

[DE] Telecommunications and Consumer Protection Order Passed

IRIS 1998-2:1/16

*Wolfram Schnur
Institute of European Media Law (EMR), Saarbrücken/Brussels*

The Telecommunications and Consumer Protection Order (Telekommunikations-Kundenschutzverordnung - TKV) was finally approved by the Federal Government on 9 December 1997. Following liberalisation of the telecommunications market and the abolition of monopolies, the TKV lays down general conditions for the use of telecommunications services, including the rights and obligations of service providers and users, the conclusion of contracts, entitlement to services and liability. The TKV allows users to keep their telephone numbers when they change service providers, as long as they remain in the same area. They are also free in every case to select the most advantageous provider, with the help of a special service call number. Unless otherwise agreed with individual providers, services furnished by other firms are billed to users by the main network access provider, so that only one account is involved. However, some providers have already agreed on other arrangements. When requested to do so by users, telephone service providers must supply full details of calls free of charge, so that bills can be checked. Users have the right to be included in a generally accessible directory, which is not necessarily exclusive to one service provider.

The TKV also specifies conditions for the provision and use of general network access facilities, in application of EU Directive No. 92/44/EEC on the application of open network provision to leased lines. Thus firms with dominant positions on the market must, in addition to the usual customer information, publish information on technical characteristics, quality standards usually achieved and conditions for the connection of equipment, in a form compatible with Council Directive No. 92/44/EEC of 5 July 1992 on the application of open network provision to leased lines (OJEC No. L 165 p.27), as amended by Directive No. 97/51/EC of the European Parliament and the Council of 6 October 1997 amending Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications (OJEC No. L295, p.23). Another expressly regulated question is «neutrality of use». Thus transmission facility providers with dominant positions on the market must make those facilities openly available, and may not restrict them to certain channels or uses. The background to this is a dispute which arose between the Federal Ministry of Posts and Telecommunications and Deutsche Telekom AG at the end of September 1997. Deutsche Telekom AG was unwilling to give its competitors a free choice of frequencies and sought to restrict them to those which it uses itself for telephone

services, thus obliging them to rely on its transmission and connection facilities. In proceedings before the Administrative Court of Appeal in Münster (Az. 13 B 1987/97, 13 B 2159/97 and 13 B 2160/97), the chamber hearing the case, which had already indicated that it tended to agree with the legal arguments put forward by the Federal Ministry and the competitors, who were demanding unrestricted access, made proposals which resulted in Telekom's agreeing to give its competitors what they wanted.

In connection with the Telecommunications and Consumer Protection Order, further disagreements developed early in January 1998 between Deutsche Telekom AG and the new regulating authority for posts and telecommunications concerning charges for pre-election of other service providers for long-distance calls, and charges for keeping numbers when changing providers.

Deutsche Telekom argued that these charges did not require prior approval, but the President of the regulating authority declared that they did - and might not be levied otherwise. The amount of the charges, too, is in dispute. The regulating authority is also considering the rental fees which Deutsche Telekom wants to charge competitors for the lines of customers who switch to them.

Telekommunikations-Kundenschutzverordnung (TKV) der Bundesregierung vom 24. Juli 1997, Drucksache 551/97, endgültige Fassung vom 9. Dezember 1997

Federal Government Telecommunications and Consumer Protection Order (TKV) of 24 July 97, Document No. 551/97, final version of 9 December 1997

