to ensure the installation of electronic communications facilities.

### 3.4 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables?

All service providers owning or holding the right to use electronic communications structures may be compelled to enter into agreements on facility sharing (including physical co-location) if it is required by a service provider deprived of access to viable alternatives because of the need to protect the environment, public health, public security or to comply with town and country planning rules. This obligation shall not apply to buildings designated for use by customers. No such obligation exists if (i) the fulfilment of the offer prevents the existing structure from being safely or normally used; (ii) the requesting service provider fails to assume the verified costs necessary for the establishment and operation of facility sharing; (iii) facility sharing would impose serious harm to reasonable private interests deriving from other legal relationships; or (iv) the obliged service provider is unable to comply with the facility sharing request due to reasons of normal use of electronic communications structures or equipment, or due to the fact that physical co-location is not possible.

In addition to the above general obligation, NCAH may impose the obligation upon SMP service providers to provide co-location or any other form of facility sharing services to other service providers, including the right to use electronic communications structures.

## 4 Access and Interconnection

### 4.1 Is network-to-network interconnection and access mandated, and what are the criteria for qualifying for the benefits of interconnection?

All service providers (including non-SMP service providers) providing access service to subscribers are obliged to interconnect their networks with the networks of other service providers if NCAH imposes such obligation on them. Together with interconnection, NCAH may impose additional obligations as well, such as non-discrimination, facility-sharing or co-location.

NCAH imposes interconnection or access obligation especially on SMP service providers. In such cases, SMP service providers are also required to submit reference offers containing the terms and conditions of interconnection agreements.

Any service provider may request an obliged service provider to provide access or interconnection. The obliged service provider may only reject to provide access or interconnection for objective technical or financial reasons. However, if NCAH imposes the obligation on the obliged service provider to submit a reference offer, the obliged service provider may not reject to provide access or interconnection based on its reference offer, unless it is technically not feasible or the integrity of the network may not be maintained by providing the requested interconnection / access.

**4.2 How are interconnection or access disputes resolved? Does the national regulatory have jurisdiction to adjudicate and impose a legally binding solution?**

Interconnection or access disputes may be resolved by (i) court; or (ii) the Board of NCAH; or (iii) the Permanent Electronic Communications Arbitration Tribunal (*Hírközlési Állandó Választottbíróság*). The Board of NCAH has jurisdiction to adjudicate and impose a legally binding solution, however, the resolution of the Board of NCAH may be challenged before court.

**4.3 Are charges for interconnection and/or network access subject to price or cost regulation and, if so, how?**

If NCAH finds, based on market analysis, that the lack of efficient competition may result in unreasonably high prices or price squeeze, SMP service providers may be made subject to price or cost regulation by NCAH. In the course of this, NCAH may impose obligations for cost orientation of prices; obligations concerning cost accounting and pricing systems, and obligations relating to price controls; and NCAH may apply a cost accounting system different from what has been used by the service provider to control the cost-efficiency of services.

NCAH, when imposing price/cost related obligations, shall take into account the investment made by the effective service provider, the reasonable rate of capital return and the risks involved, and may also take into account the prices available in comparable competitive markets, including the prices charged by SMP service providers being in similar situation. In addition, NCAH may impose the obligation of accounting separation on the service provider, i.e. to make transparent its wholesale prices and its internal transfer prices etc.

**4.4 In the local loop are existing owners of access infrastructure required to unbundle their facilities and if so, on what terms or regulatory controls?**

Local loop unbundling is considered as a type of access to network elements and associated facilities. SMP service providers shall unbundle their local loops if NCAH requires so and shall make available local loop unbundling to other service providers by publishing reference unbundling offers, approved by NCAH.

**4.5 How are existing interconnection and access regulatory conditions to be applied to new network technologies such as so-called next generation networks or IP-based networks?**

The current interconnection and access regulation does not contain any special provisions regarding next generation networks or IP-based networks.

## 5 Price and Consumer Regulation

**5.1 Are (i) retail or (ii) wholesale price controls imposed on any operator in relation to fixed, mobile, or other services?**

NCAH has various price control powers in both retail and wholesale markets, and in fact NCAH uses such powers in fixed and mobile telephone services, as well as other services (e.g. Internet).

In retail markets if NCAH, as a result of market analysis, establishes that a certain retail market is not effectively competitive, it may impose any of the following obligations on SMP service providers: obligation to refrain from (i) charging excessive prices; (ii) setting unduly low prices impeding entry into the market or competition if such prices are not due to a higher level of efficiency compared to competitors; (iii) showing undue preference to specific consumers; (iv) bundling services. NCAH may also impose the obligation on SMP service providers to implement appropriate accounting systems.

