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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

on market reviews under the EU Regulatory Framework (2nd report)

{COM(2007) 401 final}

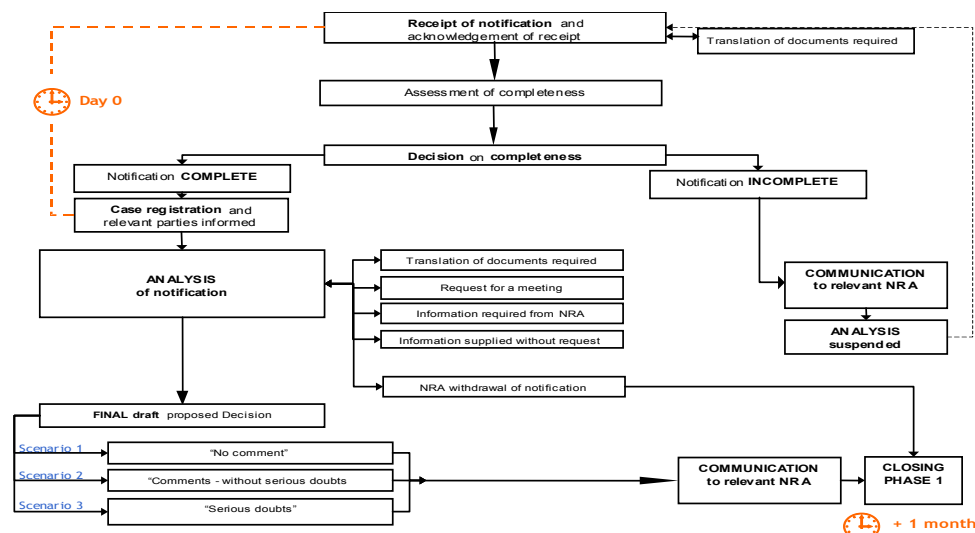
ANNEX I

THE ARTICLE 7 PROCEDURE

Under the procedures set out pursuant to Article 7 of the Framework Directive (2002/21/EC), NRAs must define the boundaries of relevant markets in accordance with competition law principles, taking utmost account of the SMP Guidelines and the Recommendation on relevant markets. If they find that relevant markets are not effectively competitive, NRAs are obliged to propose appropriate regulatory measures to address market failures. A market is not effectively competitive if one or more players is dominant (or has significant market power, “SMP”) in this market. Where operators are found to be dominant, NRAs are required to propose appropriate regulatory remedies to ensure effective competition. In the event of effective competition on the market, existing regulation has to be lifted. The market analysis has to be carried out in cooperation with the national competition authorities.

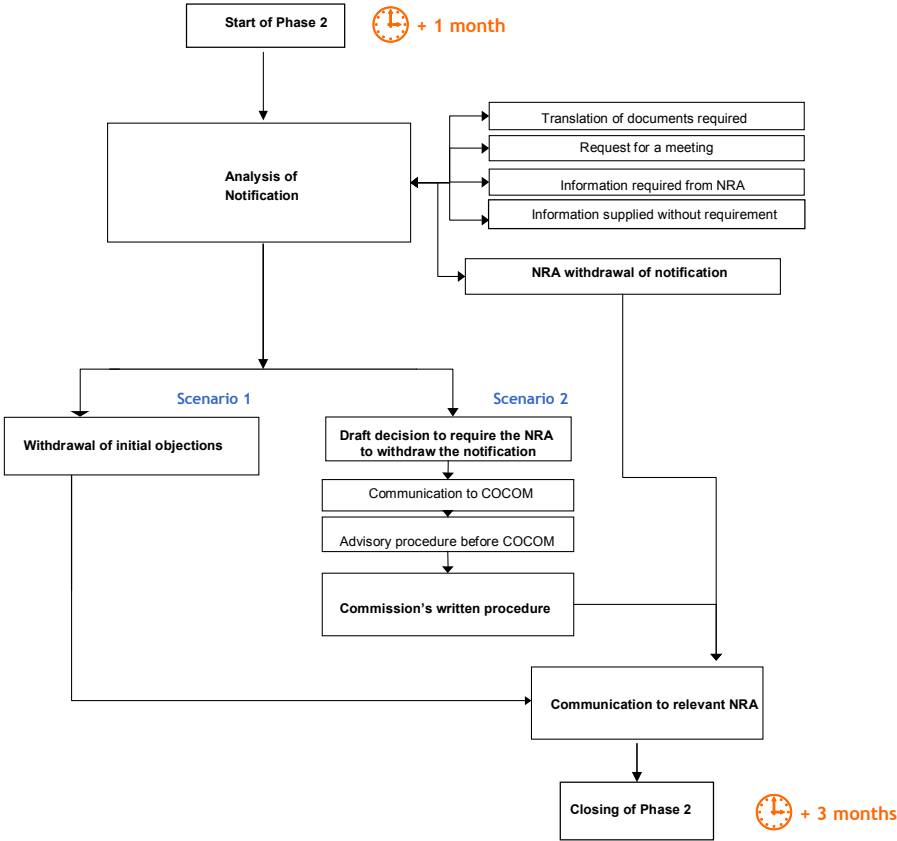
Before adopting final measures on market definition, market analysis and the imposition of remedies NRAs must not only carry out a national consultation but are also required to notify their draft measures to the Commission. Once an NRA notifies the Commission of its proposed measure for a particular market, the case is registered, and an ad hoc case team comprising officials of the services of both the Information Society and Media and the Competition Directorates General is appointed. The case team analyses the notification and may ask the NRA concerned to provide further information or clarification for the purpose of conducting the assessment. The team must carry out its assessment and comply with the necessary internal checks and balances, within the legally binding deadline of one month. At the end of this period, and provided that the notified measure does not raise “serious doubts” as to its compatibility with Community law, the Commission may decide to make comments. NRAs are to take utmost account of comments issued by the Commission before adopting the draft measure in question.

Table 1: Overview of the Phase 1 investigation



In the event that the Commission expresses serious doubts, the investigation period is extended by a further two months ("phase two" investigation) during which the NRA may not adopt its proposed measure. During these two months, the case team resumes an in-depth examination of the case and invites third parties to make known their views. What follows thereafter is an intense exchange of information between all interested parties (including the NRAs and industry players); all data provided and views expressed are carefully considered by the Commission. At the end of the investigation period, the Commission may withdraw its serious doubts (in which case the NRA may adopt the draft measure), make comments (of which the NRA must take utmost account when implementing the draft measure) or require the NRA to withdraw its proposed measure. In such an event, the Commission, before issuing its decision, submits its draft decision to the Communications Committee for an opinion. The NRA in question may decide to withdraw its draft measure at any stage of the notification procedure.

Table 2. Overview of the phase 2 investigation








ANNEX II

TABLE CONCERNING COMPETITION/REGULATION IN THE EU (31/03/2007)

Status of notifications

	AT	BE	CY	CZ	DK	EE	ES	FI	FR	DE	EL	HU	IRL	IT	LT	LU	LV	MT	NL	PL	PT	SE	SI	SK	UK		
1	a		a	a			a	a	a	/		a		a	a	a		a	a		/	a	a	a	a		
2	a		a	a			a	a	a	/		a		a	a	a		a	a			/	a	a	a	a	
3	a		a	a			a	a	a	/		a		a	a	a		a	a			/	a	a		a	
4	a		a	a			a		a	/		a		a	a	a			a			/	a	a		a	
5	a		a	a	a		a	a	a	/		a		a	a	a		a	a			/	a	a		a	
6	a		a	a	a		a		a	/		a		a	a	a			a			/	a	a		a	
7	a		a	a	a		a	a		/		a		a	a	a		a	a			/	a	a		a	
8	a		a	a	a		a	a	a	/	a	a		a	a	a	a	a	a	a	a	/	a	a	a	a	
9	a		a	a	a		a	a	a		a	a		a	a	a	a	a	a	a	a	/	a	a	a	a	
10	a		a	a	w	w	a	a	a	/	a	a		a	a	a	a	a	a	a			/	a	a		a
11	a		a	a	a			a	a	/	a	a	a	a	a		a					/	a	a	a	a	
12			a	a	a		a	a	a	/	a	a	a	a	a		a	w	a			/	a	a	a	a	
13	a		a	a			a	a		w	a	a		a	a	a		a	/					a	a	a	
14	a		a	a	w		a	a		w	a	a		a	a	a		a	a				a		w	a	
15	a		a	a	a		a	a	w			a	a	a	a		a	a	w				a	a		a	
16	a		a	a		a	a	a	a	/	a	a	/	a	a	a		a	/	a	a		a	a	a	a	
17	a				a			a																			
18			a	a			a		a	/			/							a	a		/	a	a	a	

-  Separated notification for remedies
-  Final measure adopted
-  Withdrawal (totally or partially) not yet re-notified
-  Notified
-  Partly notified

ANNEX III

1. MARKETS OVERVIEW

This document highlights the main trends and conclusions of all markets assessed before 31 March 2007.

1.1. Retail access for residential and non-residential users (markets 1 and 2)

Retail access can be described as the provision of a connection to the fixed public telephone network for the purpose of making and/or receiving telephone calls and related services (such as faxes and dial-up internet). 24 NRAs have completed and notified their analysis of the retail access markets¹.

In line with the Recommendation, most NRAs defined separate markets for residential and non-residential customers, while the British, Dutch, Greek, Cypriot, and Irish NRAs defined the retail access markets on the basis of different levels of access (mainly PSTN or ISDN). Some NRAs included alternative means of access into the market, including optical cable and local area networks. In most cases, this inclusion did not affect the finding of SMP or the scope of regulation. Nevertheless the Commission requested the Polish NRA, UKE, to withdraw its measures concerning markets 1 and 2 because UKE had not provided sufficient data to support the inclusion of xDSL access services in markets 1 and 2.

All NRAs that notified the markets for retail access thus far found the incumbent operators dominant on these markets. Even if NRAs generally imposed the full set of remedies, including price control², carrier selection and carrier pre-selection obligations, as well as wholesale line rental³ the application of remedies raised some concerns.

In particular, the Commission commented upon the absence of effective ex-ante price control obligations in Germany, the Czech Republic and – with the exception of carrier (pre-) selection – in Finland. Additionally, it considered the "retail-minus" approach chosen by the NRA in Luxemburg insufficient. The Commission also questioned the effectiveness of the ex-post price control in Germany and reminded Germany of Article 19(3) of the Universal Service Directive which foresees that CS/CPS must be provided on a cost-orientated basis; it also commented on the missing cost accounting methodology in Slovakia.

¹ The Estonian NRA has not yet notified markets 1 and 2. The Commission requested the Polish NRA to withdraw its measure on 10 January 2007.

² The Czech NRA (CTU), however, decided that the imposition of a price control obligation was not necessary. Given the strong position of the incumbent on the market, the Commission invited CTU to verify whether the remedies imposed at the wholesale and retail level are effective at addressing the market failures in the retail access markets.

³ Customers may be allowed to opt for calls to be carried by another operator than the one providing the access line. Such an alternative operator can be selected either in advance without having to dial a routing prefix for each call (carrier pre-selection) or on the basis of a routing prefix for each call (carrier selection). Wholesale line rental makes it possible for alternative operators to offer retail access services together with calls services to end customers in a way that the customer only receives one single bill from the alternative operator. The alternative operator resells to the end customer the access line that it rents from the incumbent at the wholesale level.

Further, the Commission had doubts whether the NRAs in Hungary, France, Slovenia and Spain had sufficiently assessed the impact of wholesale remedies in addressing market failures at retail level. According to Article 17(1) of the Universal Service Directive, obligations at retail level can only be imposed if remedies at wholesale level would not result in the achievement of the objectives defined in the Framework Directive (including the promotion of competition, the completion of the internal market for electronic communication services and benefits for users). The insufficient consideration of wholesale remedies when defining retail obligations could create barriers to the single market. In particular, the Commission commented on wholesale line rental in Portugal and Spain and asked Poland to specify its wholesale line rental obligation.

1.2. Retail local, national and international voice calls for residential and non-residential users (markets 3 to 6)

These markets comprise all outgoing telephone calls from a fixed location. Publicly available telephone services for residential and non-residential customers are still commonly provided over traditional fixed telephone networks. 24 out of 25 NRAs notified their analysis in 2006. A second phase examination was launched by the Commission issuing doubts on the exclusion of calls made 0708 numbers via calling card operators from the Polish market. After additional information was provided by the Polish NRA, the Commission decided to withdraw its serious doubts.

In a majority of notifications, the fixed line incumbent was found to have SMP in all calls markets. However, the following number of national markets was (partly) found competitive: two markets for national calls for residential customers (market 3); eight markets for international calls for residential customers (market 4); three markets for national calls for non-residential customers (market 5) and nine markets for international calls for non-residential customers (market 6).

1.3. Retail leased lines (market 7)

A leased line is a permanently connected communications link between two premises dedicated to the customer's exclusive use. The market for retail leased lines corresponds to the minimum set of leased lines, as defined in the Commission Decision 2003/548/EC⁴. Thus far, 24 NRAs have notified their review of market 7. Most NRAs defined the retail leased lines market in line with the Recommendation, while the Austrian, Portuguese and British NRA chose a broader market. Additionally, the Irish NRA defined a separate market for international leased lines, beyond the recommended market, in order to lift previous regulation, whereas the Maltese NRA included international leased lines in a global retail leased lines market. Finally, the Dutch NRA split the retail leased lines market into six separate national and five separate international markets, while the French NRA demonstrated that the inclusion of leased lines above 2 Mbit/s and leased lines with alternative interfaces was justified by specific national circumstances.

It can however be assumed that competition of the retail market of leased lines will be achieved by the regulation of the corresponding wholesale markets (markets 13 and 14) in most Member States.

⁴ Commission Decision 2003/548/EC of 24 July 2003 on the minimum set of leased lines with harmonised characteristics and associated standards referred to in Article 18 of the Universal Service Directive, OJ L 186, 25.7.2003, p. 43.

Regarding regulatory remedies, Annex VII of the Universal Service Directive provides that NRAs shall ensure that the provision of the minimum set of leased lines follows the basic principles of non-discrimination, cost orientation and transparency. With the exception of the Finnish, Dutch, Spanish, Slovak and Hungarian NRA, NRAs imposed all the regulatory remedies foreseen by the Universal Service Directive.

1.4. Wholesale fixed call origination (market 8)

Provision of wholesale call origination enables alternative operators to provide end users with retail fixed telephone services, including dial-up Internet services. All but one NRA have notified their analysis on call origination at a fixed location. NRAs defined the market in line with the Recommendation, with the exception of the British, German, Dutch and Danish NRAs⁵.

The incumbent operator was found to have SMP in all notified cases, which indicates that wholesale fixed call origination remains one of the bottlenecks in electronic communications. When regulating this market effectively, through carrier selection, carrier pre-selection obligations and wholesale line rental obligations, barriers to enter the downstream retail access and calls markets may be lowered so that retail regulation could be phased out. In this context, it is of paramount importance that NRAs impose effective and proportional remedies. Therefore the Commission commented upon the fact that the Polish NRA had not specified the details of the price control obligations before the introduction of a new cost accounting model and noted that the Slovenian NRA should introduce cost oriented tariffs within the shortest timeframe possible. Further, the Commission expressed its concern regarding the non-imposition of (i) WLR in Spain and (ii) of a cost-orientation obligation in the Slovak Republic. In Hungary, the NRA allowed the four local incumbents to charge origination rates 40% higher than those of Matáv, which might impede further decreases of retail charges in the view of the Commission.

1.5. Wholesale fixed call termination (market 9)

Wholesale call termination can be defined as the wholesale service offered by operator A to operator B in order to enable the subscribers of operator B to call subscribers of operator A. In line with the Recommendation, all NRAs defined each individual fixed telephone network to constitute a relevant market for call termination. It follows that fixed termination markets are natural monopolies. With the exception of an initial notification by BNetzA – which was vetoed by the Commission – NRAs designated all the terminating operators as having SMP. In most cases the full set of remedies set out in the Access Directive were imposed on large SMP operators. Many NRAs applied asymmetric remedies, for example by imposing lighter cost control obligations on newly established operators.

As outlined in Chapter 4.2.2. of the Communication, the Commission emphasised the need for a coherent EU approach. It underlined that the imposition of asymmetric remedies necessitates an adequate reasoning. The Commission also stressed the importance of efficient cost-orientation and cost-accounting obligations. To the extent that it would be considered disproportionate to impose costly cost-orientation and cost-accounting obligations on a small

⁵ The Maltese NRA proposed to include broadband wireless access in its draft measure, albeit without a full substitution analysis. The Commission noted that although such inclusion was questionable, it would not have any effect on the finding of SMP.

operator, other forms of cost-control for such operators, such as benchmarking, could be considered.

In several cases price control obligations were imposed in a way that does not guarantee legal certainty, such as ex post price control⁶, "reasonable" prices⁷, unclear cost accounting systems⁸ or the freedom of the SMP operator to choose the accounting system. Further, the Commission underlined the importance (i) of accounting separation in order to ensure transparency⁹. Accordingly, the Commission asked NRAs to modify the remedies in order to provide for transparency and consistency among Member States. In addition, the Commission commented on reviewing the need for asymmetric application of remedies¹⁰. For instance in Hungary, four local incumbents were allowed to charge termination rates that are 40% higher than those of Matáv; in Poland, alternative operators were not made subject to any form of price control.¹¹ Although such asymmetry might be justified in exceptional cases because of objective cost differences which are beyond the control of the operators concerned, they must be adequately reasoned. If asymmetries in termination rates are not based on objective cost differences, they must be phased out within a reasonable time frame. In this context, it is of paramount importance for the purpose of guaranteeing legal certainty that glide paths for the reduction of termination rates are specified in the regulatory measures¹².

1.6. Transit services in the public fixed telephone network (market 10)

Transit services refer to the (long distance) conveyance of switched calls on the public fixed telephone network. Depending on the network topology, the delineation between transit services and call origination may vary. Most NRAs defined the market in line with the Recommendation. The British, Dutch and German NRA, however, proposed more narrow market definitions; additionally, the British, Irish, Maltese, Cypriot and French¹³ NRA segmented national and international transit services. In the case of the Austrian NRA, the Commission required the NRA to withdraw the draft measure on the basis of a flaw in the market definition¹⁴.

In a large number of Member States, new entrants are still dependent on the incumbent for the provision of transit services on many routes. Out of the 24 NRAs¹⁵ that have notified the market thus far, 16 NRAs designated operators as having SMP¹⁶. In addition, BNetzA found certain of the more narrowly defined transit markets to be effectively competitive. Some of the notifying NRA imposed the full set of the remedies, whereas the Commission commented

⁶ See the notification from the German NRA in case DE/2005/0239.

⁷ For example in the case of a notification from the Slovenian NRA. The Commission stressed that a price control based on cost oriented wholesale charges should be introduced as fast as possible.

⁸ For example in the case of a notification from the Finnish NRA.

⁹ See case DE/2005/0234.

¹⁰ For example in the case of notifications by the Italian, Swedish and Portuguese NRAs.

¹¹ See case PL/2006/0502. The Commission therefore invited UKE to monitor the market closely and to impose a cost orientation obligation on ANOs, if appropriate.

¹² See the case IT/2006/0384.

¹³ The French NRA distinguished between intra-territorial and interterritorial transit markets and defined 10 separate markets for the latter, on a territory-by-territory basis.

¹⁴ The Austrian regulator has challenged the validity of that decision before the European Court of Justice ("ECJ") via a preliminary ruling request. (See case C-256/05, Telekom Austria). On 6 October 2005, the ECJ ruled that the regulator's request for preliminary ruling was inadmissible. The Austrian NRA has re-notified the market in January 2007.

¹⁵ The Estonian and Danish NRAs withdrew their notifications.

¹⁶ In Finland 14 operators were found to have SMP.

upon the non-imposition of price control obligations in Slovenia. Further, the Commission invited the Spanish NRA to consider imposing differentiated remedies given that alternative operators have gained significant market shares on some routes, while Telefonica still enjoys a quasi-monopoly on others.

1.7. Wholesale unbundled access (including shared access) to local loops (market 11)

This market covers wholesale access to the metallic local loops and sub-loops, i.e., to the “last mile” of the public fixed telecommunications network connecting the subscriber to the local exchange and to the main distribution frame, respectively.¹⁷ Once access is granted, new entrants can provide both voice and data services to end users over the local loop rented from the incumbent. Owing to the financial and social cost of duplicating this very last section of the fixed network, barriers to entry to this market are generally considered to be very high. All 24 notifying NRAs found that this market is not effectively competitive and designated the incumbent operators as SMP operators.

1.8. Wholesale broadband access (market 12)

Wholesale broadband access, (“bitstream” access or equivalent wholesale access), enables new entrants to provide retail broadband access services to end users by relying on their own backbone network in combination with access to the middle and lower parts of the incumbent’s network. Bitstream access is generally considered as an essential stepping stone for new entrants towards investment in full-scale own network roll-out on the basis of local loop unbundling (so-called “ladder of investment” theory¹⁸). The question whether wholesale bitstream access products provided over non-PSTN infrastructure, typically cable but also other networks, currently or prospectively form part of this market continues to be debated. The Dutch and Maltese NRAs have defined the markets in this encompassing way¹⁹, so that the outcome of the market analysis was affected. Several other NRAs have included cable in the market but in none of these cases the inclusion of cable had any impact on the SMP finding or the remedies proposed.

24 NRAs have completed and notified their analysis; the large majority of them found the incumbent PSTN operators dominant²⁰. In most cases, the designated SMP operators were made subject to the full set of remedies under the Access Directive. Access obligations were not always imposed at several network levels.

¹⁷ Local loops were already subject to ex ante regulation prior to the entry into force of the New Regulatory Framework. Council Regulation 2887/2000 on unbundled access to the local loop sets harmonised conditions for unbundled access to the local loop.

¹⁸ There are three types of wholesale services that a new entrant can build on to offer retail broadband services: (i) a pure resale service, where the new entrant resells the incumbent’s broadband connection to the end user and does not invest in own infrastructure, (ii) bitstream, where the new entrant builds its own backbone but relies on the incumbent’s infrastructure for the lower and middle parts of the network, and (iii) local loop unbundling where the new entrant relies on the incumbent’s infrastructure only for the so-called “last mile”. The ladder of investment theory implies that new entrants pass gradually from relying on (i), via (ii) to (iii). In order to undertake investments in network development, they first need to be able to develop a sufficiently large retail customer basis relying on the network infrastructure of the incumbent.

¹⁹ In the Dutch case the market that encompassed cable was declared competitive.

²⁰ Belgium’s notification is still missing, whereas the Maltese NRA has withdrawn its notification. In Luxemburg those markets were not analysed separately despite the lack of sufficient evidence demonstrating that trunk and terminating segments of leased lines belong to the same market.

The Commission had to comment in a number of cases on the proposed remedies imposed by the NRAs. Among other things the Commission asked Germany²¹, the Czech Republic, the Slovak Republic²², Luxemburg and Finland to adopt effective ex ante price regulation²³. Luxemburg, Lithuania, Poland²⁴ and the Czech Republic²⁵ were invited to grant access at appropriate levels / specify the level of access in order to enable the development of competition.. The Commission asked Germany and Spain to apply access obligations to VDSL infrastructure and Germany and Luxemburg to implement stand alone bitstream access (in particular "naked DSL"), which enables alternative operators to provide broadband to end customers without the obligation to rent a telephone line from the incumbent. The Commission also stressed the importance of accounting separation with a view to ensuring transparency²⁶.

The Commission had to ask the German NRA to accelerate its notification of remedies, as Germany submitted a belated market analysis without notifying final remedies for more than one year afterwards.

1.9. Wholesale terminating segments of leased lines (market 13) and wholesale trunk segments of leased lines (market 14)

Wholesale leased lines consist of dedicated unmanaged connections between two points. Operators use them either to complete their own network infrastructure or to provide retail leased line services (see market 7 above). Under the Recommendation, the precise delineation between trunk and terminating segments of leased lines is recognised as being highly dependent on the network topology specific to the Member States concerned. Consequently, the determination of the boundaries between trunk and terminating segments varies significantly among Member States²⁷. Further, the Explanatory Memorandum to the recommendation does not exclude segmentation between high and low capacity leased lines, provided such segmentation is justified pursuant to the principles of competition law. Some NRAs (including the British, Dutch, Greek and Lithuanian NRA) thus segmented wholesale leased lines markets according to bandwidth²⁸. Finally, it should be recalled that the Recommendation does not restrict the markets for terminating and trunk segments of leased lines to any particular interface or technology. Therefore some NRAs included wholesale leased lines with alternative interfaces (in particular Ethernet) in the wholesale leased lines

²¹ In particular, the Commission stated that (i) ex post price control is not appropriate to remedy the competition problems identified in the wholesale market, and that (ii) price control should be based on cost orientation.

²² The Commission therefore invited the Slovak NRA to consider imposing IP and ATM access and possibly also access at the DSLAM.

²³ Concerning a notification from the Greek NRA, the Commission recalled that a margin squeeze analysis should not depend on unrealistic assumptions about the ability of new entrants to benefit from increased margins over time.

²⁴ In particular, the Commission reminded the Polish NRA of the importance of defining the scope of obligations imposed in an exact way.

²⁵ In the Czech Republic, the NRA proposed to impose an access obligation only at the IP level, but no ATM access.

²⁶ For example in the case of a notification from the Dutch NRA.

²⁷ The Commission commented on the lack of a clear definition of the boundary between the two markets in Poland.

²⁸ Additionally, the Italian NRA excluded trunk segments below 2 Mbit/s from regulation because in its view that market was marginal. Although the Commission disagreed with this approach, it did not believe that such exclusion would affect trade between Member States.

markets because they are functionally equivalent to wholesale leased lines with traditional interfaces.

24 NRA have notified the market for terminating segments for leased lines²⁹. All notifying NRAs found that the fixed incumbent operator(s) had SMP on this market, although the British NRA found that there was no SMP on the more narrowly defined market for very high capacity terminating segments of leased lines, whereas the Lithuanian NRA designated the incumbent operator as having SMP only on the market for low capacity leased lines.

The market for wholesale trunk segments of leased lines was notified by all NRAs with the exception of the Polish and the Estonian NRA³⁰. Most of the NRAs notifying the market found it to be effectively competitive, whereas NRAs in the UK, Ireland, Portugal, Italy, Malta, France, Greece, Lithuania, Cyprus, Spain and Luxemburg designated operators as having SMP.

Regarding remedies in the market for wholesale terminating segments of leased lines, the Commission commented upon price control obligations in several cases in order to ensure the consistent application of remedies across the Community, in particular because the Commission was not convinced that the proposed draft measures contained sufficiently effective mechanisms for the implementation of cost accounting methodologies. Further, the Commission invited the Spanish NRA not to limit the scope of the remedies to leased lines with traditional interfaces.

1.10. Access and call origination on public mobile telephone networks (market 15)

Currently, access and call origination on public mobile telephone networks are typically supplied together by mobile network operators as part of the same market at wholesale level. These services allow new entrants to make use of the infrastructure of a mobile network operator to provide mobile telephone services to retail customers. The 22 NRAs having notified this market thus far³¹ did not deviate from the market definition contained in the Recommendation.

Although the Explanatory Memorandum to the Recommendation states that "... the level of competition generally observed in this market at the retail level indicates that ex-ante regulatory intervention at a wholesale level may not be warranted", the Irish³², Spanish and Maltese NRAs found joint dominance on this market, whereas the Slovenian and Cypriot NRAs designated one operator as having single SMP on this market. Further, the Commission required the Finnish NRA to withdraw its notification following a veto decision; in its final measure the Finnish NRA concluded that the market is effectively competitive.

The fact that at the wholesale level no access to third parties is granted does not *per se* mean that the market is non – competitive. Where the majority or all supply on the relevant market is captive, i.e. provided internally by vertically integrated mobile network operators, the structure of supply at the wholesale level can be derived from supply at the retail level. Competitive conditions at retail level are of crucial importance: they may provide an indicator of a rent to protect by the refusal to grant access at the wholesale level.

²⁹ The German NRA withdrew its notification.

³⁰ The German and Slovak NRA withdrew their notification.

³¹ It should be recalled, however, that the French and Polish NRAs withdrew their notification.

³² The decision of the Irish NRA was annulled by an appeals body.

In order to find joint SMP in the wholesale market of mobile access and call origination, it is not indispensable to find joint SMP at the retail level, but – among the other criteria defined in the "Air Tours" case³³ – it must be shown that (i) fringe competitors, such as emerging mobile network operators, do not have the ability to challenge any anticompetitive coordinated outcome and (ii) that pent-up demand exists, which means that it must be demonstrated that third parties have been denied access to the networks of mobile network operators despite their reasonable request.

1.11. Voice call termination on individual mobile networks (market 16)

Termination services are described under market 9 above. When provided on a mobile network, they are referred to as mobile termination services. 25 NRAs have notified the markets so far, having defined the market in line with the Recommendation, i.e. voice call termination by each individual network operator was found to constitute a separate relevant market. It follows that termination markets are natural monopolies and all NRAs found that all mobile network operators had SMP on their respective markets.

In all countries price control have been imposed on the operators, albeit in a number of countries, asymmetrical remedies have been applied, i.e. certain operators benefited from a higher regulatory termination fee.

Remedies have been highly heterogeneous throughout the EU, which cannot be explained solely due to different costs of the termination, but among other things to different costing models and highly different glide paths leading to a "cost oriented" level. As a consequence the regulatory outcome has been fragmented, despite the consistent method of SMP finding described above, leading to significantly different termination rates within the EU.

The Commission had asked in several cases to bring termination rates down by shortening glide paths and ending asymmetric treatment (i.e. favourable treatment for specific operators) earlier. Moreover, the Commission asked not to let termination rates being negotiated by operators, in order to avoid further delay and the lack of transparency. Enforcement of the Commission's comment would not only have led to more harmonisation but also to lower termination fees in a number of Member States which can be expected to translate into lower calling costs for consumers and enterprises.

1.12. Wholesale national markets for international roaming on public mobile networks (Market 17)

When a mobile subscriber travels abroad, his home operator needs to have negotiated with a mobile network operator in that country a network access agreement in order to enable the subscriber to make and receive calls. The network access corresponds to the provision of wholesale international roaming services. All of the 11 NRAs that have notified this market thus far found it effectively competitive. This market will be regulated via an EC Regulation.

³³ Judgment of 06.06.2002 of the Court of First Instance, case T-342/49, *Airtours vs Commission*. The Court considered that for collective dominance to be tenable in the long run, the market must be conducive to tacit coordination (in particular because of a high level of transparency), there must be a credible and enforceable retaliation mechanism and it must not be possible for competitors or customers to undermine the co-ordinated behaviour.

1.13. Broadcasting transmission services to deliver broadcast content to end users (market 18)

This market includes the transmission of broadcasting signals (radio and television signals) on behalf of the content providers to the end users. The 16 NRAs that have notified the broadcasting market thus far have segmented it into various more narrowly defined product markets on the basis of the platform used (cable, satellite or terrestrial), the transmission mode (analogue or digital), the geographical coverage of the network (local or national) and/or the signal transmitted (radio or television). Concrete market circumstances, underlying the market definition, appear to vary substantially from one Member State to the other. A considerable number of submarkets were found to be competitive. Where NRAs wanted to exempt parts of the market from regulation (for example cable transmission networks and satellite networks), the Commission has carefully analysed whether such an approach was justified on the basis of the three criteria test not being met and/or on the basis of no operator having SMP the market.

National terrestrial TV transmission systems seem to remain a bottleneck, in particular due to barriers to entry. Most cable submarkets were found to be competitive, the Netherlands and Germany being the exception, where SMP in the cable markets was found.

However, on a forward looking basis competitive conditions can be expected to improve considerably in all Member States due to increased platform competition, given the emergence of terrestrial digital television and internet television.

The type of remedies imposed is subject to significant variations in the Member States, which was commented upon in several cases by the Commission in order to safeguard the consistency of regulation in the broadcasting transmission market. In particular, the Commission was concerned about the fact that some NRAs did not impose transparency and price control obligations. Further, the Commission services commented upon the implementation of price control obligations, either because they were not accompanied by an appropriate cost accounting methodology or the use of benchmarking, or because the timeframe foreseen for the introduction of price control was excessively long.

ANNEX IV

Market 1: Access to the public telephone network provided at a fixed location for residential customers

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			Carrier (Pre) Selection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria*****	YES	1 operator	YES**	YES	NO	YES	YES
Denmark	YES	1 operator	YES	NO	NO	NO***	NO
Finland	YES	43 operators	YES	NO	YES	NO	NO
France	YES	1 operator	YES**	YES	YES	YES	YES
Hungary	YES	5 operators	YES	NO	NO	YES	NO
Ireland	NO*	1 operator	YES**	YES	YES	YES	YES
Portugal	YES	1 operator	YES**	YES	YES	YES	YES
Slovakia	YES	1 operator	YES	YES	NO	YES	NO
Slovenia*****	YES	1 operator	YES**	YES	NO	YES	NO

Sweden	YES	1 operator	YES**	YES	NO	NO	YES
United Kingdom	NO*	2 operators	NO	YES	YES	YES****	NO
Netherlands	NO	1 operator	NO	YES	YES	YES	NO
Czech Republic	YES	1 operator	YES	NO	NO	YES	YES
Malta	NO*	1 operator	YES**	YES	YES	YES	YES
Italy	YES	1 operator	NO	YES	YES	YES	NO
Germany	NO	1 operator	YES	NO	NO	NO	NO
Spain	YES	1 operator	YES	YES	YES	YES	YES
Cyprus	NO*	1 operator	YES**	YES	YES	YES	YES
Belgium	NO*	1 operator	YES**	YES	YES	YES	YES
Lithuania	YES	1 operator	YES**	YES	YES	YES	YES
Greece	NO*	1 operator	NO	YES	YES	YES	YES
Poland	NO	1 operator	The decision was vetoed by the Commission				
Luxembourg	NO*	1 operator	YES**	YES	YES	YES	YES
Latvia	YES	1 operator	YES	NO	NO	YES	NO

**Refinement, broader/narrower market and/or merger of markets*

***Imposition of WLR*

**** Universal service-based price control obligation only*

***** Differentiated or no remedy imposed on certain SMP operators*

****** second market review*

Overview of notifications assessed until 31 March 2007

Market 1: Access to the public telephone network at a fixed location for residential customers

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
UK/2003/0009 and UK/2003/0010	2 segments defined: (i) residential retail analogue exchange line services and (ii) residential retail ISDN2 exchange line services.	UK (excluding the Hull area) and the Hull area	BT and Kingston	1 - Non-discrimination	The Commission made a comment on: Markets defined more narrowly than in the Recommendation: A broader market definition, in line with the Recommendation, is not likely to lead to a different SMP outcome. Therefore the conclusion on the exact scope of the markets is not relevant.
				2 - Publication of charges, terms and conditions of supply	
				3 - BT only: annual ceiling for charges equivalent to RPI increase	
				4 - BT only: cost-accounting in respect of residential analogue access	
FI/2003/0020	Similar to the Recommendation.	Regional	43 regional operators	1 - Users' right to a connection to fixed telephone network	The Commission made a comment on: Remedies at retail level: No further obligations are imposed on the SMP operators at retail level in addition to CS/CPS and other non-SMP obligations based on the Universal Service Directive. NRA should assess the impact of regulation at wholesale level and of CS/CPS on the market and consider additional regulation at retail
				2 - Obligation to publish standard agreement terms and tariff information on services	

				3 - User's right to pre-selection / carrier pre-selection	level.
PT/2004/0053 and PT/2004/0091	Similar to the Recommendation.	National	PT Group	1 - Transparency	The Commission made a comment on: Wholesale line rental Wholesale line rental is an appropriate remedy to address the lack of competition in the relevant retail market. The need for Wholesale Line rental should decrease, as competitors to the incumbent invest in their infrastructure.
				2 - Non-discrimination	
				3 - Cost orientation and cost accounting	
				4 - Accounting separation	
				5 - Carrier(Pre)Selection	
				6 - Price affordability	
				7 - Wholesale line rental	

<p>AT/2004/0109 AT/2005/0303 AT/2007/0579</p>	<p>In the second round of market review retail broadband access has been included</p>	<p>National</p>	<p>Telekom Austria</p>	<p>1 - Carrier(Pre)Selection</p>	<p>The Commission made comments on:</p> <p>Inclusion in the access markets of broadband access lines over which VoB services are provided</p> <p>TKK includes broadband access lines over which VoB services are provided in the retail access markets essentially on the basis of the argument that such lines are effectively being used, <i>inter alia</i>, to make and receive calls in full connectivity with the PSTN network.³⁴ However, the functionality of narrowband access lines and broadband access lines in general overlap only partly. Although broadband connections are also capable of facilitating delivery of telephone services, customers generally will not switch from a narrowband to a broadband connection for the sole purpose of accessing voice services. Consumers switch from narrowband to broadband connections primarily to get access to higher speed Internet services. From a functional viewpoint, broadband access therefore tends to be only partially substitutable with narrowband access lines.</p> <p>Moreover, in accordance with competition law principles, product characteristics and intended use are insufficient</p>
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				<p>2 - Wholesale line rental</p>	<p>to show whether two products are substitutes. Functional interchangeability or similarity in characteristics may not, in themselves, provide sufficient criteria, because the responsiveness of customers to relative price changes may be determined by other considerations as well.³⁵ Before including certain broadband access lines within the same relevant markets as PSTN and ISDN access lines, TKK should therefore examine the prices of the various products and investigate what the impact would be if a hypothetical monopolist on the narrowband access markets would impose a small but significant non-transitional price increase of 5 to 10%. Only if such a price increase causes customers to switch to broadband access so that the price increase becomes unprofitable, should broadband access be included in the relevant market.³⁶</p> <p>Even though broadband access services, however, may not be part of the relevant markets, such services, when offered by alternative operators, may have an impact on TA's market power since competitive constraints can, in particular circumstances, also stem from neighbouring</p>
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				<p>3 - Non-discrimination</p>	<p>markets. TKK could therefore have taken the provision of broadband access lines over which VoB services are or can be offered into account at the stage of the SMP finding.</p> <p>In any event, since TA does not provide any such broadband access lines as TKK has included in the relevant market, the exclusion of such services from the relevant market would not affect the SMP finding in this case nor on the scope of the remedies imposed.³⁷ Should TA, however, within the period of this review start offering broadband access lines over which it offers VoB services, the remedies currently imposed should not be extended to cover such broadband access lines without TKK justifying on the basis of further evidence that the inclusion of such lines in the relevant markets is justified on the basis of competition law principles. Such a finding would be subject to the procedure foreseen in Article 7 Framework Directive.</p> <p>Efficiency of wholesale regulation</p>
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				<p>4 - Accounting separation</p>	<p>TKK's analysis does not indicate any significant changes in the competitive conditions in the retail calls markets since the first market review. This calls for the reassessment of the effectiveness of the current wholesale regulation. The Commission already commented upon this issue in the context of TKK's second market review of the fixed wholesale markets³⁸. With regard to the present notifications, the Commission services would like to invite TKK in particular to supervise closely the standard WLR offer of TA and to reassess whether the upfront payment applied by TA, that TKK considers to constitute a barrier to enter the retail access markets, could be lowered.</p>
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				5 - Cost orientation and cost accounting	
				6 - Ex ante approval of end-users tariffs	

SE/2004/0112	Similar to the Recommendation.	National	TeliaSonera	1 - Wholesale line rental (including reference offer and price regulated on a retail minus basis)	No comments made by the Commission.
				2 - Non-discrimination	
				3 - Accounting separation	
				4 - Carrier(Pre)Selection, also in respect of access supplied via Wholesale line rental to another operator	
				5 - Obligation to supply calls not covered by carrier pre-selection (freephone, emergency, premium rate calls)	
				6- Provision of unbundled broadband access (no requirement to purchase telephone subscription)	
HU/2005/0130	Similar to the Recommendation. Includes public	Regional	5 regional operators: Matáv, Invitel Távközlési	1 - Carrier(Pre)Selection	The Commission made a comment on: Remedies imposed at retail level prior to analysing the

	payphones.		Szolgáltató, Hungarotel Távközlési, Emitel, Monor Telefon Társaság	2 - Not to increase prices in excess to the consumer price index.	corresponding wholesale markets: Retail market remedies are supposed to be imposed after it has been recognised that remedies imposed on the wholesale market do not provide for effective competition. When carrying out the review of the relevant wholesale markets, the NRA should assess the effectiveness of remedies imposed at wholesale level in addressing market failures in the relevant retail market.
IE/2005/0158	Access for residential and non-residential customers are included in one market. Lower narrowband access (PSTN, FWA, ISDN) and higher narrowband access (ISDN2 and ISDN30) are in different markets.	National	Eircom	1 - Carrier (Pre) Selection and Wholesale Line Rental, including price control in the form of retail minus	The Commission made a comment on: Further consultations planned by ComReg on details of cost accounting and accounting separation are required to be notified to the Commission.
				2 - Access obligation	
				3 - Non-discrimination	
				4 - Transparency	
				5 - Accounting separation	
				6- Cost orientation and cost accounting	
				7 - Not to unreasonably bundle services	
SK/2005/0172	Similar to the	National	Slovak Telecom	1 - Carrier(Pre)Selection	The Commission made comments on:

	Recommendation.			2 - Price control (not allowed to charge unreasonably high or low prices)	<p>Proper national consultation on each draft measure when the measure has a significant impact on the relevant market. Give all interested parties the opportunity to comment on draft measures.</p> <p>Implementation of price control and cost accounting: Details on the implementation of price control and cost accounting have to be specified in the final measure. Reference to Art. 17(4) of the Universal Service Directive.</p> <p>Implementation of cost orientation related to CS/CPS: The Commission pointed out that cost orientation on CS/CPS should be implemented with an appropriate cost accounting method.</p>
				3 - Non-discrimination	
				4 - Prohibition of bundling of products	
DK/2005/0183	Similar to the Recommendation.	National	TDC	1 - Carrier(Pre)Selection	<p>No comments made by the Commission.</p>
				2 - Price regulation (due to the Universal service obligations)	
FR/2005/0221	Similar to the Recommendation.	Metropolitan France, overseas territories and Mayotte (except the territory of Saint-Pierre-et-	France Télécom	1 - Carrier (Pre) Selection and Wholesale Line Rental	<p>The Commission made a comment on:</p> <p>Remedies and next market review: ARCEP is invited to ensure full, effective and appropriate enforcement of the obligations imposed in markets 8 to 12 within the shortest possible timeframe, and accordingly to commit</p>
				2- Non discrimination	

		Miquelon)		3 - Prohibition of abusive bundling of access and call products	reviewing the present market analysis following such enforcement, in any case at an earlier timing than the proposed 2008 review.
				4 - Prohibition of excessive or predatory pricing	
				5 - Ex ante tariff information vis-a-vis the NRA	
				6 - Accounting separation	
SI/2005/0231 SI/2007/0600	Similar to the Recommendation.	National	Telekom Slovenije	1 - Obligation to offer wholesale line rental (WLR)	Concerning the first round of market review, the Commission made comments on: Remedies at retail level: When carrying out the forthcoming review of the corresponding relevant wholesale market, it is necessary to assess the effectiveness of remedies to be imposed at wholesale level in addressing market failures at retail level. Obligation to provide ADSL services not only to end-users who subscribe also to ISDN: The remedy imposed (non-discrimination) would be more appropriate if it included a general prohibition to oblige end-users of fixed access products to subscribe to a particular type of access product under any circumstances unless it is technically necessary for the provision of a given service.
				2 - Carrier Selection (CS) and Carrier Pre-selection (CPS)	
				3 - Prohibition to charge excessive prices: price cap for subscription fees and maintains the cost-oriented price obligation with regard to the other end-user prices linked to access to the public telephone network.	

