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Connected cars – the Bulgarian perspective

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For some time now the automotive industry has been the next playing field for the new technologies. One such enterprise entering into this new area is the connected cars and related services industry. Such entry, irrespective if driven by the aspiration of the automotive industry to abandon the status of pure product provider or by the ambitions of the IT companies to develop new services (including autonomous cars), has a lot of business, policy-making and consumer potential. Yet it generates implications as well. The global market size for connected car components is estimated to equal €31.88bn in 2015 and is expected to reach €115.26bn in 2020,¹ but the development and implementation of connected cars and the related services involves a considerable number of players (the automotive industry integrating connected car solutions into the vehicles, the networks operators enabling high speed connectivity, the IT and software companies providing the hardware and software for the connected car features, consumers, various policy-makers), as well as a number of related issues, a significant part of which are subject to national and international regulation (eg, spectrum use, electronic communications services, road traffic regulations, personal data processing, consumer protection). Such complexity, combined with the market megatrends for safety, energy efficiency and the personalised experience of the new Generation Z drivers requires common understanding and clear rules – a need that is hampered by the involvement of many national regulators and their policy-making strategies.

In Bulgaria, as in many other countries, technical and economic development is always a step ahead of the legal regulatory regime. The issue creating a challenge to the Bulgarian telecoms regulator in the context of connected cars and related services is the unclear strategic approach in relation to qualifying those services from a communications regulation point of view. In theory, those services match the characteristic features of electronic communications

services but do not fully fit in to the currently effective Bulgarian electronic communications framework, which is defined around more straightforward services and concepts for connectivity.

Connected car services as (potentially) regulated services

The Bulgarian Electronic Communications Act ('ECA') defines an electronic communications service ('ECS') as 'a service, usually provided for remuneration, which consists wholly or mainly in conveyance of signals over electronic communications networks, including transmission services, provided through broadcasting networks, excluding services, related to content and/or the control over it.'² In the light of such definition a service would be qualified as ECS where such service meets two basic criteria, that is, where a service involves 'wholly or mainly' the 'conveyance of signals' through an electronic communications network. On the other hand, the analyses of those two criteria is contingent on many factual elements related to the technical set up of the particular service (eg, the detailed technical process by which the signals are conveyed from the vehicle to the corresponding equipment) and the regulator's approach as to the connotation of 'wholly or mainly' (eg, with respect to the quantitative and qualitative benchmarks of the service needed to qualify it as consisting wholly or mainly of conveyance of signals). In view of such legislative criteria, the Bulgarian telecoms regulator - the Communications Regulation Commission ('the CRC') - has developed a case-by-case approach to determining whether the conveyance of signals relates to the whole or the main part of the service.

Connected cars are vehicles that use connectivity (conveyance of signals) in order to optimise a vehicle's own operations and maintenance and to enhance the customer's overall in-car experience. In that respect the connectivity is a crucial part of connected car services. It might be provided either by the connected car services provider (under

such circumstances the connected car service provider should have the capacity of an ECS provider as it will be engaged in the conveyance of signals) or by a third-party provider. In practice the provision of ECS services is not a usual part of the automotive industry scope of activities. Therefore, in order to avoid the burdensome regulations in the telecommunications area, most companies do avoid providing the connectivity themselves and rather project their services using third party connectivity. Based on such a factual set up, where the data and voice connectivity inherent for the connected car services are technically provided by an ECS provider (eg, a mobile service provider) and the provider of connected car services is not engaged in the conveyance of signals, the connected car services should not qualify as an ECS under Bulgarian law.

Yet this is rarely the reality. The connected car service is a complex service that could hardly fit in to the straightforward model of a single entity providing a single service. Therefore, the CRC would have to assess the service in accordance with the currently existing statutory rules which categorise it as either an ECS or a non-ECS service. To begin with, irrespective of the fact that the connectivity is actually provided by a third party (a mobile network operator) the connected car services provider offers the service to the end customer as its own service, with the underlying technical telecommunications functionalities (the connectivity provided by the MNO) being an integral part of such service. In view of this, in case the CRC chooses to assess whether from a functional point of view the service includes conveyance of signals (ie, the 'technical' approach), there is huge potential to claim that the connected car service is an ECS. Such approach would be supported also by the fact that connected car services use connectivity that under Bulgarian law would be qualified as electronic communications services per se. This is because the data transfer services are part of the services listed in the *list of the networks and services by virtue of which electronic communications services under general rules shall be provided*.³ In addition, connected car services are chargeable (a fee is paid to use the service) and offered on a commercial basis (they are part of the service offered with the purpose to generate profit), while Bulgarian law qualifies as 'undertaking