The price of universal services is a fixed price, set by the minister responsible for electronic communications.

In wholesale markets NCAH may impose obligations for cost orientation of prices; obligations concerning cost accounting and pricing systems, and obligations relating to price controls; and NCAH may apply a cost accounting system different from what has been used by the service provider to control cost-efficiency of services.

**5.2 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?**

According to the Civil Code (Act IV of 1959), electronic communications subscriber contracts concluded with consumers belong to the category of consumer agreements. The Civil Code prescribes various regulations for consumer agreements in respect of general terms and conditions, unfair conditions and other consumer rights. The Civil Code provides, for example, that if the content of the general terms and conditions / consumer agreement cannot be unquestionably determined, the interpretation favourable to the consumer shall apply.

Unilaterally pre-defined unfair conditions and the unfair general terms and conditions of consumer agreements are invalid. Concerned consumers and also certain organisations (public prosecutor, minister, chambers etc.) may challenge such unfair conditions before court. If a court establishes that a condition in a consumer agreement is unfair, therefore invalid, the court may resolve that its judgement is effective in respect of each consumer having concluded an agreement with the undertaking applying the condition, or if the unfair conditions have not been applied yet, their future application shall be prohibited.

If the subscriber contract between the service provider and the consumer is concluded by the means of distance sales, the provisions of Government Decree No. 17/1999 (II. 5.) on distance contracts (implementation of Directive 97/7/EC) shall be applicable. According to the Decree the consumer may withdraw from the contract without giving any reason within 8 working days following the conclusion of the contract.

The ISA (implementation of Directive 2000/31/EC) prescribes certain regulations for contracts concluded by electronic means, such as obligations for the service provider to provide special information prior to placing an order and to confirm orders as a precondition of concluding contracts. If the contract is concluded by a non-consumer, the parties may agree to deviate from the respective regulations of the ISA, however, in case of consumers, such regulations are mandatory.

### 5.3 Are there any rules governing use and retention of customer call information?

Customer call information (calling and called subscriber numbers; types of calls or other services, their direction, starting time, duration of conversations or the size of data transmitted, the International Mobile Equipment Identity (IMEI) of the network and cell providing the service and of the telephone set used for making use of the service provided in case of mobile radio telephone networks, and for IP networks the identifiers used; the date of call or other services provided) shall be retained for three years by service providers for the purpose of transferring them, upon request, to authorised national security bodies, investigating authorities, public prosecutors and courts for protection of national security, national defence or public safety and for prosecution of criminal acts and any unauthorised use of the electronic communications system.

## 6 Numbering

### 6.1 How are telephone numbers and network identifying codes allocated and by whom?

NCAH is responsible for the allocation of telephone numbers. NCAH allocates telephone numbers in the order prescribed in the National Numbering Plan. The National Numbering Plan contains different types of available numbers, e.g. landline and mobile telephone numbers, geographic and non-geographic numbers, as well as their formation rules.

The allocation procedure has two stages: service providers shall make a reservation first for available numbers at NCAH, and shall apply for individual assignments of reserved numbers afterwards. The service provider shall pay reservation fee, assignment fee and public administration service fee to NCAH.

### 6.2 Are there any special rules which govern the use of telephone numbers?

The National Numbering Plan provides that the maximum number length (following the +36 country code) may be 8 or 9 digits. Each number begins with a national destination code (NDC). The NDC is a two-digit number, except for the geographic NDC of Budapest, which is 1. The rest of the geographic NDCs consist of two digits and cover the entire area of the country. The currently operating mobile phone network operators use the codes 20, 30 and 70. There are several special NDCs: 21 stands for location independent network numbers (used mainly in VoIP service); 40 stands for shared-cost services; whereas 51 is used in Internet dial-up service etc.

### 6.3 How are telephone numbers made available for network use and how are such numbers activated for use by customers?

Telephone numbers are made available for network use by NCAH. Geographic landline numbers and non-geographic numbers may be applied for reservation and assignment by the service providers in number field blocks of 1,000. For mobile phone numbers, number field blocks of 10,000 are available. Reservations are valid for one year, but the validity of the reservation may be extended for an additional one-year period by NCAH upon request.

NCAH assigns reserved numbers upon the service provider's request within the validity period of the reservation. Following assignment, the service provider may authorise the subscriber in the subscriber contract to use any of the numbers within the assigned number field block.

The reservation fee of telephone numbers is HUF 22,000 (~ €88) per 1,000 numbers, whereas the annual usage fee of ordinary telephone numbers is between HUF 30 - 150 (~ €0.12-0.6) per number. The annual usage fee of special four or five-digit telephone numbers (e.g. carrier selection numbers) is between HUF 120,000 - 2,400,000 (~ €480 - 9,600) per number.

