A Study of the Chinese Telecommunications Industry and Its Regulatory Sustainability

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Abstract: The Chinese telecommunications market has evolved into the world's largest market in recent years, which attracted vast attention from both foreign industries and regulators throughout the world. Although having only a short period of privatization and liberalization, the market has provided sharp rise in almost every aspect. Being a transitional economy, China is now facing the big challenge of sustaining this fast development in the long run. This research explores the development of the China's telecommunication industry, discusses the driving forces and the domestic regulatory/legal environment, estimates the future developing trend and makes recommendations as to a better regulatory practice in the transitional period. The focus of this research is to assess whether the astonishingly fast development in the Chinese telecommunications industry in the past two decades is sustainable, and if so, what would be the supporting regulatory framework and how should it work.

1. Introduction

Telecommunications became one of the leading engines of economic growth in the 1990s, fuelling activity and trade in all sectors, from manufacturing to the provision of financial services. As part of the consequences, trends of globalization, liberalisation, market competition, and technological convergence are sweeping the world. Restructuring telecommunications industry has in fact become a significant part of the overall restructuring of the global economy, which has also started to provide a fresh impetus to the telecom development in many parts of the world. Moreover, the nature of ICT industry has developed from a vital economic engine to an enabler of a wider range of issues including social welfare, education, medical progress and many other areas is people's daily life. This social change has been well reflected by the policy makers throughout the world. They started to look at the methods of transforming the digital devices into digital opportunities.

China, with its enormous population and arguably the biggest telecom market, has emerged to be the most admired nation among those new economies in recent years. By virtue of this fact, China has successfully developed its telecommunication infrastructure from one of the least developed into one of the largest and most sophisticated networks in the world. Within a short period of about two decades, China has established its telecommunications network with some very advanced technologies. The services also have a wide range of varieties and extensive coverage (Wen, 2004).

The Chinese government had managed its own way of keeping a momentum in their telecom development, which had received some con attention throughout the entire world (Wen, 2004). During the period of 2001, many Chinese telecommunications companies emerged as worldwide players. It just recently in the past two years, the Chinese domestic telecom industry growth to show a much slower movement. Regulatory policy and legal environment some of the concerns in this situation while sustainability started to become a de topic.

Against this background, this paper provides a study of the telecommunications industry regulations, highlights special characteristics transitional economy and its legal implications, and puts forward an important ar as to:

"Whether or not the astonishingly fast development in the Chinese telecommunications industry in the past two decades will sustain in the long run with its current supporting regulatory/legal framework"

To reach the finding, this research paper sets out four parts. After an intro Part 1, Part 2 provides a brief historical examination of the Chinese telecommunications industry and the major driving forces behind the development. Part 3 deals w current state of telecommunications laws and regulations. Finally, discuss summed up in Part 4, the concluding part, in which, the central argument will addressed and the findings of this paper are laid out in an abstract form.

2. Development and Driving Forces

2.1 Development

Generally speaking, the industry growth in the period of 1949 (since the Comm. Party takes the office in mid 1949 to 1978 was minimal (Guan, 2002). The signif of telecommunications was simply not realised by the government at that time - 1977). This situation was changed by Deng Xiaoping's "open-door policy" that in late (G. Liu, 1993). In turn, the policy brought some tremendous changes to the coun results, the overall economy in China had developed at a high speed and standards had improved considerably.

New strategies and policies were also formulated for the further development of telecommunications industry along with a background of massive economic reform at that time. Telecommunications networks were designed as part of the resources, and the principle was to mobilize all resources to boost the development of the new telecommunications industry (Zhou, 1997). A centralised regulator, Ministry of Telecommunications (MPT), was consequently established by the State Council to be responsible for overall planning in the industry and the International Develop The industry legal framework during this period was very simple with the State G on the top and MPT as a single Ministry responsible for all the issues in its jurisd (S. Wang, 2001).

With the development of the overall economy, the crucial state telecommunications as a foundation industry emerged gradually. In the mid 1980s, the Chinese government came to realise that the underdev
telecommunications infrastructure was an obstacle to overall economic growth. Thus, special consideration was consequently granted to the telecommunications sector, which then led to an effective sector growth in the following years.

