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COUNTRY REPORT:

AZERBAIJAN

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1. Legal aspects of Regulation in Telecommunications

The basic regulatory functions are carried out by the Ministry of Communications and Information Technology (MCIT). The 1997 Communications Law, the 1998 Information, Informatisation and the Protection of Information Law, and the 2005 Law on Telecommunications govern telecommunication in Azerbaijan. Licensed operators are required to negotiate interconnection, with the courts able to impose settlements on the basis of the 1997 Communications Law, the 2005 Telecommunication Law, and other normative acts of MCIT.

The MCIT as a telecom regulatory body (Government) - controls numbering and the two state-owned fixed operators (BakTelekom and AzTelekom) have some informal privileged access to numbering resources. Some possibilities for number portability exist.

The special normative act on Implementation of Universal Services in Azerbaijan was adopted on 27 September 2005, however MCIT is still at the early stages of its implementation.

The MCIT uses a domestic system of cost accounting that, it asserts, is largely similar to the methodology used in other CIS countries. However, with no NRA and very limited competition, it is difficult to verify this.

Licensing was greatly simplified in Azerbaijan in 2002, and license fees are quite low (less than the equivalent of 5,000 Euro for most types).

There is no special national law on data protection, but its main aspects and provisions are reflected in various national laws. It appears that the Government is beginning to look at approximating those provisions with European norms and practice.

Tariffs (both retail and wholesale) of the state-owned operators (such as the two big operators Aztelekom and Baktelekom) are established and overseen by the Inter-Ministerial Tariff Council, acting under the supervision of the Ministry of Economic Development. Other commercial operators are able to set their own tariffs.

2. Status of the National Regulatory Authority (NRA)

There is no independent national regulatory authority in Azerbaijan. The basic regulatory functions are carried out by the Ministry of Communications and Information Technologies. In February 2004, the Ministry of Communication was
converted into, the Ministry of Communications and Information Technologies (MCIT). The new MCIT was intended to have a purely regulatory function, rather than have responsibility for the commercial aspects of the communications sector in the country, as the old Ministry had.

The MCIT was thus established as a high-level policy body within the Government, responsible for promoting the development of the ICT sector, by creating a favorable regulatory environment and monitoring the implementation of ICT projects nationwide. The MCIT statute requires regulation to be transparent, non-discriminatory and that pricing should be cost oriented.

However, MCIT still has ownership of the dominant incumbents, Aztelekom and BakTelecom and maintains state shareholding in many alternative operators. This means it intervenes in the market as both a regulatory authority and as an operator and risks being prone to acting in the state-owned concerns' interests. The incumbent operators' directors are board members of the MCIT and it is their duty to participate in all decision-making processes. Being a part of the MCIT structure, Aztelekom and its staff are at the disposal of the Ministry.

There is no defined procedure for consultation with wider ICT business stakeholders or civil institutions. From time to time, MCIT holds meetings and round tables where market players are given the opportunity to discuss regulatory issues and to request the minister deal with problems in the marketplace. However, in practice, all issues are discussed in MCIT Committees where the incumbent has a strong presence.

Thus, the two major factors hindering the development of the telecommunications sector in Azerbaijan are the lack of an independent NRA, which is currently planned by the MCIT, and the incomplete processes of liberalisation and privatisation of incumbent operators and state shares in other joint ventures.

The MCIT holds power over the setting up of joint ventures (JV) in telecommunications, being the co-founder of more than 20 JVs operating in the ICT sphere, although the management of these joint ventures and the fixing of tariffs for telecommunication services falls under the responsibility of the Inter-Ministerial Tariff Commission under the Ministry of Economic Development (MED).

According to the Statute of MCIT endorsed by Presidential Decree 111 of 10 August 2004, MCIT is the central executive body which formulates and implements state policy, ensures the regulation and development of communications and information technologies, and coordinates the activities of other Government agencies in the areas of communications and information technologies in the Republic of Azerbaijan.
The Statute defines the main organisational and legal basis, and duties of the Ministry to be:

- to formulate and implement unified state policy and regulation in the field of communication and information technologies;
- to take measures for creating new forms of social and economic activity through mass use of information technologies; to convert information into a commodity;
- to provide state control over the activities conducted in the field of communications and information technologies, including the use of radio-frequency spectrum, as well as the use and maintenance of satellite communication facilities;
- to be involved in developing and implementing necessary measures for meeting the demands of state bodies, municipalities and physical and legal entities for communication and information technologies services;
- to prepare and approve legal normative acts and standards regarding issues under the scope of the Ministry;
- to determine traffic rules in common-use communication networks, as well as mutual payment principles for traffic exchange among all communications operators;
- to supervise mutual accounting transactions with communications operators of foreign countries for the exchange of international traffic;
- to take measures within its scope for the formulation and development of e-Government and the e-economy and;
- to carry out the construction, development and improvement of cable networks, exploitation of cable broadcasting signals systems and use of frequency and channels, together with other state agencies in a manner defined by the law.