### 6.4 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile).

Subscriber access service providers are required to allow their subscribers (i) to retain their geographic numbers in case of fixed location telephone services when changing subscriber access service provider without changing the geographic location of the services; (ii) to retain their non-geographic numbers in case of services accessed through non-geographic numbers (e.g. VoIP), when changing service providers; and (iii) to retain their mobile phone numbers in case of mobile radio telephone services, when changing service providers.

The transferring service provider may not reject the application for number porting, except for certain reasons determined by law (e.g. if the subscriber has overdue unpaid invoice towards the transferring service provider).

Service providers are required to agree on general terms and conditions of their co-operation regarding number portability in their network agreements.

The transferring service provider is entitled to charge a cost-based one-off fee to the receiving service provider in consideration of the number porting. The receiving service provider may claim the reimbursement of such fee directly from the subscriber.

The receiving service provider shall notify NCAH of each number porting. NCAH registers all ported numbers, call direction information and data of the service providers and of the subscriber with the Central Reference Database.

Calling parties must be provided with the opportunity to obtain information on which service provider's network the called number belongs to and on the applicable tariff.

## 7 Fees

### 7.1 What fees and levies are payable and to whom with respect to the grant of a licence or other authorisation for the installation or use of network infrastructure or the provision of communication services?

There are various payment obligations in connection with electronic communications services in Hungary. Please find information on fees to be paid in connection with construction permits, frequency use, universal services and numbering at the respective sections.

Only a small stamp duty (HUF 2,200 ~ €9) is to be paid when notifying NCAH on the provision of communication services. There is no other fee payment obligation in this respect.

Service providers have to pay supervision fee to NCAH, which is 0.212% of the service provider's net annual turnover of the previous financial year deriving from the provision of electronic communications services. There is no payment obligation if the so calculated fee is below HUF 5,000 (~ €20).

The fee to be paid to the Board of NCAH for the approval of interconnection, local loop unbundling and related facility share reference offers is HUF 750,000 (~ €3,000). The Board of NCAH settles electronic communications related legal disputes for a fee of

HUF 175,000 (~ €700), however, if the service provider commencing the legal dispute has an annual net turnover below HUF 100,000,000 (~ €400,000), such fee is only HUF 87,500 (~ €350).

## 8 Submarine Cables

**8.1 What are the main rules governing the bringing into Hungary's territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?**

Hungary is a landlocked country having no seacoast or territorial water, consequently no such regulation exists.

## 9 Radio Frequency Spectrum

**9.1 Is the use of radio frequency spectrum specifically regulated and if so, by which authority?**

Radio frequency spectrum used for telecommunications belongs to the exclusive property of the Hungarian State under the Civil Code. The ECA makes difference between frequency use for civil purpose and for non-civil purpose. The licensing of civil purpose frequency use is one of the competences of NCAH. Non-civil frequency use may be licensed by the Governmental Frequency Management Authority (*Kormányzati Frekvenciagazdálkodási Hatóság*).

The frequency management activity of NCAH is performed in order to ensure the undisturbed operation of radio communications and other, non-telecommunications services. In the course of frequency management, NCAH creates the technical and legal regulatory system in accordance with the relevant legislation, takes part in the activity of international and EU organisations, performs the tasks related to international and national frequency coordination, issues frequency assignments and radio licences and maintains registers in connection with equipment and use of frequency.

Monitoring technical parameters of signals radiated by radio stations operated on frequencies allocated for civil use, investigation and termination of the observed disturbances are also tasks of NCAH. NCAH performs measurements, explores and locates unlicensed radio transmissions.

**9.2 In the grant of spectrum rights are distinctions made between mobile, fixed and satellite usage?**

Procedures aiming at the allocation of frequency spectrum for mobile, fixed or satellite usage are the same. Details of the relevant procedure are summarised in question 9.4.

**9.3 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?**

Satellite earth stations qualify as radio stations, therefore, as a general rule, a radio frequency has to be allocated first, and then the operator shall apply for a radio licence. Details of the procedure on obtaining such licence are summarised in question 9.4.

**9.4 How is the use of radio frequency spectrum authorised in Hungary? Do the procedures available include spectrum auctions and comparative selection of candidates?**

As a general rule, the obtaining of frequency assignment and radio licence are required for the use of radio frequency spectrum.

Installation of a radio station, radio equipment and radio communication network is subject to obtaining frequency assignment. Frequencies are assigned by NCAH. Assignable frequencies are specified in Government Decree 346/2004 (XII.22.).

