

# **Legal Issues of Services of General Interest**

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# Universal Service in WTO and EU Law

Liberalisation and Social Regulation  
in Telecommunications



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## Series Information

The aim of the series *Legal Issues of Services of General Interest* is to sketch the framework for services of general interest in the EU and to explore the issues raised by developments related to these services. The Series encompasses, inter alia, analyses of EU internal market, competition law, legislation (such as the Services Directive), international economic law and national (economic) law from a comparative perspective. Sector-specific approaches will also be covered (health, social services). In essence, the present Series addresses the emergence of a European Social Model and will therefore raise issues of fundamental and theoretical interest in Europe and the global economy.

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# Foreword

Universal service in telecommunications is a topic that over the years has stimulated a considerable body of literature, both practical and scholarly. This volume is a valuable addition to that literature: it both summarises a large amount of previous work and addresses the topic from new angles.

I have been continuously involved with universal service and related issues since 1989—first in the UK, later in Europe and now in a range of developing countries. As a consultant and consumer advocate, I have tried to keep abreast of relevant academic and policy debates. Most contributions reflect economic and/or social policy perspectives, and this author’s legal perspective makes a welcome change.

Clearly, modern electronic communications are of immense and growing importance for societies around the world, indeed for mankind as a whole. I share the author’s concern for careful thought about how far their provision is best left to market forces, and in what circumstances, and by what means, governments should intervene to achieve outcomes that seem beyond market forces—in particular, to ensure that communications services reach and include everyone.

By their very nature, electronic communications have the potential to boost social inclusion—despite concerns about data tracking, it remains largely true that on the Internet, nobody need know what you look like, what your abilities are or how you speak. And the facilities offer huge potential benefits—both personal and economic—to anyone who is connected. Ensuring that everyone eventually can be connected is a concern for practically all governments, whether or not they have anything that can be identified as a universal service policy.

This book offers a meticulous legal analysis of the motivations for, and the detailed provisions of, legal frameworks for universal service formulated by two international organisations—the World Trade Organisation (WTO) and the European Union (EU). The book’s special value is in highlighting areas where those frameworks could be improved. In some cases this is because of loose or unfortunate initial drafting, which could perhaps be fixed with relative ease.

The main burden of the argument, however, is that both technology and markets have changed radically in the decades since the frameworks were first conceived,

and that they now need equally radical review. Review would apply both to the objectives of legislation, and to the legal provisions which aim to fulfil those objectives. Both these should be worded in the most future-proof ways possible, so as to remain useful at least for another decade or two. As the author stresses, reviews of this kind are already challenging at national level, and reaching international agreement (as will be necessary in each of the two case study organisations) will be even harder.

I believe that reviews are nonetheless worthwhile endeavours, and they may become indispensable if, as is not unlikely, the weaknesses highlighted in the book lead to growing problems. The book will be of great assistance to policy-makers, as well as to scholars and students of universal service and the information society more broadly.

I am naturally pleased that the idea of evolving objectives for universal service, which I put forward in an article published in 1998, has proved useful to the author. We are already seeing many of the changes in focus that the article mentioned, as well as many more that it overlooked. In particular, concerns for universal service policy are getting ever broader—moving both upwards and outwards from their traditional base of physical networks infrastructures. They are moving up logical hierarchies, to encompass service and content as well as physical infrastructures, and at the same time outwards, from network operators to service providers and other intermediaries, and ultimately to end users.

Without interest and competence on the part of end users, facilities will not be used to full effect. Sectors such as health and education must be involved for societies to achieve the potential offered by universal connectivity. Thus the book may be influential way beyond the rather specialist readership who are most likely to pick it up. I commend it to potential readers, whether thorough or casual.

London, July 2015

Claire Milne

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# Contents

<b>1 Introduction</b> . . . . .	1
1.1 Introduction . . . . .	2
1.2 Objectives . . . . .	3
1.3 Setting the Context . . . . .	3
1.4 Outline of the Book . . . . .	5
References . . . . .	7
<b>2 Liberalisation of Telecommunications Services: Social Embedding of the Liberalised Market as a Regulatory Challenge</b> . . .	11
2.1 Telecommunications Services as Services of Public Interest. . . . .	12
2.1.1 Services of Public Interest . . . . .	13
2.1.2 Telecommunications as a Service. . . . .	25
2.1.3 Intermediary Conclusion: Telecommunications Services as Services of Public Interest and Dynamics of Their Provision in Terms of Polanyian Theory . . . . .	37
2.2 Universal Service: Regulatory Concept for Social Embeddedness of Liberalised Telecommunications Services Markets. . . . .	39
2.2.1 Origins and History of the Universal Service Concept in the United States of America . . . . .	40
2.2.2 Universal Service in Europe. . . . .	43
2.2.3 Modern Concepts of Universal Service: Universal Service and Universal Access . . . . .	50
2.2.4 Universal Service’s Potential for Social Embeddedness of the Telecommunications Services Market . . . . .	52
2.2.5 Conclusion: Universal Service as a “Black Box”. . . . .	55
References . . . . .	56