				<p>4 - Prohibition to limit competition by setting predatory pricing: As mentioned above, APEK maintains the method of cost oriented prices for those prices which are not regulated by price cap. The cost oriented prices methodology is based on fully allocated costs (FAC) and current cost accounting (CCA)</p>	<p>As regards the notification SI/2007/0600 (second market review) the Commission made no comments.</p>
				<p>5 - Obligation not to discriminate among end-users purchasing access to the fixed telephone network, namely to offer ADSL services to end-users irrespective of whether they also subscribe to ISDN</p>	

				services.	
				6 - Prohibition of unjustified bundling of services. APEK imposes on TS the obligation not to make certain services conditional upon the purchase of another service which the user does not need/want.	
IT/2005/0260	Similar to the Recommendation	National	Telecom Italia	1 – Wholesale Line Rental	No comments made by the Commission
				2 – non discrimination	
				3 - transparency	
				4 – not to unduly bundle products and services	
				5 – price control	
NL/2005/0287	OPTA distinguishes two retail access markets, (1) a low capacity access market that includes telephone connections with no more than two voice channels -i.e.	National	KPN	1 – cost accounting	The Commission made a comment on: Narrow market definition OPTA defines certain markets more narrowly than
				2 – price regulation	

	<p>analogue, ISDN1 and ISDN 2 connections; and (2) a high-capacity access market</p> <p>that includes those connections with more than two telephone lines -i.e. ISDN 15,</p> <p>ISNDN 20, and ISDN 30 connections</p>			<p>3 – non discrimination</p>	<p>foreseen in the Recommendation. In particular, OPTA defines isolated markets for fixed-to mobile calls, narrowband data services, calls to information numbers and calls to personal assistant numbers. The Commission is not convinced that such a narrow market definition is justified. However, in these particular cases, as it does not have any impact on the finding of SMP, nor on the remedies imposed, the exact market definition can be left open.</p>
				<p>4 - transparency</p>	
<p>DE/2005/0306</p> <p>DE/2006/0402</p>	<p>the markets for access to the public telephone network at a fixed location as a single market for all customers using analogue access lines, ISDN lines and ISDN-PMX lines</p>	<p>National</p>	<p>DTAG</p>	<p>1 - CS/CPS</p>	<p>Effectiveness of the proposed remedies in resolving the identified market</p> <p>failure in the fixed access market</p> <p>The Commission considers that in view of the fact that DTAG hence faces limited (potential) competition on the retail access market, the risk of excessive pricing by DTAG cannot be excluded. Ex post price control may not be effective in protecting consumers against that risk, in particular in view of the fact that the ex post price control foreseen in the</p> <p>Telekommunikationsgesetz (TKG) only prohibits tariffs that would be <i>manifestly</i> abusive.</p> <p>Therefore BNetzA should consider imposing a more</p>

				<p>2 - The obligation to notify new tariffs</p>	<p>efficient price control mechanism.</p> <p>Non-imposition of cost orientation for the CS / CPS obligation</p> <p>Article 19 (3) of the Universal Service Directive provides that CS and CPS must be offered on a cost oriented basis. On the basis of this provision and Article 8 of the Framework Directive, the Commission reminds BNetzA of Article 19(3) of the Universal Service Directive which provides that CS/CPS must be provided for on a cost oriented basis and asks BNetzA to indicate how it will implement this obligation.</p> <p>Non-imposition of accounting separation</p> <p>The Commission also considers that in order to effectively remedy the market failures identified on the retail access and local and national calls markets, BNetzA should impose on DTAG an obligation of accounting separation. Without such an obligation, it seems difficult for BNetzA to exercise effectively any price control. Such an accounting separation obligation seems also necessary to implement effectively a cost-orientation obligation for CS/CPS services as required by Article 19(3) of the Access Directive</p>
ES/2006/0336	Similar to the Recommendation	National	TESAU	CS/CPS	<p>Remedies at retail level: Article 17 of the Universal Service Directive provides that if, as a result of a market analysis carried out in accordance with Article 16(3) of the Framework Directive, an NRA determines that a</p>

				<p>Price control for analogue access lines</p> <p>Non-discrimination</p> <p>Prohibition of anti-competitive behaviour</p> <p>transparency</p> <p>Accounting separation</p>	<p>given retail market is not effectively competitive and concludes that wholesale obligations imposed under the Access Directive or the obligation to provide CS and CPS do not result in the achievement of the regulatory objectives set out in Article 8 of the Framework Directive, the NRA shall impose appropriate regulatory obligations on undertakings identified as having SMP on a given retail market.</p> <p>The Commission notes that CMT has not yet completed the review of the related wholesale markets, in particular markets 8 and 11 of the Recommendation.</p> <p>In that respect, the Commission would like to remind CMT that when carrying out the forthcoming review of the corresponding relevant wholesale markets, it should assess the impact, appropriateness and the effectiveness of remedies to be imposed at wholesale level in addressing market failures in the relevant retail market. Should this review lead to a need to amend the retail remedies as currently proposed in this notification, CMT is required to notify any possible resulting modification of retail</p> <p>remedies to the Commission pursuant to Article 7(3) of the Framework Directive.</p>
CZ/2006/0356	Similar to the Recommendation.	National	CTU	1 – CS/CPS	<p>The Commission made a comment on:</p> <p>Efficiency of the proposed remedies in resolving identified market failures:</p> <p>CTU considers that the proposed retail remedies, in combination with the remedies imposed on related</p>

				2 – accounting separation	<p>wholesale markets, in particular wholesale unbundled access to metallic loops and sub-loops, are sufficient to remedy the market failure on these retail markets. Therefore, CTU does not intend to impose any pricing conditions neither in relation to the provision of access for resale by third parties nor in relation to the retail access market for non-residential customers.</p> <p>The Commission notes that the incumbent still has a very strong position on both retail access markets.</p> <p>CTU is invited to closely monitor the development of competition on these markets, to verify whether the remedies imposed at wholesale and retail level are effective in addressing the market failures in the retail access markets. In case the development of competitive conditions would not be satisfactory, CTU should consider before the end of the three year period of review whether to amend the retail remedies as currently proposed in this notification</p>
				3 - provision of access services to the public telephone network at a fixed location for resale by third parties	
				4 – cost orientation (only market 1)	
MT/2006/0394	The inclusion of Broadband Wireless Access (BWA).	National	Maltacom	CS/CPS	The Commission made a comment on:

				Wholesale Line Rental	<p>The inclusion of BWA in the same market as fixed residential analogue and cable access lines</p> <p>The MCA considers that BWA is a potential substitute to fixed access services over the PSTN and over cable-TV networks. Within the timeframe of the review, the MCA expects the roll-out of the BWA networks to be at an advanced stage and predicts that BWA networks will have the capability to offer access services.</p> <p>Therefore, the MCA includes BWA in the same relevant market as fixed residential analogue and cable access lines. As regards BWA, the Commission notes that the MCA has not conducted a substitution analysis before defining the relevant market.</p> <p>In particular, the MCA has neither assessed whether end-users would consider switching from a fixed narrowband access product to a BWA product in case of small but non-significant price increase, nor the functionality of the BWA product.</p> <p>However, the Commission recognises the fact that in this particular case the inclusion of this technology in the relevant market does not affect the finding of SMP or the scope of regulation.</p>
				Cost orientation	
				Cost accounting and accounting separation	
				Non discrimination	
				Transparency	
				Prohibition to bundle services	
BE/2006/0400	Similar to the Recommendation.	National	Belgacom	CS/CPS	
				transparency	

				Non-discrimination Wholesale Line Rental Price control and cost accounting Accounting separation Information and notification obligation	<p>No comments made by the Commission</p>	
LT/2006/0411 and LT/2006/0512	Similar to the Recommendation.	National	TEO LT AB	CS/CPS		
						<p>The Commission made a comment on:</p> <p>The inclusion of wireless radio, optic cable and local area networks in the same market as fixed residential analogue and cable access lines</p> <p>RRT considers that cable TV networks, wireless radio,</p>

				Price control and cost accounting	<p>optic cable and local area networks could provide a potential substitute to fixed access services over PSTN and ISDN. Within the timeframe of the review, RRT expects the further growth of cable TV networks and an increased ability to offer access services. For the other alternative platforms, RRT does not provide a forecast that would show that, within the timeframe of the review, these access technologies would effectively develop as alternative access platforms. Also, as regards wireless radio, optic cable and local area networks and cable TV networks, the Commission notes that RRT has not conducted a substitution analysis before defining the relevant market. In particular, RRT has not assessed whether end users would be able to switch from the metallic loop to any of the other access platforms in case of a small but significant price increase in the metallic loop access prices. In order to assess the substitutability, RRT is invited to examine <i>inter alia</i> the functionality of these alternative access technologies and include the result of this analysis in its final measure.</p> <p>However, the Commission notes that, in this particular case, the inclusion of any of the alternative access technologies in the definition of the relevant market does not affect the finding of SMP or the scope of regulation.</p>
				Accounting separation	
				Wholesale Line Rental	

CY/2006/485	low level narrowband access including PSTN and ISDN BRA and (ii) high level narrowband access including ISDN PRA due to the differences in quality of service and speed	national	CYTA	CS/CPS and WLR	No comments made by the Commission
				Non discrimination	
				Transparency	
				Accounting separation	
				Price control and cost accounting	
				Prohibition of unreasonable bundling of products and services	
EL/2006/0500	(i) lower level narrowband and (ii) higher level narrowband access.	national	OTE	WLR	No comments made by the Commission
				Non discrimination	
				transparency	
				Price control	
				Unbundling of services	
				Cost accounting and accounting separation	
PL/2006/0518	An access through x DSL included in the market definition	national	TP SA	a prohibition of excessive pricing	
				an obligation to refrain from distorting the market entry of other undertakings	

				<p>an obligation to refrain from limiting competition by fixing prices below the costs of their provision</p> <p>an obligation to refrain from applying preferential treatment to end users</p> <p>an obligation to refrain from obliging the end users to use unnecessary services</p> <p>cost orientation and cost accounting obligation</p> <p>an obligation to submit for approval prices and other conditions of service provision</p>	<p>The Commission vetoed the draft measure based on:</p> <p>Lack of evidence that ISDN/PSTN access and broadband access in Poland are substitutable products</p>
LU/2007/0526	analogue access and basic digital access included. ISDN PRA excluded from the market	national	EPT	<p>Wholesale obligations:</p> <p>1 – access (CS/CPS and WLR)</p> <p>2 – non discrimination</p> <p>3 – transparency</p> <p>3 – accounting separation</p> <p>4 – price control</p> <p>Retail obligations:</p> <p>1 – non discrimination</p>	<p>The Commission made a comment on:</p> <p>Price control obligation</p> <p>ILR intends to base the price control obligation for WLR on the "retail minus" methodology. It should be recalled that retail access prices for residential and non residential customers are above the EU average in Luxemburg. A retail minus methodology might result in WLR prices that exceed costs. Given the fact that the cost orientation obligation at retail level is proposed to be removed, it is all the more important that WLR prices are set at cost. Consequently, the Commission invites ILR to impose a cost orientation obligation concerning WLR prices. This would ensure that users are offered attractive prices,</p>

				2 – transparency 3 – price control	whilst allowing EPT to recover its costs.
LV/2007/0565	Similar to the Recommendation	national	Lattelecom	1 - CS/CPS	<p>Lack of details concerning price control obligation</p> <p>The Commission notes that SPRK has not clearly specified in its measures details of</p> <p>the imposed price control obligation. In order to enhance legal certainty, the</p> <p>Commission would like to invite SPRK to clarify in its final measure the details of the price control remedy imposed.</p>
				2 – price control	<p>Non-imposition of accounting separation</p> <p>The Commission considers that in order to effectively remedy the market failures</p> <p>identified on the retail access and local and national calls markets, SPRK should impose on Lattelecom an obligation of accounting separation. Without such an obligation, it seems difficult for SPRK to exercise effectively any price control. Such</p> <p>an accounting separation obligation seems also necessary to implement effectively a</p> <p>cost-orientation obligation for CS/CPS services as required by Article 19(3) of the</p> <p>Access Directive</p>

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**Market 2: Access to the public telephone network
provided at a fixed location for non residential customers**

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			Carrier (Pre) Selection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria*****	YES	1 operator	YES**	YES	NO	YES	YES
Denmark	YES	1 operator	YES	NO	NO	NO***	NO
Finland	YES	43 operators	YES	NO	YES	NO	NO
France	YES	1 operator	YES**	YES	YES	YES	YES
Hungary	YES	5 operators	YES	NO	NO	YES	NO
Ireland	NO*	1 operator	YES**	YES	YES	YES	YES
Portugal	YES	1 operator	YES**	YES	YES	YES	YES
Slovakia	YES	1 operator	YES	YES	NO	YES	NO
Slovenia*****	YES	1 operator	YES**	YES	NO	YES	NO
Sweden	YES	1 operator	YES**	YES	NO	NO	YES
United Kingdom	NO*	2 operators	NO	YES	YES	YES****	NO

Netherlands	NO	1 operator	NO	YES	YES	YES	NO
Czech Republic	YES	1 operator	YES	NO	NO	NO	YES
Malta	NO*	1 operator	YES	YES	YES	YES	YES
Italy	YES	1 operator	NO	YES	YES	YES	NO
Germany	NO	1 operator	YES	NO	NO	NO	NO
Spain	YES	1 operator	YES	YES	YES	YES	YES
Cyprus	NO*	1 operator	YES	YES	YES	YES	YES
Belgium	NO*	1 operator	YES**	YES	YES	YES	YES
Lithuania	YES	1 operator	YES**	YES**	YES	YES	YES
Greece	NO*	1 operator	YES**	YES	YES	YES	YES
Poland	NO	1 operator	The decision was vetoed by the Commission				
Luxembourg	NO*	1 operator	YES**	YES	YES	YES	YES
Latvia	YES	1 operator	YES	NO	NO	YES	NO

* Refinement, broader/narrower market and/or merger of markets

** Imposition of WLR

*** Universal service-based price control obligation only

**** *Differentiated or no remedy imposed on certain SMP operators*

**** *second market review*

Overview of notifications assessed until 31 March 2007

Market 2: Access to the public telephone network at a fixed location for non-residential customers

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
UK/2003/0009 and UK/2003/0010	3 segments defined: (i) business retail analogue exchange line services; (ii) business retail ISDN2 exchange line services and (iii) business retail ISDN30 exchange line services.	UK (excluding the Hull area) and the Hull area	BT and Kingston	1 - Non-discrimination	The Commission made a comment on: Markets defined more narrowly than in the Recommendation: A broader market definition, in line with the Recommendation, is not likely to lead to a different SMP outcome. Therefore the conclusion on the exact scope of the markets is not relevant.
				2 - Publication of charges, terms and conditions of supply	
				3- BT only: annual ceiling for charges equivalent to RPI increase	
FI/2003/0021	Similar to the Recommendation.	Regional	43 regional operators	1 - Users' right to a connection to fixed telephone network	The Commission made a comment on: Remedies at retail level: No further obligations are imposed on the SMP operators at retail level in addition to CS/CPS and other non-SMP obligations based on the Universal Service Directive. NRA should assess the impact of regulation at wholesale level and of CS/CPS on the market and consider additional regulation at retail level.
				2 - Obligation to publish standard agreement terms and tariff information on services	
				3 - User's right to pre-selection / carrier pre-selection	

PT/2004/0054 and PT/2004/0091	Similar to the Recommendation.	National	PT Group	1 - Transparency	The Commission made a comment on: Wholesale line rental: Wholesale line rental is an appropriate remedy to address the lack of competition in the relevant retail market. The need for Wholesale Line rental should decrease, as competitors to the incumbent invest in their infrastructure.
				2 - Non-discrimination	
				3 - Cost orientation and cost accounting	
				4 - Accounting separation	
AT/2004/0110 AT/2005/0303 AT/2007/0580	In the second round of market review retail broadband access has been included	National	Telekom Austria	1 - Carrier(Pre)Selection 2 - Wholesale line rental 3 - Non-discrimination 4 - Accounting separation 5 - Cost orientation 6 - Ex ante approval of end-users tariffs	The Commission made comments on: Inclusion in the access markets of broadband access lines over which VoB services are provided TKK includes broadband access lines over which VoB services are provided in the retail access markets essentially on the basis of the argument that such lines are effectively being used, <i>inter alia</i> , to make and receive calls in full connectivity with the PSTN network. However, the functionality of narrowband access lines and broadband access lines in general overlap only partly. Although broadband connections are also capable of facilitating delivery of telephone services, customers generally will not switch from a narrowband to a broadband connection for the sole purpose of accessing voice services. Consumers switch from narrowband to broadband connections primarily to get access to higher speed Internet services. From a functional viewpoint, broadband access therefore tends to be only partially substitutable with narrowband access lines. Moreover, in accordance with competition law

					<p>principles, product characteristics and intended use are insufficient to show whether two products are substitutes. Functional interchangeability or similarity in characteristics may not, in themselves, provide sufficient criteria, because the responsiveness of customers to relative price changes may be determined by other considerations as well. Before including certain broadband access lines within the same relevant markets as PSTN and ISDN access lines, TKK should therefore examine the prices of the various products and investigate what the impact would be if a hypothetical monopolist on the narrowband access markets would impose a small but significant non-transitional price increase of 5 to 10%. Only if such a price increase causes customers to switch to broadband access so that the price increase becomes unprofitable, should broadband access be included in the relevant market.</p> <p>Even though broadband access services, however, may not be part of the relevant markets, such services, when offered by alternative operators, may have an impact on TA's market power since competitive constraints can, in particular circumstances, also stem from neighbouring markets. TKK could therefore have taken the provision of broadband access lines over which VoB services are or can be offered into account at the stage of the SMP finding.</p> <p>In any event, since TA does not provide any such broadband access lines as TKK has included in the relevant market, the exclusion of such services from the relevant market would not affect the SMP finding in this case nor on the scope of the remedies imposed. Should TA, however, within the period of this review start offering broadband access lines over which it offers VoB services, the remedies currently imposed should not be extended</p>
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					<p>to cover such broadband access lines without TKK justifying on the basis of further evidence that the inclusion of such lines in the relevant markets is justified on the basis of competition law principles. Such a finding would be subject to the procedure foreseen in Article 7 Framework Directive.</p> <p>Efficiency of wholesale regulation</p> <p>TKK's analysis does not indicate any significant changes in the competitive conditions in the retail calls markets since the first market review. This calls for the reassessment of the effectiveness of the current wholesale regulation. The Commission already commented upon this issue in the context of TKK's second market review of the fixed wholesale markets. With regard to the present notifications, the Commission services would like to invite TKK in particular to supervise closely the standard WLR offer of TA and to reassess whether the upfront payment applied by TA, that TKK considers to constitute a barrier to enter the retail access markets, could be lowered.</p>
SE/2004/0113	Similar to the Recommendation.	National	TeliaSonera	1 - Wholesale line rental (including reference offer and price regulated on a retail minus basis)	No comments made by the Commission.
				2 - Non-discrimination	
				3 - Accounting separation	

				<p>4 - Carrier(Pre)Selection, also in respect of access supplied via WLR to another operator</p>	
				<p>5 - Obligations to supply calls not covered by carrier pre-selection (freephone, emergency, premium rate calls)</p>	
				<p>6- Provision of unbundled broadband access (no requirement to purchase telephone subscription)</p>	
HU/2005/0131	Similar to the Recommendation.	Regional	<p>5 regional operators: Matáv, Invitel Távközlési Szolgáltató, Hungarotel Távközlési, Emitel, Monor Telefon Társaság</p>	<p>1 - Carrier(Pre)Selection</p>	<p>The Commission made a comment on:</p> <p>Remedies imposed at retail level prior to analysing the corresponding wholesale markets: Retail market remedies are supposed to be imposed after it has been recognised that remedies imposed on the wholesale market do not provide for effective competition. When carrying out the review of the relevant wholesale markets, the NRA should assess the effectiveness of remedies imposed at wholesale level in addressing market failures in the relevant retail market.</p>
				<p>2 - Not to increase prices in excess to the consumer price index.</p>	

IE/2005/0159	Access for residential and non-residential customers are included in one market. Lower narrowband access (PSTN, FWA, ISDN) and higher narrowband access (ISDN2 and ISDN30) are in different markets.	National	Eircom	1 - Carrier (Pre) Selection and Wholesale Line Rental, including price control in the form of retail minus	The Commission made a comment on: Further consultations planned by ComReg on details of cost accounting and accounting separation are required to be notified to the Commission.
				2 - Access obligation	
				3 - Non-discrimination	
				4 - Transparency	
				5 - Accounting separation	
				6 - Cost orientation and cost accounting	
				7 - Not to unreasonably bundle services	
SK/2005/0173	Similar to the Recommendation.	National	Slovak Telecom	1 - Carrier(Pre)Selection	The Commission made comments on: Proper national consultation on each draft measure when the measure has a significant impact on the relevant market. Give all interested parties the opportunity to comment on draft measures. Implementation of price control and cost accounting: Details on the implementation of price control and cost accounting have to be specified in
				2 - Price control (not allowed to charge unreasonably high or low prices)	

				3 - Non-discrimination	the final measure. Reference to Art. 17(4) of the Universal Service Directive. Implementation of cost orientation related to CS/CPS: The Commission pointed out that cost orientation on CS/CPS should be implemented with an appropriate cost accounting method.
				4 - Prohibition of bundling of products	
DK/2005/0184	Similar to the Recommendation	National	TDC	1 - Carrier(Pre)Selection	No comments made by the Commission.
				2 - Price regulation (due to the Universal service obligations)	
FR/2005/0222	Similar to the Recommendation.	Metropolitan France, overseas territories and Mayotte (except the territory of Saint-Pierre-et-Miquelon)	France Télécom	1 - Carrier (Pre) Selection and Wholesale Line Rental	The Commission made a comment on: Remedies and next market review: ARCEP is invited to ensure full, effective and appropriate enforcement of the obligations imposed in markets 8 to 12 within the shortest possible timeframe, and accordingly to commit reviewing the present market analysis following such enforcement, in any case at an earlier timing than the proposed 2008 review.
				2- Non-discrimination	
				3 - Prohibition of abusive bundling of access and call products	
				4 - Prohibition of excessive or predatory pricing	
				5 - Ex ante tariff information vis-à-vis the NRA	
				6 - Accounting separation	

<p>SI/2005/0231 SI/2007/0601</p>	<p>Similar to the Recommendation.</p>	<p>National</p>	<p>Telekom Slovenije</p>	<p>1 - Obligation to offer wholesale line rental (WLR)</p> <hr/> <p>2 - Carrier Selection (CS) and Carrier Pre-selection (CPS)</p> <hr/> <p>3 - Prohibition to charge excessive prices: price cap for subscription fees and maintains the cost-oriented price obligation with regard to the other end-user prices linked to access to the public telephone network.</p>	<p>Concerning first market review, the Commission made comments on:</p> <p>Remedies at retail level: When carrying out the forthcoming review of the corresponding relevant wholesale market, it is necessary to assess the effectiveness of remedies to be imposed at wholesale level in addressing market failures at retail level.</p> <p>Obligation to provide ADSL services not only to end-users who subscribe also to ISDN: The remedy imposed (non-discrimination) would be more appropriate if it included a general prohibition to oblige end-users of fixed access products to subscribe to a particular type of access product under any circumstances unless it is technically necessary for the provision of a given service.</p> <p>As regards the notification SI/2007/0600 (second market review) the Commission made no comments.</p>
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				<p>4 - Prohibition to limit competition by setting predatory pricing: As mentioned above,</p> <p>APEK maintains the method of cost oriented prices for those prices which are not regulated by price cap. The cost oriented prices methodology is based on fully allocated costs (FAC) and current cost accounting (CCA)</p> <p>5 - Obligation not to discriminate among end-users purchasing access to the fixed telephone network, namely to offer ADSL services to end-users irrespective of whether they also subscribe to ISDN services.</p>	
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				<p>6 - Prohibition of unjustified bundling of services. APEK imposes on TS the obligation not to make certain services conditional upon the purchase of another service which the user does not need/want.</p>	
IT/2005/0260	Similar to the Recommendation	National	Telecom Italia	1 – Wholesale Line Rental	No comments made by the Commission.
				2 – non discrimination	
				3 - transparency	
				4 – not to unduly bundle products and services	
				5 – price control	
NL/2005/0288	<p>OPTA distinguishes two retail access markets, (1) a low capacity access market that includes telephone connections with no more than two voice channels -i.e. analogue,</p>	National	KPN	1 – cost accounting	<p>The Commission made a comment on:</p> <p>Narrow market definition</p> <p>OPTA defines certain markets more narrowly than foreseen in the Recommendation. In particular, OPTA defines isolated markets for fixed-to mobile calls, narrowband data services, calls to information numbers and calls to personal assistant</p>
				2 – price regulation	

	<p>ISDN1 and ISDN 2 connections; and (2) a high-capacity access market</p> <p>that includes those connections with more than two telephone lines -i.e. ISDN 15,</p> <p>ISNDN 20, and ISDN 30 connections</p>			<p>3 – non discrimination</p>	<p>4 - transparency</p>	<p>numbers. The Commission is not convinced that such a narrow market definition is justified. However, in these particular cases, as it does not have any impact on the finding of SMP, nor on the remedies imposed, the exact market definition can be left open.</p>
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<p>DE/2005/0306 DE/2006/0402</p>	<p>the markets for access to the public telephone network at a fixed location as a single market for all customers using analogue access lines, ISDN lines and ISDN-PMX lines</p>	<p>National</p>	<p>DTAG</p>	<p>CS/CPS</p>	<p>The Commission made comments on:</p> <p>Effectiveness of the proposed remedies in resolving the identified market</p> <p>failure in the fixed access market</p> <p>DTAG has a market share of approximately 94% in the retail access market. Competitive pressure resulting from LLU may be limited in particular in certain geographic areas. On a prospective basis, WLR is not available in Germany rendering it more difficult for alternative operators to climb the ladder of investment towards full unbundling. The Commission considers that in view of the fact that DTAG hence faces limited (potential) competition on the retail access market, the risk of excessive pricing by DTAG cannot be</p>
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				<p>The obligation to notify new tariffs</p>	<p>excluded. Ex post price control may not be effective in protecting consumers against that risk, in particular in view of the fact that the ex post price control foreseen in the Telekommunikationsgesetz (TKG) only prohibits tariffs that would be <i>manifestly</i> abusive.</p> <p>Therefore BNetzA should consider imposing a more efficient price control mechanism.</p> <p>Non-imposition of cost orientation for the CS / CPS obligation</p> <p>Article 19 (3) of the Universal Service Directive⁹ provides that CS and CPS must be offered on a cost oriented basis. On the basis of this provision and Article 8 of the Framework Directive, the Commission reminds BNetzA of Article 19(3) of the Universal Service Directive which provides that CS/CPS must be provided for on a cost oriented basis and asks BNetzA to indicate how it will implement this obligation.</p> <p>Non-imposition of accounting separation</p> <p>The Commission also considers that in order to effectively remedy the market failures identified on the retail access and local and national calls markets, BNetzA should impose</p>
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					<p>on DTAG an obligation of accounting separation. Without such an obligation, it seems difficult for BNetzA to exercise effectively any price control. Such an accounting separation obligation seems also necessary to implement effectively a cost-orientation obligation for CS/CPS services as required by Article 19(3) of the Access Directive</p>
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CZ/2006/0356	Similar to the Recommendation.	National	CTU	<p>The Commission made a comment on:</p> <p>Efficiency of the proposed remedies in resolving identified market failures:</p> <p>CTU considers that the proposed retail remedies, in combination with the remedies imposed on related wholesale markets, in particular wholesale unbundled access to metallic loops and sub-loops, are sufficient to remedy the market failure on these retail markets. Therefore, CTU does not intend to impose any pricing conditions neither in relation to the provision of access for resale by third parties nor in relation to the retail access market for non-residential customers.</p> <p>The Commission notes that the incumbent still has a very strong position on both retail access markets.</p> <p>CTU is invited to closely monitor the development of competition on these markets, to verify whether the remedies imposed at wholesale and retail level are effective in addressing the market failures in the retail access markets. In case the development of competitive conditions would not be satisfactory, CTU should consider before the end of the three year period of review whether to amend the retail remedies as currently proposed in this notification.</p>
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				2 – accounting separation	
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				3 - provision of access services to the public telephone network at a fixed location for resale by third parties	
MT/2006/0394	The inclusion of Broadband Wireless Access (BWA).	National	Maltacom	CS/CPS	<p>The Commission made a comment on:</p> <p>The inclusion of BWA in the same market as fixed residential analogue and cable access lines</p> <p>The MCA considers that BWA is a potential substitute to fixed access services over the PSTN and over cable-TV networks. Within the timeframe of the review, the MCA expects the roll-out of the BWA networks to be at an advanced stage and predicts that BWA networks will have the capability to offer access services.</p> <p>Therefore, the MCA includes BWA in the same relevant market as fixed residential analogue and cable access lines. As regards BWA, the Commission notes that the MCA has not conducted a substitution analysis before defining</p>
				Wholesale Line Rental	
				Cost orientation	
				Cost accounting and accounting separation	

				Non discrimination	<p>the relevant market.</p> <p>In particular, the MCA has neither assessed whether end-users would consider switching from a fixed narrowband access product to a BWA product in case of small but non-significant price increase, nor the functionality of the BWA product.</p> <p>However, the Commission recognises the fact that in this particular case the inclusion of this technology in the relevant market does not affect the finding of SMP or the scope of regulation.</p>
				Transparency	
				Prohibition to bundle services	

<p>DE/2005/0306 DE/2006/0402</p>	<p>the markets for access to the public telephone network at a fixed location as a single market for all customers using analogue access lines, ISDN lines and ISDN-PMX lines</p>	<p>national</p>	<p>DTAG</p>	<p>CS/CPS</p>	<p>The Commission made comments on:</p> <p>Effectiveness of the proposed remedies in resolving the identified market</p> <p>failure in the fixed access market</p> <p>DTAG has a market share of approximately 94% in the retail access market. Competitive pressure resulting from LLU may be limited in particular in certain geographic areas. On a prospective basis, WLR is not available in Germany rendering it more difficult for alternative operators to climb the ladder of investment towards full unbundling. The Commission considers that in view of the fact that DTAG hence faces limited (potential) competition on the retail access market, the risk of excessive pricing by DTAG cannot be excluded. Ex post price control may not be effective in protecting consumers against that risk, in particular in view of the fact that the ex post price control foreseen in the Telekommunikationsgesetz (TKG) only prohibits tariffs that would be <i>manifestly</i> abusive. Therefore BNetzA should consider imposing a</p>
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				<p>The obligation to notify new tariffs</p>	<p>more efficient price control mechanism.</p> <p>Non-imposition of cost orientation for the CS / CPS obligation</p> <p>Article 19 (3) of the Universal Service Directive⁹ provides that CS and CPS must be offered on a cost oriented basis. On the basis of this provision and Article 8 of the Framework Directive, the Commission reminds BNetzA of Article 19(3) of the Universal Service Directive which provides that CS/CPS must be provided for on a cost oriented basis and asks BNetzA to indicate how it will implement this obligation.</p> <p>Non-imposition of accounting separation</p> <p>The Commission also considers that in order to effectively remedy the market failures identified on the retail access and local and national calls markets, BNetzA should impose on DTAG an obligation of accounting separation. Without such an obligation, it seems difficult for BNetzA to exercise effectively any price control. Such an accounting separation obligation seems also necessary to implement effectively a cost-orientation obligation for CS/CPS services as required by Article 19(3) of the Access Directive</p>
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ES/2006/0336	Similar to the Recommendation.	National	TESAU	CS/CPS	<p>The Commission made a comment on:</p> <p>Remedies at retail level: Article 17 of the Universal Service Directive provides that</p> <p>if, as a result of a market analysis carried out in accordance with Article 16(3) of the Framework Directive, an NRA determines that a given retail market is not effectively competitive and concludes that wholesale obligations imposed under the Access Directive or the obligation to provide CS and CPS do not result in the achievement of the regulatory objectives set out in Article 8 of the Framework Directive, the NRA shall impose appropriate regulatory obligations on undertakings identified as having SMP on a given retail market.</p> <p>The Commission notes that CMT has not yet completed the review of the related wholesale markets, in particular markets 8 and 11 of the Recommendation.</p> <p>In that respect, the Commission would like to remind CMT that when carrying out</p> <p>the forthcoming review of the corresponding relevant wholesale markets, it should assess the impact, appropriateness and the effectiveness of remedies to be imposed at wholesale level in addressing market failures in the relevant retail market. Should this review lead to a need to amend the retail remedies as currently proposed in this notification, CMT is required to notify any possible</p>
				Price control for analogue access lines	
				Non-discrimination	
				Prohibition of anti-competitive behaviour	

				transparency	resulting modification of retail remedies to the Commission pursuant to Article 7(3) of the Framework Directive.
				Accounting separation	
BE/2006/0400	refined the non-residential customers market into (i) analogue access, (ii) basic digital access (ISDN-2) and (iii) primary digital access (ISDN-30).	National	Belgacom	CS/CPS	No comments made by the Commission
				transparency	
				Non-discrimination	
				Wholesale Line Rental	
				Price control and cost accounting	
				Accounting separation	
				Information and notification obligation	

<p>LT/2006/0412 and LT/2006/0513</p>	<p>Similar to the Recommendation.</p>	<p>National</p>	<p>TEO LT AB</p>	<p>CS/CPS</p>	<p>The Commission made a comment on:</p> <p>The inclusion of wireless radio, optic cable and local area networks in the same market as fixed residential analogue and cable access lines</p> <p>RRT considers that cable TV networks, wireless radio, optic cable and local area</p>
				<p>Price control and cost accounting</p>	<p>networks could provide a potential substitute to fixed access services over PSTN and ISDN. Within the timeframe of the review, RRT expects the further growth of cable</p>
				<p>Accounting separation</p>	<p>TV networks and an increased ability to offer access services. For the other alternative platforms, RRT does not provide a forecast that would show that, within the timeframe of the review, these access technologies would effectively develop as alternative access platforms. Also, as regards wireless radio, optic cable and local area networks and cable TV networks, the Commission notes that RRT has not conducted a substitution analysis before defining the relevant market. In particular, RRT has not assessed whether end users would be able to switch from the metallic loop to any of the other access platforms in case of a small but significant price increase in the metallic loop access prices. In order</p>

				Wholesale Line Rental	<p>to assess the substitutability, RRT is invited to examine <i>inter alia</i> the functionality of these alternative access technologies and include the result of this analysis in its final measure.</p> <p>However, the Commission notes that, in this particular case, the inclusion of any of</p> <p>the alternative access technologies in the definition of the relevant market does not affect the finding of SMP or the scope of regulation.</p>
CY/2006/486	low level narrowband access including PSTN and ISDN BRA and (ii) high level narrowband access including ISDN PRA due to the differences in quality of service and speed	national	CYTA	CS/CPS and WLR	No comments made by the Commission
				Non discrimination	
				Transparency	
				Accounting separation	
				Price control and cost accounting	
				Prohibition of unreasonable bundling of products and services	
EL/2006/0501	(i) lower level narrowband and (ii) higher level narrowband access.	national	OTE	WLR	No comments made by the Commission
				Non discrimination	
				transparency	
				Price control	
				Unbundling of services	

				Cost accounting and accounting separation	
PL/2006/0524	An access through x DSL included in the market definition	national	TP SA	a prohibition of excessive pricing	The Commission vetoed the draft measure based on: Lack of evidence that ISDN/PSTN access and broadband access in Poland are substitutable products
				an obligation to refrain from distorting the market entry of other undertakings	
				an obligation to refrain from limiting competition by fixing prices below the costs of their provision	
				an obligation to refrain from applying preferential treatment to end users	
				an obligation to refrain from obliging the end users to use unnecessary services	
				cost orientation and cost accounting obligation	
				an obligation to submit for approval prices and other conditions of service provision	
LU/2007/0527	(i) analogue access, (ii) basic digital access, and (iii) primary digital access.	national	EPT	Wholesale obligations: 1 – access (CS/CPS and WLR) 2 – non discrimination 3 – transparency	The Commission made a comment on: Price control obligation ILR intends to base the price control obligation for WLR on the "retail minus"

				<p>3 – accounting separation</p> <p>4 – price control</p> <p>Retail obligations:</p> <p>1 – non discrimination</p> <p>2 – transparency</p> <p>3 – price control</p>	<p>methodology. It should be recalled that retail access prices for residential and non residential customers are above the EU average in Luxemburg. A retail minus methodology might result in WLR prices that exceed costs. Given the fact that the cost orientation obligation at retail level is proposed to be removed, it is all the more important that WLR prices are set at cost. Consequently, the Commission invites ILR to impose a cost orientation obligation concerning WLR prices. This</p> <p>would ensure that users are offered attractive prices, whilst allowing EPT to recover its costs.</p>
LV/2007/0566	Similar to the Recommendation	National	Lattelecom	1 - CS/CPS	<p>Lack of details concerning price control obligation</p> <p>The Commission notes that SPRK has not clearly specified in its measures details of the imposed price control obligation. In order to enhance legal certainty, the Commission would like to invite SPRK to clarify</p>

				2 - Price control	<p>in its final measure the details of the price control remedy imposed.</p> <p>Non-imposition of accounting separation</p> <p>The Commission considers that in order to effectively remedy the market failures identified on the retail access and local and national calls markets, SPRK should impose on Lattelecom an obligation of accounting separation. Without such an obligation, it seems difficult for SPRK to exercise effectively any price control. Such an accounting separation obligation seems also necessary to implement effectively a cost-orientation obligation for CS/CPS services as required by Article 19(3) of the Access Directive</p>
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**Market 3: Publicly available local and/or national telephone services
provided at a fixed location for residential customers**

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed					
			Carrier (Pre) Selection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation	
Austria****	YES	1 operator	NO	NO	NO	YES	YES	
Finland	YES	43 operators**	YES	NO	YES	NO	NO	
France	YES	1 operator	NO	YES	YES	YES	YES	
Hungary	YES	5 operators	YES	NO	NO	NO	NO	
Ireland	NO*	1 operator	YES	YES	YES	YES	YES	
Portugal	YES	1 operator	NO	YES	YES	YES	YES	
Sweden	YES	NO SMP FOUND						
United Kingdom	NO*	2 operators	NO	YES	YES	YES***	NO	
Netherlands	NO*	1 operator	NO	YES	YES	YES	YES	
Belgium	NO*	1 operator	NO	YES	YES	YES	YES	

Slovenia	YES	1 operator	NO	NO	NO	YES	NO
Lithuania	YES	1 operator	NO	NO	NO	YES	YES
Spain	YES	1 operator	NO	NO	YES	NO	NO
Malta	YES	1 operator	NO	YES	YES	YES	YES
Germany	NO*	1 operator	NO	NO	NO	NO	YES
Czech Republic	YES	1 operator	YES	NO	NO	NO	YES
Denmark	YES	1 operator	No remedies imposed				
Cyprus	NO*	1 operator	YES	YES	YES	YES	YES
Slovakia	YES	1 operator	NO	YES	NO	YES	NO
Italy	NO	1 operator	NO	YES	YES	YES	NO
Greece	YES	1 operator	NO	YES	YES	YES	YES
Luxembourg	YES	1 operator	NO	YES	YES	YES	YES
Poland	YES	1 operator	NO	YES	NO	YES	NO
Latvia	YES	1 operator	YES	NO	NO	YES	NO

* Refinement, broader/narrower market and/or merger of markets

*** On local calls. No SMP for national calls.*

**** Differentiated or no remedy imposed on certain SMP operators*

*****second round of the review*

Overview of notifications assessed until 31 March 2007

Market 3: Publicly available local and/or national telephone services provided at a fixed location for residential customers