NCAH may conduct spectrum auctions or call for a public tender (comparative selection) regarding specific frequencies. As a result of these procedures, the winning bidder obtains the right to use the specific frequency and the exclusive right to apply for frequency assignment to NCAH concerning that specific frequency. Frequency assignment issued by NCAH specifies, *inter alia*, the conditions of the obtaining of radio licence.

Radio licence is required for operating a radio station, radio equipment and radio communication network. Radio licence is issued by NCAH on the basis of effective frequency assignment and in line with the conditions set out in the frequency assignment. Details of procedure on frequency assignment and radio licence are set out in IHM Decree 6/2004 (IV.13.).

**9.5 Can the use of spectrum be made licence-exempt? If so, under what conditions?**

The use of spectrum is subject to licence, however there are numerous exemptions. Details of licensing are set out in IHM Decree 35/2004 (XII. 28.) and IHM Decree 6/2004 (IV.13.).

Frequency assignment is not required, *inter alia*, for the use of radio stations or radio equipment:

- used for experimental purposes;
- operated only in case of emergency;
- for which assignable frequencies are listed in official frequency register;
- exempted from licensing procedure upon minister decree;
- comprising only short-range tools or designed for not more than 3 months operation period and operate only on the same frequency; or
- operated during exhibitions, festivals or sport events if envisaged running period is not longer than 2 weeks.

Frequency assignment is not required for running amateur stations. However, having an amateur radio licence is a requirement.

**9.6 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?**

Fees payable for the use of radio frequency spectrum are based on complicated calculations and depend on a number of relevant technical parameters (e.g. the size of the service area, the number of stations, the frequency band etc.). The relevant rules are specified in KHVM Decree 6/1997 (IV. 22.).

**9.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?**

Spectrum licences may not be transferred unless special rules relating to a certain frequency spectrum allow transfer, in which case the transfer is subject to the prior approval of NCAH. The entity transferring the spectrum licence and the entity intending to take over the spectrum licence shall jointly apply for the approval of NCAH. In the application, the entity intending to take over the spectrum licence shall make a declaration on accepting all relevant statutory and authority regulations. A copy of the transfer

agreement is to be submitted to NCAH which publish its approving resolution in its official journal and in two national daily newspapers.

## 10 Interception

**10.1 What are the essential rules applicable to the interception of messages, traffic data and other call records? Which rules apply to the retention of such call data, and over which period(s)?**

As stated in question 1.6, electronic communications service providers shall inform the National Security Service simultaneously with filing a notification with NCAH.

The service provider shall co-operate with the National Security Service and other authorised agencies, and upon request of any of such agencies, shall enter into an agreement regarding the detailed rules of interception-related co-operation. A part of such co-operation may be that the electronic communications service provider provides the possibility of interception by making available a room at its premises for technical equipment; by allowing the staff of the authorised agency to enter the service provider's premises etc. The service provider shall, at its own cost, establish a so-called basic monitoring subsystem, if an authorised agency so requires; however, the costs of additionally required interception-related developments shall be reimbursed by the authorised agency. The basic monitoring subsystem shall be capable of the simultaneous interception of 0.3-0.6% of all subscribers or users (if the total number of subscribers or users exceeds 150,000, it may not be more than 0.3%) but not less than 60 persons at the same time.

With respect to the retention of call data and their transfer to authorised agencies, please see question 5.3.

## 11 The Internet

**11.1 Are services over the Internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the Internet at a wholesale and/or retail level?**

As a general rule, the same requirements are applicable to electronic communications services provided over the Internet (e.g. VoIP) as on any other platform. However, certain aspects are regulated differently, e.g. providers of IP-telephone service may grant non-geographic telephone numbers to their subscribers.

Access to the Internet at retail level is one of the universal services at the band width of 9600 bit/s and maximum $10^{-4}$ bit error rate. To provide access to the Internet at wholesale level is the obligation of SMP service providers identified by NCAH on the relevant market; such SMP service providers are obliged to make available a cost-orientated reference offer to other service providers regarding Internet access and flat rate Internet access services.

Chapter XIV of the ECA contains special regulations for promoting the use of Internet, such as the obligation of SMP service providers in the market of internet access via fixed public telephone networks to publish a reference offer for the provision of internet call origination and flat-rate internet call origination at prices set on the basis of cost-orientation.

**11.2 Are there any rules to prevent, restrict or otherwise govern Internet or email communications, in particular, marketing and advertising communications?**

The ISA creates the regulatory framework of electronic commerce including: contracts concluded by electronic means; the liability of the service provider and intermediary service provider; notice-and-takedown proceedings; electronic advertising. NCAH is responsible for the enforcement of the majority of the provisions of the ISA, whereas a few consumer protection-related provisions belong to the competence of the consumer protection authority.

