



Regulatory Authority Aims at Fair and Effective Competition

The former monopolists in the telecommunications and postal markets, Deutsche Telekom AG and Deutsche Post AG, will be able to maintain their dominant position long after market liberalisation. The core task of state regulation must therefore be to keep a check on each dominant provider's position in the market and create a level playing field in the interests of new competitors. The Federal Government's basic regulatory approach hence goes beyond merely policing anti-competitive behaviour ex post. The tasks associated with such regulation are so specialised that they cannot be fulfilled within the framework of general competition law. This creates the need for sector-specific regulation, at least until effective competition is established in the telecommunications and postal markets.

The Regulatory Authority's Status

The regulatory tasks are performed by a structurally separate, independent authority. A Regulatory Authority for Telecommunications and Posts was set up under the Telecommunications Act in force since 1 August 1996. It is a higher federal authority within the scope of business of the Federal Ministry of Economics and Technology, and has its headquarters in Bonn. The Regulatory Authority took up its work on 1 January 1998 and is tasked with promoting competition in the postal and telecommunications markets.

The ministerial tasks of the former Federal Ministry of Posts and Telecommunications were transferred to the Economics and Technology Ministry, and the participation tasks to the Federal Ministry of Finance. The Economics and Technology Ministry on 1 January 1998 created a new department (Department VII) comprising two divisions for telecommunications and posts, while the Finance Ministry planned for horizontal integration of the participation tasks into its scope of business.

The Regulatory Authority plays a major role in the liberalisation of both the telecommunications and the postal market. It is equipped with effective procedures and instruments with which to enforce the regulatory aims. These include information and investigative rights as well as a set of sanctions.

- Transparency and independence in Regulatory Authority decisions are also guaranteed by Ruling Chamber proceedings. The Ruling Chambers are conciliation boards whose decisions are taken, similar to the judicial system, in the composition of Chairman and two assessors. Proceedings are public, with the companies directly concerned taking part. There is the added possibility of persons and associations of persons affected by

the proceedings being invited to attend, and hence given the opportunity to comment. Basing proceedings on the judicial system and recognising the validity of procedural principles (open courts), along with the option of involving the relevant experts, guarantees objective decisions that are readily comprehensible to all. The Ruling Chambers have authority to take decisions in major areas of regulation such as rates regulation or questions of public network inter-connection. In matters chiefly concerning infrastructure, for instance obliging a company to provide universal service, the Ruling Chambers make decisions in the composition of President as Chairman and the two Vice-Presidents as assessors.

- Also important for the independence of the Regulatory Authority is the ruling whereby its decisions cannot be quashed by the supervisory authority (Economics and Technology Ministry) in the event of legal action. By way of derogation from general administrative law, there are no preliminary proceedings (appeal proceedings). Actions against Regulatory Authority decisions may be brought directly before the administrative courts, but do not have suspensory effect.
- Another factor reinforcing the Regulatory Authority's independence is that, even though the supervisory authority is tasked with general legal and restricted substantive supervision, and in derogation of the provisions of the Restraints of Competition Act, there is no scope for so-called ministerial decisions.
- Within the narrow framework of its legal and restricted substantive supervision, the supervisory authority is entitled to give

general directives. In the interests of transparency, however, these directives must be published in the Federal Gazette.

While the legal situation prior to the Telecommunications Act gave the regulator a significant degree of discretion in its decisions, the detailed legal framework established in the Act as a rule only provides scope for case-by-case decisions, which are then legally verifiable. The federal states' desired participation in the application of law would have resulted in a mixed administration, which is constitutionally questionable. It would also have worked against the Federal Government's efforts to give the authority a maximum of independence in decision-making. The federal states' wish for more extensive participation rights was accommodated by setting up an Advisory Council consisting of nine members of the German Bundestag and nine members of the German Bundesrat. The Advisory Council essentially has advisory and nomination rights in, say, staff matters, and consultation rights in matters of relevance to the nationwide provision of telecommunications and postal services.

From both a legal and an economic viewpoint, the sector-specific regulatory approach developed in the Telecommunications Act broke fresh ground in many areas. The Regulatory Authority must present itself to each and every market player as an independent, efficient administrator of regulation.

The Regulatory Authority's Senior Executives

The Regulatory Authority's President is Mr Matthias Kurth. Its Vice-Presidents are Dr Jörg Sander and Mr Gerhard Harms.

Structure of the Regulatory Authority for Telecommunications and Posts

Ruling Chambers

Ruling Chamber 1 President's Chamber	Licensing and Universal Service in Telecommunications and Posts, Scarce Frequencies
Ruling Chamber 2	Rates Regulation — Rates Subject to Approval for Transmission Lines (Licence Class 3) and Voice Telephony (Licence Class 4)
Ruling Chamber 3	Special Control of Anti-Competitive Practices, Ex-Post Rates Regulation — Telecommunications (Sections 33, 25(2), 30(2) of the Telecommunications Act)
Ruling Chamber 4	Special Network Access, including Interconnection
Ruling Chamber 5	Rates Regulation and Special Control of Anti-Competitive Practices — Postal Markets

Specialised Departments

Department Z	Department IS	Department 1
Central Matters	Information Technology and Security	Economic Aspects of Telecommunications Regulation
Organisation, Personnel, Budget, Commissioner for Revenues Legal Matters, Property Management, Purchasing, Motor Vehicles, Buildings, Real Property, Library, Translation Service	Development of IT Solutions, Digital Signature, Data Protection, Information Requests, Civil Defence, Ensuring the Provision of Telecommunications and Posts	Economics of Regulation, Market Watch; Universal Service, Consumer Issues, Conciliation Board, Numbering

Department 2	Department 3	Department 4
Legal Aspects of Telecommunications Regulation, Licences, Frequency Regulation	Postal Regulation	Technical Telecommunications Regulation
Legal Aspects of Regulation, Principles of Sector-Specific Control of Anti-Competitive Practices - Telecommunications; Mobile Radio and Satellite Licences (Classes 1 and 2); Transmission Line and Voice Telephony Licences, Use of Public Ways Frequency Management; Broadcasting Frequencies and Licences	Economic and Legal Aspects of Regulation, Market Watch, Quality of Service Measurements, Licences, Network Interconnection	Electromagnetic Compatibility Standardisation

Department 5
Regional Offices
Radio Monitoring and Radio Inspection Service; Radio Compatibility and Frequency Assignment