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
2003/0007, UK/2003/0008 and UK/2003/0045	Separation in local, national, calls to mobile phones and operator-assisted calls.	Separate markets: Hull area and UK outside Hull	Hull area: Kingston; UK outside Hull: BT	1 - Non-discrimination	<p>The Commission made comments on:</p> <p>Reliance on comments from parties other than the Commission and other NRAs: The Commission stresses the fact that any material modification to the notified draft measure will require the draft measure to be re-notified under Article 7(3) of the Framework Directive.</p> <p>Markets defined more narrowly than in the Recommendation on relevant markets: Oftel defined retail narrowband markets more narrowly than in the Recommendation on relevant markets. However, a broader market definition is not likely to lead to a different result of the SMP analysis. Consequently, a conclusion on the exact scope of the markets is not relevant in this specific context for the purposes of SMP assessment.</p> <p>Publication of a statement concerning compliance with the cost accounting</p>
				2 – Transparency	
				3 - BT only: price control implying price freeze (adjusted for inflation)	
				4 - BT only: cost accounting	

					<p>systems: It is necessary for a statement concerning compliance with the cost accounting system to be published annually, following verification by a qualified independent body.</p> <p>National consultation running in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>
<p>FI/2003/0022 and FI/2003/0023</p>	<p>Local and national calls are included in separate markets.</p>	<p>National calls: national market; local calls: regional markets</p>	<p>On local calls for the 43 regional operators. No SMP found for national</p>	<p>On local calls:</p>	<p>The Commission made comments on:</p> <p>National calls: NRAs should assess whether</p>

			calls	1 - Carrier(Pre)Selection	<p>effective competition is or is not a result of regulation in place and whether the status of competition is likely to be different in the absence of regulation. In this specific case, to what extent the competitive conditions could be different without CS/CPS-Regulation?</p> <p>Local calls: NRA's intention to impose more remedies on wholesale level: NRA does not sufficiently analyse how remedies on wholesale level would influence competition on retail level. Commission doubts that remedies at retail level are sufficient.</p>
				2 - Transparency (obligation to publish a reference offer)	
<p>PT/2004/0055, PT/2004/59 and PT/2004/0091</p>	<p>Broadly similar to the Recommendation. Additionally a market for non-geographic (service) numbers. This additional market includes both residential and non-residential customers.</p>	<p>National</p>	<p>PT Group</p>	1 - Transparency	<p>No comments made by the Commission.</p>
				2 - Non-discrimination	
				3 - Cost orientation (for geographic numbers only) and cost accounting	
				4 - Accounting separation	
				5 - Price affordability (geographic numbers only)	
				6 -Numbering plan (non-geographic service numbers)	

				only)	
<p>AT/2004/0127</p> <p>AT/2007/0581</p>	<p>Similar to the Recommendation.</p> <p>All types of calls included.</p>	National	Telekom Austria	<p>1 – price control</p> <p>2 – accounting separation</p>	<p>The Commission made a comment on:</p> <p>Efficiency of wholesale regulation</p> <p>TKK's analysis does not indicate any significant changes in the competitive conditions in the retail calls markets since the first market review. This calls for the reassessment of the effectiveness of the current wholesale regulation. The Commission already commented upon this issue in the context of TKK's second market review of the fixed wholesale markets³⁹. With regard to the present notifications, the Commission services would like to invite TKK in particular to supervise closely the standard WLR offer of TA and to reassess whether the upfront payment applied by TA, that TKK considers to constitute a barrier to enter the retail access markets, could be lowered.</p>
<p>HU/2005/0132</p>	<p>Similar to the Recommendation. Public payphones and prepaid cards included.</p>	Regional	<p>5 regional operators: Matáv, Invitel Távközlési Szolgáltató, Hungarotel Távközlési, Emitel, Monor Telefon</p>	<p>1 - Carrier(Pre)Selection</p>	<p>The Commission made comments on:</p> <p>Consideration of additional retail remedies:</p> <p>In view of the continuing high market shares of the incumbents and their relatively high retail prices compared to EU best practices,</p>

			Társaság		<p>the Commission invites NHH to consider whether the notified remedies (CS/CPS) over a given period are sufficient to address the market failure in the four retail calls markets under review.</p> <p>Remedies imposed at retail level prior to analysing the corresponding wholesale markets: The Commission reminds NHH that it should assess the effectiveness of remedies to be imposed at wholesale level in addressing market failures in the relevant retail markets. Should this review lead to a need to amend the retail remedies, particular attention should be paid to the possibility of a price or margin squeeze?</p>
SE/2005/0149	Notification withdrawn by the National Regulatory Authority.				
SE/2005/195	Similar to the recommendation. Explicitly including IP-Telephony.	National	No SMP found, due to regulation in the wholesale and retail access markets	No remedies imposed	<p>The Commission made a comment on:</p> <p>Inclusion of IP-telephony in the notified markets: PTS has included IP-telephony in the notified markets without supporting this conclusion by a substitutability analysis. When assessing whether IP-telephony services are part of any of the markets for publicly available fixed telephony services, national regulatory authorities must examine -</p>

					taking national circumstances into account - the objective characteristics, prices and intended use of the IP-telephony services, as well as their demand-side and supply side substitution with other fixed telephony services.
IE/2005/0160	Residential and non-residential together, public payphones excluded.	National	Eircom	1 - Carrier Access and Carrier (Pre) Selection	The Commission made a comment on: Further consultations planned by ComReg: The Commission reminds ComReg that draft measures relating to the details and implementation of accounting separation and cost accounting obligations are required to be notified under Article 7(3) of the Framework Directive
				2 - Access obligation	
				3 - Non-discrimination	
				4 - Transparency	
				5 - Accounting separation	
				6 - Cost orientation and cost accounting	
FR/2005/0223	VoIP calls offered by access providers ("managed VOIP") are included, VOIP calls by non-access providers are <u>not</u> included in the market.	Metropolitan France and overseas territories except for the territory of Saint-Pierre-et-Miquelon	France Télécom	Remedies only for PSTN calls, no remedies for VOIP calls	The Commission made comments on: Inclusion of managed IP-telephony in the notified calls markets: The Commission recalls that, when assessing whether IP-telephony services are part of any of the markets for publicly available fixed telephony services, national regulatory authorities must examine - taking national circumstances into account - the objective characteristics, prices and intended use of the IP-telephony services,
				1 - Prohibition of abusive bundling of access and call products	

				2 - Prohibition of excessive or predatory pricing	<p>as well as their demand-side and supply side substitution with other fixed telephony services. The Commission believes that, in the present case the inclusion of managed IP-telephony (VoB) in the relevant retail calls markets is not inconsistent with the Recommendation.</p> <p>Remedies and next market review: The Commission considers that the decision not to extend PSTN obligations to VoB is justified. The Commission notes the existing wholesale remedies on markets 11 and 12 as well as ARCEP's commitment to monitor this part of the retail markets closely for any anti-competitive practices and considers that should such practices occur, ARCEP has the right and the obligation to intervene as appropriate. The Commission invites ARCEP to ensure full, effective and appropriate enforcement of the obligations imposed in markets 8 to 12 within the shortest possible timeframe, and accordingly to commit reviewing the present market analysis following such enforcement, in any case at an earlier timing than the proposed 2008 review.</p>
				3 - Ex ante tariff information vis-a-vis the NRA	
				4 - Accounting separation	
				5 - Price control on fixed to mobile calls	

				6 - Non-discrimination	
SI/2005/0264	IP telephony excluded	National	Telecom Slovenije	1 – prohibition to restrict competition by setting predatory prices	<p>The Commission made a comment on:</p> <p>Impact of wholesale obligations on the relevant retail markets: The Commission would like to recall APEK that in accordance with the Universal Service Directive NRAs should intervene at retail level only if remedies imposed at the wholesale level together with the obligations to provide carrier selection/carrier pre-selection do not render the relevant retail markets competitive. The Commission notes that in Slovenia there are no alternative operators present on the relevant markets yet. It furthermore acknowledges that the current level of retail prices in relation to the relevant wholesale prices may risk leaving too low a margin between the retail and wholesale prices and that therefore the proposed retail price control appears to be justified. However, the Commission would like to invite APEK to closely monitor the impact of the proposed wholesale obligations, in particular the implementation of cost-oriented wholesale charges and non-discrimination obligation, on the relevant retail markets and to reassess the need to intervene at retail level accordingly</p>
				2 – price control and cost accounting obligation	

					when reviewing the notified markets.
DK/2005/0268	IP telephony excluded	National	NITA	No remedies imposed	<p>The Commission made comments on:</p> <p>The exclusion of IP-telephony from the relevant markets: The Commission considers that the justifications given by NITA for its decision to exclude IPtelephony from the notified markets are insufficient. NITA states that IP-telephony currently does not have the same functionalities as PSTN and ISDN, without describing these differences in functionality. When assessing whether or not IPtelephony should be included in any of the retail markets for fixed telephony services, NRAs must examine – taking national circumstances into account – the objective characteristics, prices and intended use of IP-telephony services, as well as their demand-side and supply-side substitution with other fixed telephony services.</p> <p>However, the possible inclusion of IP-telephony in the notified markets would seem to change neither NITA’s assessment of SMP, nor its decision not to impose any remedies in these markets. NITA considers that the remedies imposed on PSTN wholesale markets (call origination, call termination and transit) solve the identified competition problems in the retail markets. Including IP-telephony in the relevant retail markets would</p>

					<p>only further reduce barriers to market entry. Any provider of broadband connection can, in principle, provide IP-telephony as an alternative service to PSTN or ISDN telephony. The Commission services also note the existing wholesale remedies on markets 11 and 12 in Denmark, which can be expected to facilitate market entry for IP-telephony operators.</p> <p>Monitoring of effects of wholesale regulation on the notified retail markets:</p> <p>Considering NITA's intention not to impose any retail remedies despite the fact that TDC is deemed to have SMP in the two notified markets, it is imperative that NITA monitors market developments closely in order to verify whether the wholesale remedies imposed in markets 8 to 12 have the desired effect on the notified retail markets. Should any anti-competitive practices occur in these markets, NITA has the right and the obligation to intervene as appropriate.</p>
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<p>NL/2005/0289</p> <p>NL/2005/0293</p> <p>NL/2005/0294</p> <p>NL/2005/0295</p> <p>NL/2005/0296</p>	<p>Separate market for fixed to mobile calls, narrowband data services, calls to information numbers, calls to information assistant numbers.</p> <p>VoB included.</p>	<p>National</p>	<p>KPN</p>	<p>1 – cost accounting and accounting separation</p> <hr/> <p>2 – price control</p> <hr/> <p>3 – non discrimination</p>	<p>The Commission made comments on:</p> <p>Narrow market definition</p> <p>OPTA defines certain markets more narrowly than foreseen in the Recommendation. In particular, OPTA defines isolated markets for fixed-to mobile calls, narrowband data services, calls to information numbers and calls to personal assistant numbers. The Commission is not convinced that such a narrow market definition is justified. However, in these particular cases, as it does not have any impact on the finding of SMP, nor on the remedies imposed, the exact market definition can be left open.</p> <p>Inclusion of VoB – appropriateness of remedies</p> <p>The Commission believes that in the present case and in the light of the market characteristics of the access and voice calls market in the Netherlands, the inclusion of managed VoB- telephone in the relevant retail access and calls markets is not inconsistent with the Recommendation. The regulation of VoB should not prevent the SMP operator from switching to a new, more cost-efficient, technology. In this context, the Commission notes the flexible regulatory approach proposed by OPTA, which is introduced via the price floor taking into account the different cost structure of the products based</p>
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				4 - transparency	on VoB.
DE/2005/0308	No distinction between residential and non-residential customers. Exclusion of F/M calls.	national	DTAG	an obligation to notify new tariffs to BNetzA two months in advance of commercialisation to allow BNetzA to supervise the <i>ex post</i> price control obligation.	The Commission made a comment on: Non-imposition of accounting separation The Commission also considers that in order to effectively remedy the market failures identified on the retail access and local and national calls markets, BNetzA should impose on DTAG an obligation of accounting separation. Without such an obligation, it seems difficult for BNetzA to exercise effectively any price control. Such an accounting separation obligation seems also necessary to implement effectively a cost-orientation obligation for CS/CPS services as required by Article 19(3) of the Access Directive

ES/2005/0326	IP telephony excluded	National	TESAU	1 - TESAU must communicate to CMT any changes to applicable prices and conditions of the relevant services at least 10 days before their effective date of application/launch date;	<p>The Commission made a comment on:</p> <p>Exclusion of IP-telephony in the notified markets: The Commission considers that the justification given by CMT for its decision to exclude IP-telephony from the notified markets is insufficient insofar as CMT's arguments are based on the fact that IP-telephony currently does not have the same functionalities as (and are thus not regulated like) publicly available telephone services (provided over PSTN and ISDN). When assessing whether or not IP-telephony should be included in any of the retail markets for fixed telephony services, the NRA should duly examine – taking account of national circumstances – the objective characteristics, prices and intended use of IP-telephony services, as well as their demand-side and supply-side substitution with other fixed telephony services.</p>
				2 - TESAU must make available to CMT (within 10 days, on request) prices and conditions applicable to personalised offers offered by TESAU to those customers whose overall billing with TESAU exceeds €600,000 per year.	
SK/2006/0347	Similar to the Recommendation	National	Slovak Telecom	1 - Price control	<p>The Commission made a comment on:</p> <p>National public consultation: The Commission would like to remind TÚSR that according to Article 6 of the Framework Directive, NRAs must conduct a national consultation on each draft measure taken in accordance with the Framework Directive or the Specific Directives which have a</p>
				2 – non discrimination	
				3 - Prohibition of unreasonable bundling of products and services	

					significant impact on the relevant market, i.e. including the market definitions, and to give all interested parties the opportunity to comment on the draft measures.
CZ/2006/0350	VoIP excluded	national	Cesky Telecom	1 – CS/CPS	<p>Impact of the proposed wholesale remedies</p> <p>CTU considers that wholesale price regulation⁷, in combination with the proposed retail remedies, is sufficient to remedy the market failure on this particular market. In this context, the Commission notes that the retail prices in the Czech Republic are high compared to other EU Member States⁸ and that the incumbent still has a very strong position on the market.</p> <p>Therefore, the Commission invites CTU to closely monitor the impact of the proposed wholesale obligations, in particular the implementation of cost-oriented wholesale charges and the non-discrimination obligation, on the relevant retail markets and in particular to complete the review and adopt the final measures on the related wholesale markets (markets 8, 9 and 10) as soon as possible. The full and effective enforcement of appropriate wholesale obligations on these markets is necessary to achieve CTU's aim of remedying the lack of competition at the retail level.</p>
				2 – accounting separation	

MT/2006/0392	Similar to the national Recommendation	national	Maltacom	1 – cost orientation	No comments made by the Commission
				2 – transparency and non - discrimination	
				3 – cost accounting and accounting separation	
				4 – measures to counter unreasonable bundling of prices	
IT/2006/0407	AGCOM defines markets for (i) local, (ii) national and (iii) fixed to mobile calls	national	Telecom Italia	1 – non - discrimination	<p>The Commission made a comment on:</p> <p>Monitoring of the proportionality of retail regulation</p> <p>The Commission recalls that AGCOM imposed an asymmetric termination charge regulation in the related market of wholesale call termination following the designation of TI and 11 ANOs each as having SMP on their respective networks. The wholesale obligation entails <i>inter alia</i> that TI will be charged maximum 1.54€ cent/minute for terminating a</p>

				2 - transparency	<p>call on an ANOs network whereas the ANOs may not be charged more than 0.84€ cent/minute at single national commuters level. AGCOM intends to remove this asymmetry in termination charges by means of a 4-year glide path towards equivalent charges for both TI and the ANOs, but did not specify the detailed implementation of such glide path in its draft regulatory measure. In order to increase legal certainty for all parties involved, the Commission invited AGCOM to specify the</p> <p>glide path in its final measure and to develop a cost model as soon as possible for calculating ANO's termination rates taking into account the necessity for ANOs to become efficient over time.¹¹.</p>
				3 – price control	<p>The Commission notes that in the present retail calls market, AGCOM does not allow TI to differentiate its prices of local, national and fixed to mobile calls (residential and nonresidential), according to the termination network of the ANO.¹² AGCOM maintains that the obligation of non-discrimination between generalised on-net and off-net rates is motivated by demands for transparency of the rates for the end-users and the need to avoid anticompetitive effects. AGCOM believes that TI's dominant position in the relevant markets</p>

				<p>4 – submission of other offers to the price test</p>	<p>may induce it to adopt discriminatory pricing strategies to the advantage of its own users with the dual objective of raising barriers so as to make market entry unprofitable for new entrants and of recovering market shares to the detriment of competitors present on the market.</p>
				<p>5 - Prohibition of unreasonable bundling of products and services</p>	<p>The Commission does not primarily object to retail price differentiation. However in this particular case it has to be noted that 95% of all traffic in Italy is terminated on TI's network illustrating the still small size of ANOs. Therefore, the Commission agrees with AGCOM that it may be justified not to allow operators with a very high market share compared to their competitors, to price discriminate between on-net and off-net calls. At the same time, the Commission is of the view that operators should have the ability to recoup their higher regulated wholesale costs by setting the appropriate retail price, without having to have recourse to restrictive practices. The Commission notes that in the present case AGCOM stated in its draft regulatory measure that TI is able to recoup through appropriate retail prices the wholesale costs for terminating calls on the ANOs' networks. In any event, considering the difference in termination rates between TI and</p>

				6 – cost accounting	ANOs at wholesale level, which is expected to be reduced progressively over the next four years, the Commission invites AGCOM to monitor the proportionality of the retail regulation for local and national calls markets on the basis of the market's evolution.
BE/2006/0435	no distinction between local and national calls	National	Belgacom	1 – non discrimination	<p>The Commission made a comment on:</p> <p>Review of the national calls markets</p> <p>The Commission takes note that the review period for the notified markets is set for 3 years.</p> <p>Taking into account Belgacom's declining market shares in the national call markets, remedies proposed in the retail access markets (in particular wholesale line rental and carrier-selection/carrier pre-selection) and in fixed wholesale markets, the Commission invites IBPT to review the competitive situation in the national call markets within a shorter timeframe.</p>
				2 - transparency	
				3 – reporting obligation	
				4 – cost accounting	
				5 – accounting separation	
				6 – prohibition to charge excessive or predatory prices	

LT/2006/0425	Similar to the Recommendation	National	TEO LT AB	1 – price control and cost accounting	No comments made by the Commission
				2 – accounting separation	
CY/2006/0487	No distinction between residential and non-residential customers	National	CYTA	CS/CPS and WLR	No comments made by the Commission
				Non discrimination	
				transparency	
				Accounting separation	
				Price control	
EL/2006/0503	Similar to the Recommendation	national	OTE	Prohibition of unreasonable bundling of products and services	No comments made by the Commission
				Non discrimination	
				transparency	
				obligation to provide separately each component of a service package	
				Accounting separation	

				Price control	
PL/2006/0528	Similar to the national Recommendation	national	TP SA	<p>an obligation not to impose excessively high prices;</p> <p>an obligation not to hinder market entry;</p> <p>non discrimination</p> <p>an obligation to refrain from limiting competition by fixing prices below the costs of their provision;</p>	<p>Inclusion in the final measures of the additional data and arguments provided to the Commission</p> <p>The Commission invites UKE to include the data and arguments that UKE provided to the Commission in the course of the second phase procedure in the final measures. UKE is invited to indicate in particular TP's market shares including calls <i>via</i> 0 708 numbers and <i>via</i> pre-paid calling cards in the relevant markets.</p> <p>Monitoring of the market dynamics and the next review</p> <p>The information available suggests a certain dynamic in the Polish calls markets, in particular in the international calls markets. This is indicated <i>inter alia</i> by the increasing market shares of alternative providers and the availability of various methods of call placing</p>

				<p>obligation not to force end customers to purchase unwanted services;</p> <p>an obligation of regulatory cost accounting and cost orientation based on FL-FDC;</p> <p>an obligation to present retail call tariffs and conditions of provision for UKE's approval.</p>	<p>(direct call, call selection and pre-selection, calls via 0 708 numbers, emergence of VoIP services). In the short to medium term, it can be expected that wholesale line rental⁴⁰ becomes operational and other wholesale regulation should become effective as well. In view thereof, UKE is invited to closely monitor the market trends and to undertake a new market analysis at the latest within one year following adoption of the final measures.</p>
LU/2006/0532	Similar to the national Recommendation	national	EPT	<p>Non discrimination</p> <p>Transparency</p> <p>Accounting separation</p> <p>Price control</p>	<p>No comments made by the Commission</p>

LV/2007/0567	Similar to Recommendation	the national	Lattelecom	CS/CPS	<p>Lack of details concerning price control obligation</p> <p>The Commission notes that SPRK has not clearly specified in its measures details of the imposed price control obligation. In order to enhance legal certainty, the Commission would like to invite SPRK to clarify in its final measure the details of the price control remedy imposed.</p>
				Price control	<p>Non-imposition of accounting separation</p> <p>The Commission considers that in order to effectively remedy the market failures identified on the retail access and local and national calls markets, SPRK should impose on Lattelecom an obligation of accounting separation. Without such an obligation, it seems difficult for SPRK to exercise effectively any price control. Such an accounting separation obligation seems also necessary to implement effectively a cost-orientation obligation for CS/CPS services as required by Article 19(3) of the Access Directive</p>

**Market 4: Publicly available international telephone services
provided at a fixed location for residential customers**

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			Carrier (Pre) Selection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria	YES	NO SMP FOUND					
Finland	YES	NO SMP FOUND					
France	YES	1 operator	NO	YES	YES	YES	YES
Hungary	YES	5 operators	YES	NO	NO	NO	NO
Ireland	NO*	1 operator	YES	YES	YES	YES	YES
Portugal	YES	1 operator	NO	YES	YES	YES	YES
Sweden	YES	NO SMP FOUND					
United Kingdom	NO*	2 operators	NO	YES	YES	YES***	NO
Netherlands	NO*	NO SMP FOUND					
Belgium	YES	NO SMP FOUND					
Czech Republic	YES	1 operator	NO	NO	NO	NO	YES

Lithuania	YES	1 operator	NO	NO	NO	YES	YES
Spain	YES	1 operator	NO	NO	NO	YES	NO
Italy	YES	1 operator	NO	YES	YES	YES	NO
Germany	NO*	NO SMP FOUND					
Denmark	NO*	1 operator	No remedies imposed				
Cyprus	NO*	1 operator	YES	YES	YES	YES	YES
Slovenia	YES	1 operator	NO	YES	NO	NO	NO
Slovakia	YES	1 operator	NO	YES	NO	YES	NO
Poland	NO	1 operator	NO	YES	NO	YES	NO
Latvia	YES	1 operator	YES	NO	NO	YES	NO
Latvia	YES	1 operator	YES	NO	NO	YES	NO
Greece	NO*	NO SMP FOUND					
<i>*Refinement, broader/narrower market and/or merger of markets / **At a prior notification the Commission issued a Veto on the Non-SMP-finding / *** Differentiated or no remedy imposed on certain SMP operators/ Overview of notifications assessed until 31 March 2007</i>							

Market 4: Publicly available international telephone services provided at a fixed location for residential customers

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
<p>UK/2003/0007, UK/2003/0008 and UK/2003/0045</p>	<p>Separation (i) a market with competitive input at wholesale level ("category A") and (ii) many markets on a route-by-route basis with non-competitive input at wholesale level ("Category B"). Operator-assisted calls are not included (together</p>	<p>Separate markets: Hull area and UK outside Hull</p>	<p>Hull: Kingston; UK outside Hull: BT</p>	<p>1 - Non-discrimination</p>	<p>The Commission made comments on:</p> <p>Reliance on comments from parties other than the Commission and other NRAs: The Commission stresses the fact that any material modification to the notified draft measure will require the draft measure to be re-notified under Article 7(3) of the Framework Directive.</p> <p>Markets defined more narrowly than in the Recommendation on relevant markets: Oftel defined retail narrowband markets more narrowly</p>

	with national calls a separate market, see market 3).			2 - Transparency	<p>than in the Recommendation. However, a broader market definition along the lines of the Recommendation on relevant markets is not likely to lead to a different result of the SMP analysis. Consequently, a conclusion on the exact scope of the markets is not relevant in this specific context for the purposes of SMP assessment.</p> <p>Finding of SMP in the IDD calls markets: Oftel does not have sufficiently detailed market share information to calculate both residential and business market shares in each of the relevant IDD calls markets. However, the Commission considers the other, non market- share-related assumptions made regarding the finding of significant market power to be convincing. In any event, in this particular case, the Commission does not consider that any measure concerning these markets would affect trade between Member States.</p>
				3 - BT only: price control implying price freeze (adjusted for inflation)	

				4 - BT only: cost accounting	
FI/2003/0024	Similar to the Recommendation.	National	No SMP	No remedies imposed	<p>The Commission vetoed the draft measure based on:</p> <p>Lack of evidence to support the finding of the absence of SMP: Ficora has submitted neither sufficient facts nor sufficient reasoning to rebut the presumption of dominance in the presence of a market share in excess of 50%.Ficora failed to provide 1) any market data related to the exact degree of changes in market shares over the past years, 2) market data related to price levels and 3) market data related to other factors which are relevant to the assessment of market power.</p> <p>Lack of consideration of existing remedies: Ficora did not justify its conclusions in light of existing regulatory obligations, and did not consider what the outcome of the market analysis is likely to be in the absence of such obligations. Conversely, Ficora did</p>

					not consider how the justification for existing regulatory obligations, which are imposed on undertakings in the same or other closely related markets, and which may have a substantial competitive effect on markets for publicly available international telephone services provided at a fixed location, would be affected by the conclusions of its market analyses.
FI/2005/0201	Similar to the Recommendation.	National	No SMP	No remedies imposed	No comments made by the Commission.
PT/2004/0057 and PT/2004/0091	Similar to the Recommendation.	National	PT Group	1 - Transparency	No comments made by the Commission.
				2 - Non-discrimination	
				3 - Cost orientation and cost accounting	
				4 - Accounting separation	
AT/2004/0125 AT/2007/0582	Similar to the Recommendation. Public payphones and calling cards included.	National	No SMP: decreasing market share of the incumbent, low entry barriers	No remedies imposed	No comments made by the Commission.

<p>HU/2005/0133</p>	<p>Similar to the Recommendation. Public payphones and prepaid cards included.</p>	<p>Regional</p>	<p>5 regional operators: Matáv, Invitel Távközlési Szolgáltató, Hungarotel Távközlési, Emitel, Monor Telefon Társaság</p>	<p>1 - Carrier(Pre)Selection</p>	<p>The Commission made comments on:</p> <p>Consideration of additional retail remedies: In view of the continuing high market shares of the incumbents and their relatively high retail prices compared to EU best practices, the Commission invites NHH to consider whether the notified remedies (CS/CPS) over a given period are sufficient to address the market failure in the four retail calls markets under review.</p> <p>Remedies imposed at retail level prior to analysing the corresponding wholesale markets: The Commission reminds NHH that it should assess the effectiveness of remedies to be imposed at wholesale level in addressing market failures in the relevant retail markets. Should this review lead to a need to amend the retail remedies, particular attention should be paid to the possibility of a price or margin squeeze?</p>
<p>SE/2005/0147</p>	<p>Notification withdrawn by the National Regulatory Authority.</p>				
<p>SE/2005/196</p>	<p>Similar to the Recommendation. Explicitly includes IP-Telephony.</p>	<p>National</p>	<p>No SMP found, due to regulation in the wholesale and retail access markets</p>	<p>No remedies imposed</p>	<p>The Commission made a comment on:</p> <p>Inclusion of IP-telephony in the notified markets: PTS has included IP-telephony in the notified markets without supporting this conclusion by a substitutability analysis. When assessing whether IP-telephony services are part of any of the markets for publicly available fixed telephony services, national</p>

					regulatory authorities must examine - taking national circumstances into account - the objective characteristics, prices and intended use of the IP-telephony services, as well as their demand-side and supply side substitution with other fixed telephony services.
IE/2005/0161	Residential and non-residential in one market, public cell phones excluded.	National	Eircom	1 - Carrier Access and Carrier (Pre) Selection	The Commission made a comment on: Further consultations planned by ComReg: on details of cost accounting and accounting separation: Possible further measures must be notified to the Commission.
				2 - Access obligation	
				3 - Non-discrimination	
				4 - Transparency	
				5 - Accounting separation	

				6 - Cost orientation and cost accounting	
FR/2005/0224	VoIP calls offered by access providers ("managed VoiP") are included, VOIP calls by non-access providers are <u>not included</u> .	Metropolitan France and overseas territories except for the territory of Saint-Pierre-et-Miquelon	France Télécom	<u>Remedies only for PSTN calls, no remedies for VOIP calls</u>	<p>The Commission made on:</p> <p>Inclusion of managed IP-telephony in the notified calls markets: The Commission recalls that, when assessing whether IP-telephony services are part of any of the markets for publicly available fixed telephony services, national regulatory authorities must examine - taking national circumstances into account - the objective characteristics, prices and intended use of the IP-telephony services, as well as their demand-side and supply side substitution with other fixed telephony services. The Commission believes that, in the present case the inclusion of managed IP-telephony (VoB) in the relevant retail calls markets is not inconsistent with the Recommendation.</p> <p>Remedies and next market review: The Commission considers that the decision not to extend PSTN obligations to VoB is justified. The Commission notes the existing wholesale remedies on markets 11 and 12 as well as ARCEP's commitment to monitor this part of the retail markets closely for any anti-competitive practices and considers that should such practices occur, ARCEP has the right and the obligation to intervene as appropriate. The Commission invites ARCEP to ensure full, effective</p>
				1 - Prohibition of abusive bundling of access and call products	
				2 - Prohibition of excessive or predatory pricing	
				3 - Ex ante tariff information vis-a-vis the NRA	

				4 - Accounting separation	and appropriate enforcement of the obligations imposed in markets 8 to 12 within the shortest possible timeframe, and accordingly to commit reviewing the present market analysis following such enforcement, in any case at an earlier timing than the proposed 2008 review.
				5 - Price control on fixed to mobile calls	
				6 - Non-discrimination	
DK/2005/0269	No distinction between residential and non residential customers	National	TDC	No remedies imposed	<p>The Commission made comments on:</p> <p>The exclusion of IP-telephony from the relevant markets: The Commission</p> <p>considers that the justifications given by NITA for its decision to exclude IP telephony</p> <p>from the notified markets are insufficient. NITA states that IP-telephony currently does not have the same functionalities as PSTN and ISDN, without</p>

					<p>describing these differences in functionality. When assessing whether or not IP telephony should be included in any of the retail markets for fixed telephony services, NRAs must examine – taking national circumstances into account – the objective characteristics, prices and intended use of IP-telephony services, as well as their demand-side and supply-side substitution with other fixed telephony services.</p> <p>However, the possible inclusion of IP-telephony in the notified markets would seem to change neither NITA’s assessment of SMP, nor its decision not to impose any remedies in these markets. NITA considers that the remedies imposed on PSTN wholesale markets (call origination, call termination and transit) solve the identified competition problems in the retail markets. Including IP-telephony in the relevant</p> <p>retail markets would only further reduce barriers to market entry. Any provider of broadband connection can, in principle, provide IP-telephony as an alternative service to PSTN or ISDN telephony. The Commission services also note the existing wholesale remedies on markets 11 and 12 in Denmark, which can be expected to facilitate market entry for IP-telephony operators.</p> <p>Monitoring of effects of wholesale regulation on the notified retail markets:</p> <p>Considering NITA’s intention not to impose any retail remedies despite the fact that TDC is deemed to have SMP in the two notified markets, it is imperative that NITA monitors market developments closely in order to verify whether the wholesale remedies imposed in markets 8 to 12 have the desired effect on</p>
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					the notified retail markets. Should any anti-competitive practices occur in these markets, NITA has the right and the obligation to intervene as appropriate.
SI/2005/0298	Similar to the Recommendation.	National	Telecom Slovenije	<p>Prohibition to restrict competition by setting predatory prices</p> <p>Prohibition to grant unjustified priority to certain end-customers,</p> <p>prohibition to implement the unjustified bundling of various services.</p>	<p>The Commission made comments on:</p> <p>Impact of wholesale obligations on the relevant retail markets: The Commission recalls that in accordance with the Universal Service Directive¹⁰ NRAs should intervene at retail level only if remedies imposed at the wholesale level, together with the obligations to provide carrier selection/carrier pre-selection, do not render the relevant retail markets competitive.</p> <p>Therefore, the Commission would like to invite APEK to closely monitor the impact of the proposed wholesale obligations¹¹, in particular the implementation of cost-oriented wholesale charges and non-discrimination, on the relevant retail markets and to reassess the need to intervene at retail level accordingly when reviewing the notified markets.</p> <p>The exclusion of IP telephony from the relevant markets: The Commission notes that APEK will monitor the development of IP-telephony and in its next market analysis (which according to national law is to be carried out within one year) assess whether IP-telephony, from a demand and supply-side perspective, should be included in any of the retail markets for fixed telephony services.</p>

					<p>Taking into account the early stage of development of IP-telephony in Slovenia and the</p> <p>low level of broadband penetration, IP-telephony is not expected to have any significant impact on the market before APEK's next market review. In this context, the Commission further notes that full and effective enforcement of the wholesale obligations, in particular those in market for LLU and market for wholesale bitstream access, could have an impact on the entry for IP-telephony operators, and therefore invites APEK to complete the review of the related market for wholesale broadband access, market 12 of the Recommendation, as soon as possible.</p>
NL/2005/0290	No SMP found				No comments made by the Commission
DE/2005/0309	No distinction between residential and non residential customers	national	No SMP found	No remedies imposed	<p>The Commission made comments on:</p> <p>Exclusion of fixed-to-mobile calls from the relevant markets</p> <p>BNetzA defines the calls markets more narrowly than foreseen in the Recommendation.</p> <p>In particular, BNetzA defines isolated markets for fixed-to-mobile calls. The Commission is not convinced that such a narrow market definition is justified. Since BNetzA indicates that it would analyse the fixed-to-mobile calls markets separately,</p>

					<p>omitting a proper analysis of it in the context of the present notification might be acceptable. However, the Commission would propose to request BNetzA to analyse the</p> <p>separate markets for fixed-to-mobile calls and to propose remedies, if appropriate, within</p> <p>the shortest possible timeframe. Fixed-to-fixed calls and fixed-to-mobile calls are generally offered as a bundle, in particular by DTAG. Regulation of fixed-to-fixed calls without regulation of fixed-to-mobile calls may therefore be only partly effective.</p> <p>VoIP</p> <p>When assessing IP-telephony services, national regulators should examine in the light of national circumstances objective product characteristics, prices and intended use of VoIP services, as well as their demand- and supply-side substitutability. Indicators such as broadband penetration rates, price elasticities, VoIP penetration, VoIP connection costs or the incumbent's position should be taken into account when performing such analysis.</p> <p>The Commission takes the view that the technology for VoIP services is progressing</p> <p>dynamically and the large majority of those services will ultimately emerge as substitutes</p> <p>for traditional fixed telephony services. At present, unmanaged VoIP-services do</p> <p>however seem to have different product characteristics⁶, which may call for special</p>
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					<p>analytical diligence whenever they are proposed to be included in a market definition.</p> <p>Since the exclusion of unmanaged VoIP from the relevant markets in the present case would not have any impact on the SMP-finding, the issue might, however, be left open.</p> <p>Effective competition of international calls</p> <p>On the basis of the information provided, the Commission concurs with BNetzA's finding of effective competition on the market for publicly available international telephone services. However, the competitive status of this market is dependent on the existence of mandated carrier selection/carrier pre-selection ("CS/CPS") obligations.</p> <p>These obligations, which are currently imposed by BNetzA on DTAG on the basis of the previous legal framework, are to be imposed under the current regulatory framework on the basis of finding SMP in a closely related retail access market⁷. As BNetzA finds DTAG to have SMP in the retail access market it will maintain the obligations to provide CS/CPS.</p>
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ES/2005/0327	Similar to the Recommendation.	National	TESAU	1 - communication to CMT any changes to applicable prices and conditions of the relevant services at least 10 days before their effective date of application/launch date;	<p>The Commission made a comment on:</p> <p>Exclusion of IP-telephony in the notified markets: The Commission considers that the justification given by CMT for its decision to exclude IP-telephony from the notified markets is insufficient insofar as CMT's arguments are based on the fact that IP-telephony currently does not have the same functionalities as (and are thus not regulated like) publicly available telephone services (provided over PSTN and ISDN). When assessing whether or not IP-telephony should be included in any of the retail markets for fixed telephony services, the NRA should duly examine – taking account of national circumstances – the objective characteristics, prices and intended use of IP-telephony services, as well as their demand-side and supply-side substitution with other fixed telephony services.</p>
				2 – communication to CMT (within 10 days, on request) of prices and conditions applicable to TESAUs personalised offers to customers whose overall billing with TESAUs exceeds €600,000 per year.	
SK/2006/0344	Similar to the Recommendation	National	Slovak Telecom	Price control	<p>The Commission made a comment on:</p> <p>National public consultation: The Commission would like to remind TÚSR that according to Article 6 of the Framework Directive, NRAs must conduct a national consultation on each draft measure taken in accordance with the Framework Directive or the Specific Directives which have a significant impact</p>
				Non discrimination	

				Prohibition of unreasonable bundling of products and services	on the relevant market, i.e. including the market definitions, and to give all interested parties the opportunity to comment on the draft measures
IT/2006/0398	Similar to the Recommendation.	National	Telecom Italia	Submission of all offers to AGCOM	No comments made by the Commission
				transparency	
				Non discrimination	
LT/2006/0427	Similar to the Recommendation.	National	TEO LT AB	Price control and cost accounting	No comments made by the Commission
				Accounting separation	
BE/2006/0436	Similar to the Recommendation.	National	No SMP	No remedies imposed	No comments made by the Commission
CZ/2006/0444	Similar to the Recommendation.	National	Cesky Telecom	Accounting separation	No comments made by the Commission
CY/2006/0488	No distinction between residential and non residential customers	national	CYTA	CS/CPS and WLR	No comments made by the Commission
				Non-discrimination	
				transparency	
				Accounting separation	
				Price control	
				Prohibition of unreasonable	

				bundling of products and services	
EL/2006/0504 (withdrawal of notification) EL/2007/0556 (market re-notified)	No SMP found				
PL/2006/0528	Similar to the Recommendation	national	TP SA	an obligation not to impose excessively high prices;	<p>Inclusion in the final measures of the additional data and arguments provided to the Commission</p> <p>The Commission invites UKE to include the data and arguments that UKE provided to the Commission in the course of the second phase procedure in the final measures. UKE is invited to indicate in particular TP's market shares including calls <i>via</i> 0 708 numbers and <i>via</i> pre-paid calling cards in the relevant markets.</p> <p>Monitoring of the market dynamics and the next review</p> <p>The information available suggests a certain dynamic in the Polish calls markets, in particular in the international calls markets. This is indicated <i>inter alia</i> by the increasing market shares of alternative providers and the availability of various methods of call placing (direct call, call selection and pre-selection, calls via 0 708 numbers, emergence of VoIP services). In the short to medium term, it can be expected that wholesale line rental⁴¹ becomes operational and other wholesale regulation should become effective as well. In view thereof, UKE is</p>
				an obligation not to hinder market entry;	
				non discrimination	
				an obligation to refrain from limiting competition by fixing prices below the costs of their provision;	
				obligation not to force end customers to purchase unwanted services;	

				an obligation of regulatory cost accounting and cost orientation based on FL-FDC;	invited to closely monitor the market trends and to undertake a new market analysis at the latest within one year following adoption of the final measures.
				an obligation to present retail call tariffs and conditions of provision for UKE's approval.	
LU/2007/0533	Similar to the Recommendation	National	EPT	Non discrimination	No comments made by the Commission
				transparency	
				Accounting separation	
				Price control	
LV/2007/0568	Similar to the Recommendation	national	Lattelecom	1 – CS/CPS	<p>Lack of details concerning price control obligation</p> <p>The Commission notes that SPRK has not clearly specified in its measures details of</p> <p>the imposed price control obligation. In order to enhance legal certainty, the</p> <p>Commission would like to invite SPRK to clarify in its final measure the details of</p>

				<p>2 – price control</p>	<p>the price control remedy imposed.</p> <p>Non-imposition of accounting separation</p> <p>The Commission considers that in order to effectively remedy the market failures</p> <p>identified on the retail access and local and national calls markets, SPRK should impose on Lattelecom an obligation of accounting separation. Without such an obligation, it seems difficult for SPRK to exercise effectively any price control. Such</p> <p>an accounting separation obligation seems also necessary to implement effectively a</p> <p>cost-orientation obligation for CS/CPS services as required by Article 19(3) of the</p> <p>Access Directive</p>
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**Market 5 : Publicly available local and/or national telephone services
provided at a fixed location for non-residential customers**

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed					
			Carrier (Pre) Selection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation	
Austria	YES	1 operator	NO	NO	NO	YES	YES	
Denmark	YES	NO SMP FOUND						
Finland	YES	43 operators**	YES	NO	YES	NO	NO	
France	YES	1 operator	NO	YES	YES	YES	YES	
Hungary	YES	5 operators	YES	NO	NO	NO	NO	
Ireland	NO*	1 operator	YES	YES	YES	YES	YES	
Portugal	YES	1 operator	NO	YES	YES	YES	YES	
Sweden	YES	NO SMP FOUND						
United Kingdom	NO*	2 operators	NO	YES	YES	YES***	NO	
Netherlands	NO*	1 operator	NO	NO	NO	YES	YES	
Belgium	YES	NO SMP FOUND						

Czech Republic	YES	1 operator	NO	NO	NO	NO	YES
Lithuania	YES	1 operator	NO	NO	NO	YES	YES
Spain	YES	1 operator	NO	NO	NO	YES	NO
Italy	YES	1 operator	NO	YES	YES	YES	NO
Germany	NO*	1 operator	NO	NO	NO	YES	NO
Denmark	NO*	1 operator	No remedies imposed				
Cyprus	NO*	1 operator	YES	YES	YES	YES	YES
Slovenia	YES	1 operator	NO	YES	NO	NO	NO
Slovakia	YES	1 operator	NO	YES	NO	YES	NO
Greece	YES	1 operator	NO	YES	YES	YES	YES
Luxembourg	YES	1 operator	NO	YES	YES	YES	YES
Poland	YES	1 operator	NO	YES	NO	YES	NO
Latvia	YES	1 operator	YES	NO	NO	YES	NO

* On local calls. No SMP for national calls.