providing public ECS' any legal entity that carries out electronic communications in a commercial manner.⁴ In the light of the above legal reasoning, it is not at all impossible for the Bulgarian regulator to substantiate that connected car services do have the characteristics of electronic communications services.

Challenging the 'technical' approach

As a general rule the CRC is not among the most active regulators⁵ where challenges of the new technologies are concerned or where a particular position on a legal matter should be stated officially or publicly. Furthermore, no public records for court practice, public discussions, legal research under Bulgarian law, or the official position of the regulator as to the qualification of services similar to connected car services can be identified. Irrespective of this, the position that under Bulgarian law connected car services are not ECS and should not fall under the relevant regulation has grounds under the following theoretical legal reasoning.

Connected car services are not ECS in nature or in scope

All connected car services - the potential for autonomous driving, safety and entertainment features, wellbeing and vehicle management features, mobility management and home integration - are services using underlying technical telecommunications functionalities. Although integral and necessary, such telecommunication functionality is not the main part (or the key feature) of the connected car service. Given the description and purpose of the various connected car services, they, as a service, are focused on the content (real time traffic information is aimed at gathering information and using such information (usage data) with the purpose to manage the mobility), rather than on the connectivity (mobile connectivity is only the technical means for transfer of the data that is gathered or used for purposes other than the mere conveyance of signals). If viewed from such perspective as a contrast to the 'technical' approach, the connected car services should not be comprehended as a service consisting either 'wholly or mainly' in conveyance of signals.

CAN DEDICATED REGULATION FOSTER THE DEVELOPMENT OF MORE EFFICIENT/SAFER NETWORKS AND CITIES?

Connected car services are not necessarily public ECS

Pursuant to Bulgarian law ‘public electronic communications’ means ECS available to the entire society. Indeed, the term ‘entire society’ in a very broad sense might be interpreted as ‘to any third party’ (ie, not for the undertaking’s own needs). On the other hand, it seems that (at least for a certain period) connected car services would be available not to the ‘entire society’, but only to a particular set of customers – currently those customers that have purchased a vehicle made by a particular manufacturer that has ‘organised’ the complexity of relations enabling the connected car service, which vehicle, in addition, is equipped with the necessary equipment (including that which will enable the connectivity).

Given such purely theoretical legal reasoning, the position that under Bulgarian law connected car services are not subject to electronic communications regulation might be considered. Indeed, given the service is rather new and constantly evolving, the basis for such legal reasoning might prove to be inaccurate from the point of view of the factual and technical set up of

the particular service. Yet in view of the would-be implementation of the eCall service and the input gathered during the public consultation on the evaluation and the review of the regulatory framework for electronic communications networks and services⁶ held by the European Commission in the end of 2015, the CRC sooner or later will have to align itself to one side or the other because sitting on the fence will no longer be an option.

Notes

- 1 Viereckl, Ahlemann, Assmann & Bratzel, ‘Racing ahead & The connected C@r 2014 study’ (2014) Strategy& Formerly Booz & Company; available at <http://www.strategyand.pwc.com/media/file/Racing-ahead.pdf>.
- 2 The definition has been set forth in s 17 of the ECA’s Additional Provisions.
- 3 Issued by the regulator and published in the State Gazette # 63, dated 17 August 2012.
- 4 As per the definition of s 50 of the ECA’s Additional Provisions.
- 5 Unlike other regulators in Bulgaria the statutory acts and the internal rules and regulations regulating the activity of the Communications Regulation Commission does not provide for giving opinions or issuing guidelines and therefore the regulator rarely feels compelled to clarify its regulatory approach.
- 6 <https://ec.europa.eu/digital-single-market/en/news/summary-report-public-consultation-evaluation-and-review-regulatory-framework-electronic>.