CHAPTER 5

The Regulatory Regime for the Telecommunications Industry

1 Introduction

With the help of satellites, the telecommunications industry is able to provide a variety of services that have become indispensable in our daily lives. Also China has highly developed networks for telecommunications services. The telecommunications sector has been described as the “jewel in the crown of the socialist market economy.”¹ This sector also serves as a key driver of economic growth in other fields.² However, the legal side is not as well developed as the technical side. Currently, China only has the Telecommunications Regulations enacted by the State Council in 2000 as the sole legal document addressing this field.³ This is not enough, there is room for plenty of improvement.

Since 2000, China has endeavoured to develop its national laws for telecommunications services at the NPC level,⁴ but it has failed to do so. Reasons for the delay, as analysed by some scholars, include “rivalry between a range of interested ministries, differences of opinion among various stakeholders regarding appropriate balance between state control and free market principles, an MIIT (Ministry of Industry and Information Technology) preference for the status quo, and a vain attempt to provide for every possible circumstance in a perpetually dynamic industry.”⁵ As such, the Telecommunications Regulations are the only source that one may consult for basic rules regarding telecommunications. This regulation is supplemented by various rules made by the MIIT and several other relevant administrative bodies.

According to the Telecommunications Regulations, the term ‘telecommunications’ means “the activity of using wired or wireless electromagnetic or

optoelectronic systems to transmit or receive voice, text, data, images or any other form of information.” As such, this regime formally applies to all telecommunications. The Appendix to the Telecommunications Regulations further defines the scope of basic telecommunications services and value-added telecommunications services; satellite communications and satellite mobile communications services are included in the category of basic telecommunications services.

The Telecommunications Regulations play an important role in promoting the healthy development of the telecommunications market in China. The regulations cover eight major regulatory areas: licensing of telecommunications services, or the market access regime for telecommunications services; the interconnection regime; charges and rates for telecommunications services; the regulatory regime for telecommunications resources; the supervisory and management regime for the quality of telecommunications services; the regulatory regime for the construction of telecommunications facilities; the regulatory regime for telecommunications equipment network access; and the telecommunications security regime.

Telecommunications services constitute one area that has benefited from trade liberalisation; the Uruguay Round negotiations successfully integrated telecommunications services into the framework of the World Trade Organisation (WTO), which provided an impetus for the market opening of the telecommunications market. The liberalisation of the telecommunications services sector is an irreversible trend in China. China’s WTO entry furthered the commercialisation and liberalisation process of the telecommunications sector. China now committed to opening its market under the WTO framework. Since then, China has released several departmental rules to guide the liberalisation process and has made significant progress in the field.

2 Liberalisation of Telecommunications Services under the WTO Framework

As mentioned, in keeping with its WTO obligations, China has started to develop rules that are in the spirit of liberalising the telecommunications

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6 Telecommunications Regulations, Article 2.
7 See Telecommunications Regulations, Appendix: Classification of Telecommunications Services, Part I.