** Differentiated or no remedy imposed on certain SMP operators

***second round of the review

Overview of notifications assessed until 31 March 2007

Market 5: Publicly available local and/ or national telephone services provided at a fixed location for non - residential customers

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
UK/2003/0007, UK/2003/0008	Separation between local, national, calls to mobile phones and operator-assisted calls.	UK excluding Hull area and Hull area	Hull: Kingston; UK excluding Hull: BT	1 - Non-discrimination	<p>The Commission made comments on:</p> <p>Reliance on comments from parties other than the Commission and other NRAs: The Commission stresses the fact that any material modification to the notified draft measure will require the draft measure to be re-notified under Article 7(3) of the Framework Directive.</p> <p>Markets defined more narrowly than in the Recommendation on relevant markets: Oftel defined retail narrowband markets more narrowly than in the Recommendation on relevant markets. However, a broader market definition is not likely to lead to a different result of the SMP analysis. Consequently, a conclusion on the exact scope of the markets is not relevant in this specific context for the</p>
				2 - Transparency	
				3 - BT only: price control implying price freeze (adjusted for inflation)	

				4 - BT only: cost accounting	purposes of SMP assessment.
UK/2004/0045 (further amended by cases UK/2005/0217-0218)	See Case UK/2003/0007-0008			Financial reporting obligations (in addition to the remedies imposed in Cases UK/2003/0007-0008).	<p>The Commission made comments on:</p> <p>Publication of a statement concerning compliance with the cost accounting systems: It is necessary for a statement concerning compliance with the cost accounting system to be published annually, following verification by a qualified independent body.</p> <p>National consultation running in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>
FI/2003/0025	Local and national	National calls :	Local calls:	On local calls:	The Commission made comments on:

<p>and FI/2003/0026</p>	<p>calls are included in separate markets.</p>	<p>national market; local calls: regional markets</p>	<p>SMP for 43 regional operators. No SMP found for national calls.</p>	<p>1 - Users' right to a connection to fixed telephone network</p>	<p>Relationship between existing regulation and finding of lack of SMP (national calls): The Commission invites Ficora to consider what the competitive conditions in the defined markets would be like in the absence of an obligation to provide CS, CPS or their equivalent. The Commission also prompts Ficora to make explicitly clear in their final measures whether its findings rely principally on the existing regulatory obligations (i.e. CS and CPS for all types of calls) imposed as a result of a finding of SMP in the retail access and local calls markets.</p> <p>Remedies at retail level (local calls): Ficora does not impose any further regulatory obligations on SMP undertakings at retail level, in addition to CS/CPS and other non-SMP obligations based on the Universal Service Directive. Therefore, the Commission has doubts as to whether the notified remedies over a given period are sufficient to remedy potential market failure at retail level and, in view of the continuing high market shares, recommends that Ficora also consider appropriate additional regulatory measures at the retail level.</p>
				<p>2 - Obligation to publish standard agreement terms and tariff information on services</p>	

				3 - User's right to pre-selection / carrier pre-selection	
PT/2004/0056, PT/2004/59 and PT/2004/0091	Broadly similar to the Recommendation. Additionally, includes a market for non-geographic (service) numbers. This additional market includes both residential and non-residential customers.	National	PT Group	1 - Transparency	No comments made by the Commission.
				2 - Non-discrimination	
				3 - Cost orientation (geographic numbers only) and cost accounting	
				4 - Accounting separation	
				5 - Price affordability (geographic numbers only)	
				6 -Numbering plan (non-geographic service numbers only)	

<p>AT/2004/0126 AT/2007/0583</p>	<p>Similar to the Recommendation.</p>	<p>National</p>	<p>Telekom Austria</p>	<p>1 - Price control / Cost orientation</p>	<p>The Commission made comments on:</p> <p>Efficiency of wholesale regulation</p> <p>TKK's analysis does not indicate any significant changes in the competitive conditions in the retail calls markets since the first market review. This calls for the reassessment of the effectiveness of the current wholesale regulation. The Commission already commented upon this issue in the context of TKK's second market review of the fixed wholesale markets⁴². With regard to the present notifications, the Commission services would like to invite TKK in particular to supervise closely the standard WLR offer of TA and to reassess whether the upfront payment applied by TA, that TKK considers to constitute a barrier to enter the retail access markets, could be lowered.</p>
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				2- Accounting Separation	
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<p>HU/2005/0134</p>	<p>Similar to the Recommendation. Public payphones and prepaid cards included.</p>	<p>Regional</p>	<p>5 regional operators: Matáv, Invitel Távközlési Szolgáltató, Hungarotel Távközlési, Emitel, Monor Telefon Társaság</p>	<p>1 - Carrier(Pre)Selection</p>	<p>The Commission made comments on:</p> <p>Consideration of additional retail remedies: In view of the continuing high market shares of the incumbents and their relatively high retail prices compared to EU best practices, the Commission invites NHH to consider whether the notified remedies (CS/CPS) over a given period are sufficient to address the market failure in the four retail calls markets under review.</p> <p>Remedies imposed at retail level prior to analysing the corresponding wholesale markets: The Commission reminds NHH that it should assess the effectiveness of remedies to be imposed at wholesale level in addressing market failures in the relevant retail markets. Should this review lead to a need to amend the retail remedies, particular attention should be paid to the possibility of a price or margin squeeze?</p>
<p>SE/2005/0148</p>	<p>Notification withdrawn by the National Regulatory Authority</p>				

SE/2005/197	Similar to the Recommendation. IP-Telephony explicitly included.	National	No SMP	No remedies imposed	<p>The Commission made a comment on:</p> <p>Inclusion of IP-telephony in the notified markets: PTS has included IP-telephony in the notified markets without supporting this conclusion by a substitutability analysis. When assessing whether IP-telephony services are part of any of the markets for publicly available fixed telephony services, national regulatory authorities must examine - taking national circumstances into account - the objective characteristics, prices and intended use of the IP-telephony services, as well as their demand-side and supply side substitution with other fixed telephony services.</p>
IE/2005/0162	No distinction between residential and non-residential markets.	National	Eircom	1 - Carrier Access and Carrier (Pre) Selection	<p>The Commission made a comment on:</p> <p>Further consultations planned by ComReg: The Commission reminds ComReg that draft measures relating to the details and implementation of accounting separation and cost accounting obligations are required to be notified under Article 7(3) of the Framework Directive.</p>
				2 - Access obligation	
				3 - Non-discrimination	
				4 - Transparency	
				5 - Accounting separation	
				6 - Cost orientation and cost accounting	

DK/2005/0208	Similar to the Recommendation, VOIP excluded.	National	No SMP found: decreasing market share of the incumbent, falling prices, no significant entry barriers.	No remedies imposed	No comments made by the Commission.
FR/2005/0225	VoIP calls offered by broadband access providers ("managed VOIP") included in the product market.	Metropolitan France and overseas territories except for the territory of Saint-Pierre-et-Miquelon	France Télécom	Remedies only for PSTN calls, no remedies for VOIP calls	<p>The Commission made comments on:</p> <p>Inclusion of managed IP-telephony in the notified calls markets: The Commission recalls that, when assessing whether IP-telephony services are part of any of the markets for publicly available fixed telephony services, national regulatory authorities must examine - taking national circumstances into account - the objective characteristics, prices and intended use of the IP-telephony services, as well as their demand-side and supply side substitution with other fixed telephony services. The Commission believes that, in the present case the inclusion of managed IP-telephony (VoB) in the relevant retail calls markets is not inconsistent with the Recommendation.</p> <p>Remedies and next market review: The Commission considers that the decision not to</p>
				1 - Prohibition of abusive bundling of access and call products	
				2 - Prohibition of excessive or predatory pricing	

				3 - Ex ante tariff information vis-a-vis the NRA	<p>extend PSTN obligations to VoB is justified. The Commission notes the existing wholesale remedies on markets 11 and 12 as well as ARCEP's commitment to monitor this part of the retail markets closely for any anti-competitive practices and considers that should such practices occur, ARCEP has the right and the obligation to intervene as appropriate. The Commission invites ARCEP to ensure full, effective and appropriate enforcement of the obligations imposed in markets 8 to 12 within the shortest possible timeframe, and accordingly to commit reviewing the present market analysis following such enforcement, in any case at an earlier timing than the proposed 2008 review.</p>
				4 - Accounting separation	
				5 - Price control on fixed to mobile calls	

				6 - Non-discrimination	
SI/2005/0265	IP excluded telephony	National	Telecom Slovenije	1 – prohibition to restrict competition by setting predatory prices	<p>Impact of wholesale obligations on the relevant retail markets: The Commission would like to recall APEK that in accordance with the Universal Service Directive NRAs should intervene at retail level only if remedies imposed at the wholesale level together with the obligations to provide carrier selection/carrier pre-selection do not render the relevant retail markets competitive. The Commission notes that in</p> <p>Slovenia there are no alternative operators present on the relevant markets yet. It</p> <p>furthermore acknowledges that the current level of retail prices in relation to the relevant wholesale prices may risk leaving too low a margin between the retail and wholesale prices and that therefore the proposed retail price control appears to be justified. However, the Commission would like to invite APEK to closely monitor the impact of the proposed wholesale obligations, in particular the implementation of cost-oriented wholesale charges and non-discrimination obligation, on the relevant</p>
				2 – price control and cost accounting obligation	

					retail markets and to reassess the need to intervene at retail level accordingly when reviewing the notified markets.
NL/2005/0289 NL/2005/0293 NL/2005/0294 NL/2005/0295 NL/2005/0296	Separate market for fixed to mobile calls, narrowband data services, calls to information numbers, calls to information assistant numbers. VoB included.	National	KPN	1 – cost accounting and accounting separation	The Commission made comments on: Narrow market definition OPTA defines certain markets more narrowly than foreseen in the Recommendation. In particular, OPTA defines isolated markets for fixed-to mobile calls, narrowband data services, calls to information numbers and calls to personal assistant numbers. The Commission is not convinced that such a narrow market definition is justified. However, in these particular cases, as it does not have any impact on the finding of SMP, nor on the remedies imposed, the exact market definition can be left open.
				2 – price control	Inclusion of VoB – appropriateness of

				3 – non discrimination	remedies <p>The Commission believes that in the present case and in the light of the market characteristics of the access and voice calls market in the Netherlands, the inclusion of managed VoB-telephone in the relevant retail access and calls markets is not inconsistent with the Recommendation. The regulation of VoB should not prevent the SMP operator from switching to a new, more cost-efficient, technology. In this context, the Commission notes the flexible regulatory approach proposed by OPTA, which is introduced via the price floor taking into account the different cost structure of the products based on VoB.</p>
				4 - transparency	
DE/2005/0310	<p>No distinction between residential and non-residential customers.</p> <p>Exclusion of F/M calls.</p>	national	DTAG	<p>an obligation to notify new tariffs to BNetzA two months in advance of commercialisation to allow BNetzA to supervise the <i>ex post</i> price control obligation.</p>	<p>The Commission made a comment on:</p> <p>Non-imposition of accounting separation</p> <p>The Commission also considers that in order to effectively remedy the market failures identified on the retail access and local and national calls markets, BNetzA should impose on DTAG an obligation of accounting separation. Without such an obligation, it seems difficult for BNetzA to exercise effectively any price control. Such an accounting separation obligation seems also necessary to implement effectively a cost-orientation obligation for CS/CPS services as required by Article 19(3) of the Access Directive.</p>

ES/2005/0328	IP excluded telephony	National	TESAU	<p>1 - TESAU must communicate to CMT any changes to applicable prices and conditions of the relevant services at least 10 days before their effective date of application/launch date;</p>	<p>The Commission made a comment on:</p> <p>Exclusion of IP-telephony in the notified markets: The Commission considers that the justification given by CMT for its decision to exclude IP-telephony from the notified markets is insufficient insofar as CMT's arguments are based on the fact that IP-telephony currently does not have the same functionalities as (and are thus not regulated like) publicly available telephone services (provided over PSTN and ISDN). When assessing whether or not IP-telephony should be included in any of the retail markets for fixed telephony services, the NRA should duly examine – taking account of national circumstances – the objective characteristics, prices and intended use of IP-telephony services, as well as their demand-side and supply-side substitution with other fixed telephony services.</p>
				<p>2 - TESAU must make available to CMT (within 10 days, on request) prices and conditions applicable to personalised offers offered by TESAU to those customers whose overall billing with TESAU exceeds €600,000 per year.</p>	

SK/2006/0349	Similar to the Recommendation	National	Slovak Telekom	1 - Price control	<p>The Commission made a comment on:</p> <p>National public consultation: The Commission would like to remind TÚSR that</p> <p>according to Article 6 of the Framework Directive, NRAs must conduct a national</p> <p>consultation on each draft measure taken in accordance with the Framework Directive or the Specific Directives which have a significant impact on the relevant market, i.e. including the market definitions, and to give all interested parties the opportunity to comment on the draft measures.</p>
				2 – non discrimination	
				3 - Prohibition of unreasonable bundling of products and services	
MT/2006/0397	Similar to the Recommendation	National	Maltacom	1 – cost orientation	<p>No comments made by the Commission</p>
				2 – transparency and non - discrimination	
				3 – cost accounting and accounting separation	
				4 – measures to counter unreasonable bundling of prices	

BE/2006/0437	no distinction between local and national calls	National	Belgacom	1 – non discrimination	<p>The Commission made comments on:</p> <p>Review of the national calls markets</p> <p>The Commission takes note that the review period for the notified markets is set for 3 years.</p> <p>Taking into account Belgacom's declining market shares in the national call markets, remedies proposed in the retail access markets (in particular wholesale line rental and carrier-selection/carrier pre-selection) and in fixed wholesale markets, the Commission invites IBPT to review the competitive situation in the national call markets within a shorter timeframe.</p>
				2 - transparency	
				3 – reporting obligation	

				4 – cost accounting	
				5 – accounting separation	
				6 – prohibition to charge excessive or predatory prices	
LT/2006/0426	Similar to the Recommendation	National	TEO LT AB	1 – price control and cost accounting	No comments made by the Commission

				2 – accounting separation	
CZ/2006/0445	VoIP excluded	national	Cesky Telecom	Accounting separation	No comments made by the Commission
CY/2006/0489	No distinction between residential and non-residential	National	CYTA	CS/CPS and WLR	No comments made by the Commission

	customers			Non discrimination	
				transparency	
				Accounting separation	
				Price control	
				Prohibition of unreasonable bundling of products and services	

IT/2006/0408	AGCOM defines markets for (i) local, (ii) national and (iii) fixed to mobile calls	national	Telecom Italia	1 – non - discrimination	<p>The Commission made a comment on:</p> <p>Monitoring of the proportionality of retail regulation</p> <p>The Commission recalls that AGCOM imposed an asymmetric termination charge regulation in the related market of wholesale call termination following the designation of TI and 11 ANOs each as having SMP on their respective networks. The wholesale obligation entails <i>inter alia</i> that TI will be charged maximum 1.54€ cent/minute for terminating a call on an ANOs network whereas the ANOs may not be charged more than 0.84€ cent/minute at single national commuters level. AGCOM intends to remove this asymmetry in termination charges by means of a 4-year glide path towards equivalent charges for both TI and the ANOs, but did not specify the detailed</p> <p>implementation of such glide path in its draft regulatory measure. In order to increase</p> <p>legal certainty for all parties involved, the</p>
				2 - transparency	

				3 – price control	<p>Commission invited AGCOM to specify the glide path in its final measure and to develop a cost model as soon as possible for calculating ANO's termination rates taking into account the necessity for ANOs to become efficient over time.</p> <p>The Commission notes that in the present retail calls market, AGCOM does not allow TI to differentiate its prices of local, national and fixed to mobile calls (residential and non residential), according to the termination network of the ANO. AGCOM maintains that the obligation of non-discrimination between generalised on-net and off-net rates is motivated by demands for transparency of the rates for the end-users and</p>
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				<p>4 – submission of other offers to the price test</p>	<p>the need to avoid anticompetitive effects. AGCOM believes that TI’s dominant position in the</p> <p>relevant markets may induce it to adopt discriminatory pricing strategies to the advantage of its own users with the dual objective of raising barriers so as to make market entry unprofitable for new entrants and of recovering market shares to the detriment of competitors present on the market.</p> <p>The Commission does not primarily object to retail price differentiation. However in this</p> <p>particular case it has to be noted that 95% of all traffic in Italy is terminated on TI’s</p> <p>network illustrating the still small size of ANOs. Therefore, the Commission agrees with AGCOM that it may be justified not to allow operators with a very high market share compared to their competitors, to price discriminate between on-net and off-net calls. At the same time, the Commission is of the view that operators should have the ability to recoup their higher regulated wholesale costs by setting the appropriate retail price, without having to have recourse to restrictive practices. The Commission notes that in the present case AGCOM stated in its draft regulatory measure that TI is able to recoup through appropriate retail prices the wholesale costs for terminating calls on the ANOs’</p>
				<p>5 - Prohibition of unreasonable bundling of products and services</p>	

				6 – cost accounting	networks. In any event, considering the difference in termination rates between TI and ANOs at wholesale level, which is expected to be reduced progressively over the next four years, the Commission invites AGCOM to monitor the proportionality of the retail regulation for local and national calls markets on the basis of the market's evolution.
EL/2006/0505	Similar to the Recommendation	national	OTE	Non discrimination	No comments made by the Commission
				transparency	
				obligation to provide separately each component of a service package	
				Accounting separation	
				Price control	
PL/2006/0530	Similar to the Recommendation	national	TP SA	an obligation not to impose excessively high prices;	<p>Inclusion in the final measures of the additional data and arguments provided to the Commission</p> <p>The Commission invites UKE to include the data and arguments that UKE provided to the Commission in the course of the second phase procedure in the final measures. UKE is invited to indicate in particular TP's market shares including calls <i>via</i> 0 708 numbers and <i>via</i> pre-paid calling cards in the relevant markets.</p> <p>Monitoring of the market dynamics and the next review</p>
				an obligation not to hinder market entry;	
				non discrimination	

				<p>an obligation to refrain from limiting competition by fixing prices below the costs of their provision;</p>	<p>The information available suggests a certain dynamic in the Polish calls markets, in particular in the international calls markets. This is indicated <i>inter alia</i> by the increasing market shares of alternative providers and the availability of various methods of call placing (direct call, call selection and pre-selection, calls via 0 708 numbers, emergence of VoIP services). In the short to medium term, it can be expected that wholesale line rental⁴³ becomes operational and other wholesale regulation should become effective as well. In view thereof, UKE is invited to closely monitor the market trends and to undertake a new market analysis at the latest within one year following adoption of the final measures.</p>
				<p>obligation not to force end customers to purchase unwanted services;</p>	
				<p>an obligation of regulatory cost accounting and cost orientation based on FL-FDC;</p>	
				<p>an obligation to present retail call tariffs and conditions of provision for UKE's approval.</p>	
<p>LU/2006/0534</p>	<p>Similar to the Recommendation</p>	<p>national</p>	<p>EPT</p>	<p>Non discrimination</p>	<p>No comments made by the Commission</p>
				<p>transparency</p>	
				<p>Accounting separation</p>	
				<p>Price control</p>	

LV/2007/0569	Similar to the Recommendation	national	Lattelecom	1 – CS/CPS	<p>Lack of details concerning price control obligation</p> <p>The Commission notes that SPRK has not clearly specified in its measures details of the imposed price control obligation. In order to enhance legal certainty, the Commission would like to invite SPRK to clarify in its final measure the details of the price control remedy imposed.</p> <p>Non-imposition of accounting separation</p> <p>The Commission considers that in order to effectively remedy the market failures identified on the retail access and local and national calls markets, SPRK should impose on Lattelecom an obligation of accounting separation. Without such an obligation, it seems difficult for SPRK to exercise effectively any price control. Such an accounting separation obligation seems also necessary to implement effectively a cost-orientation obligation for CS/CPS services as required by Article 19(3) of the Access Directive</p>
				2 – price control	

LV/2007/0569	Similar to the Recommendation	national	Lattelecom	1 – CS/CPS	<p>Lack of details concerning price control obligation</p> <p>The Commission notes that SPRK has not clearly specified in its measures details of the imposed price control obligation. In order to enhance legal certainty, the Commission would like to invite SPRK to clarify in its final measure the details of the price control remedy imposed.</p> <p>Non-imposition of accounting separation</p> <p>The Commission considers that in order to effectively remedy the market failures identified on the retail access and local and national calls markets, SPRK should impose on Lattelecom an obligation of accounting separation. Without such an obligation, it seems difficult for SPRK to exercise effectively any price control. Such an accounting separation obligation seems also necessary to implement effectively a cost-orientation obligation for CS/CPS services as required by Article 19(3) of the Access Directive</p>
				2 – price control	

**Market 6: Publicly available international telephone services
provided at a fixed location for non-residential customers**

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			Carrier (Pre) Selection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria***	YES	1 operator	NO	NO	NO	YES	YES
Denmark	YES	NO SMP FOUND					
Finland	YES	NO SMP FOUND**					
France	YES	1 operator	NO	YES	YES	YES	YES
Hungary	YES	5 operators	YES	NO	NO	NO	NO
Ireland	NO*	1 operator	YES	YES	YES	YES	YES
Portugal	YES	1 operator	NO	YES	YES	YES	YES
Sweden	YES	NO SMP FOUND					
United Kingdom	NO*	1 operator	NO	YES	YES	NO	NO
Netherlands	NO*	NO SMP FOUND					
Belgium	NO*	NO SMP FOUND					

Czech Republic	YES	NO SMP FOUND					
Lithuania	YES	1 operator	NO	NO	NO	YES	YES
Spain	YES	1 operator	NO	NO	NO	NO	NO
Italy	YES	1 operator	NO	YES	YES	NO	NO
Germany	NO*	NO SMP FOUND					
Denmark	NO*	NO SMP FOUND					
Cyprus	NO*	1 operator	YES	YES	YES	YES	YES
Slovenia	YES	1 operator	NO	YES	NO	NO	NO
Slovakia	YES	1 operator	NO	YES	NO	YES	NO
Greece	NO SMP FOUND						
Poland	YES	1 operator	NO	YES	NO	YES	NO
Latvia	YES	1 operator	YES	NO	NO	YES	NO
Luxembourg	YES	1 operator	NO	YES	YES	YES	YES

**Refinement, broader/narrower market and/or merger of markets*

*** At a prior notification the Commission issued a Veto on the Non-SMP-finding*

****second market review*

Overview of notifications assessed until 31 March 2007

Market 6: Publicly available international telephone services provided at a fixed location for non-residential customers

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
<p style="text-align: center;">UK/2003/0007 and UK/2003/0008</p>	<p>Separation (i) a market with competitive input at wholesale level ("category A") and (ii) many markets on a route-by-route basis with non-competitive input at wholesale level ("Category B"). Operator-assisted calls are not included (together with national calls a separate market, see market 3).</p>	<p>Separate markets: Hull area and UK outside Hull</p>	<p>Hull area: Kingston; UK outside Hull: No SMP removal of existing obligations on BT</p>	<p style="text-align: center;">1 - Non-discrimination</p>	<p>The Commission made comments on:</p> <p>Reliance on comments from parties other than the Commission and other NRAs: The Commission stresses the fact that any material modification to the notified draft measure will require the draft measure to be re-notified under Article 7(3) of the Framework Directive.</p> <p>Markets defined more narrowly than in the Recommendation on relevant markets: Of tel defined retail narrowband markets more narrowly than in the Recommendation. However, a broader market definition along the lines of the Recommendation on relevant markets is not likely to lead to a different result of the SMP analysis. Consequently, a conclusion on the exact scope of the markets is not relevant in this specific context for the purposes of SMP assessment.</p> <p>Finding of SMP in the IDD calls markets: Of tel does not have sufficiently detailed market share information to calculate both residential and business market shares in each of the relevant IDD calls markets. However, the Commission</p>

				2 - Transparency	considers the other, non market- share-related assumptions made regarding the finding of significant market power to be convincing. In any event, in this particular case, the Commission does not consider that any measure concerning these markets would affect trade between Member States.
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<p>FI/2003/0027</p>	<p>Similar to the Recommendation.</p>	<p>National</p>	<p>No SMP found</p>	<p>No remedies imposed</p>	<p>The Commission vetoed the draft measure based on:</p> <p>Lack of evidence to support the finding of the absence of SMP: Ficora has submitted neither sufficient facts nor sufficient reasoning to rebut the presumption of dominance in the presence of a market share in excess of 50%.Ficora failed to provide 1) any market data related to the exact degree of changes in market shares over the past years, 2) market data related to price levels and 3) market data related to other factors which are relevant to the assessment of market power.</p> <p>Lack of consideration of existing remedies: Ficora did not justify its conclusions in light of existing regulatory obligations, and did not consider what the outcome of the market analysis is likely to be in the absence of such obligations. Conversely, Ficora did not consider how the justification for existing regulatory obligations, which are imposed on undertakings in the same or other closely related markets, and which may have a substantial competitive effect on markets for publicly available international telephone services provided at a fixed location, would be affected by the conclusions of its market analyses.</p>
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FI/2005/0202	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.
PT/2004/0058 and PT/2004/0091	Similar to the Recommendation.	National	PT Group	1 - Transparency	No comments made by the Commission.
				2 - Non-discrimination	
				3 - Cost orientation and cost accounting	
				4 - Accounting separation	
AT/2005/0124 AT/2007/0584	Similar to the Recommendation. All types of calls included	National	TA	1 - Cost orientation, ex-ante approval of tariffs	The Commission made a comment on: Efficiency of wholesale regulation TKK's analysis does not indicate any significant changes in the competitive conditions in the retail calls markets since the first market review. This calls for the reassessment of the effectiveness of the current wholesale regulation. The Commission already commented upon this issue in the context of TKK's second market review of the fixed wholesale markets. With regard to the present

				2 - Accounting separation	<p>notifications, the Commission services would like to invite TKK in particular to supervise closely the standard WLR offer of TA and to reassess whether the upfront payment applied by TA, that TKK considers to constitute a barrier to enter the retail access markets, could be lowered.</p>
HU/2005/0135	<p>Similar to the Recommendation. Public payphones and prepaid cards included.</p>	Regional	<p>5 regional operators: Matáv, Invitel Távközlési Szolgáltató, Hungarotel Távközlési, Emitel, Monor Telefon Társaság</p>	1 - Carrier(Pre)Selection	<p>The Commission made comments on:</p> <p>Consideration of additional retail remedies: In view of the continuing high market shares of the incumbents and their relatively high retail prices compared to EU best practices, the Commission invites NHH to consider whether the notified remedies (CS/CPS) over a given period are sufficient to address the market failure in the four retail calls markets under review.</p> <p>Remedies imposed at retail level prior to analysing the corresponding wholesale markets: The Commission reminds NHH that it should assess the effectiveness of remedies to be imposed at wholesale level in addressing market failures in the relevant retail markets. Should this review lead to a need to amend the retail remedies, particular attention should be paid to the possibility of a price or margin squeeze?</p>

SE/2005/0146	Notification withdrawn by the National Regulatory Authority.				
SE/2005/0198	Similar to the Recommendation. Explicitly includes IP-Telephony.	National	No SMP found, due to regulation in the wholesale and retail access markets.	No remedies imposed	The Commission made a comment on: Inclusion of IP-telephony in the notified markets: PTS has included IP-telephony in the notified markets without supporting this conclusion by a substitutability analysis. When assessing whether IP-telephony services are part of any of the markets for publicly available fixed telephony services, national regulatory authorities must examine - taking national circumstances into account - the objective characteristics, prices and intended use of the IP-telephony services, as well as their demand-side and supply side substitution with other fixed telephony services.
IE/2005/0163	Residential and non-residential in one market	National	Eircom	1 - Carrier Access and Carrier (Pre) Selection 2 - Access obligation 3 - Non-discrimination 4 - Transparency 5 - Cost orientation and cost accounting	The Commission made a comment on: Further consultations planned by ComReg: The Commission reminds ComReg that draft measures relating to the details and implementation of accounting separation and cost accounting obligations are required to be notified under Article 7(3) of the Framework Directive.
DK /2005/0194	Similar to the Recommendation.	National	No SMP found: decreasing	No remedies imposed	No comments made by the Commission.

	VOIP excluded.		market share of the incumbent, falling prices, no significant entry barriers.		
FR/2005/0226	VoIP calls offered by access providers ("managed VOIP") are included, VOIP calls by non-access providers are <u>not</u> included into the market.	Metropolitan France and overseas territories except for the territory of Saint-Pierre-et-Miquelon	France Télécom	Remedies only for PSTN calls, no remedies for VOIP calls	<p>The Commission made comments on:</p> <p>Inclusion of managed IP-telephony in the notified calls markets: The Commission recalls that, when assessing whether IP-telephony services are part of any of the markets for publicly available fixed telephony services, national regulatory authorities must examine - taking national circumstances into account - the objective characteristics, prices and intended use of the IP-telephony services, as well as their demand-side and supply side substitution with other fixed telephony services. The Commission believes that, in the present case the inclusion of managed IP-telephony (VoB) in the relevant retail calls markets is not inconsistent with the Recommendation.</p> <p>Remedies and next market review: The Commission considers that the decision not to extend PSTN obligations to VoB is justified. The Commission notes the existing wholesale remedies on markets 11 and 12 as well as ARCEP's commitment to monitor this part of the retail markets closely for any anti-competitive practices and considers that should such practices occur, ARCEP has the right and the obligation to</p>
				1 - Prohibition of abusive bundling of access and call products	
				2 - Prohibition of excessive or predatory pricing	
				3 - Ex ante tariff information vis-a-vis the NRA	

				4 - Accounting separation	intervene as appropriate. The Commission invites ARCEP to ensure full, effective and appropriate enforcement of the obligations imposed in markets 8 to 12 within the shortest possible timeframe, and accordingly to commit reviewing the present market analysis following such enforcement, in any case at an earlier timing than the proposed 2008 review.
				5 - Price control on fixed to mobile calls	
				6 - Non-discrimination	
NL/2005/0292	No SMP found				No comments made by the Commission

SI/2005/0299	Similar to the Recommendation.	National	Telecom Slovenije	Prohibition to restrict competition by setting predatory prices	<p>Impact of wholesale obligations on the relevant retail markets: The Commission recalls that in accordance with the Universal Service Directive¹⁰ NRAs should</p> <p>intervene at retail level only if remedies imposed at the wholesale level, together with</p> <p>the obligations to provide carrier selection/carrier pre-selection, do not render the relevant retail markets competitive.</p> <p>Therefore, the Commission would like to invite APEK to closely monitor the impact of</p> <p>the proposed wholesale obligations¹¹, in particular the implementation of cost-oriented wholesale charges and non-discrimination, on the relevant retail markets and to reassess the need to intervene at retail level accordingly when reviewing the notified markets.</p> <p>The exclusion of IP telephony from the relevant markets: The Commission notes that APEK will monitor the development of IP-telephony and in its next market analysis (which according to national law is to be carried out within one year) assess whether IP-telephony,</p>
				prohibition to grant unjustified priority to certain end-customers,	

				prohibition to implement the unjustified bundling of various services.	<p>from a demand and supply-side perspective, should be included in any of the retail markets for fixed telephony services.</p> <p>Taking into account the early stage of development of IP-telephony in Slovenia and the low level of broadband penetration, IP-telephony is not expected to have any significant impact on the market before APEK's next market review. In this context, the Commission further notes that full and effective enforcement of the wholesale obligations, in particular those in market for LLU and market for wholesale bitstream access, could have an impact on the entry for IP-telephony operators, and therefore invites APEK to complete the review of the related market for wholesale broadband access, market 12 of the Recommendation, as soon as possible.</p>
DE/2005/0311	No distinction between residential and non residential customers	national	No SMP found	No remedies imposed	<p>Exclusion of fixed-to-mobile calls from the relevant markets</p> <p>BNetzA defines the calls markets more narrowly than foreseen in the Recommendation.</p> <p>In particular, BNetzA defines isolated markets for fixed-to-mobile calls. The Commission is not convinced that such a narrow market definition is justified. Since BNetzA indicates that it would analyse the fixed-to-mobile calls markets separately, omitting a proper analysis of it in the context of the present notification might be acceptable. However, the Commission would propose to request BNetzA to analyse the</p>

					<p>separate markets for fixed-to-mobile calls and to propose remedies, if appropriate, within the shortest possible timeframe. Fixed-to-fixed calls and fixed-to-mobile calls are generally offered as a bundle, in particular by DTAG. Regulation of fixed-to-fixed calls without regulation of fixed-to-mobile calls may therefore be only partly effective.</p> <p>VoIP</p> <p>When assessing IP-telephony services, national regulators should examine in the light of national circumstances objective product characteristics, prices and intended use of VoIP services, as well as their demand- and supply-side substitutability. Indicators such as broadband penetration rates, price elasticities, VoIP penetration, VoIP connection costs or the incumbent's position should be taken into account when performing such analysis.</p> <p>The Commission takes the view that the technology for VoIP services is progressing dynamically and the large majority of those services will ultimately emerge as substitutes for traditional fixed telephony services. At present, unmanaged VoIP-services do however seem to have different product characteristics⁶, which may call for special analytical diligence whenever they are proposed to be included in a market definition.</p>
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					<p>Since the exclusion of unmanaged VoIP from the relevant markets in the present case would not have any impact on the SMP-finding, the issue might, however, be left open.</p> <p>Effective competition of international calls</p> <p>On the basis of the information provided, the Commission concurs with BNetzA's finding of effective competition on the market for publicly available international telephone services. However, the competitive status of this market is dependent on the existence of mandated carrier selection/carrier pre-selection ("CS/CPS") obligations.</p> <p>These obligations, which are currently imposed by BNetzA on DTAG on the basis of the previous legal framework, are to be imposed under the current regulatory framework on the basis of finding SMP in a closely related retail access market⁷. As BNetzA finds DTAG to have SMP in the retail access market it will maintain the obligations to provide CS/CPS.</p>
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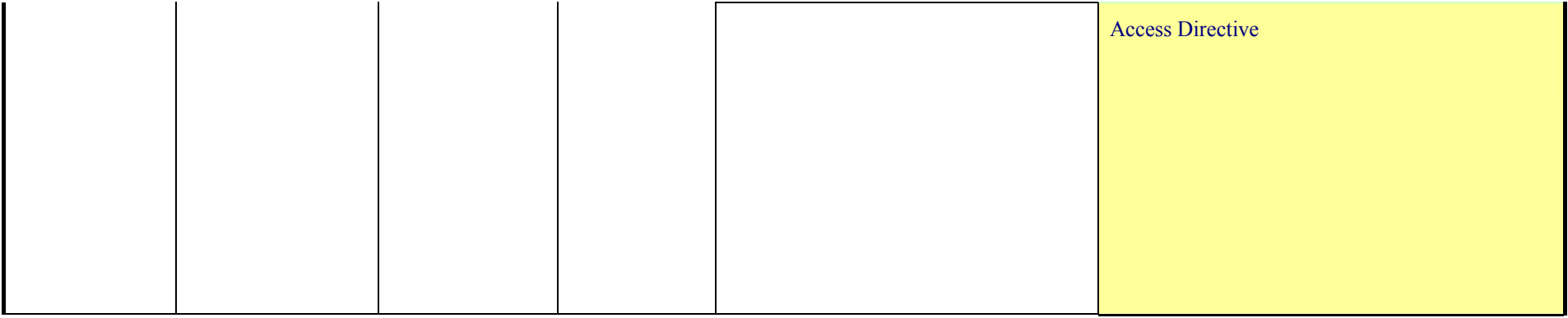
ES/2005/0329	Similar to the Recommendation.	National	TESAU	1 - TESAU must communicate to CMT any changes to applicable prices and conditions of the relevant services at least 10 days before their effective date of application/launch date;	<p>Exclusion of IP-telephony in the notified markets: The Commission considers that the justification given by CMT for its decision to exclude IP-telephony from the notified markets is insufficient insofar as CMT's arguments are based on the fact that IP-telephony currently does not have the same functionalities as (and are thus not regulated like) publicly available telephone services (provided over PSTN and ISDN). When assessing whether or not IP-telephony should be included in any of the retail markets for fixed telephony services, the NRA should duly examine – taking account of national circumstances – the objective characteristics, prices and intended use of IP-telephony services, as well as their demand-side and supply-side substitution with other fixed telephony services.</p>
				2 - TESAU must make available to CMT (within 10 days, on request) prices and conditions applicable to personalised offers offered by TESAU to those customers whose overall billing with TESAU exceeds €600,000 per year.	
SK/2006/0345	Similar to the Recommendation	National	Slovak Telecom	Price control	<p>National public consultation: The Commission would like to remind TÚSR that according to Article 6 of the Framework Directive, NRAs must conduct a national consultation on each draft measure taken in accordance with the Framework Directive or the Specific Directives which have a significant impact on the relevant market, i.e. including the market definitions, and to give all interested parties the</p>
				Non discrimination	
				Prohibition of unreasonable bundling of products and services	

					opportunity to comment on the draft measures
IT/2006/0399	Similar to the Recommendation.	National	Telecom Italia	Submission of all offers to AGCOM	No comments made by the Commission
				transparency	
				Non discrimination	
LT/2006/0428	Similar to the Recommendation	National	TEO LT AB	Price control and cost accounting	No comments made by the Commission
				Accounting separation	
BE/2006/0438	No SMP found			No comments made by the Commission	
CZ/2006/0446	No SMP found			No comments made by the Commission	
CY/2006/0490	No distinction between residential	national	CYTA	CS/CPS and WLR	No comments made by the Commission

	and non residential customers			Non-discrimination	
				transparency	
				Accounting separation	
				Price control	
				Prohibition of unreasonable bundling of products and services	
EL/2006/0504 (notification withdrawn) EL/2007/0556 (re-notified market analysis)	No SMP found				No comments made by the Commission

PL/2007/0531	Similar to the Recommendation.	National	TP SA	an obligation not to impose excessively high prices;	<p>Inclusion in the final measures of the additional data and arguments provided to the Commission</p> <p>The Commission invites UKE to include the data and arguments that UKE provided to the Commission in the course of the second phase procedure in the final measures. UKE is invited to indicate in particular TP's market shares including calls <i>via</i> 0 708 numbers and <i>via</i> pre-paid calling cards in the relevant markets.</p> <p>Monitoring of the market dynamics and the next review</p> <p>The information available suggests a certain dynamic in the Polish calls markets, in particular in the international calls markets. This is indicated <i>inter alia</i> by the increasing market shares of alternative providers and the availability of various methods of call placing (direct call, call selection and pre-selection, calls <i>via</i> 0 708 numbers, emergence of VoIP services). In the short to medium term, it can be expected that wholesale line rental⁴⁴ becomes operational and other wholesale regulation should become effective as well. In view thereof, UKE is invited to closely monitor the market trends and to undertake a new market analysis at the latest within one year following adoption of the final measures.</p>
				an obligation not to hinder market entry;	
				non discrimination	
				an obligation to refrain from limiting competition by fixing prices below the costs of their provision;	
				obligation not to force end customers to purchase unwanted services;	
				an obligation of regulatory cost accounting and cost orientation based on FL-FDC;	
				an obligation to present retail call tariffs and conditions of provision for UKE's approval.	
LU/2007/0535	Similar to the Recommendation	National	EPT	Non discrimination	No comments made by the Commission
				transparency	

LV/2007/0570	Similar to the Recommendation	National	Lattelekom	Accounting separation	<p>Lack of details concerning price control obligation</p> <p>The Commission notes that SPRK has not clearly specified in its measures details of</p> <p>the imposed price control obligation. In order to enhance legal certainty, the</p> <p>Commission would like to invite SPRK to clarify in its final measure the details of</p> <p>the price control remedy imposed.</p> <p>Non-imposition of accounting separation</p> <p>The Commission considers that in order to effectively remedy the market failures</p> <p>identified on the retail access and local and national calls markets, SPRK should impose on Lattelecom an obligation of accounting separation. Without such an obligation, it seems difficult for SPRK to exercise effectively any price control. Such</p> <p>an accounting separation obligation seems also necessary to implement effectively a</p> <p>cost-orientation obligation for CS/CPS services as required by Article 19(3) of the</p>
				Price control	
				CS/CPS	
				Price control	



Market 7: Minimum set of leased lines

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			Supply of minimum set	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria	NO*	1 operator	YES	YES	YES	YES	YES
Denmark	YES	1 operator	YES	YES	YES	YES	NO
Finland	YES	42 operators	YES	NO	NO	NO	NO
Hungary	YES	1 operator	YES	YES	YES	NO	NO
Ireland	YES	1 operator	YES	YES	YES	YES	YES
Portugal	NO*	1 operator	YES	YES	YES	YES	NO
Sweden	YES	1 operator	YES	YES	YES	YES	YES
United Kingdom	NO*	2 operators	YES	YES	YES	YES**	NO
The Netherlands	NO*	1 operator	YES	YES	YES	YES	NO
Spain	YES	1 operator	YES	YES	YES	YES	YES

Italy	YES	1 operator	YES	YES	YES	YES	NO
Malta	NO*	1 operator	NO	YES	YES	YES	YES
France	NO*	1 operator	NO	YES	YES	YES	YES
Lithuania	YES	1 operator	NO	YES	YES	YES	YES
Czech Republic	YES	1 operator	YES	YES	NO	YES	YES
Slovakia	YES	1 operator	NO	YES	YES	YES	NO
Germany	YES	1 operator	NOT YET NOTIFIED				
Cyprus	YES	1 operator	YES	YES	YES	YES	YES
Greece	YES	1 operator	NO	YES	YES	YES	YES
Austria	YES	1 operator	YES	YES	YES	YES	YES
Poland	YES	1 operator	YES	YES	YES	YES	YES
Belgium	YES	1 operator	YES	YES	YES	YES	NO
Luxemburg	YES	1 operator	YES	YES	YES	YES	NO
Latvia	YES	1 operator	YES	NO	YES	YES	NO

* Refinement, broader/narrower market and/or merger of markets

** Differentiated or no remedy imposed on certain SMP operators

Overview of notifications assessed until 31 March 2007

Market 7: The minimum set of leased lines

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
<p style="text-align: center;">UK/2003/0035-0036, UK/2004/0123 (modification of remedies)</p>	<p style="text-align: center;">Retail low bandwidth traditional interface leased lines (up to & incl. 8 Mbps).</p>	<p style="text-align: center;">UK excluding Hull area and Hull area</p>	<p style="text-align: center;">BT (UK excluding Hull), Kingston (Hull)</p>	<p style="text-align: center;">1- Supply minimum set of leased lines (BT & Kingston)</p>	<p style="text-align: center;">No comments made by the Commission.</p>
				<p style="text-align: center;">2 - Not to discriminate unduly (BT & Kingston)</p>	
				<p style="text-align: center;">3 - Cost orientation and cost accounting (only on BT)</p>	
				<p style="text-align: center;">4 - Publish reference offer (BT & Kingston)</p>	
				<p style="text-align: center;">5- Publish information on delivery and repair times (BT & Kingston)</p>	

<p>UK/2004/0045 (further amended in UK/2005/0217-0218)</p>	<p>See Cases UK/2003/0035-0036.</p>			<p>1 - Financial reporting obligations</p>	<p>The Commission made comments on:</p> <p>Publication of a statement concerning compliance with the cost accounting systems: It is necessary for a statement concerning compliance with the cost accounting system to be published annually, following verification by a qualified independent body.</p> <p>National consultation running in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>
<p>UK/2004/0077</p>	<p>See Case UK/2003/0035.</p>			<p>1 - Amendments to the interim charge control obligation imposed on BT</p>	<p>No comments made by the Commission.</p>
<p>UK/2004/0123</p>	<p>See Case UK/2003/0035.</p>			<p>Slight modification of the remedies already notified because of the establishment of the Telecommunications Adjudicator.</p>	<p>No comments made by the Commission.</p>
<p>SE/2004/0048</p>	<p>Similar to the</p>	<p>National</p>	<p>TeliaSonera</p>	<p>1- Obligation to provide the</p>	<p>No comments made by the Commission.</p>

	Recommendation.			minimum set of leased lines 2 - Non-discrimination 3 - Cost orientation 4 - Accounting separation 5 - Requirement to publish a reference offer, delivery conditions and technical information	
FI/2004/0079	Similar to the Recommendation.	Regional	42 local operators	1 - Obligation to provide the minimum set	The Commission made a comment on: Regulatory obligations reminding Ficora of the obligations set out in Annex VII of the Universal Service Directive requiring NRAs to ensure that the provision of the minimum set of leased lines referred to in Article 18 follows the basic principles of non-discrimination, cost orientation and transparency and asking Ficora to adapt its proposed remedies accordingly.
AT/2004/0097	Minimum set of retail leased lines + (i) all leased lines with a capacity of a multiple of 64 kbit/s up to an upper limit of 2048 bit/s; and	National	Telekom Austria	Minimum set of leased lines: 1 - Provision of a minimum set of leased lines 2 - Cost orientation and cost accounting	No comments made by the Commission.

