

## **EUROPEAN TELECOM REFORM: A BROADBAND STORM IS BLOWING FOR A NEW DIGITAL ERA**

After two years of discussions, the European Parliament has formally approved, on November 24<sup>th</sup>, 2009, the EU's telecoms reform package, by a resounding majority of 510 votes to 40 (with 24 abstentions), thus triggering an unprecedented revolution within the European telecom market.

Those who are not acquainted with the European telecom package may underestimate the true extent of the coming reform. Indeed, the EU regulatory framework is a compilation of five main directives, numerous recommendations and procedure rules encompassing all regulations applicable to telecom companies with regards either to competition on the market, access to the networks and the infrastructure, and consumers' rights.

Following the scandals provoked by various unfair commercial practices from telecom operators, this reform aims at cleaning the European market through three axes: regulating competition within the common market, strengthening of the consumers' rights, and promoting Internet as a fundamental right.

### **Ensuring fair competition within the EU market**

In order to ensure harmonisation within the common market, the telecom reform shall lead to the implementation of a hierarchical regulation control.

Indeed, the independence of all national regulation authorities ("NRA") shall be reinforced, and all political influence shall be eliminated. In that respect, the heads of NRA shall be protected against arbitrary dismissal.

The NRA shall be supervised by a new European regulation authority, the Body of European Regulators for Electronic Communications (BEREC), which shall be created by spring 2010. The BEREC shall be

able to take decisions with regards to cross-border telecom issues, and advise the NRA about the implementation of the reform.

On top of this pyramid, the European Commission will be granted the power to oversee regulatory remedies proposed by the NRA, in order to avoid inconsistent regulations which may distort competition on national markets. The Commission will thus be competent to draft recommendations to the NRA, and even to adopt further binding harmonisation measures.

This new regulatory "squad" is expected to prevent uncompetitive behaviours from telecom operators. In order to ensure fair competition, the NRA will be authorised to compel telecom operators to separate communication networks from their services branches, as it is the case, since 2006, in the UK. This functional separation should improve competition and act as an incentive for the investment in new networks.

### **More transparency for the consumers**

Through this reform, consumers will be granted various rights against telecom companies. For example, they shall be able to change, within one working day, fixed or mobile operator while keeping the same phone number.

Telecom operators will also be required to improve consumer information and guarantee consumer privacy.

As such, consumers shall receive better information with regards to the nature of the services they subscribe to, and what they can or cannot do with these services. Consumer contracts shall specify minimum service quality levels, and refunds if the standard level is not met. The NRA shall be able to set the said minimum quality levels in order to

prevent telecom operators from willingly lowering the quality of the services.

Privacy shall also be the new priority of telecom operators. All consumer data shall be kept safe from any illegal access, and a mandatory notification process will be created, which will oblige telecom operators to inform the authorities and their consumers of any data theft or security breach.

### **Internet: a new fundamental right**

Last, but not least, Internet access shall be, from now on, construed and enforced as a fundamental human right. This has been the corner stone of the last weeks' discussions within the EU Parliament, as a reaction, *inter alia*, to the French law on copyright infringement, "*loi HADOPI*".

The bill, in its initial wording, provided that the Internet access used to illegally download files could be suspended by an administrative authority, further to a mere notification.

Such sanction shall no longer be possible. Indeed, the telecom reform clearly states that Internet access is a fundamental right to which

no disproportionate or unnecessary restriction may apply. The reform also provides that EU citizens are entitled to a fair and impartial procedure prior to any Internet access suspension or restriction, as granted by the ECHR.

In order to promote Internet as a fundamental right, the reform also calls for the development of Next Generation Access ("NGA") networks to offer access to all EU citizens to broadband.

The final implementation of this reform shall be conducted in the coming months. The reform shall enter into force upon its publication in the Official Journal of the European Union (currently scheduled on December 18<sup>th</sup>, 2009).

The 27 Member-States shall then transpose into their national legislation the content of the reform by June 2011. However, such schedule is likely to be considered by some as exceedingly slow in consideration of the wideness of the reform, and that said reform is likely to transfigure the telecom market in an unprecedented way.

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*Ichay & Mullenex Avocats is a French law firm focusing on all legal issues related to the new technologies in France and abroad. They are considered experts in intellectual property and Internet law, e-commerce, online gaming, data protection. Ichay & Mullenex Avocats also assists its clients on all issues related to financing, mergers & acquisitions, restructuring, etc. and advises them on their litigation and arbitration procedures.*

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