

TELECOMMUNICATIONS LAWS OF THE WORLD

Belgium vs Australia



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BELGIUM



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OVERVIEW OF LEGAL LANDSCAPE

The Belgian Institute for Postal Services and Telecommunications (BIPT) is the regulator of the electronic communications market.

Subject to some exceptions (e.g. concerning the use of spectrum, depending on the frequency used), communication providers are generally authorised to operate in Belgium and do not require a licence, permit, consent, etc. However, providers of public electronic communications networks or of publicly available communications services (operators) need to inform the BIPT of their activities, as well as of changes to their activities (including the transfer and/or termination thereof).

This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing telecommunications in Belgium is the Act of 13 June 2005 on electronic communications (the 'Telecommunications Act') which implements (amongst others, such as Directives 2006/24 and 2009/136) the following European Directives:

- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities

AUSTRALIA



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OVERVIEW OF LEGAL LANDSCAPE

The Australian telecommunications regulatory landscape and regulatory perimeter is broad and complex.

The primary telecommunications legislation, the 1997 Telecommunications Act, removed barriers to participation and added to earlier legislation which was intended to permit facilities-based competition. The 1997 Telecommunications Act implemented an access regime applicable only to the telecommunications industry and also provided prohibitions against anti-competitive conduct.

The telecoms industry is heavily-regulated and has seen additional complexity arising through a governmental decision to support the construction of a National Broadband Network (NBN) and the incorporation of a wholesale only company to supply broadband services (NBN Co). This has resulted in significant regulatory changes (in particular, to shield NBN Co from certain types of competition). The current government has announced changes to the NBN, in particular potentially removing cross-subsidies between urban and rural areas which were intended to provide for a single, Australia-wide access price, as well as adjustments to its facility-based competition principle (which saw other operators connect fiber-to-the-building (FTTB) infrastructure to high-density, higher use buildings such as apartment blocks).

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

As noted above, the Telecommunications Act 1997 is the key legislation which regulates, amongst other things, telecommunications carriers in Australia.

It is supported by a range of other legislation, instruments and codes including the [Telecommunications \(Consumer Protection and Service Standards\) Act 1999](#), which provides for the establishment of the universal service obligation with respect to standard telephone services in

- Directive 2002/20/EC on the authorisation of electronic communications networks and services
- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services
- Directive 2002/22/EC on universal service and user rights
- Directive 2002/58 on privacy and electronic communications
- Directive 2002/77/EC on competition in the markets for electronic communications networks and services
- Directive 2018/1972 establishing the European Electronic Communications Code

Several other laws may also be relevant with respect to the provision of communication services and the operation of communication networks:

- The Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- The Code of Criminal Procedure, which governs the interception of communications.

Australia, the ability of the Australian Communications and Media Authority (ACMA) to set performance standards and obligations on carriers, and the requirement for carriage service providers to enter the Telecommunications Industry Ombudsman scheme. ACMA has also recently published codes regarding:

- **emergencies:** The C536:2020 Emergency Call Services Requirements Industry Code (Updated 17 December 2020) requires carriers and carriage service providers to ensure access to emergency call services. Carriers are also required under the Telecommunications Act 1997 to provide help as is reasonably necessary, in the event of a National Emergency Declaration or state of disaster or emergency; and
- **scams:** Industry Code C661:2022 Reducing Scam Calls and Scam SMS (Updated 12 July 2022) provides for processes for carriers and carriage service providers to disrupt scam calls and SMS. This includes provision for processes that enable carriers to exchange information in relation to spam materials, to facilitate the reduction of spam in telecommunications.

Specific NBN Co Laws, Regulations and Policies

The regulatory framework for the NBN was established through the [National Broadband Network Companies Act 2011](#) and the [Telecommunications Legislation Amendment \(National Broadband Network Measures - Access Arrangements\) Act 2011](#) which added to the existing generic telecommunications regulatory framework. In addition:

- **Nondiscrimination obligations:** The Australian Competition and Consumer Commission (ACCC) must publish guidance on NBN Co's non-discrimination obligations.
- **ACCC explanatory material on the Part XIC nondiscrimination provisions:** Under the legislation, NBN Co can choose to publish a standard form of access agreement and/or give a special access undertaking to the ACCC in relation to its terms and conditions for the supply of wholesale services. Where an access agreement differs from the standard form of access agreement, NBN Co must provide a statement of the differences to the ACCC.