	(ii) unconnected copper double wire between network termination points, which have been leased by communications network and service operators			3 - Non discrimination	
				4 - Publication of information with regard to the minimum set	
				5 - Accounting separation	
				Other leased lines:	
				1 - Cost orientation	
				2 - Approval of terms and conditions	
IE/2005/0137	Similar to the Recommendation.	National	Eircom	1 - Non discrimination	The Commission made a comment on: Further consultation planned by ComReg: the draft measures relating to the details and implementation of accounting separation and cost accounting obligations are required to be notified under Article 7(3) of the Framework Directive.
				2 - Cost orientation (pricing model based on fully distributed historic costs)	
				3 - Transparency	
				4 - Cost accounting and accounting separation	
PT/2005/0155	Minimum set of retail leased lines + services supported by symmetric xDSL technologies with	National	PT Group	1 - Non discrimination	No comments made by the Commission.
				2 - Transparency	

	capacity ≤ 2 Mbps			3 - Cost orientation and cost accounting	
HU/2005/0167	Similar to the Recommendation.	National	Matáv	1- Provision of the minimum set of leased lines based on non-discrimination and transparency principles	No comments made by the Commission.
DK/2005/0177	Similar to the Recommendation	National	TDC	1 - Non discrimination	No comments made by the Commission.
				2 - Transparency	
				3 - Cost orientation and cost accounting (based on modified historic cost method)	
NL/2005/0279	Six relevant retail national product markets: (i) analogue leased lines; (ii) <2Mbit/s digital	National	KPN on the national analogue leased lines; national leased lines	Market for national analogue leased lines: - price regulation.	The Commission made a comment on:

	<p>leased lines; (ii) 2Mbit/s digital leased lines; (iv) >2Mbit/s digital leased lines; (v) data communication services over copper; (vi) data communication services over fibre.</p>		<p><2Mbit/s and international analogue leased lines</p>	<p>Market for national leased lines <2Mbit/s <u>Minimum package obligations:</u> - obligation to deliver; - price regulation; - transparency; <u>Non minimum package obligations:</u> - non-discrimination; - unbundling; - transparency; - price regulation.</p>	<p>Market analysis methodology: Without contesting OPTA conclusions as to the identification of retail markets which are not part of market 7 as defined in the Recommendation on relevant markets, i.e. a market for international analogue leased lines, the Commission invited OPTA to justify in its final measure why it considers the market for international analogue leased lines susceptible to ex ante regulation taking utmost account of the three criteria test.</p>
	<p>Five international analogue leased lines markets: (i) international analogue leased lines market (ii) international <2Mbit/s digital leased lines; (iii) international 2Mbit/s digital leased lines, (iv) international >2Mbit/s digital leased lines, (v) international data communication services.</p>			<p>Market for international analogue leased lines: obligation to supply; non discrimination; transparency.</p>	
				<p>Market for international analogue leased lines: - obligation to supply; - no discrimination; - transparency.</p>	

IT/2005/0315	Notification withdrawn by the NRA (re-notified under case number IT/2006/0371)				
ES/2006/0352	Similar to the Recommendation.	National	Telefónica de España, S.A.U and Telefónica Servicios Audiovisuales, S.A.U (jointly “TESAU Group”)	<p>1 - Provision of a minimum set of leased lines</p> <p>2 – Price cap</p> <p>3 - Cost accounting and accounting separation</p> <p>4 – Non discrimination</p> <p>5 - Prohibition of anticompetitive behaviour such as price squeeze or predatory pricing, abusive bundling (e.g. abusive bundle prices, non-replicability of wholesale elements), and abusive contractual clauses (e.g. loyalty agreements and exclusivity agreements).</p>	No comments made by the Commission.
IT/2006/0371	Similar to the Recommendation	National	Telecom Italia	1 - Provision of the minimum set of leased lines on a transparent, non-discriminatory and cost-oriented	No comments made by the Commission.

				basis	
				2 – Price control	
MT/2006/0373	Minimum set of retail leased lines including both (i) retail national leased lines and (ii) retail international leased lines	National	Maltacom	1 - Non discrimination	<p>The Commission made a comment on:</p> <p>The inclusion of international lines in the wholesale and retail market definitions: By including international lines in the retail markets for the provision of leased lines and wholesale trunk segments of leased lines respectively, the MCA deviates from the Recommendation. In its notification, the MCA did not conduct the three criteria test considering this unnecessary as in its view the two markets as defined in the Recommendation include international leased lines. Without contesting the MCA’s conclusions, the Commission invited the MCA to clarify in its final measure (i) that two new markets have been defined by including international lines, thereby deviating from the Recommendation, (ii) that the three criteria test has been carried out for these markets and (iii) that the cumulative criteria of this test are fulfilled.</p> <p>Remedies imposed in the market of the international segments of leased lines</p> <p>MCA considered that prices would inevitably rise if not regulated. Accordingly it proposed to maintain the current price</p>
				2 - Cost orientation and cost accounting	
				3 - Transparency	
				4 - Accounting separation	

					regulation on the retail market of the international leased lines (cost-oriented prices approved by the MCA). The Commission invited the MCA to consider whether imposing a less stringent type of price regulation rather than maintaining the current cost-oriented prices would be more justified and proportionate in relation to the achievement of the regulatory objectives - taking into account both the short term objective to protect consumers and the longer term objective to induce effective competition.
FR/2006/0415	Four retail leased lines markets: (i) the minimum set, (ii) leased lines other than the minimum set, up to and including 2 Mbit/s, (iii) leased lines above 2 Mbit/s, and (iv) leased lines with alternative interfaces.	National	France Telecom	<p>Minimum set of leased lines</p> <p>1 - Non discrimination;</p> <p>2 – Transparency;</p> <p>3 – Cost orientation and cost accounting</p>	<p>The Commission made a comment on:</p> <p>The inclusion of leased lines above 2 Mbit/s in the retail leased lines market</p> <p>The evidence provided by ARCEP in its notification showed that (i) the described ruptures in demand and supply side substitutability might diminish as technology develop and (ii) the definition of the separate markets (in particular leased lines with traditional interfaces up to and including 2 Mbit/s, and leased lines with traditional interfaces above 2 Mbit/s) would not have led to different results as regards the finding of SMP or the fulfilment of the three criteria test. Moreover, the Commission noted that ARCEP will closely monitor the market and remove <i>ex ante</i> regulation in the retail market once effective wholesale regulation has proven to have a substantial impact on the</p>
				<p>Other leased lines markets:</p> <p>1- Non discrimination;</p> <p>2 – Price control (prohibition of predatory pricing);</p> <p>3 – Cost accounting</p>	

					downstream market.
LT/2006/0429	Similar to the Recommendation.	National	TEO LT AB	1 - Non discrimination	No comments made by the Commission.
				2 - Transparency	
				3 - Price control and cost accounting	
				4 – Accounting separation	
CZ/2006/0447	Similar to the Recommendation	National	Český Telecom a.s	1 - Non discrimination	No comments made by the Commission.
				2 - Provision of the minimum set of leased lines	
				3 - Price control	
				4 – Cost accounting	
				5 – Accounting separation	

SK/2006/0463	Similar to the Recommendation.	National	Slovak Telekom	1- Non-discrimination	<p>The Commission made a comment on:</p> <p>Appropriate justification of remedies</p> <p>The data provided by TÚSR indicated that the competitive situation may not be homogeneous within the whole minimum set of leased lines. In particular, competitive constraints faced by Slovak Telekom seem to be more stringent in the provision of high capacity digital leased lines.</p> <p>Therefore, without contesting the SMP finding, the Commission invited TÚSR to reconsider before adopting the final measure whether the competition problems identified would justify a differentiated application of remedies for different types of leased lines, taking also into account the development of retail prices for leased lines within the minimum set.</p>
				2 – Price control (prohibition of predatory and excessive prices)	
				3 – Obligation not to unreasonably bundle services	
				4 - Transparency	
DE/2006/0479	Similar to the Recommendation	National	DTAG		No comments made by the Commission.

				Remedies not yet notified	
CY/2006/0484	Similar to the Recommendation	National	CYTA	1 - Non discrimination	No comments made by the Commission.
				2 - Transparency (publication of a reference offer, including Service Level Agreements),	
				3 - Provision of the minimum set of leased lines	
				4 - Price control (based on cost orientation) and cost accounting	
				5 – Accounting separation	
				6 – Prohibition of unreasonably bundling products	
EL/2006/0491	Similar to the Recommendation	National	OTE S.A.	1 - Non discrimination	No comments made by the Commission.
				2 - Transparency	

				3 - Price control and cost accounting	
				5 – Accounting separation	
AT/2006/0507	Minimum set of leased lines + n*64 kbit/s leased lines up to 2048 kbit/s	National	Telekom Austria AG	<p>Minimum set of leased lines</p> <p>1 - Provision of the minimum set of leased lines on non-discriminatory and cost-oriented basis</p> <p>2 - Publication of information related to the minimum set</p> <p>3 – Obligation to submit prices and standard contracts conditions to TKK for ex-ante approval</p> <p>4 – Accounting separation</p>	No comments made by the Commission.
				<p>Leased lines n*64 kbit/s up to 2048 kbit/s</p> <p>1- Non-discrimination</p> <p>2 - Obligation not to unduly increase costs for end users wishing to cancel their TA subscription</p> <p>3 - Cost orientation and cost</p>	

				<p>accounting</p> <p>4 - Accounting separation</p>	
<p>PL/2006/0550</p>	<p>Similar to the Recommendation.</p>	<p>National</p>	<p>Telekomunikacja Polska S.A. ("TP")</p>	<p>1- Provision of the minimum set of leased lines on non-discriminatory and transparent basis</p>	<p>The Commission made a comment on:</p> <p>Remedies at retail level</p> <p>UKE has not yet completed the review of the related wholesale market for trunk segments of leased lines (i.e. market 14 in the Recommendation). Therefore the Commission invites UKE to finalize this review as quickly as possible in order to ensure effective wholesale regulation if the wholesale trunk segments of leased lines market is found not to be effectively competitive. Moreover, UKE is invited to ensure full and effective implementation of the obligations imposed on the wholesale market for terminating segments of leased lines (i.e. market 13 in the Recommendation) within the shortest possible timeframe.</p>
				<p>2 – Price control (prohibition of predatory and excessive prices)</p>	
				<p>3 – Ex ante approval of pricelists and conditions</p>	
				<p>4 - Transparency</p>	

				5 – Cost accounting and accounting separation	
BE/2006/0551	Similar to the Recommendation.	National	Belgacom	1- Provision of the minimum set of leased lines	<p>The Commission made a comment on:</p> <p>Cost accounting for wholesale terminating segments of leased lines:</p> <p>The Commission notes that currently IBPT does not apply a cost accounting system for all products included in market 13 as defined by IBTP and that a consultation on the cost modelling methodology is planned to take place six months after adoption of the final measures in market 13. Given the relevance of a cost accounting system in relation to all products included in market 13 and in particular alternative interfaces, the Commission invites IBPT to shorten the timeframe for elaborating the details of the cost accounting model and its implementing measures.</p>
				2 - Non-discrimination	
				3 - Transparency	
				4 – Price control and cost accounting	
LU/2006/0559	Similar to the Recommendation	National	IPT	1 - Provision of the minimum set of leased lines	<p>No comments made by the Commission.</p>
				2 - Non discrimination	
				3 - Transparency	
				4 – Cost orientation and cost accounting	

LV/2007/0571	Similar to the Recommendation	National	SIA Lattelecom	1 - Provision of the minimum set of leased lines	No comments made by the Commission.
				2 - Transparency (publication of the reference offer for the minimum set of leased lines)	
				3 – Cost orientation and cost accounting	

Market 8: Call origination on the public telephone network provided at a fixed location

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed					
			Access / interconnection	Carrier (Pre)Selection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria****	YES	1 operator	YES	NO	YES	YES	YES	YES
Denmark	NO*	1 operator	YES	NO	YES	YES	YES	YES
Finland	YES	46 operators	YES	NO	YES	YES	YES**	YES**
France	YES	1 operator	YES	NO	YES	YES	YES	YES
Germany	NO*	1 operator	YES	NO	YES	YES	YES	NO
Hungary	YES	5 operators	YES	NO	NO	YES	YES**	YES

Ireland	YES	1 operator	YES	NO	YES	YES	YES	YES
Portugal	YES	1 operator	YES	NO	YES	YES	YES	YES
Slovakia	YES	1 operator	YES	NO	YES	YES	NO	YES
Sweden	YES	1 operator	YES	NO	YES	YES	YES	YES
United Kingdom	NO*	2 operators	YES	NO	YES	YES	YES	YES
Slovenia	YES	1 operator	YES	NO	YES	YES	YES	YES
The Netherlands	NO*	1 operator	YES***	NO	YES	YES	YES	YES
Czech Republic	YES	1 operator	YES	NO	YES	YES	YES	YES
Spain	YES	1 operator	YES***	NO	YES	YES	YES	YES
Lithuania	YES	1 operator	YES	NO	YES	YES	YES	YES
Latvia	NO*	1 operator	YES	NO	YES	YES	YES	YES

Poland	YES	1 operator	YES***	NO	YES	YES	YES	YES
Italy	YES	1 operator	YES	YES	YES	YES	YES	YES
Malta	YES	1 operator	YES	NO	YES	YES	YES	YES
Belgium	YES	1 operator	YES	NO	YES	YES	YES	YES
Cyprus	YES	1 operator	YES	NO	YES	YES	YES	YES
Greece	YES	1 operator	YES	YES	YES	YES	YES	YES
Luxemburg	YES	1 operator	YES	NO	YES	YES	YES	YES
Austria	YES	1 operator	YES		NO	YES	YES	YES
Estonia	YES	1 operator	YES	NO	YES	YES	YES	NO

** Refinement, broader/narrower market and/or merger of markets*

*** Differentiated or no remedy imposed on certain SMP operators*

**** Imposition of WLR*

***** second market review*

Overview of notifications assessed until 31 March 2007

Market 8 - Call origination on the public telephone network provided at a fixed location

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
UK/2003/0011-0012	Similar to the Recommendation.	UK excluding Hull area and Hull area	BT (UK excluding Hull), Kingston (Hull)	<p>1- Provide network access on reasonable request</p> <p>2 - Non-discrimination</p> <p>3 - Cost orientation of charges and cost accounting</p> <p>4- Charge control</p> <p>5 - Transparency</p> <p>6 - Accounting separation</p> <p>7 - Carrier (Pre) Selection and indirect access in relation to call origination</p> <p>8 - Flat rate Internet access call origination (FRIACO) - only on BT</p>	<p>The Commission made comments on:</p> <p>Reliance on comments from parties other than the Commission and other NRAs: Any material modification to the notified draft measure will require the draft measure to be re-notified under Article 7(3) of the Framework Directive.</p> <p>Flat rate Internet access call origination (FRIACO): The Commission emphasises that in addition to remedy the lack of competition in the market identified, unmetered wholesale products, like FRIACO, may also be used for the provision of retail services other than the provision of unmetered Internet access.</p>

<p>UK/2004/0045 (further amended in UK/2005/0217- 0218)</p>	<p>See Cases UK/2003/0011-0012.</p>	<p>Financial reporting obligations (in addition to the remedies imposed in Cases UK/2003/0011-0012).</p>	<p>The Commission made comments on:</p> <p>Publication of a statement concerning compliance with the cost accounting systems: It is necessary for a statement concerning compliance with the cost accounting system to be published annually, following verification by a qualified independent body.</p> <p>National consultation running in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>
<p>UK/2004/0071</p>	<p>See Case UK/2003/0012.</p>	<p>Provision of a CPS local calls option service by BT Wholesale</p>	<p>No comments made by the Commission.</p>
<p>UK/2004/0072</p>	<p>See Case UK/2003/0012.</p>	<p>Modifications to the charge control obligation already imposed on BT in case UK/2003/0012.</p>	<p>No comments made by the Commission.</p>

UK/2004/0115 (amended by UK/2005/0180)	See Case UK/2003/0012.	Directions on BT's ability to use Cancel Other functionality (dispute resolution)	No comments made by the Commission.
UK/2004/0122	See Case UK/2003/0012.	Modifications to BT's charge control obligation (details of measurement of compliance)	No comments made by the Commission.
UK/2005/0165	See Case UK/2003/0012.	1- Revised charge control	No comments made by the Commission.
		2 - Amendments to the requirement (i) not to unduly discriminate and (ii) to notify charges, terms and conditions.	
UK/2005/0166	See Case UK/2003/0012.	1 - Modifications to the amounts that BT can charge for providing CPS facilities	No comments made by the Commission.

<p>UK/2003/0013-0014 (wholesale exchange line markets)</p>	<p>Fixed narrowband wholesale exchange lines market: a new market.</p>	<p>UK excluding Hull area and Hull area</p>	<p>BT (UK excluding Hull), Kingston (Hull)</p>	<p>1 - Wholesale line rental - only on BT</p>	<p>The Commission made comments on:</p> <p>Market definition for wholesale exchange line markets: The Commission stated that more consideration could have been given to assessing potential merchant wholesale demand and supply (i.e. demand from, and supply to, independent purchasers of wholesale exchange lines).</p> <p>Wholesale line rental (WLR): The Commission considers that WLR may also be imposed as a retail remedy in the retail access markets, since it serves to introduce additional sources of competition at that level.</p>
<p>FI/2003/0028</p>	<p>Similar to the Recommendation.</p>	<p>Regional</p>	<p>46 local operators</p>	<p>Asymmetrical regulation between 4 groups of operators</p> <p>1 - Access and interconnection</p>	<p>The Commission made comments on:</p> <p>Geographic divide of the market for call origination: The Commission invites Ficora to monitor the development of the market for signs of a common pricing constraint which may permit the delineation of larger geographic markets in the future.</p>

				2 - Publication of delivery terms and tariff information	<p>Exemption from certain ex ante obligations: The imposition of different remedies on different operators within similarly defined markets should be adequately reasoned. To the extent that it would be considered disproportionate to impose costly cost orientation and cost accounting obligations on a small operator, the Commission is of the view that other forms of cost control for such operators, such as benchmarking against the larger operators who are under a cost orientation obligation, could be considered.</p> <p>Cost orientation and cost accounting obligations: The Commission expresses concerns on the approach not to specify the method on which cost-orientation will be assessed, which it believes will limit the measure's contribution to consumer benefit, the enhancement of competition and the development of the internal market.</p>
				3 - Obligations concerning pricing and other terms (cost orientation and non discrimination)	
				4 - Cost accounting	
				5 - Accounting separation	

SE/2004/0049	Similar to the Recommendation.	National		1 - Obligation to meet reasonable request for interconnection (including via direct connections), network access, network capacity	No comments made by the Commission.
				2 - Cost orientation and cost accounting	
				3 - Non-discrimination	
				4 - Accounting separation	
				5 - Transparency (reference offer)	
PT/2004/0060, PT/2004/0092 (remedies)	Similar to the Recommendation.	National	PT Group	1 - Transparency - publication of a reference offer, prices, terms and conditions, technical information and relating to the quality of service	The Commission made a comment on: Asymmetrical application of remedies: The Commission invites the NRA to monitor closely the development of the cost structures of the operators on which the obligation to charge “fair and reasonable prices” is imposed and to assess whether its current assumptions on “fair and reasonable prices” will remain relevant over the period of the market review.
				2 - Non discrimination	
				3 - Accounting separation	
				4- Access on reasonable request	
				5 - Cost orientation and cost accounting	
				6- Price control	

SK/2004/0103	Similar to the Recommendation.	National	Slovak Telekom	1 - Transparency (publication of reference offer, technical specifications);	<p>The Commission made comments on:</p> <p>CS/CPS obligation and non-imposition of cost orientation in the wholesale market for call origination: The Commission invites TÚSR to consider explicit imposition of cost orientation obligations in the wholesale call origination market.</p> <p>National public consultation: According to Article 6 of the Framework Directive NRAs must conduct a national consultation on each draft measure which have a significant impact on the relevant market, i.e. including the market definitions, and to give all interested parties the opportunity to comment on the draft measure.</p>
				2 - Non-discrimination	
				3 - Accounting separation	
				4 - Obligation to provide access to certain network components	
				5 - Carrier selection/carrier pre-selection (CS/CPS)	
AT/2004/0105 AT/2006/0543	Similar to the Recommendation.	National	Telekom Austria	1 - access	<p>No comments made by the Commission during first round of market review.</p> <p>The Commission made the following comment during second market review:</p> <p>The Commission made a comment on:</p>
2 – non discrimination					
3 – transparency (including the obligation to publish a Reference					

				Interconnection Offer)	<p>Reduction of minimum interconnection loads</p> <p>Minimum interconnection loads, depending on their level, might imply an unjustified refusal to supply in the markets for wholesale voice call origination and termination markets. The Commission is of the opinion that it would be more effective that the TTK decides upon minimum loads in the present SMP decision, and not in a dispute settlement procedure. Therefore the TTK is invited to address this issue in the present SMP decision, for instance through reducing the minimum number of traffic minutes to the extent that the minimum interconnection loads would exceed the level which TA is able to economically and/or technically justify</p>
				4- cost orientation and cost accounting	
				5 – accounting separation	
DK/2005/0141	Wholesale access (connections) is included in the market for call origination on the public telephone network at a fixed location.	National	TDC	1 - Access to i) wholesale call origination, ii) wholesale purchase of services for resale, iii) co-location	<p>The Commission made a comment on:</p> <p>Inclusion of wholesale access connections in the product market definition: The Commission expressed doubts that wholesale access forms part of the wholesale origination market (market 8). Access services are not substitutes but rather complementary to call origination services. In addition, the Commission noted that the proposed remedies do not necessarily require the delineation of a separate access market, since they may be imposed in respect of the call origination market alone.</p>
				2 - Cost orientation and cost accounting	
				3 - Non-discrimination	
				4 - Reference offer	

				5 - Transparency	
				6 - Accounting separation	
DK/2005/0205 (modification of a remedy)	See case DK/2005/0141 .			1 - Retail minus price regulation on Wholesale Line Rental	No comments made by the Commission.
DE/2005/0143 (market analysis), DE/2005/0233 (remedies) DE/2005/0254 (further remedies)	Three separate markets for wholesale call origination: i) call origination for carrier (pre-) selection services; ii) call origination for value-added services and iii) call origination for dial-up internet services.	National	DT AG	1 - Access (including interconnection services, collocation)	The Commission made comments on: Remedies to be determined at a later stage: The Commission reminded RegTP of the need to notify remedies in accordance with Article 7(3) of the Framework Directive. Accounting separation: Given the risk of cross- subsidisation arising from the operations of a vertically- integrated company, the Commission invites BNetzA for the purposes of enhancing transparency and legal certainty to consider imposing accounting separation as a separate measure.
				2 - Non-discrimination	
				3 - Price control (in relation to interconnection, conveyance and collocation)	
				4- obligation to make internal transfer prices transparent and to make them accessible to BNetzA upon request	

HU/2005/0151	Similar to the Recommendation.	Regional	5 regional operators: Matáv, Invitel Távközlési Szolgáltató, Hungerotel Távközlési, Emitel, Monor Telefon Társaság	1 - Transparency (reference offer)	The Commission made a comment on: The obligation of cost orientation on the designated local incumbents: The Commission was not convinced that the fact that, Invitel, Hungerotel, Emitel and Monortel would be entitled to set their origination charges at a level which cannot exceed by more than 40% would effectively contribute to further decrease the relevant retail charges.
				2 - Accounting separation	
				3 - Obligation related to access and interconnection	
				4 - Price control and cost-accounting	
IE/2005/0190	Similar to the Recommendation.	National	eircom	1 - Transparency	The Commission made a comment on: Further consultation planned by ComReg: The Commission reminds that draft measures relating to the details and implementation of accounting separation, cost accounting and wholesale price caps are required to be notified under Article 7(3) of the Framework Directive.
				2 - Non-discrimination	
				3 - Provision of access to and use of specific network elements and associated facilities on reasonable request	
				4 - Price control and cost accounting	
FR/2005/0227	Similar to the Recommendation.	Territory of metropolitan	FT	1 - Access to, and use of specific network facilities	No comments made by the Commission.
				5 – Accounting separation	

	Includes also non-switching based interconnection (mainly IP).	France, the French overseas territories and Mayotte		2 - Non-discrimination	
				3 - Transparency	
				4 - Accounting separation	
				5 - Cost orientation and cost accounting	
SI/2005/0257	Similar to the Recommendation.	National	Telekom Slovenije	1 - Provision of access to and use of specific network elements and associated facilities on reasonable request	<p>The Commission made a comment on:</p> <p>Implementation of the proposed price control obligation</p> <p>The notified draft measures provide that until the application of cost-oriented wholesale call origination and call termination charges, Telekom Slovenije would be obliged to provide wholesale call origination and call termination services at a “reasonable” rate subject to APEK’s approval. The Commission however notes that the current level of these wholesale charges does not seem to be</p>
				2 - Non-discrimination	
				3 - Transparency	
				4 - Price control and cost accounting	

				5 – Accounting separation	appropriate to foster competition, which is also clearly demonstrated by the current 100% market share of Telekom Slovenije in the two relevant wholesale markets. Accordingly, the application of the non-cost oriented wholesale charges (including the “reasonable” character of the wholesale charges to be applied during the transitional period) should be replaced by cost oriented wholesale charges within the shortest timeframe possible.
NL/2005/0286 and NL/2006/0511 (further details of remedy*)	Similar to the Recommendation except for the exclusion of local conveyance	National	KPN	1 – Access (including imposition of Wholesale Line Rental*)	No comments made by the Commission.
				2 - Non-discrimination	
				3 – Transparency (publication of the Reference Offer)	
				4 - Carrier (pre) selection	
				5 – Cost orientation	
				6 - Accounting separation	

CZ/2006/0351	Similar to the Recommendation.	National	Český Telecom	1 - Transparency	<p>The Commission made a comment on:</p> <p>Price regulation applied only to minute based prices</p> <p>Considering that the incumbent will be obliged to provide flat rate origination services at the wholesale level, and since CTU's concerns for potential excessive pricing by the incumbent would seem to be valid also for flat rate</p> <p>services, CTU is invited to consider imposing to flat rate origination services a price regulation equivalent to that applying to services billed on a per-minute-basis. This will avoid relying on multiple dispute resolutions that could result in a lack of certainty in the market.</p>
				2 - Non-discrimination	
				3 - Provision of access to and use of specific network elements and associated facilities	
				4 - Price control	
				5 – Accounting separation	
ES/2006/0355 and ES/2007/0589 (further remedy*)	Similar to the Recommendation.	National	TESAU	1 – Transparency (publication of a Reference Offer)	<p>The Commission made a comment on:</p> <p>Non-imposition of wholesale line rental remedy</p> <p>CMT does not consider</p> <p>imposing a wholesale line rental (“WLR”) obligation on TESAU arguing that such a remedy would not promote investments in infrastructure, in particular in local loop unbundling (“LLU”). The Commission welcomes CMT’s objective to encourage infrastructure competition but would like to emphasise that WLR could also support such competition in the short run by making it easier for alternative operators to climb the ladder of investment. The Commission therefore considers that WLR can be an appropriate remedy</p>
				2 - Non-discrimination	
				3 - Provision of access to and use of specific network elements and associated facilities (including imposition of Wholesale Line Rental*)	
				4 – Cost orientation and cost accounting	
				5 – Accounting separation	

					<p>to address the lack of competition in the relevant retail markets. It allows the incumbent's competitors to bundle their products and services in the retail markets as they deem most efficient, complementing carrier-selection/carrier-pre-selection ("CS/CPS").</p> <p>Therefore, taking into account the market failures identified at the retail level and the fact that the use of CS/CPS has been significantly decreasing over the last years in Spain, and presuming that this is not only due to the increasing market shares of alternative operators providing services on the basis of LLU, the Commission invites CMT to consider imposing a WLR remedy on TESAU bearing in mind that the need for market entrants to rely on inputs such as WLR, should decrease over time as their investment in alternative network infrastructure is increased.</p>
LT/2006/0364	Similar to the Recommendation.	National	Lietuvos Telekomas AB	1 - Access	No comments made by the Commission.
				2 - Non-discrimination	
				3 – Transparency (publication of the Reference Offer)	
				4 – Cost orientation and cost accounting	
				5 - Accounting separation	
LV/2006/0365	Similar to the Recommendation except for the	National		1 – Access to call origination services and unbundled access to local loop	The Commission made a comment on:

	exclusion of calls to non-geographic numbers.		SIA Lattelekom	2 – Non-discrimination	<p>Obligation of local loop unbundling:</p> <p>In principle, the Commission agrees with SPRK’s finding that the lack of access to the end customer is a significant obstacle to enter the wholesale markets for fixed origination (and termination) and an impediment to the development of competitive electronic communication markets. However, wholesale unbundled access (including shared access) to the local loops and sub-loops for the purpose of providing broadband and voice services is identified as a separate market susceptible to ex ante regulation in the Commission’s Recommendation on the relevant markets (market 11). Indeed, access to local loops is neither from the demand-side nor from the supply-side substitutable with wholesale call origination services. The Commission hence considers that LLU (including the publication of a reference offer for access to local loops) should not be imposed as a remedy in market 8 without prior proper analysis of market 11. Instead, pursuant to Article 16 of the Framework Directive, SPRK is invited carry out an analysis of the market for wholesale unbundled access to the local loops market in view of determining whether this market is effectively competitive and, if one or more undertakings are found to have SMP on this market, impose appropriate regulatory obligations.</p>
				3 – Transparency (publication of a Reference Offer)	
				4 – Price control and cost accounting	
				5 – Accounting separation	
PL/2006/0380	Similar to the Recommendation.	National		1 – Access (including the provision of Wholesale Line Rental)	The Commission made comments on:

			Telekomunikacja Polska S.A. ("TP")	2 – Non-discrimination	<p>Price control before approval of LRIC cost calculation</p> <p>UKE has not clearly specified in its measure on which criteria it will verify the appropriateness of call origination charges proposed by TP prior to the approval of its LRIC-based cost calculation by an independent auditor.</p> <p>This approach fails to provide adequate transparency and legal certainty for market players, in particular since no timing is foreseen by which the LRIC-based cost calculation of the SMP operator must be approved.</p> <p>The Commission therefore invites UKE to clarify in the final measure which verification method it will use to approve the call origination charges proposed by the SMP operator before the cost calculation has been conclusively approved. The verification method that UKE will use in this interim period should ensure that the SMP operator, without delay, offers wholesale origination services at prices which allow competition to develop. UKE may in particular want to consider imposing retail-minus price regulation pending the approval of LRIC based prices.</p> <p>Wholesale Line Rental</p> <p>The Commission notes that Wholesale Line Rental (WLR) is imposed on TP on the basis of TP's SMP status in the relevant market and understands that this obligation will replace any WLR</p>
				3 – Transparency (publication of a Reference Offer)	
				4 – Price control and cost accounting	
				5 – Accounting separation	

					<p>obligations that may have been imposed on TP under the old regulatory framework.</p> <p>The draft measure, however, fails to specify on which conditions WLR must be provided. When determining the conditions for the provision of WLR, UKE should take into account the objectives set out in Article 8 of the Framework Directive, namely the promotion of competition as well as the encouragement of efficient investment. The Commission hence invites UKE to ensure that the imposition of mandated WLR which increases competition in the short-term does not reduce incentives for competitors to invest in alternative facilities that will secure more competition in the long-term.</p> <p>Specifically, WLR conditions must leave a sufficient margin with retail prices to avoid margin squeezes, but on the other hand must not discourage investments in LLU in areas where such investment is economically feasible.</p>
IT/2006/0383	Similar to the Recommendation.	National	Telecom Italia	1 - Access	No comments made by the Commission.
				2 - Non-discrimination	
				3 – Transparency (publication of the Reference Offer)	
				4 – Price control (based on the network cap) and cost accounting	
				5 - Accounting separation	

				6 – CS/CPS	
MT/2006/0387	Similar to the Recommendation.	National	Maltacom	1 - Access	<p>The Commission made comments on:</p> <p>The inclusion of BWA networks in the wholesale call origination market</p> <p>BWA has been included in the wholesale call origination market without conducting a full substitution analysis. Furthermore, the conclusion that it cannot be determined whether BWA operators will offer voice services and hence call termination services over their own individual networks during the lifetime of this review would seem to cast equally doubts as to whether call origination services will be provided over the life time</p> <p>of the review. However, in this particular case the inclusion of BWA networks in the relevant market does not affect the finding of SMP or the scope of regulation.</p>
				2 - Non-discrimination	
				3 – Transparency	
				4 – Cost orientation and cost accounting	
				5 - Accounting separation	
BE/2006/0439	Similar to the Recommendation.	National	Belgacom	1 - Access	<p>No comments made by the Commission.</p>
2 - Non-discrimination					
3 – Transparency (publication of a Reference Offer)					
4 – Cost orientation and cost accounting					

				5 – Accounting separation	
CY/2006/0473	Similar to the Recommendation.	National	ATHK	1 - Access	No comments made by the Commission.
				2 - Non-discrimination	
				3 – Transparency including the obligation to disclose all information needed and to publish a Reference Offer (including additional facilities such as co-location)	
				4 – price control and cost accounting	
				5 – Accounting separation	
EL/2006/0493	Similar to the Recommendation.	National	OTE	1 - Access	No comments made by the Commission.

				2 – CS/CPS	
				3 - Non-discrimination	
				4– Transparency (including the obligation publish a Reference Interconnection Offer)	
				5 – Price control and cost accounting	
				6 – Accounting separation and auditing	
LU/2006/0541	Similar to the Recommendation.	National	EPT	1 – Access and interconnection	No comments made by the Commission.
				2 - Non-discrimination	

					No comments made by the Commission.
				3 – Transparency	
				4 – Cost orientation and cost accounting	
				5 – Accounting separation	
EE/2007/0597	Similar to the Recommendation	National	Elion	1 - access	
				2 – non discrimination	
				3 – transparency (including publication of a reference offer)	
				4 – price control and cost accounting	

Market 9: Call termination on individual public telephone network provided at a fixed location

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			Access / Interconnection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria	YES	9 operators	YES**	YES**	YES**	YES**	YES**
Denmark	YES	6 operators	YES	YES**	YES**	YES**	YES**
Finland	YES	50 operators	YES	YES**	YES**	YES**	YES**
France	YES	21 operators	YES	YES	YES	YES**	YES**
Germany	YES	53 operators*	YES	YES	NO	YES	NO
Hungary	YES	8 operators	YES**	YES**	YES	YES**	YES**
Ireland	YES	12 operators	YES	YES	YES	YES**	YES**
Portugal	YES	8 operators	YES	YES	YES	YES**	YES
Slovakia	YES	1 operator	YES	YES	YES	YES	YES
Sweden	YES	22 operators	YES**	YES	YES**	YES**	YES**

United Kingdom	YES	63 operators	YES	YES**	YES**	YES**	YES**
Slovenia	YES	1 operator	YES	YES	YES	YES	YES
Lithuania	YES	1 operator	YES	YES	YES	YES	YES
The Netherlands	NO	Several operators	YES	YES**	YES	YES**	YES**
Czech Republic	YES	Several operators	YES	YES	YES**	YES	YES
Latvia	YES	17 operators	YES**	YES**	YES	YES**	YES**
Italy	YES	12 operators	YES	YES	YES	YES**	YES**
Poland	NO*	29 operators	YES	YES	YES	YES	YES
Malta	YES	2 operators	YES	YES	YES	YES**	YES**
Belgium	YES	9 operators	YES	YES	YES**	YES**	YES**
Cyprus	YES	3 operators	YES**	YES	YES	YES**	YES**
Greece	YES	14 operators	YES	YES	YES	YES**	YES**
Austria	YES	12 operators	YES**	YES**	YES**	YES**	YES**
Luxemburg	YES	9 operators	YES	YES	YES	YES**	YES**
Estonia	YES	12 operators	YES**	YES	YES	YES	NO

** On 17 May 2005, the Commission vetoed draft measures by RegTP (now BNetzA) for not designating alternative network operators to have SMP. On 29 August 2005, BNetzA renotified draft measures designating the ANOs to have SMP. However, remedies notified so far cover only DT AG.*

Partially withdrawn by UKE as to call termination services to non-geographic numbers

*** Differentiated or no remedy imposed on certain SMP operators*

Overview of notifications assessed until 31 March 2007

Market 9 - Call termination on individual public telephone network provided at a fixed location

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
UK/2003/0003	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	BT Kingston 61 other alternative network operators ("ANO")	1 - Provision of call termination on reasonable request (on all)	The Commission made a comment on: BT's countervailing buyer power: The Commission notes that a detailed assessment of the competitive effects of obligations to be imposed on BT as a result of finding BT to have SMP is important for the finding that all other PECNs have SMP as well.
				2 - Cost orientation of call termination charges (LRIC) and cost accounting (on BT and Kingston)	
				3 - Accounting separation (on BT and Kingston)	
				4 - Non-discrimination (on BT and Kingston)	
				5 - Publication of a reference interconnection offer (RIO) (on BT and Kingston)	
				6 - Notification of new charges 90 days before changes become effective (on BT and Kingston)	
				7 - Call termination charge control setting the annual ceiling for charges at retail price index (RPI) increases less	

			10% (RPI –10) (on BT)	
UK/2004/0045 (further amended by cases UK/2005/0217-0218)	See Case UK/2003/0003.	Financial reporting obligations (in addition to the remedies imposed in Cases UK/2003/003).	The Commission made on:	<p>Publication of a statement concerning compliance with the cost accounting systems: It is necessary for a statement concerning compliance with the cost accounting system to be published annually, following verification by a qualified independent body.</p> <p>National consultation running in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>
UK/2004/0072	See Case UK/2003/0003.	Modifications to BT's charge control obligation	No comments made by the Commission	
UK/2004/0122	See Case UK/2003/0003.	1 - Modifications to BT's charge control obligation (details of measurement of compliance)	No comments made by the Commission.	
UK/2005/0165	See Case UK/2003/0003.	1- Revised charge control	No comments made by the Commission.	

