[DE] BMWi Tables Draft New Telecoms Act

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On 23 September 2010, the *Bundesministerium für Wirtschaft und Technologie* (Federal Ministry of Economics and Technology - BMWi) submitted the draft amendment to the *Telekommunikationsgesetz* (Telecommunications Act - TKG) to the other government departments for approval. This represents the first step in the transposition of the Directive amending the European telecommunications legal framework, which must be completed by next May (see IRIS 2010-1: 1/7).

The draft in particular contains important changes to competition rules and consumer protection. With its proposed regulatory principles, the BMWi hopes to create competition- and investment-friendly conditions, particularly for the further development of high-speed broadband networks. In future, the *Bundesnetzagentur* (Federal Network Agency - BNetzA) will also be able to submit long-term regulatory concepts. The particular risks of investments in new, fast infrastructure will be taken into account in the regulations, which are designed to adhere to the new EU provisions. In the so-called “Lex Telekom” procedure, the ECJ had ruled in December 2009 that the exemption of new markets from regulation (“regulation holidays” under Article 9 TKG, see IRIS 2007-1: 6/8) was incompatible with EU law (C-424/07). As part of the reforms, the EU legislator has now opted for a rule under which competitors must be given access to new infrastructure - although only in return for a reasonable share of the investment costs.

It will also be possible to use existing infrastructures more efficiently in future. At the same time, the BMWi hopes to extend access rights to passive infrastructures such as supply pipes and masts. The BNetzA will be able to decree that certain infrastructure should be used jointly. The need for such a rule can mainly arise within buildings for financial reasons, in order to avoid inefficient dual structures. Such conditions can also be laid down regardless of whether a dominant market position is held.

Improvements to consumer protection are also proposed. For example, switching providers should, in future, be a smoother, faster process. It will also be possible to transfer a mobile telephone number to a different network at any time, regardless of the term of the contract. In addition, all telecommunications companies should offer at least one contract with a term of no more than 12 months. For pay-as-you-go calls and mobile data services, the BNetzA will be able

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to issue rules obliging providers to publish information about prices and service quality. The BMWi hopes to increase transparency in this way. The most important innovation in terms of consumer protection is the rule that the cost of being held in a queue on customer service and premium rate numbers should be charged to the call recipient.

The TKG is also being brought into line with amendments to the EU legal framework in the field of spectrum regulation. The greater emphasis on technology and service neutrality and general authorisations, as well as rules on spectrum trading, should achieve the desired flexibility and contribute to more efficient spectrum use.

In the broadcasting field, the draft - independently of the demands from Brussels - makes provision for three new regulations that have been debated for a long time. Firstly, plans to switch off analogue VHF radio by 2015 have been amended insofar as existing frequency holders will be given the chance to keep their frequency for one further 10-year period. At the same time, it is proposed that new radio sets should be capable of receiving only digital signals from 2015. Through an amendment to Article 57 TKG, the BMWi hopes to ensure that content providers that own a frequency allocation for analogue broadcasting under media law are able to choose their broadcasting network operator. The corresponding frequency will then only be allocated to that operator under telecommunications law. This is designed to promote competition in the network operation sector, which so far has been dominated more or less exclusively by the former *Telekom* subsidiary, *Media Broadcast*.

The BMWi has announced that it will discuss the draft with relevant interest groups in the next few weeks; it is hoped that the cabinet will examine it before the end of the year.

Pressemitteilung des BMWi

http://www.bmwi.de/BMWi/Navigation/Presse/pressemitteilungen,did=360138.html

BMWi press release

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