Take a close look, an accelerated expansion period in China's telecom industry started from the 1990s with the average per annum expansion rate approximately 3.8% since then. The telecom industry has been particularly robust and well ahead of China's GDP growth in the past decade. From 1994 to 2000, the industry maintained a growth rate of about four times faster than GDP on an average yearly basis and the proportion of industrial added value increased gradually in GDP by being one of the fastest growing industries with the best economic result. There are external comments stating that the Chinese telecom sector has the strongest and fastest growth in the world in this line of industry (Sautedé, 2002).

Interestingly, the driving force behind this phenomenal growth is nothing like any contemporary regulatory paradigms beloved by the Western world - privatization, liberalisation, free markets, and so on (Sautedé, 2002), the simple regulatory framework with only the State Council at the top and MPT as the industry regulator, the real driving force was 'the political will'. With this as the background, the following part examines in detail as to reasons for the development and various driving forces.

2.2 Driving Forces

Similar to many other countries in the world, the PRC Government used to have a government-owned and controlled telecommunications monopoly. At that time, telecom was considered to be a strategic element of the national economic infrastructure, which is vital to national security (Chavalla and Samarajiva, 1997). The sector was consolidated under a single authority MPT and its provincial branches Provincial Posts & Telecoms Bureau (PPTs) (Zhou, 1997). Apart from certain telecommunications infrastructure operations delegated to the Ministry of Electronics Industry (MEI) for defense purposes and the Chinese People's Liberation Army (PLA), which has its own dedicated telecommunications infrastructure, MPT and PPTs enjoyed exclusive powers to plan, construct, operate and regulate the country's public networks (Wu, 2004).

With near absolute control there is the temptation to be complacent and gradually become torpid. By 1980s, MPT's substandard performance has undermined the industry for many years. Public complaints against MPT became more and more often. In addition, other Ministries also came to realise that telecommunication is a very lucrative business. Thus, the pressures to break up monopoly formed a strong force (Zhou, 1997).

2.2.1 Creation and Break of Monopoly

As a single party regime, policy-making in China has always been a sensitive issue amongst the various stakeholders. Any minor change to the existing practices would take months or years to implement. Moreover, considering the nature of this industry, no problems in telecommunications can be dealt with in isolation, which therefore prolongs the policy making process even further (Zhou, 1997). The State Council, after years of hesitation and behind the scenes negotiation, acknowledged the importance of the information age and the need for the efficient flow of information to enable economic reforms to succeed (Ure, 1997).

As mentioned earlier, a very important motivation for telecom reforms was the realization that it was a lucrative business. This makes reform as various stakeholders would literally 'wage war' amongst themselves for a share of its profit stream (Y. Xu, Levine, & Douglas, 1998). Thus, lengthy bargaining and plug development of the regulatory regime in Chinese telecommunications. The next outcome resulted in the introduction of limited competition dominated by a number of players (Ure, 1997). Observers described this process as 'turf war' (Lovelock & Ure, 1998).

Years of 'turf warfare' made the Directorate-General of Telecommunications (DOT) separated from the postal operations of the MPT's business and corporatized into a self-financing operator - China Telecom - in 1993. The aim was to ex-MPT as an independent regulator; and, at the same time, corporatize telecom busi part of the socialist market economy reform. The legal framework of the is supposed to be the regulator and the policy maker, MPT, being an independent r and the market player and incumbent, China Telecom, operate as SOE (Y. Xu, 1998).

This initiative was however failed. There were many reasons contributed overall failure. The most important one was that the new management in China Ta had strong personal connections with MPT (Loo, 2004), which enabled China Ta to retain its dominance and enjoy vast policy privileges. In particular, China Ta seemed immune from public dissatisfaction (Y. Wu, 2000). At the same time, Ministries started to look for ways to get a 'slice of the cake'. After years of nego and inter-ministries bargaining, the State Council finally approved new entrants market. As the result of this approval, China Telecom's legal monopoly was cut Those early entrants included JiTong Communications Company (JiTong) and Unicom, which is also sponsored primarily by another ministry MEI (Jan, 1992).

Unfortunately, new entrants did not bring in competition automatically. Unicom was such an example. Since MPT embraced both regulatory and operations responsibility, Unicom as an entity outside the MPT seemed to encounter problems with China Telecom. In fact, Unicom faced the same problems all new entrants faced against the former monopoly - China Telecom. There were no agreed price for service, no service contract, Unicom lacked resources to do and was therefore more inclined to look for overseas technical partners and fi reason enough for the MPT to oppose foreign participation on any terms that migh its position (Ure, 1995).