				2 - Amendments to the requirement (i) not to unduly discriminate and (ii) to notify charges, terms and conditions.	
FI/2003/0029	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	50 SMP operators	Asymmetrical regulation between 4 groups of operators	<p>The Commission made comments on:</p> <p>Exemption from certain ex ante obligations: The impositions of different remedies on different operators within similarly defined markets should be adequately reasoned. To the extent that it would be considered disproportionate to impose costly cost orientation and cost accounting obligations on a small operator, the Commission is of the view that other forms of cost control for such operators, such as benchmarking against the larger operators who are under a cost orientation obligation, could be considered.</p> <p>Cost orientation and cost accounting obligations: The Commission expresses concerns on the approach not to specify the method on which cost orientation will be assessed, which it believes will limit the measure's contribution to consumer benefit, the enhancement of competition and the development of the internal market.</p>
				1 - Provision of interconnection	
				2 - Publication of delivery terms and tariff information	
				3 - Obligations concerning pricing and other terms (cost-orientation and non discrimination)	
				4 - Cost accounting	
				5 - Accounting separation	

IE/2004/0050	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	22 SMP operators	1 - Access and interconnection: meet reasonable request of access & interconnection (all operators); meet reasonable request for a direct billing agreement (all operators); meet reasonable request for interconnection via direct connections (TeliaSonera, Tele2, Telenor); meet reasonable request for access to network capacity (only TeliaSonera)	No comments made by the Commission.
				2 - Price regulation: cost oriented pricing (TeliaSonera); to charge reasonable & fair prices (others)	
				3 - Non-discrimination	
				4 - Accounting separation: accounting separation and obligation to submit separated accounts to PTS annually or on PTS' request (TeliaSonera, Tele2, Telenor); obligation to submit separated accounts to PTS on its request (others);	

				5 - Transparency: publish reference offer (TeliaSonera); compile and publish information necessary for interconnection, direct connections and direct billing purposes (Tele2, Telenor); compile and publish information necessary for interconnection and direct billing agreements (others)	
PT/2004/0061, PT/2004/0092 (remedies)	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	PT Group	1 - Transparency	The Commission made a comment on: Asymmetrical application of remedies: The Commission invites ANACOM to monitor closely the development of the cost structures of the operators on which the obligation to charge “fair and reasonable prices” is imposed and to assess whether its current assumptions on “fair and reasonable prices” will remain relevant over the period of the market review.
			Cabovisão	2 - Non Discrimination	
			Coltel	3 - Accounting separation	
			Jazztel	4 - Access on reasonable request	
			Novis Telecom	5 - Cost orientation and cost accounting	
OniTelecom					
Refer Telecom					
Vodafone Telecel					
SK/2004/0102, SK/2005/0187 (further details)	Operator-specific relevant markets.	Geographic coverage of each network =	Slovak Telecom	1 - Transparency (technical specifications)	The Commission made comments on: Implementation of the proposed cost orientation

of a remedy)		geographic extent of each relevant market		<p>2 - Non-discrimination ;</p> <p>3 - Transparency</p> <p>3 - Accounting separation</p> <p>4 - Obligation to provide access to certain network components</p> <p>5 - Cost orientation based on LRAIC</p>	<p>obligation in the call termination market: The Commission invited TÚSR to notify pursuant to Article 7(3) of the framework Directive these implementing draft measures setting out the timeframe and stages applicable for the reduction of termination charges. By notification SK/2005/0182 TÚSR notified these measures.</p> <p>National public consultation: According to Article 6 of the Framework Directive NRAs must conduct a national consultation on each draft measure which has a significant impact on the relevant market, i.e. including the market definitions, and to give all interested parties the opportunity to comment on the draft measure.</p>
AT/2004/0106	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	<p>Telekom Austria AG</p> <p>Information-Technologie Austria GmbH</p> <p>Colt Telecom Austria GmbH</p> <p>Tele.ring</p>	<p>Telekom Austria:</p> <p>1 - Non Discrimination</p> <p>2 -Publication of a Reference Interconnection Offer (“RIO”)</p>	No comments made by the Commission.

			Telekom Service GmbH	3 -Accounting separation	
			Telekabel Wien GmbH		
			eTel Austria AG		
			Equant Austria GmbH		
			UTA Telekom AG		
			LIWEST Kabelmedien GmbH	4 -Access on reasonable request	

<p>DE/2005/0144 (market analysis),</p>	<p>Operator-specific relevant markets.</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>No SMP for alternative networks operators ("ANO"s) because of claimed countervailing buyer power by DT AG</p>	<p>The Commission vetoed the draft measures concerning ANOs:</p> <p>No justification for the considered strict Greenfield approach: Any Greenfield approach must ensure that absence of SMP is only found and regulation only rolled back where markets have become sustainably competitive, and not where the absence of SMP is precisely the result of the regulation in place. This implies that regulation which will continue to exist throughout the period of the forward-looking assessment independently of a SMP finding on the market concerned, must be taken into account.</p> <p>No convincing evidence of absence of SMP under the so-called “modified Greenfield approach”: RegTP asserts that DTAG’s buyer power limits the ability of each ANO to behave independently of its customers and competitors (at the retail level). RegTP does, however, not present concrete evidence that DTAG has effectively exercised such buyer power. In view of DTAG’s own termination rates being regulated and given that it cannot realistically threaten to stop purchasing termination services, DTAG would therefore be deprived of any bargaining tool in the form of a corresponding increase in its own tariffs when negotiating termination rates on that ANO’s network. For the above reasons, the Commission considers that also under the modified Greenfield approach, RegTP has not provided convincing evidence to support the absence of SMP of each ANO.</p> <p>No analysis of ANOs’ market power vis-à-vis each other and vis-à-vis MNOs: RegTP has limited its</p>
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					<p>SMP analysis for ANOs mainly to an analysis of negotiation powers between DTAG and each of the ANOs. However, it appears that a number of direct interconnection agreements between ANOs exist and. An analysis of these agreements could have provided further information on the market power of ANOs.</p>
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DE/2005/0234 (remedies)			DT AG	DT AG:	Commission made comments on: Remedies to be determined at a later stage: The Commission reminded RegTP of the need to notify remedies in accordance with Article 7(3) of the Framework Directive. Accounting separation: Given the risk of cross-subsidisation arising from the operations of a vertically- integrated company, the Commission invites BNetzA for the purposes of enhancing transparency and legal certainty to consider imposing accounting separation as a separate measure.
				1 - Access (including interconnection services, collocation)	
				2 - Non-discrimination	
				3 - Price control (in relation to interconnection, conveyance and collocation)	
DE/2005/0239 (market analysis, renotification following a veto in case DE/2004/0144) DE/2006/0343 (remedies on ANOs)	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	52 ANOs	1 - Access	The Commission made comments on: Price control mechanism: The Commission reminds BNetzA that the provisions of the TKG referring to a “double dominance” test and restricting BNetzA’s power to impose remedies are currently subject to examination in the context of infringement proceedings in accordance with Article 226 of the EC Treaty. The Commission points out that the possibility of imposing ex ante price control on a wholesale market is provided by the Access Directive independently of the SMP status of the operator in the corresponding retail market(s). Secondly, the Commission invites BNetzA to monitor whether in the absence of <i>ex ante</i> price regulation ANOs attempt to increase their fixed termination rates. If this is the case BNetzA should reconsider imposing ex ante price control instead of relying on multiple dispute resolutions that result in a lack of certainty in the market.
				2 – Non-discrimination	
				3 – Transparency (publication of a Reference Offer)	
				4 – Ex post price control	

HU/2005/0152	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	Matáv Invitel Hungarotel Emitel Monortel Pantel GTS Datanet BT	Matáv, Invitel, Hungarotel, Emitel and Monortel:	The Commission made a comment on: The obligation of cost orientation on the designated local incumbents: The Commission is not fully convinced that allowing for the four local incumbents to charge 40% higher termination charges than Matáv (and therefore, the possibility for not submitting a LRIC-based cost model) would effectively contribute to further decrease the relevant wholesale charges.
				1 - Transparency (reference offer)	
				2 - Accounting separation	
				3 - Access and interconnection	
				4 - Price control (4 operators are authorised to set their termination charges up to 40% higher than the level of the termination charges of Matáv)	
				5 - Cost accounting	
				Pantel, GTS Datanet and BT:	
				1 – Transparency	
				2 - Non discrimination	
DK/2005/0171	Notification withdrawn by the NRA				
DK/2005/0207	Operator-specific relevant markets. The market definition includes dial-up internet calls to geographic	Geographic coverage of each network = geographic extent of each relevant market	TDC TeliaSonera Sonofon Consorte	TDC:	The Commission made a comment on: Asymmetric application of remedies: Where it is intended to impose different remedies on different operators within similarly defined markets, the asymmetrical application of
				1- Access (requirement to provide network access at reasonable request)	
				2 - Cost orientation (LRAIC) and cost accounting	

	numbers on PSTN or ISDN with a speed of up to 128 Kbit/s.		Danmark Tele2 Colt Telecom	3 - Accounting separation 4 - Non-discrimination 5 - Publication of a reference offer 6 - Transparency Others: Obligation to provide network access on fair and reasonable terms at reasonable request	remedies should be adequately reasoned. The Commission is of the view that NITA has not duly substantiated its intended decision not to impose certain obligations on the ANOs, e.g. non-discrimination. Consequently, the Commission would invite NITA to reconsider its position on this matter.
IE/2005/0191	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	eircom Access Telecom Budget Telecom Cable & Wireless Chorus Communications Colt Telecom Energis BT Ireland	1 - Transparency (all) 2 - Non-discrimination (all) 3 - Requirement to provide access to and use of specific network facilities on reasonable request (all) 4 - Price control (eircom : FL-LRIC, others : benchmarking) 5 - Cost-accounting (eircom)	The Commission made a comment on: Further consultation planned by ComReg: The Commission reminds that draft measures relating to the details and implementation of accounting separation, cost accounting and wholesale price caps are required to be notified under Article 7(3) of the Framework Directive.

			MCI NTL Swift Call Centre Talk Telecom		
FR/2005/0228	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	FT + 20 ANOs	FT:	The Commission made comments on: The exclusion of termination to non-geographic numbers from market analysis: ARCEP should conduct, as soon as possible, a market analysis pursuant to Article 16 of the Framework Directive with regard to call termination to non-geographic numbers of non-ISP end users. Asymmetric imposition of pricing related remedies: The impositions of different remedies on different operators within similarly defined markets should be adequately reasoned. To the extent that it would be considered disproportionate to impose costly cost orientation and cost accounting obligations on a small operator, the Commission is of the view that other forms of cost control for such operators, such as benchmarking against the larger operators who are under a cost orientation obligation, could be considered.
				1 - Access and interconnection	
				2 - Non-discrimination	
				3 - Transparency	
				4 - Prohibition of excessive pricing	
				5 – Cost-orientation and cost accounting (LRAIC)	
				ANOs:	
				1 – Access and interconnection	
				2 – Non-discrimination	

				3 - Transparency	
				4 – Prohibition of excessive pricing	
ES/2005/0250	Similar to the Recommendation	Geographic coverage of each network	28 operators	1- Non-discrimination	<p>The Commission made comment on:</p> <p>Asymmetrical application and legal certainty of remedies:</p> <p>The Commission reiterates that obligations imposed under the Access Directive should be based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of the Framework Directive. The remedies should provide adequate transparency and legal certainty for market players.</p> <p>In respect of price control obligations imposed on ANOs (reasonable price) the Commission invites CMT:</p> <p>i) to define in detail in the adopted measure the scope of the remedies imposed, including the criteria to be used in order to assess whether the termination prices charged by ANOs are reasonable, and ii) to monitor closely the development of the cost structures of the operators on which the obligation to charge reasonable prices is imposed, and to assess whether its current assumptions will remain relevant over the period of this market review.</p>
				2 - Transparency	
				3 - Accounting separation	
				4 - Cost orientation of prices	

SI/2005/0258	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	Telekom Slovenije	1 – Access to particular network facilities and the use of these facilities	<p>The Commission made comments on:</p> <p>Implementation of the proposed price control obligation:</p> <p>The notified draft measures provide that until the application of cost-oriented wholesale call origination and call termination charges, Telekom Slovenije would be obliged to provide wholesale call origination and call termination services at a “reasonable” rate subject to APEK’s approval. The Commission however notes that the current level of these wholesale charges does not seem to be appropriate to foster competition, which is also clearly demonstrated by the current 100% market share of Telekom Slovenije in the two relevant wholesale markets. Accordingly, the application of the non-cost oriented wholesale charges (including the “reasonable” character of the wholesale charges to be applied during the transitional period) should be replaced by cost oriented wholesale charges within the shortest timeframe possible.</p>
				2 – Non-discrimination	
				3 – Transparency	
				4 – Price control and cost accounting	
				5 – Accounting separation	
LT/2005/0263	Operator-specific relevant markets.	National	LTAB	1 - Access	<p>The Commission made comments on:</p> <p>Market definition and SMP assessment relating to other providers of call termination services in fixed networks</p> <p>The Commission notes that RRT did not define</p>
				2 – Non-discrimination	

				<p>3 – Transparency (publication of a Reference Offer)</p> <p>4 – Price control and cost accounting</p> <p>5 – Accounting separation</p>	<p>relevant markets with regard to call termination services provided by other operators of fixed networks in Lithuania. The Commission would like to urge RRT to conduct the market assessment with regard to those other operators who provide wholesale fixed termination services in Lithuania as soon as possible. If appropriate and justified, RRT could impose differentiated remedies on those operators, by taking into account (for example) the size of the undertakings.</p>
NL/2005/0284	<p>four distinct relevant product markets susceptible to <i>ex ante</i> regulation: (i) termination on geographical numbers on individual telephone networks, (ii) termination on 088-numbers (companies or institutions) on individual telephone networks, (iii) termination on 084- and 087-numbers (personal assistance services)</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>KPN + ANOs</p>	<p>KPN+ANOs: 1 – Access in markets (i), (ii) and (iv)</p> <p>KPN: 2 - Non-discrimination in markets (i), (ii), (iii) and (iv)</p> <p>KPN+ANOs: 3 – Transparency in markets (i), (ii) and (iii)</p> <p>KPN: 4 - Reference Offer in markets (i), (ii), (iii) and (iv)</p> <p>KPN: 5 – price cap in all markets</p> <p>ANOs: 6 – delayed reciprocity in markets (i), (ii) and (iii)</p> <p>KPN: 7- Accounting separation</p>	<p>No comments made by the Commission.</p>

	on individual telephone networks, and (iv) termination on 112 number (emergency services)				
	on individual telephone network				
CZ/2006/0358	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	Cesky Telecom + ANOs	All operators	No comments made by the Commission.
				1 - Access	
				2 – Non-discrimination	
				3 – Price control	
				4 – Accounting separation	
Cesky Telecom	5 - Transparency				
LV/2006/0366	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	SIA Lattelekom + 16 ANOs	SIA Lattelekom	The Commission made a comment on: Obligation of local loop unbundling: In principle, the Commission agrees with
				1 – Access to call termination services and unbundled access to local loop	
				2 – Non-discrimination	

				3 – Transparency	<p>SPRK’s finding that the lack of access to the end customer is a significant obstacle to enter the wholesale markets for fixed origination (and termination) and an impediment to the development of competitive electronic communication markets. However, wholesale unbundled access (including shared access) to the local loops and sub-loops for the purpose of providing broadband and voice services is identified as a separate market susceptible to ex ante regulation in the Commission’s Recommendation on the relevant markets (market 11). Indeed, access to local loops is neither from the demand-side nor from the supply-side substitutable with wholesale call origination services. The Commission hence considers that LLU (including the publication of a reference offer for access to local loops) should not be imposed as a remedy in market 8 without prior proper analysis of market 11. Instead, pursuant to Article 16 of the Framework Directive, SPRK is invited carry out an analysis of the market for wholesale unbundled access to the local loops market in view of determining whether this market is effectively competitive and, if one or more undertakings are found to have SMP on this market, impose appropriate regulatory obligations.</p>
				4 – Cost orientation and cost accounting	
				5 - Accounting separation	
				<p>ANOs</p> <p>1 - Transparency</p>	

<p>IT/2006/0384</p>	<p>- call termination on individual public telephone networks provided at a fixed location;</p> <p>- Internet dial-up call termination;</p> <p>- call termination on international networks.</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>Telecom Italia ("TI") + 11 ANOs</p>	<p style="text-align: center;">TI</p> <p>1 – Access</p> <p>2 – Non-discrimination</p> <p>3 – Transparency (publication of the Reference Offer)</p> <p>4 – Price control (based on network cap) and cost accounting</p> <p>5 – Accounting separation</p> <p>6 – CS/CPS</p>	<p>The Commission made comments on:</p> <p>Legal certainty of regulatory obligations</p> <p>Obligations imposed under the Access Directive should be based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of the Framework Directive. Where an NRA intends to impose different remedies on different operators within similarly defined markets, such differential treatment should be adequately reasoned. In order to increase legal certainty AGCOM should reconsider the need to specify the glide path preferably in the final measure. Moreover, in order to better safeguard the interest of consumers, the AGCOM is invited to develop a cost model as soon as possible for calculating ANOs' termination rates that, while being based on costs takes into account the necessity for ANOs to become efficient over time.</p> <p>Obligations related to the wholesale market for Internet dial-up call termination</p> <p>After conducting the three criteria test, AGCOM concludes that this market is not susceptible to <i>ex ante</i> regulation. AGCOM therefore proposes to withdraw the existing regulation on this market.</p> <p>However, the Commission notes that AGCOM,</p>
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				<p style="text-align: center;">ANOs</p> <p style="text-align: center;">1 – Access</p> <p style="text-align: center;">2 – Non-discrimination</p> <p style="text-align: center;">3 – Transparency</p> <p style="text-align: center;">4 – Price control through imposition of a maximum termination rate.</p>	<p>while proposing to withdraw the cost orientation obligation on TI's dial-up termination service, intends to maintain the</p> <p>transparency, non-discrimination and accounting separation obligations at least until the review of the retail market for Internet dial-up access (which is presently regulated).</p> <p>AGCOM considers this necessary in order to avoid cross subsidies. Without contesting the conclusion reached by AGCOM on the wholesale market for Internet dial-up call termination, the Commission invites AGCOM to analyse its retail market for internet dial-up access in the shortest delay possible and notify it in accordance with Article 7(3) of the Framework Directive, and reminds AGCOM that appropriate obligations can only be imposed upon finding of SMP in a particular market.</p> <p>Since the market for wholesale internet dial-up call termination has not been found susceptible to <i>ex ante</i> regulation, AGCOM is obliged to lift all obligations previously imposed on this market.</p> <p>Withdrawal of obligations on the market for call termination on international networks</p> <p>While confirming the intention to remove the current regulations imposed on TI, AGCOM believes that it is necessary to begin an analysis of the international termination market in order to identify whether there are currently certain specific international directions that do not pass</p>
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					<p>the criteria set out in the Recommendation, due to specific, non transitory problems.</p> <p>The Commission reminds AGCOM to notify the results of such market analysis in accordance with Article 7(3) of the Framework Directive.</p>
<p>PL/2006/0381</p>	<p>Deviation to the Recommendation: inclusion of call termination to non-geographic numbers</p>	<p>Geographic coverage of the incumbent network = geographic extent of its relevant market</p>	<p>Telekomunikacja Polska S.A. ("TP")</p>	<p>1 - Provision of Access on reasonable request.</p>	<p>The Commission made a comment on:</p> <p>Price control before approval of LRIC cost calculation</p> <p>UKE has not clearly specified in its measure on which criteria it will verify the appropriateness of call termination charges proposed by TP prior to the approval of its LRIC-based cost calculation by an independent auditor.</p> <p>This approach fails to provide adequate transparency and legal certainty for market players, in particular since no timing is foreseen by which the LRIC-based cost calculation of the SMP operator must be approved.</p> <p>The Commission therefore invites UKE to</p>
	<p>Partially withdrawn by the NRA as to - call termination to access numbers for intelligent network services</p>			<p>2 - Non-discrimination</p>	
				<p>3 – Transparency (publication of Reference Access Offer)</p>	
				<p>4 – Price control and cost accounting</p>	
				<p>5 - Accounting separation.</p>	

	including audio text services (0-300, 0-400, 0-70X, 0-80X); - call termination to numbers used for special subscribers services.				clarify in the final measure which verification method it will use to approve the call termination charges proposed by the SMP operator before the cost calculation has been conclusively approved. The verification method that UKE will use in this interim period should ensure that the SMP operator, without delay, offers wholesale termination services at prices which allow competition to develop. UKE may in particular want to consider imposing retail-minus price regulation pending the approval of LRIC based prices.
MT/2006/0388	Similar to the Recommendation.	Geographic coverage of each network = geographic extent of each relevant market	Maltacom and Melita cable	Maltacom:	The Commission made comments on: Level of termination charges – implementation of cost orientation Currently, Maltacom is obliged to implement a cost-based accounting system using a fully allocated cost methodology on a historic cost base. The MCA is considering a move to a current cost regime, which would, according to the MCA, reduce the impact of legacy costs and thus reduce these charges but does not specify when such a change could be implemented. Considering that Maltacom’s interconnection charges for call termination are among the highest in the EU17 the Commission invites the MCA to revise its price control obligations as soon as possible in order to accelerate interconnection tariff reduction. As an intermediate solution, until a new price control
				1 - Access	
				2 - Non-discrimination	
				3 – Transparency	
				4 – Cost orientation and cost accounting	
5 - Accounting separation					

				<p>Melita cable</p>	<p>model is implemented, the MCA could temporarily base its price control obligations on international benchmarking.</p>
				1 – Access	
				2 - Non-discrimination	
				3 – Transparency	
				4 - Price control through imposition of a maximum termination rate.	
BE/2006/0440	Similar to the Recommendation.	Geographic coverage of each network =	Belgacom +	Belgacom	

					No comments made by the Commission.
				1 – Access and interconnection	
				2 – Non-discrimination	
				3 – Cost orientation and cost accounting	
				4 – Accounting separation	
				ANOs	
		geographic extent of each relevant market	8 ANOs	1 - Access and interconnection	
				2 – Non-discrimination	
				3 - Transparency	
				4- Prohibition of excessive pricing	
CY/2006/0474	Similar to the	Geographic	ATHK, Primetel	ATHK	The Commission made comments on:

	Recommendation.	coverage of each network = geographic extent of each relevant market	and OTEnet	<table border="1"> <tr> <td data-bbox="1037 188 1491 256">1 - Access</td> </tr> <tr> <td data-bbox="1037 256 1491 325">2 - Non-discrimination</td> </tr> <tr> <td data-bbox="1037 325 1491 603">3 – Transparency including the obligation to disclose all information needed and to publish a Reference Offer (including additional facilities such as co-location)</td> </tr> <tr> <td data-bbox="1037 603 1491 671">4 – Price control and cost accounting</td> </tr> <tr> <td data-bbox="1037 671 1491 794">5 – Accounting separation</td> </tr> <tr> <td data-bbox="1037 794 1491 986" style="text-align: center;">Primetel and OTEnet</td> </tr> <tr> <td data-bbox="1037 986 1491 1054">1 - non-discrimination,</td> </tr> <tr> <td data-bbox="1037 1054 1491 1123">2 - transparency,</td> </tr> <tr> <td data-bbox="1037 1123 1491 1246">3 - accounting separation (when the operator's annual turnover reaches 50 million €)</td> </tr> <tr> <td data-bbox="1037 1246 1491 1342">4 - price control (fair and reasonable prices)</td> </tr> </table>	1 - Access	2 - Non-discrimination	3 – Transparency including the obligation to disclose all information needed and to publish a Reference Offer (including additional facilities such as co-location)	4 – Price control and cost accounting	5 – Accounting separation	Primetel and OTEnet	1 - non-discrimination,	2 - transparency,	3 - accounting separation (when the operator's annual turnover reaches 50 million €)	4 - price control (fair and reasonable prices)	<p>Remedies imposed on D.Y. Worldnet, Callsat and Telepassport</p> <p>OCECPR proposes to decide, already at this stage, on the set of obligations to be imposed on the three alternative operators once they become active in the market for wholesale call termination. OCECPR's decision is based on the assumption that the three operators will start to provide wholesale call termination within the 12 to 18 months timeframe of the review.</p> <p>The Commission reminds OCECPR that remedies may only be imposed on undertakings which are considered to have SMP on the relevant market after an analysis of their position on that market, which normally presupposes that these undertakings are already active on the market (either by supplying the product internally and/or to third parties) when the SMP assessment is made. Therefore, the Commission invites OCECPR to reassess and notify the call termination markets of the three alternative operators referred to above as soon as they enter the market and not to adopt the proposed measures at this stage.</p>
1 - Access															
2 - Non-discrimination															
3 – Transparency including the obligation to disclose all information needed and to publish a Reference Offer (including additional facilities such as co-location)															
4 – Price control and cost accounting															
5 – Accounting separation															
Primetel and OTEnet															
1 - non-discrimination,															
2 - transparency,															
3 - accounting separation (when the operator's annual turnover reaches 50 million €)															
4 - price control (fair and reasonable prices)															

EL/2006/0494	Similar to the Recommendation.	Geographic coverage of each network = geographic extent of each relevant market	OTE + 13 ANOs	OTE	No comments made by the Commission.
				1 – Access	
				2 – CS/CPS	
				2 - Non-discrimination	
				3 – Transparency (including the obligation publish a Reference Interconnection Offer)	
				4 – Price control and cost accounting	
5 – Accounting separation and auditing					

				ANOs	
				1- provide wholesale termination to other providers of public telephone networks;	
				2 - transparency, (including an obligation to announce interconnection charges to other providers and EETT with a 1-month prior notice);	
				3 - non-discrimination;	
				4 - price control through the imposition of maximum termination and cost accounting.	

LU/2006/0546	Notification withdrawn by the NRA				
PL/2006/0502	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	29 ANOs	1 - Access	<p>The Commission made a comment on:</p> <p>Non-imposition of price regulation on the alternative operators</p> <p>The Commission reiterates that obligations imposed under the Access Directive should be based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of the Framework Directive. The remedies should provide adequate transparency and legal certainty for market players.</p> <p>Furthermore, where an NRA intends to impose different remedies on different operators within similarly defined markets, such differential treatment should be adequately reasoned.</p> <p>The Commission takes note of the reasons why UKE does not consider it necessary to impose price regulation on the alternative operators under the given national market circumstances, in particular the limited degree of asymmetry in cases where it exists, the decreasing termination rates of alternative operators even in the absence of price regulation</p>
				2- Non-discrimination	
				3 - Transparency	

					<p>and their higher cost of terminating a call, as well as the significantly smaller scope of operation than that of the incumbent operator.</p> <p>However, the Commission invites UKE to closely monitor the development of</p> <p>alternative operators' termination rates. If the expected trend of further price decreases does not materialise or if the level of asymmetry with TP's termination rates increases, UKE should intervene and impose effective price regulation also on the alternative operators. Generally, the most appropriate means to achieve effectively regulated termination rates would be to base their calculation on a cost model that takes into account the necessity for alternative operators to become efficient over time. Given the EU-wide importance of such a model, UKE is invited to work in close co-operation with the European Regulators Group in order to arrive at a coherent approach that also takes into account the work of other NRAs.</p>
AT/2006/0544	Similar to the Recommendation.	Geographic coverage of each network = geographic extent of each relevant market	Telekom Austria + 11 ANOs	<p>Telecom Austria</p> <p>1 – Access</p>	<p>The Commission made a comment on:</p> <p>Implementation of the proposed cost-orientation obligation</p> <p>According to the Recitals 5 and 6 and Article 4 of the Access Directive, undertakings should negotiate their access and interconnection agreements in good faith.</p> <p>Nevertheless, the Commission services would like to reiterate that the competitive problems</p>

				<p>3 – Transparency (including the obligation publish a Reference Interconnection Offer)</p>	<p>identified should be tackled as soon and as efficiently as possible in order to guarantee transparency and legal certainty. In particular, it should be recalled that the rate for regional termination of TA serves as a benchmark for the termination of ANOs. Therefore the Commission invites the TTK to specify in the present SMP</p> <p>decision how the cost-orientation obligation of TA should be implemented in practice. Regarding the possibility of ANOs to request higher termination rates, the</p> <p>Commission recalls that such termination rates, while being based on costs, take into account the necessity for ANOs to become efficient over time.</p> <p>Reduction of minimum interconnection loads</p> <p>Minimum interconnection loads, depending on their level, might imply an unjustified refusal to supply in the markets for wholesale voice call origination and termination markets. The Commission is of the opinion that it would be more effective that the TTK decides upon minimum loads in the present SMP decision, and not in a dispute settlement procedure. Therefore the TTK is invited to address this issue in the present SMP decision, for instance through reducing the minimum number of traffic minutes to the extent that the minimum interconnection loads would exceed the level which TA is able to economically and/or technically justify.</p>
				<p>4 – Cost orientation and cost accounting</p>	
				<p>5 – Accounting separation</p>	
				<p>ANOs</p> <p>1 – maximum termination rates based on benchmarking</p>	

LU/2006/0560	Similar to the Recommendation.	Geographic coverage of each network = geographic extent of each relevant market	EPT + 8 ANOs	EPT	No comments made by the Commission.
				1 – Access and interconnection	
				2 – Non-discrimination	
				3 – Transparency (including the obligation publish a Reference Offer)	
				3 – Cost orientation and cost accounting	
				4 – Accounting separation	
				ANOs	
				1 - Access and interconnection	
				2 – Non-discrimination	
				3 - Transparency	

				4 - Price control (obligation to charge reasonable prices).	
BE/2007/0588 (related to case BE/2006/0440)	Similar to the Recommendation.	Geographic coverage of each network = geographic extent of each relevant market	11 additional ANOs	1 – Non-discrimination	No comments made by the Commission.
				2 – Transparency	
				3 – Price control	

<p>EE/2007/0598</p>	<p>Similar to the Recommendation</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>Elion and 11 ANOs</p>	<p>1 – access (only Elion)</p>	<p>Non-imposition of an access obligation on the market for call termination on ANOs' networks.</p> <p>On the market for call termination in Estonia SIDEAMET does not intend to impose an access obligation on ANOs. In its response to the request for information SIDEAMET explains that, according to the Estonian Electronic Communications Act ("EECA"), operators providing network services are required, at the request of another operator, to negotiate the interconnection in</p>
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2 – non discrimination

good faith if this is necessary for the provision of communications services.

Further to the obligation to negotiate, the EECA provides, according to

SIDEAMET, that an operator may terminate contractual negotiations and refuse

to enter into an access or interconnection agreement only if the creation of

technical conditions for interconnection or access is unreasonably burdensome or

the interconnection or access damages the integrity of its network, while in other

cases an undertaking is obliged to provide access. SIDEAMET considers that the

3 - transparency

above provisions of the EECA are sufficient in the case of ANOs to prevent the

problem of access denial.

While recognising that ANOs in general have an economic interest to

interconnect, the Commission is of the view that any general interconnection

obligation that might stem from the Estonian legislation would not resolve swiftly

eventual access problems such as delaying tactics compared to a more specific

access obligation imposed as a result of a market analysis. SIDEAMET itself

				<p>3 – price control and cost accounting</p>	<p>admits that the general legislation as such is not sufficient to guarantee access</p> <p>when justifying the access obligation imposed on Elion. Therefore the</p> <p>Commission invites SIDEAMET to impose effective access obligations also on ANOs.</p> <p>Asymmetry of termination rates</p> <p>The Commission reiterates that obligations imposed under the Access Directive</p> <p>should be based on the nature of the problem identified, proportionate and</p> <p>justified in the light of the objectives laid down in Article 8 of the Framework</p> <p>Directive. The remedies should provide adequate transparency and legal certainty</p> <p>for market players. Where an NRA intends to impose different remedies on</p> <p>different operators within similarly defined markets, such differential treatment</p> <p>should be adequately reasoned.</p> <p>In the present case the Commission notes the arguments put forward by</p> <p>SIDEAMET- <i>inter alia</i> ANOs' weaker economies of scale and scope and large</p>
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				<p>differences in volumes of terminated traffic – to justify asymmetric remedies.</p> <p>However, the fact that an operator has a smaller market share can only justify</p> <p>higher termination rates for a limited transitory period. The persistence of higher</p> <p>termination rate would not be justified after a period long enough for the operator</p> <p>to adapt to market conditions and become more efficient.</p> <p>Consequently, in order to increase legal certainty and to better safeguard the</p> <p>interest of consumers, the Commission invites SIDEAMET to consider the</p> <p>development of a cost model for the calculation of termination rates of ANOs,</p> <p>which, while being based on costs, takes into account the necessity for ANOs to</p> <p>become more efficient over time</p>
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Market 10: Transit services in the fixed public telephone network

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed					
			Access / interconnection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation	
Austria*	YES	No SMP found						
Finland	YES	14 operators	YES	YES	YES	NO	NO	
France	YES	1 operator	YES	YES	YES	YES	YES	
Germany	NO**	1 operator	YES	YES	YES	YES	NO	
Hungary	YES	No SMP found						
Ireland	YES	1 operator	YES	YES	YES	YES	YES	
Portugal	YES	No SMP found						
Sweden	YES	1 operator	YES	YES	YES	YES	YES	
United Kingdom	NO**	1 operator	YES	YES	YES	YES	YES	
Slovenia	NO**	1 operator	YES	YES	YES	NO	NO	

Netherlands	NO**	1 operator	YES	YES	YES	YES	YES
Lithuania	YES	1 operator	YES	YES	YES	YES	YES
Latvia	YES	1 operator	YES	YES	YES	YES	YES
Italy	YES	1 operator	YES	YES	YES	YES	YES
Malta	NO**	1 operator	YES	YES	YES	YES	NO
Spain	YES	1 operator	YES	YES	YES	YES	YES
Belgium	YES	1 operator	YES	YES	YES	YES	YES
Czech Republic	YES	No SMP found					
Slovakia	YES	1 operator	YES	YES	YES	YES	YES
Cyprus	NO**	1 operator	YES	YES	YES	YES	YES
Greece	YES	1 operator	YES	YES	YES	YES	YES
Luxemburg	Not susceptible to ex ante regulation						
Denmark	Withdrawn by the NRA						
Estonia	Withdrawn by the NRA						

* On 20 October 2004, the Commission vetoed the draft measure. TKK re-notified its market analysis.

** Refinement, broader/narrower market and/or merger of markets

Overview of notifications assessed until 31 March 2007

Market 10: Transit services in the fixed public telephone network

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
UK/2003/0015-16	Local tandem conveyance and transit on fixed public narrowband networks (Case UK/2003/0015) and market for transit services on fixed public narrowband networks (UK/2003/0016).	National (excluding the Hull area)	BT	1 - Provision of network Access on reasonable request.	<p>The Commission made a comment on:</p> <p>Reliance on comments from parties other than the Commission and other NRAs: Any material modification to the notified draft measure will require the draft measure to be re-notified under Article 7(3) of the Framework Directive.</p>
				2 - Non-discrimination	
				3 - Cost-orientation and cost accounting	
				4 - Charge control	
				5 - Transparency	
				6 - Accounting separation.	

<p>UK/2004/0045 (further amended by cases UK/2005/0217-0218)</p>	<p>See Cases UK/2003/0015-0016.</p>	<p>Financial reporting obligations (in addition to the remedies imposed in Cases UK/2003/0015-0016).</p>	<p>The Commission made comments on:</p> <p>Publication of a statement concerning compliance with the cost accounting systems: It is necessary for a statement concerning compliance with the cost accounting system to be published annually, following verification by a qualified independent body.</p> <p>National consultation running in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>
<p>UK/2004/0072</p>	<p>See Cases UK/2003/0015-0016.</p>	<p>Modifications to the charge control obligation already imposed on BT in cases UK/2003/0015-0016.</p>	<p>No comments made by the Commission.</p>
<p>UK/2005/0164-0165</p>	<p>See Cases UK/2003/0015-0016</p>	<p>In relation to the market for ITC/ITT services, all SMP obligations imposed previously on BT were withdrawn</p>	<p>No comments made by the Commission.</p>

				<p>In the market for LTC/LTT services previous obligations are maintained (see cases UK/2003/0015-0016). In addition, the following amendments to previous obligations were made:</p> <p>1- Revised charge control</p> <p>2 - Amendments to the requirement (i) not to unduly discriminate and (ii) to notify charges, terms and conditions.</p>	
FI/2004/0043		12 separate local transit markets and one market for nationwide transit services	<p>National transit: not analysed</p> <p>Following SMP operators in local transit markets:</p>	<p>1 - Interconnection</p> <p>2 - Obligation to publish delivery terms and tariff information</p>	<p>The Commission declared the notification incomplete on the following grounds:</p> <p>The analysis presented by Ficora was not sufficiently reasoned for the purposes of allowing the Commission to carry out its tasks, and to evaluate the notified draft measures.</p> <p>The notification lacked the appropriate argumentation for excluding national transit traffic from the market analysis.</p>

			<p>Auria Networks Oy, Elisa Oy, Kesnet Oy, KPY Verkot Oy, Kymen Puhelin Oy, Länsilinkki Oy, Mikkelin Puhelin Oy, Oulun Puhelin Oy, Satakunnan Puhelin Oy, Sonera Carrier Networks Oy, Soon Net Oy, Telepohja Oy, Tikka Networks Oy, Vaasan Läänin Puhelin Oy</p>	<p>3 - Non-discrimination obligations concerning pricing and other terms</p>	
<p>FI/2004/0075</p>	<p>Similar to the Recommendation.</p>	<p>12 separate local transit markets and one market for</p>	<p>Auria Networks Oy, Elisa Oy, Kesnet Oy, KPY Verkot Oy,</p>	<p>1 - Interconnection</p>	<p>No comments made by the Commission.</p>

		nationwide transit services	Kymen Puhelin Oy, Länsilinkki Oy, Mikkelin Puhelin Oy, Oulun Puhelin Oy, Satakunnan Puhelin Oy, Sonera Carrier Networks Oy, Soon Net Oy, Telephoja Oy, Tikka Networks Oy, Vaasan Läänin Puhelin Oy	2 - Obligation to publish delivery terms and tariff information	
				3 - Non-discrimination obligations concerning pricing and other terms	
SE/2004/0051	Similar to the Recommendation.	National	TeliaSonera Sverige AB	1 - Obligation to meet reasonable requests for interconnection	The Commission made a comment on: National consultation run in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.
				2 - Cost-orientation	
				3 - Non-discrimination	
				4 - Accounting separation	
				5 - Transparency (reference offer)	
				6 - Obligation to meet reasonable requests for direct billing and cascade billing agreements	
AT/2004/0090	Market including self-supply	National	No SMP found	No remedies were imposed	The Commission issued a veto decision, on the following grounds: insufficient evidence for the

<p>AT/2007/0590</p> <p>(re-notification of a vetoed draft measure)</p>	<p>through direct interconnection.</p>				<p>inclusion of self-provision through direct interconnection in the market, results of the market analysis and on the importance of applying a thorough greenfield analysis.</p> <p>As regards re-notified market analysis (AT/2007/0590), the Commission made the following comment:</p> <p>Tendency towards effective competition</p> <p>Considering the specific features and developments as set out below of the Austrian wholesale market of transit services (low barriers to entry in view of the relatively limited number of local switches in TA's network and the existing collocation of various alternative operators in those switches, the existing degree of duplication of the TA's network, the presence of alternative operators supplying nation-wide transit services in competition with the incumbent and the existence of countervailing buying power) the Commission agrees with TKK's proposal to withdraw <i>ex ante</i> regulation from that market.</p> <p>On the basis of the information provided by TKK, it would seem that there are no high</p>
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					<p>and non-transitory barriers to enter the transit market in Austria and that the market, in</p> <p>the absence of regulation, would tend towards effective competition within the meaning</p> <p>of the three criteria test set out in the Recommendation.</p> <p>The Commission services are therefore of the opinion, on the basis of the up-to-date</p> <p>market information provided, that the market for transit service in Austria does not meet</p> <p>the three criteria that render a market susceptible to <i>ex ante</i> regulation. In view thereof, the precise scope of the relevant market and the question whether TA has SMP on the relevant market can be left open.</p>
DE/2005/0145, DE/2005/0235 (remedies)	Five separate markets for transit services: i) transit services in the fixed public telephone network plus call origination for carrier (pre-)	National	Deutsche Telekom AG	1 - Access (including interconnection services, collocation)	In case DE/2005/0145, the Commission made a comment with regard to the determination of remedies at a later stage.
			No SMP was found in the market for transit services	2 - Non-discrimination	In case DE/2005/0235, the Commission made a comment on:

	<p>selection services; ii) transit services in the fixed public telephone network plus origination of calls to value-added services; iii) transit services in the fixed public telephone network plus call origination for dial-up internet services; iv) transit services in the fixed public telephone network plus call termination in national networks excepting calls originating and terminating in national mobile networks and v) transit services in the fixed public telephone network for calls originating and terminating in national mobile networks.</p>		<p>in the fixed public telephone network for calls originating and terminating in national mobile networks, i.e., market 5.</p>	<p>3 - Price control (in relation to interconnection, conveyance and collocation)</p>	<p>Accounting separation: Given the risk of cross-subsidisation arising from the operations of a vertically- integrated company, the Commission invites BNetzA for the purposes of enhancing transparency and legal certainty to consider imposing accounting separation as a separate measure.</p>
<p>HU/2005/0153</p>	<p>Similar to the Recommendation.</p>	<p>National</p>	<p>No SMP found</p>	<p>No remedies were proposed</p>	<p>No comments made by the Commission.</p>

IE/2005/0192	Similar to the Recommendation.	National (international transit services are distinguished from the market for national transit services)	Eircom	1 - Transparency	The Commission made a comment on: Further consultations planned by ComReg: The draft measures relating to the details and implementation of the obligations of cost accounting, accounting separation and wholesale price caps are required to be notified under Article 7(3) of the Framework Directive.
				2 - Non-discrimination	
				3 - Access to and use of specific network facilities on reasonable request	
				4 - Price control and cost accounting	
				5 - Accounting separation	
PT/2005/0154	Similar to the Recommendation.	National	No SMP found	No remedies were imposed	The Commission commented that the elements provided by Anacom to find that the relevant market would not meet the three criteria test should be further developed. Irrespective of whether, as a result of the three criteria test, the Portuguese market for transit services in the fixed public networks could be found to be susceptible to ex ante regulation, the market analysis in this particular case would still not have led to a finding of SMP.

