



## Telecoms Newsletter Switzerland

# Revised Telecommunication Ordinance in Effect as of July 1<sup>st</sup>, 2014

### Revision of the Telecommunication Ordinance

On July 1<sup>st</sup>, 2014 the revised Telecommunication Ordinance (TCO) came into effect. The changes introduced by the revision provide for a clarification of the non-discrimination obligation of the incumbent operator (Art. 52 TCO), cost oriented price determination for access (Art. 54 TCO), determination of access cost for cable ducts (Art. 54a TCO), minimum price (Art. 54b TCO); determination of access price in the case of a price margin squeeze (Art. 54c TCO), interfaces (Art. 55 TCO); full unbundling (Art. 58 TCO), interconnection (Art. 61 TCO) and leased lines (Art. 62 TCO). The following outlines the most important changes introduced by the most recent revision.

#### Nondiscrimination Obligation (Art. 52 TCO)

The newly inserted Art. 52 para 2bis specifies that the price offered must permit the alternative operator to achieve at least cost covering revenue (price margin squeeze).

#### General Principle of Cost Orientation (Art. 54 TCO)

Art. 54 TCO sets out the general cost orientation principle and sets out the principle of the functional equivalent (MEA). Unless provided otherwise, the basis of the cost orientation are the relevant costs, forward looking, modern equivalent assets, long run incremental costs (LRIC), constant mark-up and adequate capital return.

#### Cable Ducts (Art. 54a TCO)

The newly introduced Art. 54a TCO jettisons the principle of MEA for cable ducts which permitted the incumbent operator to charge costs for the use of the cable ducts by the alternative operators which by far exceeded the actual costs which have been long amortised.

The costs will have to be determined based on the costs for maintenance and modifications of the cable ducts and Art. 54a TCO provides for a detailed regulation on the calculation of the amortisation, capital invested and WACC.

#### Minimum Price (Art. 54b TCO)

Art. 54b para 1 TCO provides for a minimum access price on the basis of short run incremental costs plus (SRIC+).

#### Price Margin Squeeze (Art. 54c TCO)

Art. 54c TCO introduces a corrective mechanism in case the price determination according to Arts. 54 - 54b will not permit cost covering revenue for the alternative operator (see also Art. 52 para 2bis). In such a case retail minus will need to be applied.

#### Full Unbundling Corrective for Copper (Art. 58)

Since for the unbundling the MEA approach applies also for the copper pair, which means that FTTH is the functional modern equivalent, Art. 58 para 3 TCO provides for a corrective since the copper pair does not permit the same functions as the FTTH.

#### Capacity Based Offer for Interconnection (Art. 61 para 3 TCO) and Glide Path

Art. 61 para 3 requires the incumbent operator to also offer capacity based charges as part of its standard offer. Para 4 further introduces a glide path for the functional equivalent such that the full modern and functional equivalent costs will become relevant after two years only.

#### Glide Path for Leased Lines (Art. 62 para 2 TCO)

For leased lines the same glide path has been introduced.



## Comment

The changes introduced by the revised TCO pave the way for the transition from the legacy switched network to a modern IP based network.

It is expected that the transition to a full NGN will lead to a further decrease of the interconnection costs and costs for leased lines. Also the costs for the use of cable duct are expected to decrease based upon the new calculation principle which is no longer based on MEA.

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