

FOLLOW-UP ON THE ARTICLE ON THE NEW TELECOMMUNICATIONS ACT, AND OTHER NEWS

Executive order on the provision of electronic communications networks and services

A new executive order on the provision of electronic communications networks and services entered into force on 23 June 2011 in connection with the new Act on Electronic Communications Networks and Services being passed.

We refer to our article on the new Telecommunications Act from 29 June 2011. The new executive order is mostly a replicate of the previous executive order. However, it does contain a number of new measures which, in connection with the new Telecommunications Act, will help make this part of the legal area more clear and accessible

Requirements at conclusion of contract

Compared to the former executive order, Section 9 of the new executive order contains more and larger requirements at conclusion of contracts with end-users; this now applies to both private and commercial end-users. The increased requirements are of special significance to the commercial end-users as they may now be forced to update their current contracts if these do not live up to the new requirements in the executive order.

The specific requirements at conclusion of contracts now appear from Appendix 1 and 2 of the executive order. The Appendices supplement the previous Section 10 of the executive order by listing the former requirements for information, as well as adding the following new items:

- Item 3) Concerning error correction service

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- Item 4) Concerning traffic prioritization
- Item 7) Concerning personal information in number databases
- Item 8) Concerning security and integrity incidents or threats
- Item 13) Concerning outgoing emergency calls

The penalty clause Section 26 – Traffic and tracing data

The new executive order imposes penalties on the supplier if he breaks Section 23 or Section 24 of the executive order, which concerns the supplier's handling of user traffic and tracing data. If the supplier of public electronic communications networks and services breaks any one of the two sections, he may be fined according to Section 26 of the executive order.

Executive order on cookies is postponed

The National IT and Telecom Agency has announced that the executive order on cookies, which regulates the end-users consent to the logging of information, will be postponed for an indefinite period time. The executive order on cookies should have entered into force on 25 May 2011 in connection with the new Telecommunications Act.

The reason for the he postponement is that, during a hearing in March, questions were raised regarding the interpretation of the underlying EU law, including the requirements for user consent.

The National IT and Telecom Agency confirms that they are working on a clarification of the interpretation, so that the executive order on cookies may enter into force as soon as possible.

The National IT and Telecom Agency will publish a guide for the executive order on cookies as soon as it enters into force. The guide will explain the implications of the new rules.

Inter-industry agreement on number portability

In May 2011, the telecommunication industry published a new inter-industry agreement on number portability, which includes land and mobile number portability. It entered into force on 25 May 2011 and entails that it must be possible to port all numbers in one working day.

The new inter-industry agreement replaces the existing agreements within the industry. A draft for a new standard contract on number porting was published alongside the in-

ter-industry agreement. If the provider agrees to the new inter-industry agreement, he will also be obligated to use the standard contract.

According to the draft of the standard agreement from 18 May 2011, a provider will be entitled to a monetary compensatory amount if the provider compensates a user in connection with a delayed or wrongful number porting caused by another telecommunications provider.

The monetary compensatory amount is VAT exempt and estimated based on each number porting. However, it is only possible to demand compensation for a maximum of 100 numbers per portability agreement and thereby from the same client.

The monetary compensatory amount is estimated based on the following rates:

- Wrongful porting: DKK 500
- Delayed porting: DKK 50, DKK 5 per day delayed
- Lack of connection for 24 hours and more: DKK 50 and DKK 50 per day without connection.

The new rules do not prevent the customer from making use of the ordinary period of notice or from having a contract period reset. Therefore, a customer may have to pay for two contracts during a period of time.

Principle of Network neutrality

The principles of network neutrality were presented on 30 March 2011 in connection with the drafting of the new Telecommunications Act.

The principles aim at securing the end-users' access to information and right to use chosen applications and services. The principles thereby secure a non-discriminatory and open internet with a potential for innovation and free competition.

The principles of network neutrality on the open internet are as follows:

- Users have the right to internet access with declared capacity and quality
- Users have the right to view any content and use any application and service, provided that they are legal and do not influence network integrity.

- Users must have access to transparency, i.e. the user must be able to gain insight into the relevant traffic controlling principles which the internet provider uses.
- The users must have access to competing providers of services and contents.
- The internet providers must not discriminate in relation to certain services, contents and applications.

The above is established on the basis of:

- the Authorities having gained an instrument by virtue of the Telecommunications Act and the implementation of the provisions of the EU Directives which makes them able to actively intervene if a serious and persistent problem with network neutrality is detected.
- no evidence having been found of specific incidences on the Danish market where network neutrality has been violated, and a need for active intervention from the Authorities in relation to protection of network neutrality thus not having been established.
- a need to carry out continuous monitoring of the development being necessary in order to ensure that actions which might distort competition to the detriment of either a consumer or a business may be quickly and effectively handled by the Authorities.

Finally, the National IT and Telecom Agency has established a forum for network neutrality where they may discuss the principles with the telecommunication companies and advise them on how to maintain network neutrality.

Roaming on the mobile phone network

On 6 July 2011, the EU Commission presented a draft for a new regulation on roaming on public mobile networks in EU. This regulation must enter into force on 1 July 2012 and thereby replaces the present Regulation EF no. 717/2007. The aim of the regulation is to establish better competition by harmonising the price difference which companies and consumers pay for voice, text and data services in other EU Member States compared to Danish prices.

The background for letting the new regulation replace the regulation presently applying is that the present regulation does not live up to the objectives. The aim of the present

regulation was to strengthen competition by introducing a price cap on the providers' rates and services on wholesale as well as on retail level.

The new regulation expands the control of retail prices by including data roaming. The aim of the new regulation is thereby a gradual reduction of the current price cap.

The EU Commission has introduced the draft for the new regulation in the hope that it will strengthen competition on the roaming market by securing lower prices when using mobile networks in the EU.

The lower prices will be secured by the right and opportunity of mobile operators to use other operators' networks within the EU. By imposing this right, all mobile operators, including the ones without their own mobile network, will be able to compete on equal terms with other operators, thereby increasing competition.

Mobile phone customers are also given the option to cancel their contract concerning roaming services and thereby keep their SIM card and telephone number while using a competing roaming provider. Free competition will thus exist between the roaming providers as the customers may choose the provider offering the best roaming agreement.

In the long run, these structural measures will contribute to the abolishment of retail regulation from 30 June 2016, as it is expected that competition will be sufficiently strengthened at the time. Furthermore, it is expected that it will be possible to abolish the price cap on wholesale in 2022.

If you have any questions or require additional information on the new Telecommunications Act, please contact Attorney Christoffer Galbo (cga@mwblaw.dk), Attorney Henrik Syskind Pedersen (hsp@mwblaw.dk) or Assistant Attorney Sofie-Amalie Gregaard Brandi (sab@mwblaw.dk).

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