The possibility of the creation of an independent NRA is being actively discussed in Azerbaijan. One Government source has suggested that such an authority would have a purely regulatory function, unlike the MCIT which is a significant, dominant commercial force in the sector. Such an NRA would probably manage the implementation of market-oriented reforms in the national telecoms market. In addition, MCIT recently undertook a large project with USTDA (the United States Trade Development Agency) with the aim of reforming the structure of the MCIT and preparing for the establishment of an independent regulatory body in Azerbaijan. However, the 2005 national Law on Telecommunications makes no direct mention of plans to establish a new regulatory body and instead suggests Azerbaijan should reform the telecoms sector as necessary to help achieve WTO accession.

3. Stakeholders participation in Regulation and Policy

Several business associations involving telecoms providers are having an increasingly significant impact on national ICT policy development in Azerbaijan. This is manifesting itself through the introduction of progressive legislation that seeks to support the growth of ICT and through attempts to convince the Government to withdraw regulatory measures that risk stifling innovation or hindering the process of telecoms liberalisation and privatisation.

Annual business forums are held where representatives of business associations hold
discussions with the President and Government representatives regarding the implementation of business-friendly reforms in national telecoms governance. For instance, at a 2003 forum, the then Communications Minister was subjected to strong criticism because of his regulatory policy, and this criticism is widely believed to have led to his subsequent dismissal at the beginning of 2004.

The Azerbaijan Internet Society (which is not part of the international Internet Society) was established to build a coalition of Internet-related civil organisations, Internet communities, universities, academies and research institutes, and ICT stakeholders, in order to strengthen their ability to shape national ICT policy. The Internet Society lobbies for a comprehensive reform of Azerbaijan's ICT regulatory system and it holds wide-ranging dialogue with industry and Government officials, including officials from the MCIT and the incumbent operators, in order to seek mutually acceptable agreements on improving regulation, administration, licensing, certification, tariffs, telecom liberalisation and the privatisation policies of the MCIT and other Ministries. The Internet Society is also very active with regard to the protection of Internet users' rights.

The Azerbaijan ISP Association (AzISPA) was created as an informal grouping, and is now an effective coalition of more than twelve commercial and two state-owned Internet Service Providers, as well as several ICT-related businesses. AzISPA is committed to providing legal, political, and administrative assistance to ISPs, campaigning against alleged anti-competitive practices of the monopoly telecoms operators with regard to the terms and conditions of ISP access to the Internet. AzISPA is also committed to developing united policies and positions on crucial aspects of state policy affecting ISPs. Specifically, AzISPA has called for transparency and simplicity in the licensing and certification requirements of ICT operators and with regard to interconnection rules, and advocates explicit procedures for liberalisation and privatisation in the telecoms market.

Certain international groups have consistently made efforts to approach MCIT to explain the steps that they believe are required to enhance the Azeri communications market, and the use of ICT in business more generally, through suitable regulation (the American Chamber of Commerce in Azerbaijan (AMCHAM), the Commercial Service of the US Embassy in Azerbaijan, the UK and German Embassies, and the Turkish Industrialists' and Businessmen's Association are some examples). For instance, AMCHAM supports and monitors the implementation of the procedures and regulation needed for the liberalisation of the market and the creation of new telecom providers (including Voice over IP and mobile providers), in order to ensure fair conditions and open competition for all entities operating within the ICT area.

4. National Development Plan

The National Information and Communications Technology Strategy for the Development of the Republic of Azerbaijan (2003-2012) was launched by the
President in February 2003 and was developed in cooperation with the UNDP. The primary aims of the Strategy include assisting with democratic development, improving national communications infrastructure, information security (including data protection) and international links, developing e-Government and e-Learning and ensuring favorable conditions for the transition to a knowledge-based civil society by 2011.

The Strategy assesses the country's strengths and weaknesses as well as the most appropriate role for the State in leading ICT sector development. To this end, it identified the development of ICT awareness, transparency, equality, innovation and international cooperation, taking the lead in the implementation of ICT tools, and the development of national information resources as the key areas where the State could play a role.

