

DISPUTE RESOLUTION showing any direction ?

Marcell HORVÁTH

(horvath.marcell@hif.hu)

Member of the Arbitration Committee
Communications Authority, Hungary
(www.hif.hu)

for the CEPT 11th Conference
22-24 October 2003, in Nice

1

What is Dispute Resolution (DR) ?

- lots of *meaning and sense*
 - „dispute”: general, legal, etc.
 - „resolution”: in terms of time, legal, justice, etc.
- *country specific* solutions
 - different legal regulations for procedures,
 - different traditions of making business,
- showing *my experiences* related to ONP telecom regulation in Hungary, and seeing my expectations related to the new framework,
- according to the **ECC PT4 APRIL DRSP Report**
(June 2003)

2

One possible evaluation of DR (I)

- type of available procedures (binding/non-binding decision),
- initiation (request/ex officio; one party/ all parties),
- rectification (setting timelimits, terms, etc.),
- participants (directly involved, affected, or all sector members),
- investigation power (documents, inspection, etc),

3

One possible evaluation of DR (II)

- other bodies involved (NCA) and legal status of their opinion,
- transparency, access to information (depends on the status of the participant, access to confidential and financial data),
- timelimit for resolution,
- appeal of the decision (court/second instance, changing/ annulation),
- enforcement of the decision (fines, automatic suspension by appeal),
- publication of the decision.

4

Some fields of DR

- reference interconnection offers (RIO) and reference local loop unbundling (RUO)
- identification of organizations with significant market power (SMP)
- arbitration (mediation) procedures,
- legal dispute procedures.

5

Hungary, the 54 local primary areas



6

Situation of RIO/RUO

- all the 4 LTOs
(formerly exclusive rights granted for local telephone service in one or more primary areas), and
- MATAV
(formerly exclusive rights granted for local telephone service in 36 primary areas, and for long distance and international service)
have to submit their RIOs and RUOs to the Arbitration Committee (AC)

7

Questions about RIO/RUO

- **deadline:** first round 60 days + 30 days rewriting + second round 60 days + publication by the NRA,
 - RIO/RUO has to be applied from the decision, from the publication, or transitory period
- only **the SMP operators can participate** in the legal procedure,
 - the status of the OLOs in the procedure,
 - experiences, recommendations, etc.
- **transparency,**
 - see the not approved RIO/RUO (time),
 - see the cost-model including data (appeal),
- **more than one** RIO/RUO
 - non discrimination, benefit of the market

8

Situation of SMP

- an operator is SMP operator, if its market share is more than **25%** in one of the four relevant markets (telephone, leased line, mobile telephone, interconnection),
- it is possible to identify an operator as SMP evaluating **some other factors** (control of access means, etc.),
- collecting data from **500 operators**,
- **deadline** 45 days excluding data collection time,
- the decision of 2002 **was appealed** by two operators of two different markets,
- the Court **suspended the enforcement** of the decision in both cases, and the procedures before Court have not yet ended,
- the decision of 2003 will be published **these days**,

9

Questions about SMP

- 45 days for the NRA and more than one year for the Court,
 - factor of time, legal certainty
- control of the data submitted for the NRA,
 - well-founded decision, right to appeal
- market and financial data,
 - transparency, confidentiality,
- the NRA decision was suspended partly by the Court (1 from the 5 SMPs in the telephone market, 1 from the 2 SMPs in the interconnection market)
 - equal handling of market players,

10

Situation of arbitration

- arbitration (mediation) *in Hungary*
 - legal procedure before the AC, 45 days,
 - on request of one party, but the other is not obliged to participate,
 - if there is an agreement between the interested parties, the decision is binding,
- **example:** internet call origination is access service, and not interconnection one
 - no power of NRA to control this type of charges,
 - politically highlighted matter,
 - transitional solutions,

11

Questions about arbitration

- not *very common and effective* in Hungary,
- not very much *fitted to* the Hungarian legal system,
- **experience:** if one of the interested parties has no intention to find a solution, it is not possible to arbitrate effectively,

12

Situation of legal dispute

→ *different regulatory subject:*

- obligation for interconnection,
- obligation for access in the justified cases,
- disputes related to RIO/RUO,
- conditions of agreement between operators,

→ but the *same legal procedure:*

- 45 days, on request and ex officio,
- binding decision of NRA,
- strong enforcement power of NRA,
- the decision can be appealed before Court (*most of the NRA decisions* were),
- no automatic suspension of the enforcement (*typically no suspension* by the Court)

13

Questions about legal dispute

→ detailed regulation (also for the procedure)

- legal certainty,

→ importance of the principles

- response to the new market event,

→ proactive, fast and consequent decision

- short period and in time

→ Court decision, suspension of the enforcement

- long period and after year(s),
professionalism

14

Situation of the new framework

- **more responsibilities and more power** of the NRA,
 - more and more important decisions,
- **less detailed** legal regulation (also for procedure),
 - longer and deeper reasoning,
- more **importance of the principles**,
 - can be the main reason of the decision,
- **alternative forums** (NRA, Court, Arbitral Court)
 - parallel tasks, different decisions
- **merger** of ex-ante and competition law regulation
 - possible conflicts,

15

Questions about the new framework

- more possibilities to appeal the NRA decision,
- more risk of suspension of the NRA decision by the Court,
- effectiveness of alternative DSRP forum,
- forum „shopping”,
- segmentation of national regulation,

16

Thank you for your attention