2.2.2 The 1998 and 2002 Shake-ups

Lobbying led by MEI, MOR, MEP, China International Trade and Invest Corporation (CITIC) and other interests groups brought the most significant refo the telecommunications sector in 1998 and consequently in 2002.

In March 1998, whilst still concerning the public telephone market, MEI and MPT continued to break up the telecom market, were merged with State Radio Regu Commission and formed a new ministry - Ministry of Information Industry (MII), became a principal regulator of the telecommunications industry and Government news release stated that the purpose of this reform is to set an independent regulator and therefore a better competitive market (Hong, 206). How observers believed that this is a compromise of 'an uncompromised battle' (Hui, 206}
Yet after the 1998 restructuring, the battle for domination in the telecommunications sector persisted. During 1999-2000, the newly established MII led the market through a complicated restructuring program to accommodate all other competing interest groups. As a result, ministries negotiated a new telecommunications configuration with a total of six SOEs in 2000, breaking up China Telecom's four divisions of services into separate entities. Consequently, four independent companies were formed. They are responsible for the fixed line, mobile, paging and satellite communication services, respectively. The fixed line services retained the name China Telecom. The new China Telecom was officially incorporated on 17 May 2000. The mobile service department of the old China Telecom became China Mobile, which was established on 16 May 2000. A new company, China Satellite, which provides satellite telecommunications services, was also approved by the State Council. The paging arm of the old China Telecom was merged with Unicom. In particular, after the restructuring the new China Telecom, China Mobile and Unicom were comparable with each other in size and hence more equal rivalries were established (Y. Wu, 2000).

As always, the superficial compromise of conflict interests is never a permanent resolution. Not surprisingly, after several years reallocating market share between the various providers the changes were still far from completed. In May 2002, the PRC State Council created six multi-functional state-owned enterprises with a high degree of functional overlap. The market configuration was reorganized again to reflect the socialist market economy policies or another compromise of conflict interests.

In simple, this reform inter-mixed the functions of the market players. Old China Telecom was separated into two parts — southern and northern. China telecom, Northern, was permitted to operate mobile telephony and fixed line services and they operates with China Netcom. Southern China Telecom became a new China Telecom and they were permitted to operate a mobile telephony and fixed line services. China Mobile remained unchanged as China's largest operator in the mobile service market. The New China Netcom combined Northern China Telecom, old China Netcom and Jilong, which remained as strong presence in northern part of China's telecom market. China Unicom remained unchanged and can provide a full range of telecommunications services with a focus on mobile telephony. China Railcom also remained unchanged and can provide a full range of telecommunications services with a focus on fixed-line telephony.

Since the 2002 reform, the Chinese telecommunications services have six major providers including Internet and other value-added businesses and this topography of competition remained unchanged to date.

Not surprisingly, industry observers commented that the current regulatory framework is more of the result from turf war rather than the result of a genuine better regulatory practice (Zhang, 2001). Although the MII claimed that the complicated reform was designed with a primary purpose of improving competition and efficiency (Jichuan, 2003), complaints from other Ministries to the State Council and the involvement and the decision made by the State Council showed that the real motivation of these reforms were to ease the inter-ministry tensions (X. Wang, 2003).

However, at the same time, a healthy regulatory/legal environment positive help to this situation. Thus, the conclusion made above is of nature. The follow part 3 will illustrate the telecom legal environment evaluate further the possibility of a sustainable development in the future.

3. The PRC State of Law

As many foreign lawyers working in Beijing or Shanghai have attested, China has many areas is often grey or ambiguous, if indeed law exists at all. A major investor in the country is to find the applicable law or laws that govern a Foreign company venturing into the grey areas run many potential risks. The current transitional economy, an ambiguous legal environment is having effect on overall development. The telecommunication industry in China prime illustration in this regard.