**3 Liberalisation and Regulation of International Trade in Telecommunications Services Through the WTO . . . . . 63**

3.1 Reconstruction of the Origins of the WTO Liberalisation and Regulation . . . . . 64

3.1.1 Influence of Various Stakeholders on the Launch and Process of Liberalisation Reform . . . . . 65

3.1.2 Negotiations on Value-Added Telecommunications Services . . . . . 71

3.1.3 Negotiations on Basic Telecommunications Services and on the Reference Paper on Regulatory Principles . . . . . 74

3.1.4 Intermediary Conclusion . . . . . 77

3.2 Overview of the Regulatory Framework . . . . . 79

3.2.1 Overview of the Commitments Under the Basic Telecommunications Agreement . . . . . 80

3.2.2 Provisions on Universal Service in the Annex on Telecommunications . . . . . 82

3.2.3 The Reference Paper on Regulatory Principles as a Document Containing Central Provisions on the Regulation of Universal Service . . . . . 87

3.2.4 Implementation of WTO Regulatory Principles Regarding Universal Service Provision by the Members. . . . . 98

3.3 Conclusion: Critical Appraisal of WTO Regulation. . . . . 107

References. . . . . 112

**4 Liberalisation of Telecommunications Services Markets and Regulation of Universal Service in the European Union . . . . . 117**

4.1 Reconstruction of Telecommunications Market Liberalisation by the European Union. . . . . 118

4.1.1 The European Commission and Liberalisation of the Market for Telecommunications Services . . . . . 119

4.1.2 Liberalisation of Basic Telecommunications and Regulation of the Market for Telecommunications Services . . . . . 126

4.1.3 Intermediary Conclusion . . . . . 130

4.2 Regulation of the Provision of Universal Service Under Current Rules . . . . . 131

4.2.1 Scope of Application of the Universal Service Directive. . . . . 135

4.2.2 Principles of Universal Service Regulation and Provision. . . . . 137

4.2.3 Scope of Universal Service in the EU . . . . . 142

4.2.4 Characteristics of Universal Service . . . . . 162

4.2.5 Designation of Universal Service Provider(s) and the Status of a Designated Undertaking . . . . . 174

4.2.6 Financing of the Universal Service Provision . . . . . 184

- 4.2.7 The Role of National Regulatory Authorities  
in the Implementation of the Regulatory Framework  
for Universal Service . . . . . 195
- 4.2.8 Overview of the Implementation of the European  
Regulatory Framework by the Member States . . . . . 200
- 4.3 Conclusion: Critical Appraisal of European Regulation . . . . . 205
- 4.4 Comparison of the Transnational Approaches to the Regulation  
of Universal Service Provision . . . . . 208
- References . . . . . 211
  
- 5 Transformation of Universal Service for the Future . . . . . 215**
  - 5.1 Evolution of the Communications Environment . . . . . 216
    - 5.1.1 Technological Trends . . . . . 217
    - 5.1.2 Evolution of Markets for Telecommunications Services . . . . . 219
    - 5.1.3 Societal Implications . . . . . 221
    - 5.1.4 Intermediary Conclusion: Dramatic Evolution  
of the Public Value of Telecommunications . . . . . 224
  - 5.2 Necessity of Reforms of Both Transnational Regulatory  
Frameworks on Universal Service . . . . . 227
    - 5.2.1 The WTO Framework . . . . . 228
    - 5.2.2 The EU Framework . . . . . 234
    - 5.2.3 Intermediary Conclusion: Critical Appraisal  
of the Current Universal Service Concept  
for Application in a Changing Communications  
Environment . . . . . 242
  - 5.3 Re-casting the Universal Service Concept . . . . . 248
    - 5.3.1 Access as a Core of the New Universal Service . . . . . 249
    - 5.3.2 Characteristics of Access to the Network . . . . . 254
    - 5.3.3 Translation of Access to the Network into Law . . . . . 257
    - 5.3.4 Conclusion: Universal Service as a Policy Decision . . . . . 262
  - References . . . . . 263
  
- 6 Conclusion . . . . . 269**
  
- Annexes . . . . . 271**
  
- Bibliography . . . . . 283**
  
- Index . . . . . 297**

# Abbreviations

APEC	Asia-Pacific Economic Cooperation
ATC	Average Total Costs
AVC	Average Variable Costs
BEREC	Body of European Regulators for Electronic Communications
BTA	Agreement on Basic Telecommunications
CEPT	European Conference for Post and Telecommunications Administrations
COCOM	Communications Committee
CPC	UN Central Product Classification
EC	European Communities
ECFR	Charter of Fundamental Rights of the European Union
ECJ	European Court of Justice
ETSI	European Telecommunications Standards Institute
EU	European Union
FCC	US Federal Communications Commission
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNI	Gross National Income
ICT	Information and Communications Technology
INTUG	International Telecommunications Users Group
ISDN	Integrated Services Digital Network
ITU	International Telecommunications Union
MIIT	Ministry of Information Industries and Technology of China
NGBT	Negotiating Group on Basic Telecommunications
NGN	New Generation Network
NGO	Non-governmental Organisation
NRA	National Regulatory Authority
OECD	Organisation for Economic Co-operation and Development
ONP	Open Network Provision

PSTN	Public Switched Telephone Network
PTT	General reference to government agencies responsible for the provision of post, telephone and telegraph services
RP	Reference Paper on regulatory principles
SGEI	Services in General Economic Interest
SOGT	Senior Officials Group on Telecommunications
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UNICE	Union of Industrial and Employers' Confederations of Europe
USA	United States of America
USD	Universal Service Directive
USO	Universal Service Obligations
VoIP	Voice over Internet Protocol
WTO	World Trade Organisation