

[DE] Telecommunications Act Amendment Adopted

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On 30 November 2006, the German *Bundestag* adopted an amendment to the 2004 *Telekommunikationsgesetz* (Telecommunications Act - TKG) (see IRIS 2004-6: 9). One particularly controversial change concerns the sector-specific regulation of emerging "new markets" (see IRIS 2006-3: 12). For months, the European Commissioner for Information Society and Media had been warning the German Government against granting so-called "regulation holidays" for companies with significant market power if they opened up new sectors with innovative new services. This was considered a breach of the Directives on electronic communication networks and services that were issued by the EC in 2002.

The newly added Art. 9a of the *TKG* stipulates that "new markets" are, in principle, exempt from regulation. The *Bundesnetzagentur* (Federal Network Agency), the national regulatory body, should only intervene where "there is factual evidence" that a lack of state control would "cause long-term damage to the development of a sustainable competition-oriented market in the area of telecommunications services or networks". In doing so, it should particularly take into account "the objective of promoting efficient infrastructure investments and fostering innovation".

However, there was some resistance to the planned amendment in the *Bundesrat*, which meant that it was unclear whether the latter would approve it on 17 December 2006, or whether a joint *Bundesrat/Bundestag* committee would be asked to look into the matter.

It remains to be seen whether the European Commission will carry out its threat and instigate proceedings against this new regulation on the grounds that it breaches the EC Treaty.

Gesetzentwurf der Bundesregierung, Entwurf eines Gesetzes zur Änderung telekommunikationsrechtlicher Vorschriften, 14. September 2006

<http://dip.bundestag.de/btd/16/025/1602581.pdf>

Federal Government Bill, draft Act amending telecommunications law provisions, 14 September 2006

