

The new Italian Code for electronic communications: a technologically neutral solution

The last global revision of the Italian Code for post, post banking activities and telecommunications came into force in 1973 and, since then, the two major European reforms of 1990 and 1998 were implemented in the national legislation with specific regulatory measures, but without formal changes to the Code.

The European 1999 review “package” was an excellent chance to revise the whole legislation following innovative criteria based on the administrative simplification and separating the postal regulations from the electronic communications framework.

The new Electronic Communications Code, effective since September 16, 2003, implemented the Directives without substantial changes or departures from the text adopted at European Union level. In implementing the Directives, the Code expressly abolished the former legal framework for regulation of the telecommunications sector in Italy mainly represented by the Presidential Decree no. 318 of September 19, 1997, which was effective since October 7, 1997.

The main characteristics of the Code are as follows:

- Redefinition of the concept of “significant market power” and of the threshold for imposing obligations on certain operators, with the introduction of market analysis;
- The introduction of the term “electronic communication services and networks” (a broader term which now encompasses the term “telecommunications”);
- “electronic communication services and networks” can now be provided pursuant to a “general authorization”;
- more flexibility by national regulatory authorities to select which access and interconnection obligations to impose on operators notified as having “significant market power” in a relevant market; and
- redefinition of certain measures relating to retail price regulation and extension of number portability to mobile operators.

Moreover, the Directives (and other EU-related regulatory interpretations and recommendations) as implemented by the Code provide for guidelines on market analysis and calculation of “significant market power” and identify 18 markets at retail and wholesale level where such analyses and identification shall be conducted. According to the Code, the Italian National Regulatory Authority will have to conduct a new evaluation of the operators having “significant market power” and propose applicable remedies. Within the authority allowed by EU law, the Code also provides for the following:

- allows the trading of the rights of use of frequencies among operators, offering the same type of services;
- excludes from the category of universal service (and its related obligations), the provision of directory information services;
- provides for specific and more defined rules aimed at reducing the burden of current legislation and local regulations which discipline the installation of networks;
- redefines the assignment of roles and responsibilities among the Italian Ministry of Communications and the National Regulatory Authority mainly by assigning to the Ministry of Communications the task of supervising the authorization process and compliance with

the universal service obligations and to the national regulatory authority the task of conducting market analyses and proposing remedies.

The Code also introduces a new definition of and specific references to “broadband services”, encouraging their development also at regional level