FR/2005/0229	Similar to the Recommendation.	National	France Télécom	1 - Access to, and use of specific network facilities	No comments made by the Commission.
				2 - Non discrimination	
				3 - Transparency	
				4 - Accounting separation	
				5 - Price control and cost accounting obligations	
DE/2005/0255 (remedies related to case DE/2005/0145)	See cases DE/2005/0145 and DE/2005/0235			1 - Non-discrimination	No comments made by the Commission.
				2 - Transparency	
				3 – Price control	
				4 - obligation to make internal transfer prices transparent and to make them accessible to BNetzA upon request	
SI/2006/0274	Similar to the Recommendation, except for the exclusion of transit services provided	National	Telecom Slovenije	1 - Access to and use of specific network facilities on reasonable request	The Commission made a comment on: Appropriateness of remedies
				2 - Non-discrimination	

	via direct interconnection since routed through the mobile network without using switches.			3 - Transparency	As regards APEK's justification for not imposing any price regulation, the Commission would like to point out that the mere fact that no complaints have been made concerning pricing does not necessarily mean that a problem of excessive pricing could not exist in the relevant market, in particular taking into account that Telekom Slovenije is currently in practice the only provider of transit services. The Commission notes the limited competition in the retail markets for telephony services in Slovenia. For a potential new entrant in retail markets which has not yet rolled out its own infrastructure, the reliance on direct interconnection is not likely to be feasible in the short term. Furthermore, full and effective enforcement of the wholesale obligations imposed in related wholesale markets have impact on the competitive conditions of supply at the downstream retail level. Therefore, the Commission would like to invite APEK to closely monitor the wholesale transit market, in particular with a view to potential pricing problems and to intervene if any such problems occur.
NL/2006/0285	three distinct product markets: (i) wholesale local conveyance	National	KPN	in the market for local conveyance services: 1- provision of access, 2 - non-discrimination, 3 - provision of reference offer,	No comments made by the Commission.

	<p>conveyance services, defined as conveyance between regional switches, and (iii) wholesale</p> <p>transit services, defined as the transmission of traffic from one network to another network by a third party</p>			<p>4 - cost orientation,</p> <p>5 - accounting separation</p>	
				<p>in the market for regional conveyance services: 1 - acceptance of reasonable requests for access under similar conditions as KPN has</p> <p>provided in the past, 2 - cost orientation and report to OPTA of new or changed wholesale interregional</p> <p>services, including bundles containing such services</p>	
				<p>in the market for</p> <p>transit services: 1 - access, 2 - non-discrimination, 3 - provision of a reference offer, 4 - no</p> <p>price discrimination</p>	
LT/2006/0319	Similar to the Recommendation	National	LTAB	<p>1 - Access to, and use of specific network facilities</p> <p>2 - Non discrimination</p> <p>3 - Transparency</p> <p>4 - Price control and cost accounting</p> <p>5 - Accounting separation</p>	No comments made by the Commission.

LV/2006/0367	Similar to the Recommendation.	National	SIA Lattelekom	1 - Access to, and use of specific network facilities	No comments made by the Commission.
				2 - Non discrimination	
				3 - Transparency	
				4 - Price control and cost accounting	
				5 - Accounting separation	
IT/2006/0385	Similar to the Recommendation.	National	Telecom Italia	1 - Access	No comments made by the Commission.
				2 - Non-discrimination	
				3 – Transparency (publication of the Reference Offer)	
				4 – Price control (based on the network cap) and cost accounting	
				5 - Accounting separation	
				6 – CS/CPS	
MT/2006/0389	2 distinct markets for national and international transit services	National	SMP found only in the market for international transit services: Maltacom	1 - Access	No comments made by the Commission.
				2 - Non-discrimination	
				3 – Transparency	
				4 – Cost orientation and cost accounting	

ES/2006/0404	Similar to the Recommendation.	National	TESAU	1 - Access	<p>The Commission made comments on:</p> <p>Consideration of differentiated remedies</p> <p>The ability to provide geographically ubiquitous transit services in Spain still depends on the transit services provided by TESAU. Due to <i>inter alia</i> low traffic volumes, there are routes and services which are exclusively or almost exclusively provided by TESAU. However, at the same time alternative operators appear to have gained a substantial share of the market in some part of the overall transit market, most likely corresponding to certain thick routes (seemingly without constraining TESAU's behaviour on the thin routes). Therefore, the Commission would like to invite CMT to explore the possibility to take these different competitive conditions into account in designing the final remedies in the notified market, in particular as regards the scope of the cost orientation obligation.</p>
				2 - Non-discrimination	
				3 – Transparency (publication of a Reference Offer)	
				4 – Cost orientation and cost accounting	
				5 - Accounting separation	
BE/2006/0441	Similar to the Recommendation.	National	Belgacom	1 - Access	<p>No comments made by the Commission.</p>
				2 - Non-discrimination	
				3 – Transparency (publication of a Reference Offer)	
				4 – Cost orientation and cost accounting	

				5 – Accounting separation	
CZ/2006/0448	Similar to the Recommendation.	National	No SMP found	No remedies imposed	<p>The Commission made a comment on:</p> <p>Additional information provided: The Commission would like to invite CTU, in order to motivate its findings, to include in its final measure the additional information provided in the course of this procedure, relating to, <i>inter alia</i>, market shares excluding captive sales, tariffs, and provision by alternative operators of transit services to third parties.</p>
SK/2006/0470	Similar to the Recommendation.	National	Slovak Telecom	1 - Access	No comments made by the Commission.
				2 - Non-discrimination	
				3 – Transparency	
				4 – price control and cost accounting	
				5 – Accounting separation	
CY/2006/0475		National		1 - Access	No comments made by the Commission.
				2 - Non-discrimination	

	2 distinct markets for national and international transit services		ATHK	<p>3 – Transparency including the obligation to disclose all information needed and to publish a Reference Offer (including additional facilities such as co-location)</p> <p>4 – price control and cost accounting</p> <p>5 – Accounting separation</p>	
EL/2006/0495	Similar to the Recommendation.	National	OTE	<p>1 - Access</p> <p>2 – CS/CPS</p> <p>2 - Non-discrimination</p> <p>3 – Transparency (including the obligation to publish a Reference Interconnection Offer)</p>	

No comments made by the Commission.

				4 – Price control and cost accounting	
				5 – Accounting separation and auditing	
LU/2006/0542	Not susceptible to ex ante regulation			No comments made by the Commission.	
DK/2006/0525	Notification withdrawn by the NRA				
EE/2007/0599	Notification withdrawn by the NRA				

Market 11: Wholesale unbundled access (including shared access)

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			Access / interconnection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria	YES	1 operator	YES	YES	YES	YES	YES
Denmark	YES	1 operator	YES	YES	YES	YES	YES
Finland	YES	44 operators	YES	YES**	YES	YES**	YES**
France	YES	1 operator	YES	YES	YES	YES	YES
Germany	YES	1 operator	YES	YES	YES	YES	NO
Hungary	YES	5 operators	YES	YES	YES	YES	YES
Ireland	YES	1 operator	YES	YES	YES	YES	YES

Portugal	YES	1 operator	YES	YES	YES	YES	YES
Slovakia	YES	1 operator	YES	YES	YES	YES	YES
Slovenia	YES	1 operator	YES	YES	YES	YES	YES
Sweden	YES	1 operator	YES	YES	YES	YES	NO
United Kingdom	NO*	2 operators	YES	YES	YES	YES	YES**
Italy	YES	1 operator	YES	YES	YES	YES	YES
The Netherlands	YES	1 operator	YES	YES	YES	YES	YES
Cyprus	YES	1 operator	YES	YES	YES	YES	YES
Czech Republic	YES	1 operator	YES	YES	YES	YES	NO
Greece	YES	1 operator	YES	YES	YES	YES	YES
Spain	YES	1 operator	YES	YES	YES	YES	YES
Lithuania	YES	1 operator	YES	YES	YES	YES	YES
Poland	YES	1 operator	YES	YES	YES	YES	YES
Luxemburg	YES	1 operator	YES	YES	YES	YES	NO
Slovenia	YES	1 operator	YES	YES	YES	YES	YES
Austria***	YES	1 operator	YES	YES	YES	YES	YES
Latvia	YES	1 operator	YES	YES	YES	YES	YES

Malta	YES	1 operator	YES	YES	YES	YES	YES
Finland***	NO*	39 operators	YES	YES	YES	YES	YES**
Estonia	YES	1 operator	YES	YES	YES	YES	YES

* *Includes cable connections.*

** *Differentiated or no remedy imposed on certain SMP operators*

*** *Second review*

Overview of notifications assessed until 31 March 2007

Market 11: Wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
FI/2003/0030	Similar to the Recommendation.	44 local markets	44 former local monopolies	1 - Obligation to lease part of a local loop and equipment facilities (on all SMP operators)	<p>The Commission made comments on:</p> <p>Imposition of remedies: Where Ficora intends to impose different remedies on different operators within similarly defined markets the reasons for such differential treatment should be adequately reasoned. Further, Ficora should monitor market developments.</p> <p>Cost orientation and cost accounting obligations: The Commission expresses concerns on the approach not to specify the method on which cost orientation will be assessed, which it believes will limit the measure's contribution to consumer benefit, the enhancement of competition and the development of the internal market.</p>
				2 - Obligation to publish delivery terms and tariff information (on all SMP operators)	
				3 - Obligation concerning pricing and other terms (cost orientation and non-discrimination) (on certain SMP operators)	
				4 - Cost accounting procedures (on certain SMP operators)	
				5 - Accounting separation (on certain SMP operators)	

IE/2004/0046	Similar to the Recommendation.	National	eircom	1 - Access obligations	<p>The Commission made comments on:</p> <p>Costing methodology for the implementation of the cost orientation obligation: In view of the relatively high prices and low penetration rate of LLU in Ireland, ComReg was invited to monitor market developments carefully, and especially (i) how the implementation of the proposed forward-looking long run incremental cost methodology would be more effective at addressing the lack of effective competition in the provision of fully unbundled lines, shared lines, collocation and associated facilities, than the current obligation of fully distributed costs and (ii) how and to what extent these would positively impact on the level of prices and the numbers of fully unbundled and shared access lines in Ireland.</p> <p>National consultation running in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>
				2 - Non discrimination	
				3 - Transparency	
				4 - Accounting separation	
				5 - Price control and cost accounting	
SE/2004/0084	Similar to the	National	TeliaSonera AB	1 - Access obligation	No comments made by the Commission.

	Recommendation.			2 - Cost orientation (LRIC) and cost accounting	
				3 - Non-discrimination	
				4 - Transparency (reference offer)	
UK/2003/0094	The wholesale local access market, in addition to traditional copper local loops also including cable connections.	2 separate markets (the UK excluding the Hull area and respectively the Hull area)	BT (UK excluding the Hull area) and Kingston (the Hull area)	1 - Provision of access on reasonable request	<p>The Commission made a comment on:</p> <p>Product market definition, including both copper loop-based and cable-based wholesale local accesses: When including cable-based wholesale services in the relevant market, consideration should be given to the technical, practical and economic feasibility for cable operators to offer facilities equivalent to unbundled local loops. The indirect pricing constraint stemming from the substitutability at the retail level and the potential competition of cable-based wholesale local access could have been taken into account at the stage of assessment of SMP. Notwithstanding, while this approach may have led to a narrower market definition and there remain doubts as to whether cable-based wholesale products (whether currently or prospectively) form part of the market, the exclusion of cable-based wholesale services from the market definition in this particular case would not have led to a different result in</p>
				2 - Non-discrimination	
				3 - Cost orientation and cost accounting	
				4 - Transparency	

				5 - Collocation	the SMP analysis. Consequently, a conclusion on the exact scope of the market was not relevant for the SMP assessment.
				6 - Accounting separation (on BT only)	
UK/2004/0123	See Case UK/2003/0094 .			Slight modification of the remedies already notified because of the establishment of the Telecommunications Adjudicator.	No comments made by the Commission.
AT/2004/0098 (dispute settlement AT/2005/0318)	Similar to the Recommendation.	National	Telekom Austria	1 - Provision of access to metallic loops and sub-loops on reasonable request by a third party	No comments made by the Commission.
				2 - Publication of a Reference Unbundling Offer within one month of issue of TKK's decision	
				3 - Cost-oriented prices according to the cost of efficient service provision	
				4 - Non-discrimination	
				5 - Accounting separation	

				6 - Cost accounting providing for the cost of efficient service provision	
SK/2004/0107	Similar to the Recommendation.	National	Slovak Telecom	1 - Transparency (including the publication of technical specifications)	<p>The Commission made comments on:</p> <p>Implementation of the proposed cost orientation obligation: As TÚSR failed to provide adequate transparency and legal certainty for market players by specifying the details of the proposed cost orientation obligation, the Commission had concerns as to whether the proposed price control obligation will be effective at addressing the lack of effective competition in the relevant market, and requested that once adopted, TÚSR will notify the relevant implementing measures.</p> <p>National public consultation: NRAs must conduct a national consultation on each draft measure taken in accordance with the Framework Directive or the Specific Directives which have a significant impact on the relevant market.</p>
				2 - Non-discrimination	
				3 - Accounting separation	
				4 - Access to, and use of, specific network facilities	
				5 - Price control, including the obligation of cost-orientation	
PT/2004/0117	Similar to the Recommendation.	National	PT Comunicações	1 - Provide access to and use of specific network facilities	<p>The Commission made a comment on:</p> <p>Costing methodology for the implementation of the price control obligation: Anacom was invited to follow</p>
				2 - Non-discrimination	

				3 - Transparency	market developments carefully and to assess whether a forward looking approach long-run incremental cost model would not be more appropriate than the fully distributed historic costs model, originally proposed by ANACOM.
				4 - Accounting separation	
				5 - Price control and cost accounting	
				6 - Provide accounting information	
DE/2004/0119, DE/2005/0150 (remedies)	The wholesale market for unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services, also including unbundled access to local loops on the basis of OPAL and	National	Deutsche Telekom	1 - Fully unbundled access to the local loop in the form of a copper pair and shared access	In case DE/2004/0119 , the Commission made comments on: Consideration of fibre glass connections to end-users: Relying on the Recommendation and the SMP Guidelines, RegTP excluded fibre glass connections from the scope of the relevant market (and thus from the market analysis). However, to the extent that fibre glass connections can be used to offer wholesale unbundled access to local loops and

	<p>ISIS2 at the main distribution frame or subloops.</p>			<p>2 - Bundled access to the local loop in the form of a copper pair at the main distribution frame, including to the OPAL/ISIS variant</p>	<p>sub-loops for the purposes of providing broadband and voice services, like metallic loops and sub-loops, they may thus, on the basis of specific national circumstances, form part of market 11. Fibre glass connections or part of them may also be found to belong to a separate market which is not in the Recommendation, subject to the three criteria test. In any event, since fibre lines are currently regulated in Germany, it needed to be emphasised that the possible maintenance, withdrawal or modification of current regulation needs to be based on a new market analysis in accordance with Article 16 of the Framework Directive.</p> <p>Remedies to be determined at a later stage: The Commission highlighted that RegTP will have to notify the remedies it intends to impose in the markets concerned under Article 7(3) of the Framework Directive.</p> <p>In case DE/2005/0150, the Commission made comments on:</p>
				<p>3 - Collocation</p>	

				4 - Non-discrimination	<p>Scope of the proposed remedies: As glass fibre connections in Germany may form part of market 11, the Commission questions whether the remedies notified on 25 February 2005 in relation to that market should not also extend to glass fibre connections.</p> <p>Withdrawal by RegTP of DT's obligation to provide access to its glass fibre connections: Despite the Commission's comment in case DE/2004/0119, RegTP intends to withdraw DT's existing obligation to provide access to its glass fibre connections without a market analysis as required by Article 27 in conjunction with Article 16 of the Framework Directive. In the absence of such a market analysis notified to it, the Commission is not in a position to assess the proposed withdrawal of existing regulation. Commission considers that the proposed withdrawal of the existing regulation for access to pure glass fibres is not made pursuant to a market analysis based on a market definition that has been duly notified to the Commission.</p>
				5 - Transparency (reference unbundling offer)	
				6 - Price control, based on the costs of the efficient provision of services	

				7 - Communication of the location of local loops and of collocation spaces to interested parties on request	
SI/2005/0142	Similar to the Recommendation.	National	Telekom Slovenije	1 - Access on reasonable request	<p>The Commission made a comment on:</p> <p>Choice of an appropriate cost accounting methodology to prevent margin squeeze: APEK indicated that the price for fully unbundled access to the local loop in Slovenia is substantially higher than retail access price and gives rise to a likely margin squeeze creating thus an obstacle for operators to enter the market and preventing the existence of effective competition at the retail level. APEK considered the forward looking LRIC cost accounting method to be the most appropriate for the evaluation of cost oriented prices for unbundled access to the local loops, but concluded, however, that this model would represent an excessive burden on Telekom Slovenije and is therefore not proportionate in the current conditions. However, the Commission had concerns as to whether the cost accounting methodology proposed will be effective at addressing the lack of effective competition in the relevant market, at least in the medium term.</p>
				2 - Non-discrimination	
				3 - Transparency	
				4 - Cost accounting (fully distributed common costs)	
				5 - Price control	
				6 - Accounting separation	

SI/2005/0181	See Case SI/2005/0142.			1 - Price control and cost accounting obligations (prolongation by 6 months of the period for implementing the cost orientation obligation)	The Commission made a comment on: Choice of an appropriate cost accounting methodology to prevent margin squeeze: In its revised notification APEK indicated that a possibility of price squeezes between the wholesale and retail prices of local loops cannot be fully excluded in Slovenia. APEK considered the forward looking LRIC cost accounting method to be the most appropriate for the evaluation of cost oriented prices for unbundled access to the local loops, but concluded, however, that this model would represent an excessive burden on Telekom Slovenije and is therefore not proportionate in the current conditions. However, the Commission had concerns as to whether the cost accounting methodology proposed will be effective at addressing the lack of effective competition in the relevant market, at least in the medium term.
				2 – Accounting separation obligation (requirement on Telekom Slovenije to render transparent its wholesale prices instead of both wholesale prices and internal transfer prices)	
FR/2005/0174 (further details of remedies)	Similar to the Recommendation.	National	France Télécom	1 - Access	No comments made by the Commission.
				2 - Non-discrimination	

FR/2005/0301)				3 - Transparency (publication of a reference offer)				
				4 - Accounting separation				
				5 - Cost orientation and cost accounting				
DK/2005/0176	Similar to the Recommendation. The market comprises additionally the services provided in those cases where a retail end-user stops using the narrowband service (voice) provided over the local loop, but still keeps his broadband connection provided by his broadband operator.	National	TDC	1 - Requirement to provide wholesale unbundled access at reasonable request	No comments made by the Commission.			
				2 - Price control and cost accounting (LRAIC)		No comments made by the Commission.		
				3 - Accounting separation			No comments made by the Commission.	
				4 - Non-discrimination				No comments made by the Commission.
				5 - Requirement to publish a reference offer				
HU/2005/0185	Similar to the Recommendation.	5 markets corresponding to the former	Matáv Rt., Invitel Távközlési	1 - Transparency	The Commission made comments on:			

		concession areas of the former concession operators	Szolgáltató Rt., Hugarotel Távközlési Rt., Emitel Távközlési Rt. Monor Telefon Társaság Rt.	2 - Non-discrimination	<p>Non-imposition of ex ante regulatory obligations concerning “out of use local loops”: Unless it is technically not possible or economically not viable to unbundle a particular local loop that has been out of use, “out of use” loops should be included in the relevant market, and made subject to the remedies proposed for local loops in use.</p> <p>Choice of an appropriate cost accounting methodology: NHH should follow market developments carefully and assess whether a forward looking approach long-run incremental cost model would not be more appropriate in addressing the lack of effective competition than the fully distributed cost model, originally proposed by NHH.</p>
				3 - Accounting separation	
				4 - Obligation to provide access and interconnection	
				5 - Particular obligations concerning facility sharing and co-location	
				6 - Price control and accounting separation	
IT/2005/0244	Similar to the Recommendation.	National	Telecom Italia	1 - Access	<p>No comments made by the Commission.</p>
				2 - Non-discrimination	
				3 - Transparency (publication of a LLU reference offer including a service level agreement (“SLA”))	
				4 - Accounting separation	

				5 - Cost orientation (based on a network cap) and cost accounting	
NL/2005/0280	Similar to the Recommendation.	National	KPN	1 - Access on reasonable request	<p>The Commission made comments on:</p> <p>Determination of the price cap: OPTA has devised four scenarios which are intended to reflect varying degrees of infrastructure competition. OPTA considers that the higher the degree of infrastructure competition, the greater should be the freedom of KPN to determine its own access prices. OPTA declares that the 2nd scenario – prospect of development of infrastructure competition that should lead to durable competition after the time of revision” – is the most relevant scenario in this case. However, OPTA does not justify in concrete terms why it considers the 2nd scenario to be the most pertinent. In particular, OPTA states that wholesale access to cable networks, mobile networks, wireless networks or fibre-optic networks currently do not constitute substitutes to the local loop of KPN. In the light thereof, OPTA does not indicate why it believes that these infrastructures should lead to durable competition in the future. The Commission considers that OPTA should elaborate in its final measure its reasons for choosing the 2nd scenario.</p>
				2 - Non-discrimination	
				3 – Transparency (publication of a reference offer)	
				4 - Cost orientation and cost accounting	
				5 – Accounting separation	

					<p>Scope of accounting separation obligation: In order to facilitate the monitoring market for low quality wholesale broadband access (“WBA”) (case NL/2005/0281) and the application of competition law, OPTA should consider extending the scope of the accounting separation obligation proposed for the LLU-market to cover also the provision of low quality WBA.</p>
CY/2006/0331	Similar to the Recommendation.	National	CYTA	<p>1 – Access on reasonable request including supplementary services such as co-location, and provision of updated information on the availability of network resources</p>	<p>No comments made by the Commission.</p>
				<p>2 - Non-discrimination</p>	
				<p>3 - Transparency (publication of a LLU reference offer)</p>	
				<p>4 - Accounting separation</p>	
				<p>5 - Cost orientation</p>	

CZ/2006/0340	Similar to the Recommendation.	National	Český Telecom	1 – Access on reasonable request including supplementary services such as co-location, and provision of updated information on the availability of network resources	No comments made by the Commission.
				2 - Non-discrimination	
				3 - Transparency (publication of a reference offer)	
				4 – Price control	
EL/2006/0353	Similar to the Recommendation.	National	OTE	1 – Access on reasonable request	No comments made by the Commission.
				2 - Non-discrimination	
				3 - Transparency (publication of a LLU reference offer including a Service Level Agreement ("SLA"))	

4 – Price control and cost accounting

				5 – Accounting separation	
ES/2006/0368	Similar to the Recommendation.	National	TESAU	1 – Access on reasonable request	No comments made by the Commission.
				2 - Non-discrimination	
				3 - Transparency (publication of a LLU reference offer)	
				4 – Price control and cost accounting	
				5 – Accounting separation	
LT/2006/0391	Similar to the	National		1 – Access on reasonable request	No comments made by the Commission.

	Recommendation.		Lietuvos Telekomas	2 - Non-discrimination	
				3 - Transparency (publication of a LLU reference offer)	
				4 – Price control and cost accounting	
				5 – Accounting separation	
PL/2006/0418	Similar to the Recommendation.	National	Telekomunikacija Polska SA ("TP")	1 - Access on reasonable request	<p>The Commission made a comment on:</p> <p>Price control before approval of LRIC cost calculation</p> <p>UKE has not clearly specified in its measure the basis of the</p> <p>verification of the appropriateness of local loop unbundling charges proposed by TP prior to the approval of its FL LRIC-based cost</p>
				2 - Non-discrimination	
				3 – Transparency (publication of a reference access offer)	
				4 – Price control	

				5 – Accounting separation	calculation by an independent auditor. This approach might affect the transparency and legal certainty for market players, in particular since no timing is foreseen for the FL LRIC-based cost calculation and approval thereof by the auditor. Therefore, UKE is invited to precisely clarify in the final measure which verification method it will use to approve the charges proposed by the SMP operator before the cost calculation has been conclusively approved.
LU/2006/0509	Similar to the Recommendation.	National	EPT	1 - Access on reasonable request	<p>The Commission made a comment on:</p> <p>Details of the proposed price control obligation</p> <p>The cost-orientation obligation should be based on the costs of an efficient operator. However, the notification does not specify how the costs of an efficient operator will be calculated and which cost model will be used. In order to enhance the effectiveness of the price control obligation imposed and to ensure legal certainty and transparency, the Commission invites ILR to clarify without delay the details and the timing of the implementation of the cost orientation obligation.</p>
				2 - Non-discrimination	
				3 – Transparency (publication of a reference access offer)	
				4 – Price control and cost accounting	
SI/2006/0519	Similar to the Recommendation.	National		1 – Access on reasonable request	No comments made by the Commission.

			Telekom Slovenije	2 - Non-discrimination	
				3 - Transparency	
				4 – Price control and cost accounting	
				5 – Accounting separation	
AT/2006/0537	Similar to the Recommendation.	National	Telekom Austria	1 - Provision of access to metallic loops and sub-loops on reasonable request by a third party	No comments made by the Commission.
				2 – Transparency (Publication of a Reference Unbundling Offer)	
				3 – Price control	
				4 - Non-discrimination	

				5 - Accounting separation	
LV/2006/0539	Similar to the Recommendation.	National	SIA Lattelekom	1 – Access on reasonable request	No comments made by the Commission.
				2 - Non-discrimination	
				3 – Transparency (including the publication of a Reference Unbundling Offer)	
				4 – Price control and cost accounting	
				5 – Accounting separation	
MT/2006/0549	Similar to the Recommendation.	National	Maltacom	1 – Access on reasonable request	No comments made by the Commission.
				2 - Non-discrimination	
				3 – Transparency (including the publication of a Reference Offer)	

				4 – Cost orientation and cost accounting	
				5 – Accounting separation	
FI/2006/0547	Similar to the Recommendation.	Regional	39 operators	All 39 SMP operators: 1 - Access on reasonable request	<p>The Commission made comments on:</p> <p>Cost-orientation and cost accounting obligations</p> <p>The Commission recalls the comment made in the first round notification with regard to the fact that FICORA did not specify the method on which cost orientation would be assessed. In the context of the adoption of the final measure, FICORA justified it by explaining that since the Finnish Communication Market Act leaves each operator free to select the cost-accounting procedures, it cannot decide on the cost-accounting methodology. The Commission continues to believe that this limits the measure’s contribution to consumer benefit, the enhancement of competition and the development of the internal market.</p>
				2 - Non-discrimination	
				3 – Transparency (publication of delivery terms and tariff information)	
				4 – Cost orientation and cost accounting	

				<p>Only 15 SMP operators:</p> <p>5 – Accounting separation</p>	
EE/2007/0577	Similar to the Recommendation.	National	Elion	1 – Access and interconnection	No comments made by the Commission.
				2 - Non-discrimination	
				3 – Transparency (including the publication of a Reference Offer)	
				4 – Cost orientation and cost accounting	
				5 – Accounting separation	

Market 12: Wholesale broadband access

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			Access / interconnection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Denmark	YES	1 operator	YES	YES	YES	YES	YES
Finland	NO*	43 operators	YES	YES	YES	NO	NO
France***	YES	1 operator	YES ****	YES	YES	YES	YES

Hungary	YES	5 operators	YES	YES	YES	YES	YES
Ireland	NO*	1 operator	YES	YES	YES	YES	YES
Portugal	NO*	1 operator	YES	YES	YES	YES	YES
Sweden	NO*	1 operator	YES	YES	YES	YES	NO
United Kingdom	NO*	2 operators	YES	YES	YES	YES**	YES
Italy	NO*	1 operator	YES	YES	YES	YES	YES
Germany	YES	1 operator	YES	YES	YES	YES	YES
Lithuania	YES	1 operator	YES	YES	YES	YES	YES
Netherlands	NO*	1 operator	YES	YES	YES	NO	NO
Austria	NO*	1 operator	YES	YES	YES	YES	YES
Cyprus	YES	1 operator	YES	YES	YES	YES	YES
Slovenia	YES	1 operator	YES	YES	YES	YES	YES
Spain	YES	1 operator	YES	YES	YES	YES	NO
Greece	YES	1 operator	YES	YES	YES	YES	YES
Czech Republic	YES	1 operator	YES	YES	YES	YES	NO
Slovakia	NO*	1 operator	YES	YES	YES	YES	YES
Poland	YES	1 operator	YES	YES	YES	YES	YES

Luxembourg	YES	1 operator	YES	YES	YES	YES	YES
Estonia	NO*	1 operator	YES	YES	YES	YES	YES
Latvia	YES	1 operator	YES	YES	YES	YES	YES
Finland*****	NO*	39 operators	YES	YES	YES	NO	NO

* *Refinement, broader/narrower market and/or merger of markets*

** *Differentiated or no remedy imposed on certain SMP operators.*

*** *Including the notification concerning the market for "Wholesale broadband access delivered at national level in France."*

**** *This remedy was not imposed in the market for "Wholesale broadband access delivered at national level in France."*

***** *Second review of the market*

Overview of notifications assessed until 31 March 2007

Market 12: Wholesale broadband access

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
<p>UK/2003/0032, 0033 and 0034</p>	<p>Wholesale asymmetric broadband origination (in the UK excluding the Hull area and in the Hull area, including both cable and PSTN networks) and broadband conveyance (in the UK excluding the Hull area).</p>	<p>Two separate markets for broadband origination (UK excluding the Hull area and the Hull area) and one separate market for broadband conveyance (for the UK excluding the Hull area)</p>	<p>BT (broadband origination and broadband conveyance in the UK excluding the Hull area) and Kingston (broadband origination in the Hull area)</p>	<p>1 - General obligation to provide network access on reasonable request (both for BT and Kingston)</p>	<p>The Commission made comments on:</p> <p>Product market definition of asymmetric broadband origination including both DSL- and cable-based wholesale: Although it was not seen as possible to provide asymmetric broadband origination services over the cable networks, given the indirect pricing constraint exercised by cable-based services at the retail level, Ofcom concluded that the wholesale market for asymmetric broadband origination includes both DSL- and cable-based wholesale services. By including cable-based wholesale broadband access services in the relevant market, Ofcom should have given greater consideration to the technical, practical and economic feasibility for cable operators to offer facilities equivalent to bitstream access.</p> <p>Notwithstanding, while this approach may have led to a narrower market definition, and there remained doubts as to whether cable-based wholesale services from the market definition</p>
				<p>2 - Non-discrimination (both for BT and Kingston)</p>	
				<p>3 - Transparency (reference offer) (both for BT and Kingston)</p>	
				<p>4 - Transparency (requirement to notify terms and conditions) (both for BT and Kingston)</p>	

				5 - Requirement to notify technical information (both for BT and Kingston)	<p>would not have lead to a different result in the SMP analysis. Consequently, a conclusion on the exact scope of the market was not relevant for the purposes of the SMP assessment.</p> <p>National consultation run in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>
				6 - Accounting separation (both for BT and Kingston)	
				7 - Retail minus pricing approach for network access (for BT only)	
				8 - Requirement to provide quality of service information (for BT only)	
				9 - Obligations relating to new network access (for BT only)	
UK/20040064	See Cases UK/2003/0032-0034.			Details of transparency obligations (publication of Quality of Service and information in the form of Key Performance Indicators)	No comments made by the Commission.

<p>FI/2004/0062</p>	<p>The market for wholesale broadband services, comprising bitstream services and services alike (provided by any technology), but excluding the access link to the customer premises in the PSTN network.</p>	<p>Regional</p>	<p>43 local operators</p>	<p>1 - Obligation to lease transmission capacity (including necessary equipment) to the other operators as a wholesale broadband product</p>	<p>The Commission made comments on:</p> <p>Definition of wholesale broadband services markets: Ficora's market definition does not cover the access link to the customer premises. Therefore, in order to be able to provide broadband services to end-users, a third party must acquire a further local loop product, in addition to the wholesale broadband product. However, since the local loop product is regulated, and the wholesale broadband services markets are proposed to be regulated, the availability of "access to data transmission services to be supplied to an end user at a fixed location" in Finland would not be different to a situation where the wholesale broadband access market would be defined in accordance with market 12 of the Recommendation.</p> <p>The Commission trusted that the combination of regulation of unbundled local loops and the wholesale broadband services will provide access seekers with a seamless service both in</p>
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				<p>2 - Transparency (publish delivery terms and tariff information)</p>	<p>respect of technology and in respect of the commercial contracts involved. Ficora will need to examine any change in the regulatory measures in the local loops markets also in terms of their impact on the market for wholesale broadband service and vice-versa.</p> <p>Prices and conditions: Regulating the wholesale broadband access market in a way which requires a third party to acquire two separate wholesale products may not be the most effective way to promote competition. Although the provision of two separate products instead of one will not lead to any competitive disadvantage for access seekers, Ficora should ensure, however, that the two wholesale products in combination are provided on conditions and at prices which are comparable to a situation where a regulated single wholesale input were available.</p> <p>Inclusion of cable in the definition of the</p>
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				3 - Non-discrimination	<p>wholesale broadband access market: Despite the fact that the evidence provided does not seem to sufficiently support the conclusion that wholesale broadband services provided over a PSTN network and a cable network belong to the same market, the exclusion of cable-based wholesale services from the market definition would not have led to a different result of the SMP analysis in this particular case.</p>
SE/2004/0083	Wholesale broadband access in the form of bitstream access (including cable-TV networks and Local Area Networks).	National	Teliasonera AB	1 - Access obligation	<p>The Commission made a comment on:</p> <p>Cable-TV networks as alternative infrastructure for the provision of wholesale bitstream access: No bitstream connections are currently provided over cable-tv networks in Sweden. Consequently, PTS is invited to make clear in its final decision that cable-TV networks are excluded from the relevant product market, and to consider concluding that it is unlikely for</p>
				2 - Price regulation (retail minus) and cost accounting	

				3 - Non-discrimination	cable-TV operators to enter the market for wholesale bitstream access in the near future. Potential competition from cable-TV operators could only constrain to a very limited extent, if at all, the market behaviour of the current providers of wholesale bitstream access.
				4 - Transparency (reference offer)	
IE/2004/0093	Bitstream access permitting the transmission of broadband data in both directions and other wholesale access provided over other infrastructures, if and when they offer facilities equivalent to bitstream access. Includes cable networks and Fixed Wireless Access (FWA).	National	eircom	1 - Access to and use of specific network facilities	The Commission made a comment on: Self-supply by cable operators and FWA operators in the relevant product market: ComReg explicitly excludes any potential direct constraint exercised by providers of cable- or Fixed Wireless Access (FWA)-based wholesale inputs and bases its conclusions on market definition entirely on an assumed indirect pricing constraint derived from substitutability at the retail level. In the presence of evidence excluding demand side substitutability at the wholesale level, such an indirect competitive constraint could have been taken into account subsequent to the definition of the relevant market, i.e. at the stage of assessment of SMP. In the case of FWA platforms, the limited capacity carried on these networks may even call into question the existence of an indirect pricing constraint, as one of the assumptions of the “indirect pricing constraint” approach is the ability of providers to increase output in case of
				2 - Non-discrimination	
				3 - Transparency	

				4- Accounting separation	a retail price increase by the competing network operator.
				5 - Price control and cost orientation (pending a further decision on wholesale price control, retail minus pricing is applied)	
PT/2004/0118	Wholesale broadband access services (supported by the PSTN and the cable-TV-network).	National	The PT Group	1 - Access obligation	The Commission made a comment on: Inclusion of cable in the definition of the wholesale broadband access market: Before including cable networks in the relevant market definition, the NRAs should give due consideration to the technical, practical and economic feasibility for cable operators to offer facilities equivalent to bitstream access. There are specific aspects of the Portuguese market which should be taken into account when assessing whether cable should be included in the market, such as the fact that the national cable network is to a large extent already upgraded to provide interactive services.
				2 - Non-discrimination	

				3 - Transparency and reference offer	<p>The fact that one operator has previously requested, and been denied, access to the cable network might suggest that there is a certain degree of demand-side substitutability in the market. It may be questioned whether wholesale broadband access via the cable network should be included in the relevant product market. However, in this particular case the exclusion from the relevant product market of wholesale bitstream access provided via cable-TV networks would not lead to a different result in the SMP analysis. Consequently, a conclusion on the exact scope of the relevant product market is not relevant for the purposes of SMP assessment. However, should the PT Group decide to divest of its cable-TV-business, the use of the current definition of the relevant product market may have a major impact on the SMP finding. Therefore, Anacom was asked to re-conduct its market analysis and the proposed remedies in case PT Group decides to divest of its cable business.</p>
				4 - Accounting separation	
				5 - Price control (retail minus) and cost accounting	
				6 - Information requirements	
FR/2005/0175	Similar to the Recommendation.	Metropolitan France, the		1 - Access obligation	Publication of accounting information

<p>And FR/2006/0520</p>		<p>French over- seas territories and Mayotte, excluding the territory of Saint-Pierre- et-Miquelon</p>		2 - Non-discrimination	<p>The Commission recalls Article 5 of the Accounting Recommendation, which states that</p> <p><i>“national regulatory authorities make relevant accounting information from notified operators available to interested parties at a sufficient level of detail [...] In providing information for these purposes, national regulatory authorities should have due regard for commercial confidentiality.</i></p> <p><i>In this respect, the publication by the notified operator of sufficiently detailed cost</i></p> <p><i>statements showing, for example, the average cost of network components will increase transparency and raise confidence on the part of competitors that there are no anticompetitive cross-subsidies... ”</i> Therefore, the Commission invites ARCEP to better substantiate the reasons for which it considers that accounting information should, or not, be published, taking into account commercial confidentiality. This consideration applies in particular for regulatory statements describing the cost of network elements.</p>
				3 - Transparency - obligation to make public information regarding access	
				4 - Quality of service	
				5 - Price control (prices should be cost-oriented reflecting “the long-run costs of an efficient operator”)	
				6 - Accounting separation	

FR/2005/0206	The provision of wholesale broadband access products delivered at a single national point of presence, regardless of whether (i) the technical interface used is IP or ATM and (ii) the products are meant to be provided ultimately to residential or non-residential customers at retail level, excluding wholesale access technologies other than DSL such	Metropolitan France, the French overseas territories and Mayotte	France Télécom	1 - A form of price control (i.e. “interdiction de pratiquer des tarifs d’éviction”)	<p>The Commission made comments on:</p> <p>Market definition: In previous cases notified pursuant to Article 7(3) of the Framework Directive, the product market in question has been considered by some NRAs to be part of market 12 of the Recommendation. In the present case, however, and on the basis of the notification and the additional information provided by ARCEP, the Commission is of the view that ARCEP has demonstrated specific national circumstances justifying that the notified market constitutes a separate market susceptible for ex ante regulation.</p> <p>SMP assessment: Market shares in the present case may not necessarily reflect reliable</p>
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	as cable.			<p>2 - Non-discrimination</p>	<p>information on the competitive level of supply on the relevant market. ARCEP accords great importance to France Télécom's economies of scale and scope following Wanadoo's reintegration (i.e. to the essential role of these economies in France Télécom's production cost structure). The Commission considers that, should the upstream remedies be already properly enforced, these economies could be constrained, to a certain extent. ARCEP should consider reflecting better this point in the final measure. ARCEP should also consider explaining in more detail in the final measure the obstacles that could limit a self-supplier's ability to enter the market. Moreover, imminent structural changes and their effects on the competitive conditions on the market need to be addressed in ARCEP's analysis.</p>
				<p>3 - Accounting separation</p>	<p>Remedies: When the obligations on LLU and regional bitstream will be properly enforced and in particular accounting separation, regulation as proposed in this notification would no longer be necessary. In this respect, given the uncertainties as to how market conditions will evolve beyond the next 12 months and the effect of upstream remedies being properly enforced, the Commission invites ARCEP (i) to ensure full and effective enforcement of existing LLU and regional bitstream obligations within the shortest possible timeframe; (ii) to commit reviewing the present market analysis once the full enforcement of the remedies referred to in (i)</p>

				4 - Obligation to formalise and transmit to ARCEP the tariffs and technical conditions of internal transactions between the wholesale “network” branch and the retail “ISP” branch.	above is ensured and at the latest within one year following adoption of the final measure resulting from this notification, and (iii) to limit the validity of the obligations proposed in the present draft measure accordingly.
HU/2005/0186 HU/2006/0363	Similar to the Recommendation.	5 markets corresponding to the former concession areas of the former concession operators	Matáv Rt., Invitel Távközlési Szolgáltató Rt., Hungarotel Távközlési Rt., Emitel Távközlési Rt. Monor Telefon Társaság Rt.	1 - Transparency	The Commission made comments on: Implementation of the proposed “retail minus” obligation: NHH is invited to adopt the draft measure setting out the details of the “retail minus” formula as soon as possible in order to provide adequate transparency and certainty for the market players concerned. In this respect, NHH is reminded that once adopted, the measure setting out the margin between the retail and wholesale offerings should be notified under Article 7(3) of the Framework Directive. Offerings other than local and national bitstream access: In case there would be unsatisfied market demand for other types of wholesale bitstream access, in particular at ATM level, NHH should consider the use of the
				2 - Non-discrimination	
				3 - Accounting separation	

				4 - Access and interconnection	regulatory means available to it, including particularly the launch of a market review procedure.
				5 - Price control and cost-orientation (local bitstream access to be provided on cost-oriented prices, based on FDC methodology; national bitstream access to be provided on retail minus basis)	
					Provision of voice services using a bitstream access product: NHH should ensure that there are no unjustified limitations imposed by the SMP operators on third parties such as preventing them from using local bitstream access to offer voice services.
DK/2005/0182	Withdrawn by the National Regulatory Authority (renotified under case number DK/2005/0209)				
DK/2005/0209	Similar to the Recommendation.	National	TDC	1 - Requirement to meet reasonable requests to provide wholesale access and co-location with associated facilities	No comments made by the Commission.
				2 - Non-discrimination	

