

Explanatory remarks on the amendment to the Telecommunications Markets Ordinance 2008

General:

This amendment to the TKMV 2008 serves as the basis for procedures for the identification of effective competition and the identification of significant market power on the retail market for publicly available telephone services provided at a fixed location for non-residential customers; such procedures are to be carried out by the Telekom-Control Commission (TKC) pursuant to Art. 37 TKG 2003.

A.) Definitions:

1. Residential customers – non-residential customers

Non-residential customers as defined in this market definition include all legal entities and public-law/private-law corporations as well as partnerships and civil-law partnerships as well as physical and legal persons qualifying as undertakings pursuant to Art. 1 Consumer Protection Act, Federal Law Gazette No. 140/1979 as last amended. For the purposes of market definition in this ordinance, preparatory transactions in accordance with Art. 1 Par. 3 leg. cit. are to be assigned to this market.

2. Voice over IP (VoIP)

For the considerations taken in the course of market delineation, an essential distinction must be made between two types of VoIP services:

▪ Voice over Internet (VoI)

VoI is characterized by the fact that the VoIP provider offers services using the (public) Internet, but these services are generally not bundled with (broadband) Internet access to the retail consumer. Access to the retail consumer is realized via the retail customer's existing (broadband) Internet connection, that is, the VoIP provider uses the Internet or an existing Internet connection as an "access network."

The customer's Internet connection (i.e., the physical connection, including Internet connectivity) is generally provided by an independent third party. VoI is offered in various forms: Some enable full connectivity with the conventional telephone network, while others only support outgoing calls to the conventional telephone network or are restricted to calls between Internet users.

▪ Voice over Broadband (VoB)

Voice over Broadband (VoB) is offered in the form of Voice over DSL (VoDSL) using copper-wire pairs, or as "Voice over CATV" on cable television networks. VoB is characterized by the fact that the VoIP provider offers services in combination with the

provision of (broadband) Internet access and uses VoIP technology to transport voice data in the access network. VoB services generally enable full connectivity with the conventional telephone network and are largely equivalent to conventional telephone services in terms of product characteristics. This is not least due to the fact that the provider controls the quality parameters in the access network by offering a VoIP service combined with (broadband) Internet access. Moreover, VoB operators can generally fulfill the requirements for the use of geographical telephone numbers.

B.) Explanatory remarks on the defined market for publicly available telephone services provided at a fixed location for non-residential customers (retail market):

Voice call services from public pay telephones are not considered part of this market. Calls established using Voice over Broadband are included in this market, while calls established using Voice over IP are not.

All publicly available national and international telephone services provided at a fixed location for non-residential customers are included in this market unless they are realized using Voice over IP.

This market also includes dial-up connections via fax and modem.

Due to the objectively similar competitive conditions, this market comprises the entire federal territory of Austria.