

Katia Favre • David Känzig

October 7, 2014

Revised Telecommunication Ordinance in Effect as of July 1st, 2014

Basel

burckhardt AG
Steinentorstrasse 23,
Postfach 258,
CH-4010 Basel

Zürich

burckhardt AG
Usterstrasse 12,
Postfach 1172,
CH-8021 Zürich



Telecoms Newsletter Switzerland

Revised Telecommunication Ordinance in Effect as of July 1st, 2014

Revision of the Telecommunication Ordinance

On July 1st, the revised Telecommunication Ordinance (TCO) came into effect. The changes introduced by the revision provide for a clarification of the non-discrimination obligation of the incumbent operator (Art. 52 TCO), cost oriented price determination for access (Art. 54 TCO), determination of access cost for cable ducts (Art. 54a TCO), minimum price (Art. 54b TCO); determination of access price in the case of a price margin squeeze (Art. 54c TCO) Interfaces (Art. 55 TCO); full unbundling (Art. 58 TCO), Interconnection (Art. 61 TCO and leased lines (Art. 62 TCO). The following outlines the most important changes introduced by the most recent revision.

Nondiscrimination Obligation (Art. 52 TCO)

The newly inserted Art. 52 para 2bis specifies that the price offered must permit the alternative operator to achieve at least cost covering revenue (price margin squeeze).

General Principle of Cost Orientation (Art. 54 TCO)

Art. 54 TCO sets out the general cost orientation principle and sets out the principle of the functional equivalent (MEA). Unless provided otherwise, the basis of the cost orientation are the relevant costs, forward looking, modern equivalent assets, long run incremental costs (LRIC), constant mark-up and adequate capital return.

Cable Ducts (Art. 54a TCO)

The newly introduced Art. 54a TCO jettisons the principle of MEA for cable ducts which permitted the incumbent operator to charge costs for the use of the cable ducts by the alternative operators which by far exceeded the actual costs which have been long amortised.

The costs will have to be determined based on the costs for maintenance and adjustments of the cable ducts and Art. 54a TCO provides for a detailed regulation on the calculation of the amortisation, capital invested and WACC.

Minimum Price (Art. 54b TCO)

Art. 54b para 1 TCO provides for a minimum access price on the basis of short run incremental costs plus (SRIC+).

Price Margin Squeeze (Art. 54c TCO)

Art. 54c TCO introduces a corrective mechanism in case the price determination according to Arts. 54 - 54b will not permit cost covering revenue for the alternative operator (see also Art. 52 para 2 bis). In such a case retail minus will need to be applied.

Full Unbundling Corrective for Copper (Art. 58)

Since for the unbundling the MEA approach applies also for the copper pair, which means that FTTH is the functional modern equivalent, Art. 58 para 3 TCO provides for a corrective since the copper pair does not permit the same functions as the FTTH.

Capacity Based Offer for Interconnection (Art. 61 para 3 TCO) and Glide Path

Art. 61 para 3 requires the incumbent operator to also offer capacity based charges as part of its standard offer. Para 4 further introduces a glide path for the functional equivalent such that the full modern and functional equivalent costs will become relevant after two years only.

Glide Path for Leased Lines (Art. 62 para 2 TCO)

For leased lines the same glide path scale has been introduced.



Comment

The changes introduced by the revised TCO pave the way for the transition from the legacy switched network to a modern IP based network.

It is expected that the transition to a full NGN will lead to a further decrease of the interconnection costs and costs for leased lines. Also the costs for the use of cable duct are expected to decrease based upon the new calculation principle which is no longer based on MEA.

October 7, 2014

Katia Favre and David Käzig

© by Dr. Katia Favre (k.favre@thouvenin.com) and David Käzig (d.kaenzig@hegenbarth.ch)

THOUVENIN rechtsanwälte compact

THOUVENIN rechtsanwälte is an innovative and partner-centred law firm with more than three decades of experience in business law. Our experienced TMT team advises on a wide range of contentious and non-contentious issues related to telecommunication, broadcast and information technology, including licensing and registration, data protection issues, mergers and acquisitions as well as technology licensing. The Thouvenin TMT team has been ranked by Chambers & Partners and legal 500.

More detailed information and further TMT Newsletters can be accessed at www.thouvenin.com