While some progress has been made in certain aspects of the Strategy (such as the adoption of new legislation on telecommunications), few measures have been taken that specifically address priority issues identified in the overall strategy, and no well-defined procedure is in place to measure progress towards long-term goals.

5. **Tariff Policy**

The Inter-Ministerial Tariff Council sets the tariffs for all telecommunications services provided by state entities in Azerbaijan. The stated government goal in price regulation is to ensure a business-friendly environment, with prices based on costs and to restrict unfair competition. However, no publicly declared frameworks or timetables for tariff rebalancing have been established. The relatively low level of income earned by the majority of the country's population makes it exceptionally difficult to significantly increase local call charges.

From time to time, MCIT initiates public discussions on implementing metering of local calls. However, this is always met by a very negative reaction from citizens, which makes it difficult on a political level to introduce change. Hence, to date, there has been no determined effort made to rebalance tariffs and there has therefore been little in the way of moves to reduce or eliminate price differences between local, regional and national calls, to reflect the actual cost of the service. However, there has been some reduction in the prices of regional and international rates recently: this is partly due to Government efforts at rebalancing and partly due to competition.

Local calls (even between different fixed operators) are free of charge and line rental remains very low (0.5 Euro per month). The cost of calls from mobile to fixed or vice versa are, by contrast, quite expensive at approximately 0.26 Euro per minute. Interregional fixed to fixed calls cost 0.09 Euro per minute. Interregional fixed to fixed calls cost 0.09 Euro per minute.

The number of outgoing international call minutes as a percentage of incoming minutes decreased from 41 percent in 2001 to 24 percent in 2004. Outgoing calls from Azerbaijan cost 1.35 Manat (1.21 Euro) per minute for CIS states and Baltic countries; 2.70 Manat (2.41 Euro) for Turkey and Iran; 3.24 Manat (2.90 Euro) for European countries; and 4.32 Manat (3.86 Euro) for the USA.
6. Universal Service

The MCIT has declared that implementing universal service is a fundamental goal of Azerbaijan telecommunication policy. This was outlined in the State Programme on the Development of ICT in Azerbaijan as well as the 2003 National ICT Strategy of Azerbaijan. Universal service is stated again as a key government policy in the 2005 Law on Telecommunications. The MCIT also has adopted a special ministerial regulation on Universal Services implementation.

However, further guidance is needed from the MCIT to detail the costing, implementation and administration of a universal service system. All the main telephone companies already offer selective call barring services to customers.

Most of the obligations currently placed by the State on telecommunications service providers relate to ensuring the delivery of specified levels of quality of service. In line with several other countries in this study, Azerbaijan has embarked on a focused effort to increase basic access to communications in smaller towns and villages. Current plans are to ensure that:

- Settlements of 50-200 people be given access to local, inter-regional and international telephony services, access to information services (directory enquiries) and emergency services.
- Settlements of 200-1,000 people, in addition to the above, are to be given access to the Internet.
- Settlements of 1,000 to 10,000 people, in addition to the above, be given data transfer and fax services.

Unusually, these services are seen by government as a long-term investment for telecommunications companies. Therefore, they will be lent the money to develop these services and will have to repay this debt.

7. Licensing and Authorization

In 2002, a major reform of licensing in Azerbaijan reduced the number of business activities requiring licenses from more than 240 to approximately 30, covering all sectors of industry. The validity period of licenses was extended from two to five years. According to Presidential Decree 782, of 2 September 2002, MCIT licenses are granted for telephone, cellular, paging, radio trunking, installation and operation of CCTV and courier services. The MCIT is responsible for monitoring compliance with license conditions. Licenses are issued within 15 days of submission of all relevant documentation and payment of the appropriate fee, which is 5,500 Manat (4,916 Euro) for most services. Licenses may not be transferred.

The 2005 Law on Telecommunications also includes rules covering licensing for telecommunications service provision. However, secondary legislation, which has yet to be published, is needed for these measures to be implemented and explained in more detail. In January 2006, the Ministry for Communications and Technology announced plans to change from the current situation, where one
license covers all telecommunications services, to a system with a variety of differently priced licenses.

The 2005 law also covers the certification of communications equipment, although the scope of such requirements is yet to be clarified. There is concern among some industry players that this lack of clarity could translate into arbitrary actions on the part of government authorities, making it more difficult and expensive to provide telecommunications services.

Restrictions on ISPs have also been eased by the 2005 Law, which is intended to give a boost to competition in the Internet access and service provision markets.