

Special Alert

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Proposed Amendments to the Implementation of the Telecom Law

Seeing that telecom sector is regularly changing, as are its governing regulations. The Ministry of Information and Communications (“**MIC**”) has recently released for public comments the draft decree (the “**Draft Decree**”) amending and supplementing a number of articles of Decree No. 25/2011/ND-CP guiding the implementation of the 2009 Law on Telecommunications (the “**Telecom Law**”), as amended by Decree No. 81/2016/ND-CP dated 1 July 2016 (“**Decree 25**”). A number of significant changes are proposed under the Draft Decree.

Procedure for granting telecom business service license

With the targets of improving transparency and simplifying administrative procedures in the telecom sector, the Draft Decree removes provisions on classification of landline fixed telecom networks based on the criteria of using radio frequency bands and digital subscriber numbers under Article 19 of Decree 25. The Draft Decree only leaves conditions of legal charter capital and the level of investment commitment when establishing a landline fixed telecom network for telecom enterprises.

A private-use network license as specified by Article 24.5(b) of the Telecom Law is required where the private network is established for use of independent organizations and individuals who do not belong to the same agency or organization. This amendment strengthens the governmental management of this type of network in order to avoid illegally turning them into public telecom networks. The Draft Decree also clearly guides the handling of license revocation for telecom service businesses based on Article 39 of the Telecom Law.

Competition control over telecom service business

Pursuant to Article 4.2 of the 2018 Competition Law and Article 19.7 of the Telecom Law, the Vietnam

Telecommunications Authority (“**VNTA**”) under the MIC will deal with unfair competition acts and typical competition acts as specified under the Telecom Law. Vietnam Competition and Consumer Authority (“**VCCA**”) now or the National Competition Commission (“**NCC**”) to be established later, under the Ministry of Industry and Trade, will handle cases of competition-restraining and economic concentration in the telecom sector, but must consult the VNTA during such cases.

The Draft Decree has provided the market of important telecom services subject to the State administration of competition, including market among telecom enterprises (wholesale market) and the market providing telecom services to end users / customers (retail market). The Draft Decree also provides measures for controlling competition in the wholesale telecom markets, such as making a declaration of wholesale charges with the VNTA, to ensure a healthy competitive environment between telecom enterprises and promote the development of this sector of telecommunication.

Management and use of SIM mobile subscriber accounts

SIM mobile subscriber accounts are not only used to pay for primary telecommunication services, but also for value added services, including digital content services on mobile telecommunication networks within digital content ecosystems of telecom enterprises. Each mobile subscriber account will now have a limitation on use of digital content services, i.e.: not exceeding VND500,000 per payment transaction and VND2,000,000 for all transactions in a given month. The digital content ecosystem is merely provided by telecom enterprises who satisfy the prescribed conditions.

The Draft Decree supplements certain obligations of telecom enterprises in its provision of digital content ecosystems, including verification of the customers who subscribe for the SIM mobile subscriber accounts for the first time by the use of know your client (“**KYC**”), application of the methods to authenticate subscribers using the digital content service at each transaction, as well as a measure / mechanism to remove digital content services in violation of the laws from the digital content ecosystem. These regulations will enhance the responsibility of telecom enterprises, ensure the management of the use of SIM mobile subscriber accounts in payment of digital content services, and mitigate the risks in provision of digital content services.

The MIC has also proposed more measures for SIM management to restrict and remove pre-activated SIMs and incorrect subscriber information, i.e.: the SIM activation must be carried out by the telecom enterprise’s staff, the maximum number of SIMs that a telecom enterprise can activate for each subscriber will depend on his/her actual demands.

Registration, storage and use of subscribers’ information

The Draft Decree facilitates the registration of the subscribers’ information, i.e.: the conclusion of contracts and/or general terms and conditions at the telecom enterprises’ transaction offices / points of sale or online features via mobile applications, and adds some management measures to limit the risks in authentication of the subscribers’ registration information, for example, to require a subscriber’s registration information authenticated by making a video call.

The telecom enterprise's centralized subscriber information database will be connected to the database of the MIC to allow for the inspection, supervision and implementation of the State management at the request of the competent authority, as well as the citizen identification database of the competent authority including fingerprint data. This will serve the online check and maintenance of accuracy of subscribers' information. These connections and management of the database of subscriber information must ensure the confidentiality of the subscribers information and the safety of the network of the telecom enterprises.

Subscribers' information may only be disclosed by telecom enterprises upon a written request from a competent authority. This written request must include the basic contents as prescribed in the Draft Decree. The competent authority is required to ensure the request on provision of the subscribers' information in compliance with the purposes, contents, scope and competence as prescribed by law. In this relation, telecom enterprises and the relevant competent authority have responsibility for keeping such information confidential in the process of providing, managing and storing subscribers' information.

Management of commercial promotion activities

Telecom enterprises must comply with the principles of promotion and regulations on forms of commercial promotion as prescribed in Decree No. 81/2018/ND-CP stipulating the details of the 2005 Commercial Law regarding commercial enhancement activities ("**Decree 81**"), except that the service charges for telecom services which are subject to price management by the State shall not be promoted in the form of discounts of service charge rates lower than the minimum price prescribed by the State.

Due to the typical of the telecom sector, the VNTA will conduct State management of commercial promotions in the sector of telecommunication, except for lucky draws or promotion by chance.

Moreover, telecom enterprises are required to notify the authorities of promotional programs if such programs are applied for services within the market of important telecommunication services subject to the State administration of competition or such programs are part of a concentrated promotional program in accordance with Decree 81.

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