- **Special Access Undertaking (SAU):** In December 2013, the ACCC accepted an SAU lodged by NBN Co, in accordance with section 152CBA of Part XIC of the Competition and Consumer Act. The SAU specifies basic terms and conditions under which NBN Co will provide its wholesale services.
- **Authorised conduct:** The NBN Access Act introduced Division 16 into Part XIB of the Competition and Consumer Act, which authorises, for the purposes of the Act, certain conduct by NBN Co that is reasonably necessary for it to achieve uniform national wholesale pricing. This conduct relates to refusal to interconnect other than at listed points of interconnection, the bundling of services and cross-subsidising in charging for services. However, current Government policy on the issue of uniform pricing may result in differential charging between urban, rural and remote locations.
- **Telecommunications Act:** The NBN Access Act applies to fixed-line local access networks, or parts of such networks, that are built, upgraded, altered or extended after 1 January 2011 so that they are capable of providing a carriage service where the download transmission speed is normally more than 25 megabits per second to residential or small business owners.

REGULATORY BODIES OR AUTHORITIES

The BIPT is a federal institution which performs several tasks. As the regulator of the electronic communications market it, *inter alia*, has the task of promoting competition, contributing to the development of the internal market and protecting the users' interests.

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Community Regulators with regard to broadcasting

REGULATORY BODIES OR AUTHORITIES

The Australian Competition and Consumer Commission's main responsibilities include:

- The promotion of competition within the Australian telecommunications industry and to ensure that consumers' interests are protected
- Overseeing the telecommunications access regime provisions for controlling anti-competitive conduct and price control arrangements
- Focussing on access determinations to bottleneck services

The Australian Communications and Media Authority's main responsibilities include:

For the sake of completeness, the following regulators are of importance for the broadcasting in the three Belgian communities (Flemish, French and German-speaking):

- [The Flemish council for the media](#)
- [The French \(Walloon\) High Council for Broadcasting](#)
- [The Medienrat from the German-speaking Community](#)

Other important regulatory bodies

- The Belgian Competition Authority, which has been charged with (1) the duty of settling certain types of lawsuits between operators and (2) giving opinions (binding or not depending on the case) to the BIPT with regard to decisions that demand a market analysis imposed by the European regulatory framework.
- Mediation services, such as the ombudsman.

- Forming part of the Department of Infrastructure, Transport, Regional Development and Communications
- As a converged telecommunications regulator, overseeing the broadcasting, internet, radio communications and telecommunications industries
- Regulating technical and non-competition aspects of the industry, licensing telecommunications carriers, regulating fixed-line and mobile telecommunications, developing codes of practice for the industry and monitoring compliance, monitoring the performance of carriage service providers, setting and enforcing industry and technical standards and monitoring industry performance numbering, advising consumers on their rights and safeguards and managing the delivery of services to people with communication impairment

[The Telecommunications Industry Ombudsman's](#) main responsibilities include:

- The provision of a fast, free and fair dispute resolution service for small businesses and residential consumers who have a complaint about their telephone or internet service
- Being an independent body that complies with the Commonwealth's Benchmarks for Industry-Based Customer Dispute Resolution Services here

[The Communications Alliance's](#) main responsibilities include:

- Being an industry body for the communications industry
- Promoting the growth of the communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance that uses practical, self-imposed solutions that are developed co-operative processes

[The Communications Compliance's](#) main responsibilities include being an independent monitoring body that oversees conduct of the Telecommunications Consumer Protections Code Compliance Framework, providing guidance on how to comply with the code and providing

an overview of industry compliance. It should be noted that the Communications Compliance does not actually enforce compliance (ACMA is, in most cases, the key enforcement body).

The Attorney General's Department's main responsibilities include administering the Telecommunications (Interception and Access) Act 1979 and the Surveillances Devices Act 2004. However, the department does not investigate crimes (relevant police enforcement agencies investigate and potentially prosecute).

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The Electronic Communications Act regulates both the activities of electronic communications networks ("ECN") and providers of electronic communication services.

A further subdivision is made between public and private providers. This is of importance, because providers of public ECN or services will qualify as operators and will thus have to fulfil the obligations corresponding to the role of an operator in Belgium.

To assess the public character of an ECN, it is necessary to consider whether there is an open or closed group of users. For example, a public ECN has an open user group as its target audience, whereas a non-public ECN only has a closed user group as its target audience. This closed user group is a specific group of individual users, with a certain stability and common interest, that predates the provision of the ECN or services.

Another possible way to qualify as a public ECN or service is to consider the service or network as 'publicly available'. For this, it is necessary to consider whether everyone in the targeted audience can generally choose to use the services offered or if the access to the services is partially restricted to a specific group of users.

