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GUIDELINES FOR SUBMITTING A TELECOMMUNICATIONS NOTIFICATION

HOW TO SUBMIT A TELECOMMUNICATIONS NOTIFICATION TO FICORA**Introduction**

According to section 13 of the Communications Market Act (393/2003), a written notification of the intention to operate public telecommunications shall be submitted to FICORA before the operations begin (telecommunications notification). A telecommunications notification is not significant in the sense that it would create independent rights or obligations. Instead, it is meant to be an instrument of work for the regulatory authorities. According to section 14 of the Communications Market Act, a telecommunications operator shall also notify the Finnish Communications Regulatory Authority of any changes in the information in the notification or in case the operations are discontinued.

The objective of these guidelines is to provide advice on how to interpret the definition of public telecommunications subject to the notification obligation. A telecommunications operator subject to notification or licence must pay an annual communications market fee and information security fee to the Finnish Communications Regulatory Authority. Fees are not collected from the turnover of television and radio operations. Neither are they collected from companies whose telecommunications operations remain below the limit set for telecommunications of minor significance.

Telecommunications of minor importance that is free from notification obligation

The notification obligation under section 13 of the Communications Market Act does not apply to public telecommunications that is temporary in nature, aimed at a small audience or otherwise of minor significance. Telecommunications of minor significance is defined as follows in the Government Decree (675/2003), given under section 13 (2) of the Communications Market Act:

Public telecommunications is regarded to be of minor significance if the operator's turnover of telecommunications in Finland is less than 300,000 euros per year.

On the grounds cited in the Act, experimental activities can be regarded as an example of temporary public telecommunications. Telecommunications that is otherwise considered of minor significance may for instance comprise public telecommunications in communications network that is predominantly used as a dedicated network or maritime radio network.

A telecommunications operator that is starting its operations must assess whether the operations exceed the limits defined for telecommunications of minor significance in the Act or the regulation. If the extent of public telecommunications exceeds the criteria set for telecommunications of minor significance, a telecommunications operator is required to submit a telecommunications notification.

Telecommunications operators referred to in the Communications Market Act and Act on the Protection of Privacy in Electronic Communications

The nature of the operations is relevant when assessing public telecommunications, not the legislative status of the service provider etc. Thus, a municipality, school or IT service provider may be a telecommunications operator referred to in the Act.

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As referred to in the law, the telecommunications operators laid down the Communications Market Act and Act on the Protection of Privacy in Electronic Communications comprise, for example:

- network and service operators that operate in a fixed telephone or mobile network
- operators that provide television and radio networks: terrestrial networks that function by means of freely propagating radio waves and cable television networks
- operators that provide data transmission network services
- programme service providers that operate in television and radio networks and are subject to program licence
- other operators that broadcast in television and radio networks, e.g. data transfer services
- satellite-transmitted television operators, if the actual broadcasting takes place in Finland
- internet access service providers and
- e-mail service providers

Telecommunications operator and public telecommunications

In the Communications Market Act, *a telecommunications operator*, means a network operator or service operator that functions in communications networks. Whereas a network operator means an operator who offers a communications network owned by it or otherwise in its possession to be used for transmission, distribution or provision of messages. A service operator means an operator who transmits messages in a communications network in its possession or leased from a network operator or distributes or provides messages in a mass communications network. *A service operator in the mass communications network means an operator that transmits or provides for transmission, programmes or other content intended to be received by the public.*

In the Act, public telecommunications means the provision of a network service or a communications service to a set of users that is not subject to any prior restriction. A set of users that is not subject to any prior restriction means that, in principle, any user may start using the service. Drawing a line between a priorly-restricted and priorly-unrestricted set of users may require case-specific consideration. Examples of factors restricting the set of users may be when services are implemented for the player's own use only, a communications service is provided in conjunction with another service or customership (Internet café) or members of a closed site. But, in case a certain set of users qualify as users of a service due to the geographical area or limited number of potential users, they cannot be regarded as factors limiting the set of users.

FICORA maintains that *public telecommunications also comprises* such supplementary services, which are closely-related the main service.

For example:

- An Internet connection provider's telecommunications referred to in the Communications Market Act is not only formed of Internet connection and data transfer capacity services but also of fixed IP addresses and better service level.
- *Maintenance and upkeep of a telecom operator's operations.*

Examples of services that fall outside the scope of public telecommunications

The Finnish Communications Regulatory Authority maintains that, according to legal definition, the following operations cannot be considered as public telecommunications referred to in the Communications Market Act due to a set of users that is subject to prior restriction:

- operations serving the own interests of the company or other organisation

For

example:

The use of a server or software for the internal communications of an organisation or implementation of other internal communications networks and communications systems for own purposes.

WLAN connections offered by a school to its students and personnel.

- internal communications within the organisation and among members

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- leasing of hosting service i.e. server space
However:
If an Internet access service is provided in conjunction with the hosting service, the service is telecommunications provided that the service provider has device that transmit traffic and is able to, for example, edit and filter traffic and monitor network access..
- sales of devices and provision of software solutions (including maintenance contracts provided as ancillary products provided that the customer is actually responsible for the functionality and features of the service)
However:
Unless the service provider is responsible for the functionality and features of the customer's communications service and the customer has minor control of the service settings, the provision of the service is deemed to be public telecommunications.
- pure retail and further provision of telecommunications services, if the provided is unable to influence the technical features of the network or service
However:
If the provider has actual right and possibility to control the network or access to it or the transmission and provision of messages on the basis of an identifier or equivalent that reveals the user, the provision of the service is public telecommunications.
- • providing the company's own customers with services bought from telecommunications operators that are considered as locally restricted accessory services in the sense that the service that is provided to the customer is mainly something else than a telecommunications service
For *example:*
WLAN – a restricted area network or an Internet connection whose access rights are provided to customers as an accessory service of other principal service than that of telecommunications
WLAN connections offered by a company (for example hotel or café) to its customers
- • telecommunications in a communications network that is meant for a restricted user group
For *example:*
A shared procurement of a building from an internet service provider to a restricted set of users (the residents of the building, the tenants of a business premise)

Operations in a network that is established for the purpose of providing taxi or other transport services
- • satellite-transmitted television operations if broadcasting takes place abroad
However:
If satellite-transmitted programmes are broadcast in cable television network, the broadcasting operations of a cable television operator carrying out programmes in Finland is considered as public telecommunications.
- shared procurement and shared usage
For *example:*
Sharing the use of an exchange or other telecommunications terminal

Notification obligation pursuant to the Communications Market Act does not concern operators whose operations exclusively comprise operations that are not considered as public telecommunications, the above-mentioned operations or operations corresponding to them. If necessary, FICORA gives case-specific instructions on how to submit a telecommunications notification.