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Revision of the Swiss Telecommunications Act and Ordinances

Access to Property Development and Building Installations

Introduction

On 18 November 2020, the Swiss Federal Council adopted the revised implementing provisions for the Telecommunications Act (TCA). The revision was carried out on the basis of the partial revision of the TCA, which was adopted by Parliament on 22 March 2019.

Revised TCA

The telecommunications market has undergone an extraordinary development in recent years, marked by digitalisation. To take account of this dynamic, Parliament amended the TCA in spring 2019. In particular, consumer concerns were strengthened (international roaming, open internet, unfair advertising, protection of minors) and deregulations and administrative simplifications were introduced (abolition of the obligation to notify telecommunications service providers and the general licensing obligation for frequency usage rights).

In the area of local loops, the draft revision of the law provided that the existing network access regulation in the case of copper lines could have been extended in a technology-neutral manner, thus also to fibre-optic lines, in order to promote effective competition. However, this aspiration was rejected in the parliamentary consultation. Under the revised TCA, network access regulation for copper lines alone will therefore continue. However, the costs and the granting of access to the local loop are under scrutiny: every three years the Federal Council must report to the Federal Assembly and it may submit applications to promote effective competition.

However, access to the building entry point and the shared use of internal building facilities were newly defined by law. Without this access, consumers would otherwise have no choice of different telecommunications service providers and effective competition would be impossible. This means that it is not only the grid-operating

provider who has an obligation, but also the owners of the properties. They shall grant other telecommunications service providers shared use of the in-house facilities, provided this is technically justifiable and there are no other important reasons for refusal. Reasonable compensation is due to the provider who built the intra-building facility.

Under the current TCA, property owners are already obliged to tolerate parallel connections. What is new is that a telecommunications service provider can demand such a parallel connection if it bears the costs for it and insofar as such a connection is reasonable for the owner. According to the dispatch to Parliament (Botschaft), however, there is no obligation to tolerate a radio-based connection.

Revised regulations

The adjustments in the seven ordinances affected by the amendments are partly of a technical nature, but they also entail improvements in consumer protection. The Telecommunications Services Ordinance (TSO) was primarily affected by the amendments. Among other things, the TSO was adapted in the areas of registration of telecommunications service providers, billing modalities for international roaming, quality measurements, emergency calls and security communications. This was also associated with the tightening of the Price Disclosure Ordinance (PDO) with regard to the verbal disclosure of prices for value-added telephone services. The TSO has also been amended and supplemented with regard to the property owners' obligations to tolerate (see below). The revised ordinance will come into force as of 1st January 2021.

Property owners' obligations to tolerate

Since the law now stipulates a right for telecommunications service providers to have access to the building entry point and to share the use of internal building installations, the TSO contains specific implementing provisions

on this and on access to property development. Several property owners' obligations to tolerate have been established. For example, the shared use of existing cable ducts used for property development must be tolerated. If the existing capacity is not sufficient, the construction of further plants must be tolerated. Furthermore, the shared use of electricity connections and the installation of equipment inside the building for the provision of telecommunications services by a shared provider must be tolerated.

"Reasonableness", "technically justifiable", "important reasons"

The TCA does not specify when parallel development is reasonable for the property owners and must be tolerated and when it is not. According to the dispatch to Parliament on the TCA, reasonableness is to be understood as a certain consideration towards the property owner. Obviously, the provision of the law is in tension with the property guarantee. This cannot be mitigated by ordinances provisions either. Consequently, the TSO also does not contain any specification of reasonableness. According to the dispatch on the TCA, the test of reasonableness is to be applied in particular to old buildings, whereas in the case of new buildings it is to be assumed that an intervention is in principle reasonable. The TSO also does not specify when shared use would not be technically justifiable or which important reasons would justify a refusal of shared use.

According to the ordinance, these undefined legal terms are to be specified by practical application. Any legal disputes should be dealt with by a civil court, and disputes between providers by ComCom.

Cost allocation

According to the TSO, the costs of maintenance work resulting from the installation of new equipment are to be borne by the telecommunications service provider which has gained access to cable ducts or internal building equipment. For shared use, it must also pay a one-off pro rata compensation per residential or commercial unit to the pre-financing provider if the latter can provide evidence of the production costs. Finally, the shared-use provider must pay for proven additional costs incurred by property owners. On the other hand, the property owners are not

entitled to compensation for the fact that the shared telecommunications service provider can use the property connections and building installations.

We will be happy to provide further details regarding the implementation of the new regulations.

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