Before 2000, China's telecommunications sector was regulated by administrative rules and regulations. The process for issuing and impeller rules and regulations was neither transparent nor consistent (X. Xu, Yip 2001a). Under the Sino-U.S. bilateral agreement for China's accession to 1999, China agreed, for the first time, to allow gradual foreign investment telecommunications business (The White House Office of Public Liaison, 1999). After that, China signed off the Basic Telecommunications Agreement (it governs the liberalisation of basic telecommunications services among WTO members & designed to impose pro-competitive regulatory principles - WTO, 1996). As with other BITs, China prepared and schedule of specific liberalisation commitments in relation to the provision of basic telecommunications services and this schedule adopts the core principles set out in the Reference Paper, which forms part of the BIT.

Currently, the industry is mainly governed by the Regulations of Republic of China on Telecommunications (2000 Regulation), which was the PRC State Council on 20 September 2000 and subsequently promulgated into effect on 25 September 2000. There also have been a number of the regulations, ordinances and official notices promulgated by the State Council since 2000. In addition to the national laws and regulations, the telecom sector was the national People's Congress, namely The Decision of People's Congress on Internet Safety 2000 and Law of People's Republic of China on Digital Sign. Unfortunately, these two national level legislations are of specific issues on therefore lack of any general power of telecommunications industry in whole 2006, there are five telecommunications related regulations from St. (including 2000 Regulation). Moreover, there are 37 MII ordinances and regulations. Among all these, the 2000 Regulation is a core document administrative regulation nature.

3.1 The New Basic Telecommunications Law

The current regulatory framework in PRC reveals obviously that there is an umbrella statute – a new basic telecommunications law. The only two telecommunications related "laws" are for digital signature and to protect In
They are very specific to certain areas of telecommunications services and of very narrow application. Thus, their significance to the overall industry is limited.

There has been strong criticism of the lack of basic telecom law for years from both domestic telecom players and the international forum (Lovelock & Ure, 1998a). The criticism has also intensified in recent years (Bailey, 2004). In fact, China started to draft a Telecommunications Law to guide the future development of the industry back in 1989 (The Office of the United States Trade Representative, 1999). After so many years of drafting and has been listed twice in the official legislative planning of NPC (2005 and 2006), the Law has still not been enacted to date. In addition, the long delayed legislative processes have left little confidence to the industry and public that the law will be passed through in the near future (L. Wu, 2005).

Over the years, there have been quite tense debates about this upcoming new law. On the one hand, commentators believe that, in general, with the future promulgation of the proposed new Telecom Law, a number of sensitive issues would possibly be solved, which might include the issues such as openness of the pricing scheme, licensing regime, guarantee of interconnection, separation of supervision and regulation. On the other hand, negative speculations have been around for sometime and those speculations are getting intensified in the recent years (L. Wu, 2005). The follow part of his paper discusses some of these negative comments and presents some challenges regarding to the enactment of the new law.

Firstly, MII’s heavy involvement in the drafting process has been strongly questioned by the industry. Commentators believed that, as the current industry regulator, policy maker and supervisor, MII should not be involved in the drafting process. It is believed that the proposed Telecom Law should have a major role of separating the functions of the super-power MII as a principle method of achieving independent regulation and fair treatment to the market (Yin, 2005). Also, the future supervising body is quite likely to be separated from the current MII structure. Therefore, MII’s heavy involvement in drafting has introduced into the current law—making a vicious circle of protecting the Ministry’s power (B. Wang, 2005).

Secondly, there have been questions about the principal purpose of the new Telecom Law. In the past 25 years there have been a vast number of debates and government official notices on the new law, from which it is quite clear that the law will focus on the industry supervision (Suijiao, 2003). However, it is believed that this focus (on the industry supervision) was not appropriately reflected by the current situation in PRC. With a market with few players who are backed up with Ministries and other government departments, the most important issue needs to be thoroughly addressed is anti-monopoly operation rather than supervision (Cong, 2002). This paper also argued that—although focus on supervision will bring some convenience to the regulator in the future, properly addressing anti-monopoly will set up a fair competition platform for market players, which is far more significant to the current Chinese telecom market. In this respect, the situation also reveals that the market is probably in a great need of an anti-monopoly legislation (Likan, 2005).

