



Telecommunication Newsletter Switzerland

ComCom paves the way for a new model for cost oriented access charges

Decision

In the decision rendered by the ComCom in December 2011, regarding interconnection, access to the unbundled local loop and collocation, the ComCom has indicated that the traditional switched legacy network will no longer be modeled in the future for the determination of cost oriented prices.

The price control officer ("Preisüberwacher") has already in the proceedings for the determination of cost oriented prices for the year 2009 and 2010 argued that a copper based access network is an outdated technology which can hardly be qualified as a Modern Equivalent Asset ("MEA") in the sense of Art. 54 Telecommunication Ordinance.

It is generally accepted that a hypothetical efficient competitor would not invest in a copper based access network but rather in a mobile or fiber network. The ComCom has already announced in its decision rendered on December 13, 2010 regarding interconnection, access to the local loop and collocation that it will evaluate a change of the legacy model approach which is based on the traditional switched and copper access network in light of the technical developments taking place.

The ComCom held in its decision that it will no longer apply the traditional model in the future and that a model IP based New Generation Network ("NGN") will become relevant for the determination of access prices. According to the ComCom, IP based NGN network will become the established technology in the immediate future.

Consequently, switched legacy technology will no longer be the basis for the model calculation of cost oriented access prices and as of January 1, 2013, the ComCom will apply the new NGN based model for determining the access costs.

Similarly, the ComCom argued that a copper based access network is no longer considered to be state of

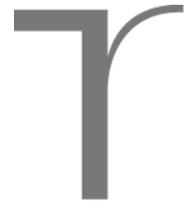
the art under the MEA-Approach and that therefore in the access network the technology change from the legacy copper pair to fiber must be taken into account in the future.

Comment

The ComCom has taken a cautious approach and has announced its intent to change its previous model for the calculation of cost oriented prices. This announcement to change the calculation model is welcome. It provides the parties with the opportunity to prepare for the new area and precludes Swisscom from arguing that such a change from the previously established practice must be announced in the interest of legal certainty. Swisscom has now been warned.

The argument that the legacy switched and copper based access network is not compatible with the MEA-approach was voiced already in various earlier proceedings (where the undersigned acted as counsel to the alternative providers). The fact that the ComCom has now finally bought into this argument demonstrates the importance of filing interconnection proceedings in the interest of developing the regulator's practice.

With the new decision rendered by the ComCom the incumbent operator and the alternative providers will have to prepare for a new area. There are still many unknowns as to the effect of the model change on costs. However, it is expected that the access cost will be driven further down or at least contained at the actual level. The costs for the traditional switched technology and interconnection have started to increase again in the past. This increase in costs was predominantly the consequence of a migration of traditional switched services to IP-based services which lead to a downturn in demand for traditional switched services and which again lead to an increase of the costs for regulated services.



Conclusion

The regulator is now faced with the challenging task to come up with a new model calculation. Its impact on prices is hard to predict. However, this change in the model offers a unique opportunity for all providers to seek the dialog with the regulator and to shape the new calculation model for the NGN in the interest of all parties involved. The OFCOM has already commenced a public survey. Comments are expected by March 16, 2012¹

February 10, 2012

Katia Favre and David Käzrig

For further information please contact:

Katia Favre (k.favre@thouvenin.com) or

David Käzrig (d.kaenzig@thouvenin.com)

¹.

<http://www.bakom.admin.ch/dokumentation/gesetzgebung/00909/03888/index.html?lang=en>