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

Installing Facilities

The Telecommunications Act 1997 restricts carriers in their installation of telecommunications facilities. Primarily only low-impact facilities, which are designed to be unobtrusive and to be installed in line with the legislation, are permitted. Superfast network obligations also arise under the same legislation which limit the installation of superfast networks (in connection with the rollout of the NBN).

Approval of telecommunications facilities is the responsibility of the local government authority in the area.

Service Providers

Service providers including Carriage Service Providers (CSP), that use, but do not own, a telecommunications network unit to provide carriage services to the public (including Internet Service Providers and Internet Access Providers, as they fall within the category of a CSP), and content service providers that supply content services to the public must comply with obligations imposed by the telecommunications access regime, in addition to the following regulations:

- The Telecommunications Act 1997
- The Telecommunications (Consumer Protection and Service Standards) Act 1999
- The Competition and Consumer Act 2010
- The Telecommunications Consumer Protections Code

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

No licence, permit, consent, etc. is required for communication providers to operate in Belgium, therefore communication operators have a general authorisation to operate in Belgium as required by the European Authorisation Directive. However, the Act on electronic communication sets forth an obligation for operators to notify the BIPT before starting to operate in Belgium.

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

In addition to the registration of a business name with the Australian Securities and Investments Commission, the following registration and licensing requirements must be adhered to:

- **Telecommunications licence:** Except in limited circumstances, the owner of a network unit (cable, wireless, or satellite) used to supply carriage services to the public must hold a Carrier Licence. Carriage Service Providers do not need a licence but must comply with the codes set out in the “Carriers and Carriage Service Providers” section.
- **Content Service Providers:** If a company uses, or proposes to use, any point-to-point carriage service to supply an online service to any other person that is not an officer of the company or a related body corporate then the company is a Content Service Provider under the Telecommunications Act 1997. A Content Service Provider is a general classification of industry participants supplying content services to the public. There is no licence required, however the company will need to comply with the content rules determined by ACMA.
- **Installation Services:** If a company provides installation services for customers that involve customer cabling then they must register with ACMA and comply with the Telecommunications Cabling Provider Rules 2000 issued by ACMA.
- **Radiocommunications Equipment:** A CSP that operates radiocommunications equipment for the purpose of supplying carriage or content services may need to be licensed under the Radio Communications Act 1992. If a radio transmitter or receiver is required to provide services, the company will require a Spectrum, Class or Apparatus Licence.

There may also be local council planning regulations relating to the location of certain infrastructure (base stations, transmitters etc). The nature of these regulations differ between different council areas.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

From a telecoms regulatory perspective, a telecommunications provider is not required to be domiciled in Belgium prior to or during the provision of services. Generally, only the notification to the BIPT should be complied with, which can also be done by an operator established abroad.

However, it should be noted that a contact person is required. This contact person can be located elsewhere, but should remain available at all times.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Telecommunications Act requires all providers of public electronic communications networks to negotiate in good faith, interconnection with other operators with a view to providing electronic communications services to the public.

Interconnection agreements have to be submitted to the BIPT.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

No domicile requirements apply for carrier licences, provided that the applicant is a 'constitutional corporation', an 'eligible partnership' or a public body.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Domestic inter-carrier roaming

Domestic inter-carrier roaming is not a declared service (although it has been the subject of a regulatory enquiry to determine whether it should be) and is regulated through commercial agreements reached between the relevant carriers.

International roaming

This is governed by the Telecommunications Service Provider (International Mobile Roaming) Determination 2019.

The Standard focused on four key consumer protection measures:

- A notification via a nominated method of communication to be sent to all consumers on arrival overseas, warning them that significantly higher charges for using roaming services may apply
- Enabling customers to stop international roaming at any time and at the maximum cost of AUD 1, including from an overseas location
- A notification to be sent via a nominated method of communication to customers of service providers giving them pricing information for using a range of roaming services. These services

include any that would normally be free in the domestic market, such as receiving a call on a mobile device

- Spend management tools, including notifications in AUD 100 increments for data usage and notifications at 50, 85 and 100% of included value, if a customer has purchased an included value travel package from their International Roaming Mobile (IMR) service provider

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

With regard to the provision of services (e.g. rules on information obligations) the Telecommunications Act does not make a clear distinction between business-to-business and business-to-consumer relations.