Thirdly, this paper believes that there are room to argue that the drafting team of the new law is probably using “the new law” to “regulate” their competitors and suppress customer dissatisfaction. Instead of making a new law to regulate the existing poorly regulated market, things like the length process, behind scene negotiations and the heavy involvement of MII have outlined a picture where people might argue that eventualization of this new laws would just be another instrument to protect or guarantee the interests of several Telco stakeholders and their sponsors (the ministries) in wider range of market and public interests. In other words, the enactment of it would be a legal document to support the things that the political wills want and restrict the things political wills want to restrict. To avoid the speculation, it is suggested that a transparent legislative process with much greater public interest be in need. As it says that a fair legal environment is the best supervising the industries. A sound legal environment with a set of legislations reflecting interests and a fair competition platform would be in great needs. To achieve fundamental legal reform should be put in to practice, which would be more effective of charge to the telecom sector (H. Xu, 2005).

A power-group collusion is also a major challenge to the new law. As previous parts, there have been many personal, ministries and departments closely associated with telecom. Some of them hold massive power in their market. To maximize these interests, a lengthy negotiation process is just not something they would easily avoid (Chen, 2005).

In sum, the significance of this 25 year debate about the new Telecommunications Law became much greater than the proposed law itself. It brings out a series of fundamental issues in the Chinese law-making process, which badly includes the transparency and public interests into personal interests and abuse of government administrative power. Many Chinese domestic laws, regulations and ordinances to date have a strong tendency of protecting industrial monopolies or ministries’ interests. Currently, a large number of government departments and various ministries have become closely involved in drafting, testing, public enquiry and even the moderation process by utilizing political influence and economic power. Speculators believe, with heavy involvement of these government related market players, the new law, even, in the long term, would eventually be meaningless for industry growth (J. Liu and Lu, 2005).

3.2 The current situation with the 2000 Regulation

Putting aside the discussions of the new Telecom Law, the 2000 Regulation regulating the industry for the past eight years. At the beginning of its arrival, 2000 solved a number of urgent issues. However, as time passed it gradually starts developing its deficiencies as all other dated legislations. Nevertheless, it is still the most robust regulation today for the Chinese telecommunications industry. The following paper will provide a summary of this regulation together with a discussion of its increasing weaknesses.

3.2.1 Summary of 2000 regulation

As a core legal document, this 81-article administrative regulation aims to lay down the foundation for regulating the telecom market in China, protecting the interests of the telecom subscribers and operators, and ensuring the safety and security of the telecom network and information (Article 1, Chapter 1, 2002 Regulation). The regulation covers major areas in telecommunications: market, services, construction, and so on. It applies to all telecom-related activities in China.

The 2000 Regulation has a very general and widely defined goal, the structure is application-based. This will inevitably lead its reader to imagine an ~bulky legal document covering everything concerning the industry. This, however
the case - the Chinese 2000 Regulation is a very short document with only 16 pages. Comparing it with the Australian Telecommunications Act 1997, the 2000 Regulation is even shorter than the Australian Legislation's introduction part.

In the 2000 regulation, telecommunications is defined broadly to mean any activity whereby voice, text, data, images, or any other form of information is sent, transmitted, or received through wired or wireless electromagnetic or optical systems (Article 2, Chapter 1, 2002 Regulation). According to the drafters, this definition is intended to encompass broadcast networks, the Internet, and related services, providing a legal basis for regulating the "convergence" of information technologies (Horsley, 2001).

It is generally believed that this document served its purpose of being a welcome first effort by a national rulemaking body to standardize the administration of China's rapid changing telecommunications industry. These regulations helped to prepare and position China to undertake many, though not all, of its telecom-related WTO commitments. In addition, it is also believed that this Regulation has addressed many regulatory principles beloved by the Western world to varying degrees (Y. Xu, 2003). However, it is not surprising to note that this extremely important but short legal document has a number of pitfalls, which undermined it from the day it came into force and have become more pressing in recent years. The following section of this part is an examination of the weaknesses of this legal instrument.

### 3.2.2 Weaknesses of the 2000 regulation

The entire regulation was formed on the basis of separating the telecommunications business into two wide categories of basic and value-added service. Although this seems to come a common practice in many other countries like UK, US and Australia, China’s definition of these two categories remains many uncertainties and grey areas.

