[CH] Federal Council in Favour of Free Choice of Decoder for Receiving Digital TV

IRIS 2010-10:1/19

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Watching digital TV programmes requires having a receiver capable of transforming the signal into images that can be viewed on the screen. The receiver is usually incorporated into latest-generation television sets (digital tuner), but a separate decoder is necessary for older sets. However, consumers are often obliged to rent or buy receivers approved by their telecommunication service provider (proprietary decoders). This obligation restricts users' freedom of choice and hinders competition on the market for receivers of digital television broadcast by cable. The Federal Council is therefore proposing to amend the national Radio and Television Act (LRTV) in order to guarantee consumers free choice of their receiver. Accordingly, users will no longer be forced to acquire the proprietary decoder of a particular telecommunication service provider to be able to receive certain digital offers.

The draft wording for the new Article 65a of the LRTV provides that the Federal Council may lay down provisions authorising the free choice of appliance for receiving digital television. It will thus have to take account of the situation of the market and of the state of technology. The statutory arrangement for delegation in favour of the Federal Council is formulated in an open fashion. The Federal Council will therefore be able to regulate access to digital television, whatever the mode of broadcasting, wherever this is required by consumer protection, competition issues, or technical progress. The details and the technical and commercial conditions governing access to digital television programmes are set out in a Federal Council order, which will make it possible to react rapidly to technical and economic developments.

The Federal Council has decided not to propose a blanket ban on encryption on freely accessible television channels that are part of the basic offer proposed in digital mode on cable networks. This is because, apart from protecting young people and restricting access to only those users authorised by subscription, encryption makes it possible to protect high-value content from unauthorised broadcasting or reproduction. The Federal Council therefore feels that a blanket ban on encrypting would constitute serious infringement of the commercial freedom of the telecommunication service providers. Moreover, such a ban is not absolutely essential since there are less restrictive ways of ensuring freedom of choice of receiver.

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Suppliers of telecommunication services will still be free to determine, within the statutory limits, how they intend to ensure that users have a free choice of receiver. The basic offer must be accessible under suitable conditions using an access authorisation system compatible with readily available decoders fitted with a standard interface. Suppliers will be able to continue offering proprietary decoders, but if they broadcast encrypted programmes on-line, they will have to ensure that the programmes can also be received by other reception equipment by providing the public with an access authorisation system in the form of a conditional access module and a corresponding smart card.

Suppliers of Internet Protocol television (IPTV) services will however need to be exempted temporarily from the obligation to ensure free choice of receiver, mainly because, for technical reasons, decrypting is only possible using proprietary decoders. In addition, present-day decoders do not have a standard interface that would allow the use of an external access authorisation system. Lastly, abolishing encryption would endanger the commercial model of IPTV.

The message from the Federal Council will be examined by the Federal Assembly. The new statutory provision will not however come into force before 2012.

Message from the Federal Council on amendment of the Radio and Television Act

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