Most of these rules apply to 'subscribers' i.e. individuals and legal persons who use electronic communications services after having concluded a contract with an operator. Sometimes a specific provision is included in order to protect consumers (e.g. relating to the maximum initial duration of the contract).

Some specific consumer/end-user information obligations are imposed on operators concerning the access to their network and services, the use thereof, prices and potential costs in case of contract termination. A standard information file also need to be made for the consumers/end-users and should be sent to the BIPT. Consumers also have the right to change their subscription formula with their current operator at least once a year without any charge.

In addition to specific telecom rules, provisions of general consumer law also apply, such as rules concerning unfair terms or the rules concerning the tacit extension of services contracts.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Differences between provision of services to businesses and provision of services to consumers

Subject to contractual commitments agreed between the service provider and the end customer, and as set out below, there are no significant differences in terms of the regulatory treatment of end users of telecommunications services from a general level.

Requirements for provision of services to consumers

- This is principally governed by the Telecommunications Consumer Protections Code, and complaints handling is governed by the Telecommunications (Consumer Complaints Handling) Industry Standard 2018
- Consumers and small businesses can complain to the Telecommunications Industry Ombudsman. Resolutions by the ombudsman are legally binding to the value of AUD 50,000
- If a service is 'declared' by the ACCC, standard access obligations then apply updated consumer protections have been implemented by industry code C628:2019 Incorporating Variation No.1 /2022 Telecommunications Consumer Protections (Updated 16 June 2022), which provides further consumer protection safeguards relating to sales, service and contracts, billing, credit and debt management and changing suppliers. It also sets out a framework of code compliance and monitoring

Prohibition on unfair contract terms in the Australian Consumer Law will likely apply to any standard form

contract agreed between a service provider and an individual end user or corporate customer (where certain conditions are met).

REGULATORY TAXES AND FEES

Operators have to pay a registration fee and annual administrative fees. Amounts can be found [here](#).

REGULATORY TAXES AND FEES

Telecommunications carriers who earn AUD 25 million or more in any eligible revenue period are required to pay annual levies and charges including the telecommunications industry levy, and the annual Carrier Licence charge. These are calculated based on their eligible revenue for the previous financial year.

The current fee for an application for a Carrier Licence is AUD2122. This fee covers the cost of processing the application.

Installation services

All individuals performing cabling work, except 'plug and play' cabling of customer equipment (which is not in a wall or ceiling cavity) must be a registered cabler for open cabling work.

Importation of goods for the provision of telecommunication services

Goods imported into Australia with a value above AUD 1000, including commercial quantities, must be cleared by submitting a completed import declaration form and paying duty, GST, and other taxes and charges that apply. The duty rates payable will depend on the tariff classification, the value of the goods in the exporting country and where the goods were manufactured. The Customs Tariff Act 1995 provides the tariff classifications, duty rates, interpretive rates and information on preference schemes, and other concessions and exemptions that may apply.

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

In case of a breach of the Telecommunications Act, criminal fines of up to EUR 100,000 and imprisonment up to 4 years can be imposed.

Administrative fines of up to 1% of the turnover for the telecommunication activities of the last accounting year.

However, it is to be noted that higher fines are possible in some specific cases.

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

Infringement Notices

Under the Telecommunications Act 1997, ACMA can, instead of instituting court proceedings, give infringement notices for alleged contraventions of certain civil penalty provisions relating to telecommunications. If the penalty under the infringement notice is paid within the specified time frame (or other period agreed to by ACMA) then civil penalty proceedings cannot be initiated and the

matter is disposed of without admission of guilt or a conviction. If the penalty is not paid then court action may be taken for civil penalties in relation to the alleged contravention.

Civil Penalties

The penalty specified in an infringement notice given to a body corporate must be a pecuniary penalty equal to 60 penalty units or, for breaches of the service provider rules or carrier licence conditions, the Minister for the Department of Infrastructure, Transport, Regional Development, Communications and The Arts may set a pecuniary penalty amount in a Determination up to 1,800 penalty units.

Privacy Laws

The Office of the Australian Information Commissioner is responsible for breaches of the Privacy Act 1988 (Cth).

Breach of Telecommunications Consumer Protections Code

ACMA enforces the code and it can take the following steps:

- Agree with the telecommunications provider on steps it will take to remedy the breach or improve compliance
- Give a formal warning
- Give a Direction to Comply with code provisions

Telecommunications Industry Ombudsman

- Is authorised to investigate complaints by residential and small business users of telecommunications and internet services
- Can enforce resolution of complaints of up to AUD 50,000, and make recommendations for complaints of up to AUD 100,000

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