First of all, the definition of basic telecom business in the 2000 Regulation appeared to be broad. For example, some telecommunications commentators have argued in the past that the lease or sale of ducts alone should not constitute telecommunications business (Sujião, 2005). The inclusion of the “lease and sale of ducts” in the definition of basic telecom business clearly breaks the spirit of the licensing regime introduced by the 2000 Regulation. “Network outsourcing services”, “paying services” and “resale of basic telecom business” would appear to be value-added in nature but have been included as part of basic telecom business and are subject to more stringent licensing requirements under the 2000 Regulation. The meaning of many services included as part of basic telecom business, such as “network bearer services” and “network outsourcing services”, is not immediately obvious and is in need of further definition by the MII (X. Xu, Yip, and Chance, 2001b). Secondly, many ‘Internet’ related issues are not clearly defined. In relation to the definition of VAS, US telecom businesses had a particular argument concerning China’s treatment of the Internet as a value-added service, which would entail more liberal entry requirements (McMahon, 2006). Moreover, it should be noted that the provision of Internet access services is governed by many other separate regulations, including the Interim Regulations of the PRC for the Administration of International Connections to Computer Information Networks 1995, and their Implementing Measures 1997. In addition, the provision of Internet information services is subject to the Administrative Measures on Internet Information Services. 2000. This situation makes the practice even harker.
In sum, there are many unclear provisions in this regulation not only in the two areas demonstrated above and in many other areas such as interconnection and allocation of resources. Generally speaking, this regulation adopted a framework approach, which could be seen in many other PRC laws. With this type of approach, the law or regulation itself is more like a document presenting the lawmaker's opinion towards issues rather than providing a workable instrument to solve the real problems. In this respect, the 2000 Regulation is far from an effective legal document, which could be properly utilized by the industry and the public.

4. Conclusion

Although there is no government is even close to perfect, one of the most important government functions is to intervene when markets do not work properly so that the markets can serve the public. Claiming of deregulation and continuing government intervention in the telecommunication sectors are therefore expected at the same time. The form of intervention is open to choice by governments depending on the country's telecommunications, social and economic needs. The ultimate objective is the sector performance: that is, all those who desire services based on the telecommunication infrastructure should, with access to them at affordable prices, with adequate quality and choice, and socio-political objectives such as universal access and contribution to the needs of the already there should be facilitated.

Despite the fact that Chinese telecom market has evolved into the world's largest market with only short period of liberalization, the market is unfortunately created with some born defects. Responding to the argument set in the introduction of this paper, the finding of this study reveals that the regulatory framework in PRC's Telecommunications industry is not likely to be sustainable in the future. It was also revealed that the major driving force of the development was in fact the inter-ministry bargaining. Prima facie, the inter-ministry bargaining broke the monopoly status and brought in more market players as its direct result, which were welcomed at that time because it came with some limited market competitions. However, this situation is unlikely to proceed with the same speed of growth in a long run. It is established in many authorities that the real telecom market pillar is the proper industry framework, sufficient regulations, transparency and fairness. Unfortunately, current situation in China reflects little about these norms.

In particular, the legal environment in regulating telecom related issues in China is extremely weak. Apart from the only two national level telecom legislations, the industry is mainly regulated by administrative decrees, Ministry regulations and decisions from the State Council. Those two national level legislations are of specific concerns of certain aspects of the industry. They are lack of any overall impacts. In particular, as the central piece, Regulation 2000 has long gone out of date. Although the new Telecom law has been in agenda for years, it has not been enacted to date. Moreover, even with the enactment of the new Telecom Law, the future is still not going to be easy. As revealed in the discussion, although the market and industry needed the new law urgently, it has been in the negotiation for more than two decades. The reason behind this ridiculously long process was because of the finely balanced ministerial or inter-governmental interests. Moreover, criticism regarding to the new law is getting intensified over the years with particular issues such as the MII's heavy involvement in the law-making process and the close links between the market players and industry decision makers. Thus, the new law, if it eventually, will still have many born de this respect, this paper may envisage hopefully that this new Law would be a legislation for an imperfect purpose and made by an imperfect process. Irony would more likely be a perfect balancing of the imperfect inter-power-group. Therefore, it will have little likelihood of changing the current imperfect system. It can make changes to a certain extent, those changes can only be superficial in the realm of the political wills.

In closing, this paper believes that without a more substantial social-econo reform - a reform beyond the boundary of any given industry, the telecom sector in PRC would more likely to face a downturn or even a backward deep after its initial fast development. Regulatory sustainability will become a challenge.

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