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## Federal Council Finds Room for Improvement of the Swiss Telecommunication Act

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## Telecommunication Newsletter Switzerland

# Federal Council Finds Room for Improvement of the Swiss Telecommunication Act

### Federal Council's Report

Upon request of the Parliament, the Federal Council issued its report on the Swiss Telecommunication Market on March 28, 2012<sup>1</sup>. This report comes two years after the report of the Federal Council on the evaluation of the Swiss Telecommunication Market of September 17, 2010<sup>2</sup>, where the Federal Council has already identified several shortcomings of the Swiss regulatory system, but at that time found no urgent need for the revision of the existing legal framework. In the report of March 28, 2012, the Federal Council concluded that the present legal framework could be improved on a few identified issues, since the shortcomings of the existing legal framework have become more evident over time.

The Federal Council found that the existing legal framework lead to positive results in the Swiss telecommunication market, but that the technological development in the field of telecommunication has already surpassed the existing legal framework. In particular, the legacy copper technology which formed the basis of the existing legal framework is being replaced by NGN's (fibre, cable and new mobile technology).

Without the introduction of a technology neutral approach for regulation, it is feared that the regulatory instruments which are available today will become useless. Access guarantee, customer protection, net neutrality and the foundations for a sustainable internet access are also thought to be of paramount importance.

In particular the Federal Council concluded in its report that the limitation of the unbundling to the

<sup>1</sup> see:

<http://www.bakom.admin.ch/dokumentation/gesetzgebung/00512/03498/index.html?lang=de>

<sup>2</sup> see:

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copper pair is no longer adequate, since copper is gradually being replaced by fibre.

Hence, the Federal Council proposes to initiate a partial revision of the existing regulatory framework. Such a revision will have to take into consideration the need for a flexible regulatory framework which would permit the intervention by the regulator if and when needed.

This could be achieved by introducing a technology neutral regulatory framework on the level of the telecommunication act, which would then authorize the Federal Council to quickly adapt the implementing ordinances, should the need for intervention by the regulator arise. This approach is thought to adequately balance the need for investment security with the need for a more flexible regulatory intervention in case competition in the market fails to properly function.

### Comment

The legislative process for amending the existing legal framework is a long one. Two years have already been lost, since the Federal Council identified the shortfalls of the existing regulation back in 2010. The last revision of the Telecommunication Act lasted more than three years from the draft proposal of the Federal Council until the enactment of the new. It is therefore to be hoped that a new law can be passed, before the competition in the telecommunication sector is stalled again to the detriment of the alternative providers and the end customers.

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