The ISA contains an opt-in spam regulation: advertisements by e-mail or by similar means may only be sent with the recipient's express prior consent.

## 12 USO

**12.1 Is there a concept of universal service obligation; if so how is this defined, regulated and funded?**

Hungary implemented Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services. According to the ECA, universal electronic communications services include the following set of services that is to be rendered available to all users, anywhere within the territory of Hungary, at an affordable price:

- connection to a telephone network at a place designated according to the residence, registered office or business location of end-users at a fixed subscriber access point which permits the originating and receiving of national and international calls, and also other forms of communication, such as facsimile and data, to access emergency services, as well as internet access, at a band width of at least 9600 bit/s and maximum $10^{-4}$ bit error rate;
- operation of one public pay telephone per one thousand inhabitants or in settlements with a population of less than one thousand, as well as at least 3 per cent of all compulsory public pay telephones must be fit to accommodate the hearing-impaired and disabled persons;
- national directory services; and
- access to subscriber information.

The universal service provider is designated by the minister responsible for electronic communications after a public tender and concludes a universal service provision agreement with the service provider. The designated universal service provider is obliged to conclude agreements with subscribers relating to universal services.

Universal service providers are entitled to receive compensation in order to recover the reasonable and verified costs of providing universal services under non-commercial conditions laying extra burdens upon them as compared to the estimated costs and revenues of services provided under commercial conditions. The amount of compensation may not exceed the net avoidable cost of universal service. Compensation is paid from the Universal Electronic Communications Compensation Fund (*Egyetemes Elektronikus Hírközlési Támogatási Kassza*).

Landline telephone service providers as well as those internet service providers that provide internet service to subscribers using universal telephone services are to pay contribution to the Universal Electronic Communications Compensation Fund. The amount of contribution is determined every year by the minister responsible for electronic communications, however, it cannot exceed 0.5% of the previous financial year's net turnover of the payer. New service providers are exempt from such payment obligation in the first two years of their operation.

## 13 Foreign Ownership Rules

**13.1 Are there any rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite or other wireless operations?**

There are no such restrictions.

**János Tamás Varga**

Forgó, Varga & Partners
17-19 Alkotás u.
Budapest - 1123
Hungary

*Tel:* *+36 1 214 0080*
*Fax:* *+36 1 214 0078*
*Email:* *vargajt@forgovarga.com*
*URL:* *www.forgovarga.com*

Dr János Tamás Varga, co-founding partner of Forgó, Varga & Partners, is also head of the Information, Technology, Communications Practice. János Tamás received his JD, summa cum laude, from the Law Faculty of Janus Pannonius University in 1994 and he was admitted to the Budapest Bar in 1997.
He has extensive experience in advising information technology and communications services providers on all aspects of their operation and has particular expertise in advising on large IT outsourcing projects. He has developed special expertise in technology related private equity and venture capital investment projects. He also represents clients in proceedings before the Board of the National Communications Authority of Hungary and before arbitral tribunals and courts in communications related cases.
János Tamás worked as researcher for the Institute of Legal Sciences, Hungarian Academy of Sciences (1995-1999); and was a lecturer at the Budapest University of Economics, Business Law Department (1996-2001). He was a member of the Committee established for drafting the Hungarian Companies Act (1997).
Besides his native Hungarian, he is fluent in English.

## 14 Future plans

**14.1 Are there any imminent and significant changes to the legal and regulatory regime for electronic communications?**

No such changes are expected.

**Viktor Vasi**

Forgó, Varga & Partners
17-19 Alkotás u.
Budapest - 1123
Hungary

*Tel.:* *+36 1 214 0080*
*Fax:* *+36 1 214 0078*
*Email:* *vasiv@forgovarga.com*
*URL:* *www.forgovarga.com*

Dr Viktor Vasi is a Hungarian attorney admitted to the Budapest Bar (2006). He received his JD, cum laude, from the Law Faculty of Eötvös Loránd University in Budapest in 2002. In addition to his graduate studies, he studied at Bibó István College of Law and the Faculty of Law of the University of Helsinki. Currently, he studies corporate law at the Institute of Postgraduate Legal Studies of Eötvös Loránd University in Budapest. Viktor has been with Forgó, Varga & Partners since 2002.
He specialises in telecommunications, IP and commercial related legal areas; and has experience in advising both Hungarian and foreign clients on data protection. He is a member of the Hungarian Association for the Protection of Industrial Property and Copyright.
Besides his native Hungarian, he is fluent in English.