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Federal Council Report on the Swiss Telecommunication Market

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Telecoms Newsletter Switzerland

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Introduction

On November 19, 2014 the Federal Council issued its report on the Swiss telecommunication market providing an overview of the developments and the regulatory challenges.

The technological development towards an IP based network has fundamentally changed the telecommunication sector and the traditional providers see themselves confronted with new and often global service providers competing with new business models.

Although these new providers compete in the Swiss market it is often not clear, whether and to what extent these providers fall under the Swiss Telecommunication Act ("TCA") and how the regulations can be successfully enforced against a foreign based provider.

The Federal Council concluded that the TCA does not provide for an adequate answer to many questions that have arisen as a consequence of the fast technological development and that a revision of the TCA is inevitable.

Planned revision

The coming revision of the TCA will have to clarify its application for global providers, differentiate between the various categories of providers and will discard the registration requirement which became a useless administrative burden.

A technology neutral access will need to be introduced also for the last mile and the Swiss regulator will have to be empowered to intervene ex officio for the determination of cost oriented prices. Whilst several proceedings have been launched in the past for the determination of cost oriented mobile termination costs, all these proceedings have been withdrawn and were introduced only to negotiate

better rates between the providers, without benefitting the end users.

Access to cable ducts may be extended to a wider range of suitable infrastructure which will include also non dominant carriers at fair market prices and not at cost oriented prices as of today.

The Federal Council sees further challenges in the use of the radio spectrum, net neutrality, consumer protection and the consumers' freedom to choose which have become a big issue for social networks and the ability to switch from one social network to the other and the possibility to transmit such data.

No immediate regulatory intervention is seen for mobile roaming costs and for the State's majority shareholding in Swisscom, the former monopolist.

Provider liability will also likely to be included in the revision and the universal services obligation will have to be revised as well.

Two step approach

The Federal Council concludes that although the need for a revision is apparent, it may be premature to intervene at this point in time for certain aspects and the further development of the markets and the discussions to be held will have to be awaited in order to determine a possible intervention by the legislator.

The following topics should, however, be addressed without delay:

- Provide a clearer definition of telecommunication service providers (which will include over the top services) and discard the registration system;
- Technology neutral access including unbundling;
- Ex officio intervention of regulator;
- Flexible use of radio spectrum and introduction of joint use of network;



- Regulation regarding the ".ch" and ".swiss" internet domain;
- Enhanced regulation for network resilience, stability and security;
- Freedom to choose individual services and to facilitate a change of providers (which might also include social networks), which becomes more and more important due to bundled service offers;
- Obligation of service providers to provide information regarding their policy to prioritize or discriminate certain data transported over their network;
- Introduction of regulation regarding liability of providers for content (take down on governmental notice);
- Introduce precise basis for international roaming costs on actual time used and a basis for local break out;
- Increase consumer protection and protection of minors.

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.

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Conclusion

It remains to be seen, whether the Swiss Parliament will fancy a further liberalization of the Swiss telecommunication market in the interest of the consumers and the alternative service providers.

The Swiss Confederation's majority stake in the incumbent operator Swisscom, however, may somewhat lessen the Parliament's appetite to further reign in the incumbent operator and to create a true and level playing field for all competitors.

Given the pace of the Swiss legislator we do not expect any changes to be introduced to the existing act before three to four years' time.

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