				3 - Cost accounting and accounting separation	
				4 - Transparency	
				5 - Price control in the form of uniform national pricing based on modified historic costs for the access products	
IT/2005/0253	services based on satellite technologies included in the market	National	Telecom Italia	1 - obligation to supply wholesale broadband access on copper as well as on fibre optic lines	<p>Inclusion of satellite connections in the definition of the wholesale broadband access market</p> <p>The notified market definition for wholesale broadband services equivalent to bitstream services includes the provision of such services over alternative technologies including via satellite networks.</p> <p>In AGCOM's opinion, the inclusion of a satellite-based wholesale product in the relevant market is justified by the existence of an indirect pricing constraint exercised by the corresponding retail xDSL broadband products.</p> <p>The Commission questions the inclusion of wholesale broadband access products based on satellite connections in the relevant market definition for the following reasons:</p>

				<p>2 - transparency (publication of the bitstream reference interconnection offer</p>	<p>- AGCOM considers that the indirect pricing constraint from the retail market would lead to the inclusion of satellite in the wholesale market. However, as the Commission has previously pointed out such an approach does not focus on the actual demand and supply side substitutability between the different wholesale inputs. Considering that, in this specific case, wholesale products over satellite are actually available for sale to third parties, AGCOM's analysis should have focused on a detailed analysis of the wholesale products, including a comparison of the actual prices of the different wholesale products concerned. AGCOM has however not provided any analysis of the actual prices of these products.</p> <p>- AGCOM has also not demonstrated that wholesale broadband access product supplied via satellite connections "offers facilities equivalent to the bitstream access" based on</p>
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				3 – non discrimination	<p>xDSL technologies.</p> <p>AGCOM itself states that it is difficult to find a correspondence between wholesale broadband services based on satellite technologies and wholesale services based on xDSL technologies.</p> <p>Moreover, it is not clear to what extent the ANOs can shape the parameters of the satellite-based service offered to end-users. Although, AGCOM states that in principle, ANOs could differentiate their retail services from the services offered by their wholesale suppliers, AGCOM does not provide any evidence showing that wholesale offers based on satellite technologies are not in reality pure “resale offers”, the latter being expressly excluded by AGCOM from the relevant market definition. AGCOM further does not analyse to what extent the difference between, from a demand side perspective, the purchase of mono-directional and bi-directional satellite wholesale products</p>
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				<p>4 – price control and cost accounting</p> <p>5 – accounting separation</p>	<p>would affect the market definition.</p> <p>However, since in the light of the market position of satellite operators the exclusion of satellite wholesale access services from the market definition would not have led to a different result as regards the SMP analysis, the Commission considers that a conclusion on the exact scope of the market is not relevant in this particular case.</p>
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<p>DE/2005/0262</p> <p>DE/2006/0457</p> <p>DE/20070576</p>	<p>BNetzA</p> <p>defines two separate markets on wholesale level: 1) a wholesale bitstream access market</p> <p>with handover at ATM-level and 2) a wholesale bitstream access market with handover</p> <p>at IP-level (including hybrid fibre-coaxial network (“HFC”) cable broadband access at IP-level).</p>	<p>national</p>	<p>Deutsche Telecom</p>	<p>1- Obligation of access for the purpose of interconnection and collocation.</p>	<p>The future treatment of VDSL connections in the context of emerging new retail services; the need to base any prior exclusion of products from the wholesale broadband access markets on a proper substitutability test</p> <p>The Commission notes that the emergence of new retail services may give rise to the emergence of a new derived wholesale market to the extent that such new retail services cannot be provided over the existing wholesale products. The new retail services may in such a case generate a wholesale demand for broadband access services with different characteristics from the currently existing wholesale broadband access services. Such new wholesale</p> <p>products should not be subjected to inappropriate obligations. When examining differences between retail services, BNetzA should therefore examine in particular to what extent they necessarily require different wholesale inputs, before excluding the derived wholesale inputs from the wholesale bitstream access markets. In this context, the Commission invites BNetzA to examine to what extent the mere bundling of distinct retail products would in itself give rise to the existence of a new retail product belonging to a separate retail market. A mere upgrade of an existing service is not considered in itself to constitute a new market. The lack of substitutability of a product has to be established from both demand- and supply-side perspectives before it can be excluded from the markets in question.</p>
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				2 - No discrimination	<p>Imposition of remedies</p> <p>Given that wholesale bitstream access is not yet available in Germany, given that there has hardly been competition between broadband infrastructures, given that there have been a number of competition problems in the German broadband markets and that the level of competition in and the penetration of the German broadband markets are still relatively low, the Commission invites BNetzA to impose appropriate remedies in the notified markets without delay and to notify them to the Commission under Article 7(3) of the Framework Directive. In this context the Commission considers that BNetzA</p> <p>should ensure that no form of wholesale broadband access is negatively affected by DT's roll out of VDSL/fibre infrastructure.</p> <p>Scope of the access obligation</p> <p>The Commission welcomes the fact that the access obligation as imposed by BNetzA includes bitstream over all variants of infrastructure, including ADSL2,</p> <p>ADSL2+, SDSL and VDSL unless they are not substitutes to other bitstream access products. This corresponds to the practice of all NRAs which have notified their analysis of the wholesale broadband access market so far. The Commission invites BNetzA to apply the appropriate remedies without delay.</p>
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				<p>3 – accounting separation</p>	<p>The Commission recalls that in case DE/2005/0262 concerning the market definition and analysis of the wholesale broadband access market in Germany it was originally disputed between BNetzA and the Commission to which extent the recently established VDSL connections of the incumbent were included in the relevant market. The Commission refers to the withdrawal of its serious doubts letter of 23 December 2005 where it is stated that bitstream access to VDSL connections is included in the wholesale bitstream access markets unless it proves not to be a substitute for the existing kinds of bitstream access.</p> <p>Against this background and in order to provide regulatory certainty the Commission finds it appropriate for BNetzA to set out explicitly that remedies in the present case also relate to the VDSL network. In view of the VDSL-based retail products that DT has recently launched, such an application of remedies should no longer be postponed.</p> <p>As indicated in the Commission’s serious doubts letter of 11 November 2005, the Commission has at present no indication of a lack of substitution between VDSL</p>
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				<p>4 – obligation to issue a reference offer</p>	<p>and other xDSL products, whether at retail or at wholesale level. It is recalled in particular that a mere upgrade of an existing service (such as an offering with a higher bandwidth) is not considered in itself to constitute a new market. The Commission hence considers that the question about the substitutability between bitstream access to VDSL connections and other forms of bitstream access should be answered positively from the outset. Excluding DT's VDSL-based infrastructure from the access obligation would jeopardise the effectiveness of that obligation to the detriment of competition in the downstream market and of the consumer. In the presence of such exclusion, if DT upgrades its ADSL infrastructure in a given city to VDSL technology by rolling out its fibre to the remote concentrators or street cabinets and dismantling its ADSL equipment, there is a risk that end users in that city become unreachable for any alternative DSL-operator as the alternative operators could not rely on DT's wholesale access product to provide retail broadband access services in that city. Even if DT were required to keep its ADSL infrastructure operational</p>
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				<p>5 – ex post price control</p>	<p>throughout Germany in parallel to its VDSL infrastructure being rolled out, there may be a risk that without giving access to its VDSL infrastructure. Alternative DSL-operators may be prevented from competing effectively with DT at the retail level in the relevant market.</p> <p>Finally, the requirement to take into account the investment undertaken by DT when upgrading its broadband network to VDSL technology should not prevent the imposed access obligation from covering DT's VDSL-based infrastructure.</p> <p>The costs incurred by DT can and should be compensated for through the setting of an appropriate access price (including cost of capital), but cannot justify an exclusion from the access obligation.</p> <p>Therefore, when the infrastructure is in place, access to VDSL-based infrastructure is to be included in this remedy imposed. Any change to this access obligation has to be notified to the Commission under Article 7(3) of the Framework Directive.</p> <p>Stand alone bitstream access</p> <p>The Commission welcomes that in its answer to the request for information BNetzA confirms the future imposition of access</p>
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					<p>to stand alone bitstream.</p> <p>The Commission asks BNetzA to impose this remedy without delay in order to</p> <p>enable competitors to offer broadband connections to end customers without an obligation to buy a telephone connection from DT. This would stimulate competition in particular in rural areas less susceptible to local loop unbundling, where competition on the retail services is particularly weak in Germany. Such an offer will also provide an adequate means to increase competition in the retail voice markets via Voice over IP</p> <p>Effective price regulation</p> <p>The Commission points out that a finding of non-SMP on the retail broadband</p> <p>access market is not per se sufficient to remove the ex ante price control obligation at the wholesale level.</p> <p>In line with the practice of other Member States and given DT's refusal to offer</p> <p>bitstream access in the past, the Commission notes that ex-post price control is not appropriate to remedy the competition problem identified in the wholesale</p> <p>market in question. The Commission underlines moreover that when assessing</p> <p>the incumbent's market power at retail level, it</p>
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					<p>should be taken into account that</p> <p>part of the retail market share of alternative operators represents pure reselling of</p> <p>DT's broadband access products.</p> <p>Concerning the implementation of the ex ante price control, the Commission invites BNetzA to indicate in the definitive measure which method the price control will be based upon in order to ensure transparency and legal certainty in the market. The Commission notes that the German law provides that price control can be implemented in form of cost-orientation or benchmarking. In this context, the Commission is concerned that benchmarking may not allow for the</p> <p>specific national circumstances that may have an impact on costs to be taken into</p> <p>account, in particular network topology and differences in the point of interconnection. Benchmarking may also not ensure an appropriate margin with the retail prices applicable in the German market, on the one hand, and with the regulated local loop unbundling rates in Germany, on the other hand, which margins are essential to encourage alternative operators to climb the ladder of investment and to avoid a price squeeze between the various rungs of the ladder.</p> <p>Therefore, the Commission asks BNetzA to impose either retail minus or cost-oriented</p> <p>price control. If BNetzA chooses cost-</p>
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					<p>orientation, it is invited, in order to increase transparency, to communicate to the market players a cost model on which cost-orientation will be based.</p> <p>Notification of remedies concerning ATM bitstream access to be submitted</p> <p>without further delay</p> <p>The Commission reminds BNetzA that bitstream access has already been</p> <p>available in the vast majority of EU Member States for a number of years.</p> <p>BNetzA notified the market definition and market analysis of the bitstream market only in October 2005 after a reminder from the Commission services. The Commission notes that eight months have elapsed since the Commission's withdrawal of serious doubts in this case asks BNetzA to notify the related remedies for ATM bitstream access without further delay.</p>
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LT/2005/0267	Similar to the Recommendation	national	Lietuvos Telekomas AB	<p>1 - requirement to: (i) meet reasonable requests to provide access to specific network elements and/or facilities; (ii) negotiate in good faith with other undertakings, not to withdraw access already granted; and (iii) provide all other measures necessary for the provision of broadband access to end-users;</p> <p>2 - price control and cost accounting:</p> <p>3 – accounting separation</p> <p>4 – non discrimination</p> <p>5 – transparency</p>	No comments made by the Commission.
NL/2005/0281	OPTA differentiates between the market for WBA with high	national	KPN on the market for high	1 – access	

NL/2006/0377	quality WBA and the market for WBA with low quality WBA		quality WBA		<p>definition of the relevant product market</p> <p>In its notification, OPTA considers that the pricing constraint exercised by cable-based broadband services at the retail level has a sufficiently significant impact at the</p> <p>wholesale level to justify its inclusion in the WBA market.</p> <p>OPTA's approach to defining a wholesale market on the basis of the competitive conditions in the corresponding retail market is not in principle inconsistent with the methodology set out in the Recommendation and in the Commission's Guidelines on market analysis and the assessment of SMP.</p> <p>However, for the definition of the relevant market, demand side substitution represents the most immediate and effective disciplinary force on the suppliers of a given product, in particular in relation to their pricing decisions. Basically, the exercise of market definition consists in identifying the effective alternative sources of supply for the customers of the undertakings involved.¹⁶ OPTA does not provide evidence of any direct demand side substitution, and states that to its knowledge there has been no switching at the wholesale level between neither DSL-operators and cable operators, nor between DSL-operators mutually. Such demand side substitution would rest on the assumption that operators currently buying DSL based wholesale bitstream products could readily switch to a bitstream product offered on an alternative technological platform, i.e. a cable network, in</p>
				2 – non discrimination	
				3 – obligation to publish a reference offer	

					<p>response to a price rise of the DSL based product. In practice, such switching could be restricted by considerable switching costs. Such switching costs should have been assessed by OPTA prior to the inclusion of a cable based bitstream product into the relevant market.</p> <p>Even if one were to ignore actual switching possibilities for existing wholesale</p> <p>customers and focus on substitutability between both products for new entrants (which have not committed to either DSL or cable infrastructure yet), there appear to be limits in the substitutability between both products. Cable-based WBA products in the Netherlands offer a much more limited coverage than the DSL-based WBA product of KPN or, for example, Versatel. This appears to restrict substitutability from the</p> <p>demand perspective (having to combine WBA products from different cable suppliers may not only increase transaction costs but also network and product integration</p> <p>costs). Despite having been available, according to OPTA, for several years, ISPs using third party access based on cable represent today only [...] % of the retail market.</p> <p>Furthermore it must be noted that even if some degree of substitution between both</p> <p>products may exist for new entrants, this would not protect existing customers of KPN as KPN is in a position to price discriminate between new entrants and existing customers. KPN may very</p>
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					<p>well price its WBA product competitively in order to attract new customers, while raising its price for existing customers once these customers, due to the high switching costs, have become tied to KPN.</p> <p>Also from the supply-side, substitution is limited as a cable operator cannot readily switch to supplying DSL-based WBA and <i>vice versa</i>.</p> <p>Possibly aware of these limitations as regards direct substitutability, OPTA bases its finding of a single wholesale market for DSL and cable based bitstream products on an assumed indirect pricing constraint derived from substitutability between cable and DSL at the <i>retail</i> level. The Commission considers that such an indirect competitive</p> <p>constraint should not have been taken into account at the stage of the definition of the</p> <p>relevant market. Moreover, for the theory of indirect pricing constraint to be applied at all, it would have to be shown that i) ISPs do not absorb such a price rise at the wholesale level but were forced to raise prices at the retail level, that ii) even in case ISPs pass on the price increase, all or most of the customers of the ISPs forced to raise prices would switch to retail cable operators and not, for example, to the retail arm of</p> <p>the WBA provider, in particular if the latter does not raise its own retail prices. This has not been demonstrated by OPTA. Account should, for example, have been taken</p>
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					<p>of demand elasticity in order to substantiate the claim of an indirect pricing constraint</p> <p>coming from demand side substitution at the retail level. In this respect it is also noteworthy that KPN applies distinct tariffs for its WBA product in so-called A-zones and B-zones,²¹ despite cable operators being present in both zones and retail prices being uniform throughout the country.</p> <p>For the reasons indicated above, the Commission has strong concerns as to whether low quality WBA provided over cable and DSL form part of the same market.²²</p> <p>The finding of no SMP on the market as defined by OPTA</p> <p>Even if one were to accept OPTA's broad market definition, including cable-based WBA in the relevant market, the Commission has strong concerns about OPTA's finding that KPN would not hold SMP. On such a broadly defined market, KPN's market share would be 44%. KPN's market share has increased strongly over the past four years (coming from 3% in January 2001). Even if KPN's share of both DSL and cable based broadband connections seems to have decreased by [...] percentage points in the past five months, OPTA expects that KPN's market share will grow to 48% in 2008; according to the alternative operators, KPN's market share would exceed 50% in Q1 2006. The market share of KPN's largest competitor (UPC) is substantially lower, around 13%.²³</p>
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					<p>Additional elements seem to point in the direction of KPN having SMP. OPTA</p> <p>recognizes for example that KPN controls infrastructure which cannot easily be</p> <p>duplicated. Alternative operators are investing in alternative infrastructure, but KPN is the only operator which has ensured national coverage. Competing DSL operators have today maximally [...]% of the investment in place to ensure national coverage ([...]), even though this investment enables them to cover 60-70% of Dutch households. Competing cable operators have maximally [...]% of the investment in place to ensure national coverage (UPC) and cover maximally [...]% of Dutch households.</p> <p>OPTA also recognizes that KPN has advantages of scale and scope, linked to the high level of fixed costs and the broad product portfolio of KPN enabling it to distribute fixed costs over various retail products. OPTA indicates that these advantages of scale and scope may reduce over time (especially taking into account that the wholesale input – access to the local loop – is provided to alternative operators at cost-oriented prices), but in view of the fact that KPN's retail market share is expected to increase on the retail Internet access market and remains very high on certain neighbouring markets (such as retail calls) it is uncertain that these advantages will disappear over the period of the review. OPTA furthermore recognises that the barriers to enter the WBA market are high, but indicates that this has not impeded alternative operators to become active on this market and gain substantial market</p>
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					<p>share (15% <i>combined</i> on the market including cable; 25% <i>combined</i> on DSL-based WBA only). The Commission points out that KPN's market position has to be assessed against the position of each of its</p> <p>competitors taken individually; moreover, the presence of alternative operators on the market does not exclude that barriers to entry are high.</p> <p>For the reasons indicated above, the Commission has strong concerns as to whether KPN does not have SMP in the market for low quality WBA.</p> <p>The non-imposition of ex ante regulation in the market for low quality</p> <p>WBA</p> <p>With regard to the particular features of the Dutch market (i.e. high broadband</p> <p>penetration; high penetration of cable infrastructure; high penetration of alternative, LLU-based DSL operators in the absence of regulation of low quality WBA²⁴;</p> <p>competitive retail broadband market) taken cumulatively, the Commission does not</p> <p>contest OPTA's proposal at this stage not to impose ex ante regulation to the low</p> <p>quality WBA market in the Netherlands. On the basis of the information provided by</p>
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					<p>OPTA, it would seem that behind the high barriers to entry, the market for wholesale DSL-based bitstream access <i>tends</i> towards an effectively competitive outcome (within</p> <p>the meaning of the three criteria test set out in the Recommendation)²⁵, even in the absence of regulation on the low quality WBA market. In particular, the fact that LLU</p> <p>is already in place in the Netherlands with coverage up to 70% of the population,</p> <p>which is expected to increase to 85% in 2006, enables alternative operators to provide a wholesale DSL-based bitstream product in competition with KPN. In addition, the competition between cable operators and DSL-based operators on the retail internet access market further reduces the need for ex ante regulation of the low quality WBA market in the specific case of the Netherlands.</p> <p>Nevertheless, since the above assessment is based on a likely market tendency over the period of the review, the Commission asks OPTA to carefully monitor market</p> <p>developments, to re-conduct a market analysis and to notify its results within one year from the date of this letter. In monitoring market developments, OPTA should closely examine whether KPN is not leveraging its market power on the low quality WBA market into downstream markets where it is present as well (in particular into the retail internet access market and the retail calls markets), for example</p>
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					<p>by refusing to supply low quality WBA in response to a reasonable request, by supplying low quality WBA on discriminatory terms (for example, by making the provision of low quality WBA conditional upon an undertaking on the part of purchasers not to invest in LLU) or by raising the price of low quality WBA. OPTA should also monitor whether KPN is not engaging in anti-competitive behaviour such as predatory pricing or price squeeze in order to protect its position on the low-quality WBA market, in particular in those areas where LLU is in place.</p> <p>OPTA should also consider imposing accounting separation on KPN on the basis of finding SMP in the market for local loop unbundling that would also cover the provision of low quality WBA in order to facilitate the above monitoring and the</p> <p>application of competition law</p> <p>The non-imposition of accounting separation in the market for high quality WBA</p> <p>The Commission invites OPTA to impose the obligation of accounting separation on KPN in the market for high quality WBA in order to be able to monitor KPN's compliance with the non-discrimination obligation. Such remedy should ensure that KPN makes transparent its wholesale prices and its internal transfer prices for high quality WBA.</p>
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AT/2005/0312	inclusion of WBA provided over cable networks	national	Telekom Austria	1 - access	<p>The inclusion of WBA provided over cable networks in the definition of the relevant product market: TKK bases its conclusion to include cable-based broadband access into the same product market as DSL-based wholesale access on the existence of a cable-based wholesale offer and the consideration that the pricing constraint exercised by cable-based broadband services at the retail level has a sufficiently significant impact at the wholesale level to justify its inclusion in the WBA market.</p> <p>TKK's approach to defining a wholesale market on the basis of the competitive conditions in the corresponding retail market is not in principle inconsistent with the methodology set out in the Recommendation and in the Commission's Guidelines on market analysis and the</p>
				2 – non-discrimination	
				3 – price control	

				4 – reference offer	<p>assessment of SMP.</p> <p>However, for the definition of the relevant market, demand side substitution represents the most immediate and effective disciplinary force on the suppliers of a given product, in particular in relation to their pricing decisions. Basically, the</p> <p>exercise of market definition consists in identifying the effective alternative sources</p> <p>of supply for the customers of the undertakings involved. TKK does not provide evidence of any direct demand side substitution but admits that the demand and supply side substitution at the wholesale level is limited. TKK does not provide any evidence on switching at the wholesale level between DSL-operators and cable operators and states that due to limited coverage of individual cable networks, the</p>
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				5 – cost accounting	<p>possibilities of ISPs to switch from a DSL-based wholesale products to cable-based</p> <p>products are limited. In addition the switching costs should have been assessed by TKK prior to the inclusion of a cable based bitstream product into the relevant</p> <p>market. Considering the limitations as regards direct substitutability, TKK bases its finding of a single wholesale market for DSL and cable-based bitstream products mainly on an assumed indirect pricing constraint derived from substitutability between cable</p> <p>and DSL at the <i>retail</i> level. The Commission considers that such an indirect competitive constraint should not have been taken into account at the stage of the definition of the relevant market. Rather it should have been taken into account at the SMP assessment stage.</p>
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				<p>6 – accounting separation</p>	<p>Moreover, for the indirect pricing constraint to be effective it would have to be shown that i) ISPs do not absorb such a price rise at the wholesale level but are forced to raise prices at the retail level and that ii) even in case ISPs pass on the price increase, a significant number of customers of the ISPs forced to raise prices would switch to retail cable operators and not, for example, to the retail arm of the WBA provider, in particular if the latter does not raise its own retail prices.¹⁵ This has not been demonstrated by TKK. Account should, for example, have been taken of demand elasticity in order to substantiate the claim of an indirect pricing constraint coming from demand side substitution at the retail level.</p> <p>For the reasons indicated above, the Commission is of the view that TKK has not provided sufficient evidence to support the conclusion that WBA provided over cable form part of the same market.</p> <p>In case of a “DSL-only” market definition, Telekom Austria’s market share would be around 87% of DSL based broadband connections. Therefore, while there remain doubts as to whether cable-based WBA or other technologies form part of the relevant market, their exclusion from the market definition would not have led to a different result in the SMP analysis. Consequently, the Commission considers that a</p>
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					<p>conclusion on the exact scope of the market is not relevant in the present case for the purposes of SMP assessment.</p>
CY/2006/0332	Similar to the Recommendation	National	CYTA	<p>1 - Provision on reasonable request of bitstream access to interested parties, including supplementary services such as co-location;</p>	<p>No comments made by the Commission.</p>
				<p>2 - Transparency and publication of Bitstream Reference Offer;</p>	

				3 – non discrimination	
				4 – accounting separation	
				5 – price control	
SI/2006/0346	Similar to the Recommendation	national	Telekom Slovenije	1 - requirement to meet reasonable requests for wholesale access to bitstream products, use of certain network elements and related facilities;	No comments made by the Commission.
				2 – non-discrimination	

				3 - transparency, including a requirement to publish a reference offer;	
				4 – price control and cost accounting	
				5 – accounting separation	
ES/2006/0370	Similar to the Recommendation	national	TESAU	1 - access	<p>Definition of the relevant product market</p> <p>The Spanish market is characterised by the existence of two categories of</p> <p>wholesale broadband access products offered by</p>

				<p>2 – transparency and obligation to publish a reference offer</p>	<p>the incumbent: (i) the regional wholesale product (GigADSL) which delivers traffic at 109 regional POI and (ii) the national wholesale product (ADSL-IP) which delivers traffic at 1 national POI.</p> <p>Both products fall under the definition of bitstream and are candidates for <i>ex-ante</i> regulation.</p> <p>CMT considers that the national and the regional wholesale offers are substitutable in a prospective manner, despite the important investments for the regional offer on behalf of a new entrant in order to reach TESAU’s 109 POI (compared to the national offer).</p> <p>The Commission notes that in a previous case notified to the Commission⁶, this market has been segmented in two product markets: (i) the regional wholesale market or the market for bitstream access market with handover at the ATMbackbone and (ii) the national wholesale market or the market for bitstream access market with handover at the IP-backbone. The Commission also notes that the number of POI for the regional offer in Spain is among the highest in EU. The higher the number of POI necessary to reach in order to have national coverage, the</p>
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				<p>3 – price control</p>	<p>higher is the barrier to entry for new entrants.</p> <p>The Commission considers that the actual characteristics and the conditions of the Spanish broadband market could potentially justify a refinement of the wholesale market for broadband access in two relevant product markets.</p> <p>Notwithstanding, while this approach may have led to a narrower market definition, the refinement of the definition of the market at hand in this particular case would not have led to a different result in the SMP analysis. Consequently, the Commission considers that a conclusion on the exact scope of the market is not relevant in the present case for the purposes of SMP assessment.</p> <p>De facto limitation of the remedies to ADSL technology</p> <p>Despite the fact that CMT includes all xDSL technologies (ADSL, ADSL2, ADSL2+, VDSL, etc) in the relevant product market on which it finds TESAU to have SMP and despite the fact that TESAU bases its different retail services (internet access, TV over DSL, VoIP) on its DSL infrastructure, CMT intends to oblige TESAU to provide access only in order to guarantee the replicability of retail broadband internet access services in Spain.</p> <p>The Commission would like to underline that any wholesale broadband access</p>
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				<p>4 – non-discrimination</p>	<p>product that the remedies oblige TESAU to provide shall be made available</p> <p>regardless of the use that the buyer of such a service wishes to make of it (internet access, VoIP or TV over DSL).</p> <p>As a principle the same remedies imposed by CMT should cover the entire relevant market on which TESAU is found to have SMP (i.e. including ADSL to VDSL) if</p> <p>CMT cannot justify in accordance with Article 8(4) of the Access Directive⁹ and in</p> <p>the light of the regulatory objectives laid down in Article 8 of the Framework</p> <p>Directive why the remedies cover only part of the market and how such remedies</p> <p>nevertheless remedy the market failure identified.</p> <p>Considering the information provided and the competition problems identified by</p> <p>CMT it would seem proportionate in this case to ensure access to all infrastructures</p> <p>including TESAU’s ADSL, ADSL 2+ and future VDSL infrastructure, unless the</p> <p>products delivered over these infrastructures do clearly not act as substitutes to the retail products derived from the wholesale bitstream</p>
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					<p>market.</p> <p>Asymmetrical application of remedies</p> <p>CMT indicates in its draft measure that it may introduce some asymmetry in the</p> <p>remedies imposed on TESAU, based, inter alia, on geographic criteria. CMT</p> <p>explains that it would take into account the particular conditions of the relevant</p> <p>market with respect to the development of local loop unbundling in order not to</p> <p>impose unjustified or disproportionate requirements on TESAU.</p> <p>In its reply to the request for information, CMT explained that the asymmetry</p> <p>relate in particular to the price control obligation. CMT considers that the retail minus methodology should take into account the fact that the operator designated as having SMP faces greater competition constraints in the areas where some alternative operators use local loop unbundling. Geographical criteria might be</p> <p>used, to model the cost structure of the efficient operator, with the aim of allowing Telefónica to align appropriately on the prices of its competitors and sending</p> <p>signals to new entrants about the need to develop alternative infrastructure ensuring</p>
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					<p>sustainable competition in the long term.</p> <p>However, the Commission notes that although the number of unbundled local loops significantly increased during 2005 it still remains relatively low in relation to the incumbent's activated ADSL lines (less than 3%). In addition, when analysing the potential competition in the relevant market from operators using local loop unbundling, CMT refers to a series of disputes between TESAU and its competitors regarding delaying tactics in the provision of the services relating to local loop unbundling. CMT considers that a high number of those conflicts of access are the result of a multitude of TESAU's practices.</p> <p>In that context, the mere fact that some alternative operators are connected to some of TESAU's local exchanges does not mean that they are able to switch rapidly from a wholesale broadband access offer to the offer of unbundling of the local loop. Consequently, the geographical approach that CMT would use in implementing the margin squeeze test on TESAU's retail tariffs might deliver inappropriate results. The remedy envisaged would then fail to tackle the problem identified (margin squeeze) and would not be proportionate, nor justified (contrary to the principles and objectives laid down in the Access Directive).</p>
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					<p>Therefore, the Commission invites CMT to re-consider its geographical approach</p> <p>to the margin squeeze test and, in any event, to submit to consultation such remedies and thereafter notify them the Commission.</p>
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EL/2006/0372	Similar to the Recommendation	national	OTE	1 - access	<p>The Margin squeeze test</p> <p>EETT proposes to subject OTE's wholesale broadband prices to a "retail-minus" based on the costs of a reasonably efficient operator using the DCF methodology. In this context the Commission would like to point out the following as regards the different methodologies for assessing profitability in a margin squeeze test.</p> <p>There are basically two main different methodologies for assessing such profitability:</p> <p>a) Matching every year (or in shorter periods) the observed revenues and costs extracted from the undertaking's accounts in which investment expenditure have been amortised over appropriate periods.</p> <p>b) Aggregating the future revenues and costs of the company during an adequate period (generally the lifetime of the infrastructure) in order to arrive at a single</p>
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				<p>2 – non-discrimination</p> <p>measure, the net present value (“NPV”). Such method, referred to as DCF only looks at the profitability of a business over the adequate period (several years) and does not specify how costs should be recovered in distinct sub-periods.</p> <p>The Commission invites EETT to avoid the following shortcomings in the DCF methodology when used to detect a potential margin squeeze:</p> <ul style="list-style-type: none"> – Firstly, the outcome of the test risks relying on unreasonable forecasts about the ability of a new entrant to benefit from an increasing margin over time, thus leading to a “false positive” result.
				<p>3 - transparency</p> <ul style="list-style-type: none"> – Secondly, the DCF method would only show whether OTE is expected to earn a positive NPV over the period employed for the analysis, but it would not specify how costs should be recovered in distinct sub-periods. Consequently, a positive NPV could be interpreted not as evidence of absence of an anticompetitive price squeeze but, quite on the contrary, as an evidence of a successful exclusion making possible the recoupment of the initial losses.

				<p>4 – accounting separation</p> <p>– The use of the DCF method to detect a possible margin squeeze would allow a dominant firm such as OTE to incur substantial initial losses (that would be compensated for in the future) while its competitors may not be able to absorb losses during several years.</p> <p>Therefore, EETT should to ensure that a positive outcome for the margin squeeze analysis does not depend on unrealistic assumptions about the ability of a new entrant to benefit from an increasing margin over time. In other words, the Commission invites EETT to ensure that assumptions on future costs and prices included in the analysis for future years are plausible and are sustainable in a competitive market.</p>
				<p>5 – price control and cost accounting</p> <p>The Commission also invites EETT to submit the retail minus model based on a DCF methodology to national consultation, and to notify it to the Commission.</p>

CZ/2006/0449	Similar to the Recommendation	national	Cesky Telecom	1 – access	<p>Access obligation at the IP level only</p> <p>In the framework of the access obligation, CTU only requires CTc to provide access to alternative operators at the IP level, which is an option where the alternative operator cannot alter the parameters of the BRAS (broadband remote access server), which is operated by the incumbent, and has, therefore, very limited possibilities to determine the characteristics of the bitstream and differentiate the services provided to its customers. CTU does not intend to mandate more advanced forms of bitstream access, i.e. access at the ATM or corresponding technology level and/or access at the DSLAM level.</p> <p>The Commission would like to recall that when determining the appropriate access level to be mandated, the NRAs must balance the technical and operational conditions resulting from the incumbent's network architecture with the level of</p> <p>competition in the market. The assessment regarding the appropriate point of</p> <p>access should also take into account the perspective of the beneficiaries and the</p> <p>forms of access sought. By enabling alternative operators to choose from different access levels, infrastructure competition is promoted as it enables them to climb up the ladder of investment by migrating from one form of access to the next higher step, investing more and more in their own infrastructure.</p>
				2 – transparency	
				3 – non-discrimination	
				4 –accounting separation	

					<p>The Commission is not convinced that CTU's arguments regarding non-imposition of the ATM and/or DSLAM access are satisfactory. First of all, CTU should have analysed the architecture of the incumbent's network to establish whether the prevailing technical and operational conditions make the provision of the ATM and/or DSLAM access possible. The fact alone that CTc considers a specific technology as outdated and is not willing to invest therein is in itself not sufficient for drawing a conclusion that mandating access over the technology</p> <p>concerned would be disproportionate. Concerning the DSLAM access, it should</p> <p>be noted that local loop unbundling is generally not to be considered as a</p> <p>substitute in view of the additional costs to be made by an alternative operator</p> <p>when purchasing LLU. Further, the Commission notes that one alternative operator specifically requested CTU within the national consultation procedure to determine concrete forms of mandated access, including the DSLAM access, ATM access and access at the IP level. CTU did not adequately respond to this</p> <p>request.</p> <p>Given CTc's very high market share as well as the fact that in terms of self supplied</p> <p>broadband access its market share has been</p>
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					<p>growing over the recent years, the Commission invites CTU to impose on CTc an obligation to provide also more advanced forms of bitstream access at connection points further down in the network, which allow third parties to differentiate their services more from those of the incumbent than access at IP level, without requiring them to build out their infrastructure at local exchange level. The Commission notes in this regard that a vast majority of Member States have granted access to bitstream at the ATM level in addition to access at IP level.</p> <p>No price regulation</p> <p>CTU does not propose any price regulation, which it justifies by the fact that both wholesale and retail prices have been falling over the recent years due to indirect pressure exercised by the competitive retail broadband access market.</p> <p>As regards the competitive pressure from alternative infrastructures at retail level, the market analysis indicates, however, that xDSL is rapidly gaining market share at the expense of cable (the geographical coverage of which is limited) and WiFi.</p> <p>The Commission notes, moreover, that whereas</p>
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					<p>it is true that prices have been</p> <p>falling, it is also true that, as the data provided in the market analysis show, the</p> <p>margin between the wholesale and retail prices applied by the incumbent has decreased significantly over the analysed period. Further, CTU states in the market analysis that recurring special offers by the incumbent at the retail level, which were not matched by adequate wholesale offers, are among the reasons that have lead to a situation where, unlike in other Member States, CTc's market share in terms of self-supplied broadband access has been steadily rising over the recent years. Despite these facts, CTU does not address the apparent margin squeeze problem in the market analysis and does not consider imposing price regulation, such as a retail-minus remedy.</p> <p>In the reply to RFI, CTU provides more recent data showing that as of February</p> <p>2006 for certain products¹¹ the margin increased to 31% and as of July 2006 to</p> <p>41%. Whereas these data may indicate that the apparent margin squeeze problem</p> <p>observed over the recent years currently becomes less significant, the</p> <p>Commission notes that a broader analysis of data relating to all broadband access services provided by the incumbent would be necessary to determine whether or not a potential margin squeeze continues to distort competition at the</p>
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					<p>wholesale market. Moreover, without effective price regulation in place, normally retail minus, it cannot be excluded that CTC's future pricing policy may result into a decreasing margin again.</p> <p>The Commission is not convinced that the non-discrimination obligation as such, even if coupled with accounting separation obligation, can effectively remedy the market failure identified. Therefore, CTU is invited to impose an appropriate price control mechanism such as retail minus.</p>
SK/2006/0465	<p>TÚSR</p> <p>analyses the relevant market on the basis of competitive conditions in the retail market</p> <p>taking also alternative technologies into account. Slovak Telekom is only active on DSL based services</p>	national	Slovak Telekom	1 - access	<p>Defining the scope of the access obligation imposed</p> <p>It is not clear from the notification and the additional information provided at which</p> <p>level of the network Slovak Telekom will be required to provide access to alternative operators. It is therefore not clear whether, <i>inter alia</i>, TÚSR intends to mandate – apart from access at IP level – also more advanced forms of bitstream access, i.e. access at the ATM or corresponding technology level8 and/or access at the DSLAM level.</p> <p>The Commission recalls that access at (managed) IP level should enable alternative</p>

				<p>2 - transparency</p> <p>operators to offer bitstream access with relatively moderate investments. However this is an option where the alternative operator cannot alter the parameters of the</p> <p>BRAS (broadband remote access server), which is operated by the incumbent, and has, therefore, very limited possibilities to determine the characteristics of the bitstream and differentiate the services provided to its customers.</p> <p>The Commission recalls furthermore that when determining an appropriate access level to be mandated, the NRAs must take account of the technical and operational conditions resulting from the incumbent's network architecture as well as of the</p>
				<p>3 – non-discrimination</p> <p>level of competition in the market. The assessment regarding the appropriate point of access should be made from the perspective of the beneficiaries, who should be able to define the product. By enabling the alternative operators to choose from different access levels, infrastructure competition is promoted as these can climb up the ladder of investment by migrating from one form of access to the next higher</p> <p>step, adding more own value when going deeper in the value chain and investing</p> <p>more and more in their own infrastructure.</p> <p>Against this background, TÚSR should therefore</p>

				4 – accounting separation	analyse, before adopting its final measure, the architecture of the incumbent’s network to establish whether the prevailing technical and operational conditions make the provision of the ATM and/or DSLAM access possible. Given Slovak Telekom’s very high market share, the Commission invites TUSR to consider imposing the obligation on the incumbent to provide bitstream access in the form of IP, ATM and possibly also DSLAM access.
				5 – ex ante price control	
PL/2006/0472	Similar to the Recommendation	national	Telekomunikacja Polska SA	1 - access	<p>Defining the scope of the obligations imposed</p> <p>In the draft measure as notified, UKE did not clearly identify the precise scope of the remedies. Taking into account the additional information provided by UKE in response to the request for information, the Commission invites UKE to specify in the definitive measure in particular at which level in its network TP is obliged to provide access (ATM, DSLAM, IP,...) and for which bitstream access products TP is obliged to prepare a reference offer, to keep separate accounts and to charge cost</p>
				2 – non-discrimination	

				3 - transparency	oriented prices. In case the access obligation and related remedies do not apply to access at DSLAM and/or IP-level in the same way as they apply to access at ATM-level, UKE should for the sake of transparency and legal certainty of all operators clarify what TP's obligation to accept reasonable requests to access at the DSLAM and IP level in practice entails.
				4 – accounting separation	
				5 – price control	

<p>LU/2006/0510</p>	<p>Similar to the Recommendation</p>	<p>national</p>	<p>EPT</p>	<p>1 - access</p>	<p>Access obligation</p> <p>The Commission takes note of ILR's justifications, that are based inter alia on the specific network topology in Luxembourg, for limiting the access obligation to IPbased access. It does also note that Cegecom is providing wholesale broadband access on the basis of unbundled local loops. However, the Commission notes that retail broadband prices in Luxembourg remain relatively high.</p> <p>The obligations imposed under the Access Directive should be based on the nature of the problem identified, proportionate and justified in the light of the objectives</p>
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				2 – non-discrimination	<p>laid down in Article 8 of the Framework Directive. The access obligation imposed</p> <p>by ILR should be effective in ensuring effective competition in the broadband market, in ensuring that users derive maximum benefit in terms of choice, price and quality and in encouraging efficient investment in infrastructure. In light thereof, and if retail prices remain high despite the wholesale measures imposed, ILR should consider imposing access also at a lower level than IP11, in particular taking into account the fact that there is demand for access at levels which allow a more substantial differentiation of the retail services.</p> <p>Stand alone bitstream access</p> <p>The Commission notes that there is a demand for a stand alone bitstream which</p>
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				3 - transparency	<p>would enable competitors to offer broadband connections to end customers without an obligation to buy a telephone connection from EPT. Such a product would</p> <p>stimulate competition in areas, where competition on the retail services is particularly weak. It may also provide an adequate means to increase competition</p> <p>in the retail voice markets via Voice over IP. Therefore, the Commission invites</p> <p>ILR to design the access obligation to enable both the delivery of a broadband</p> <p>access to Internet only, and the bundled delivery of a broadband access and voice</p> <p>services or video services.</p> <p>Price control obligation</p>
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				<p>4 – accounting separation</p> <p>5 – price control</p>	<p>ILR proposes to implement the price control obligation on the basis of a "retailminus" methodology. The Commission notes however that the "retail-minus" approach may not be effective in this particular case.</p> <p>Indeed, as indicated by ILR, the prices applied by EPT at retail level are above the prices in neighbouring Member States (without such price distinctions being caused prima facie by objective cost differences). The application of retail minus methodology may consequently not lead to effectively regulated wholesale prices.</p> <p>Under these circumstances, the Commission invites ILR to impose an obligation of price control based on costs. Such an obligation would ensure both the equality in the conditions of competition between alternative operators (buyers of the wholesale offers) and EPT as retail provider, as well as guarantee attractive prices for consumers. Indeed, wholesale pricing based on costs allows the SMP operator to recover its costs while allowing alternative operators, which have not yet reached the same critical weight, the benefit of its economies of scale.</p>
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EE/2006/0522	<p>Sideamet includes cable TV networks in the market definition on the basis of retail</p> <p>demand-side substitutability, as in densely populated areas cable exists in parallel with</p> <p>the PSTN network and may act as a substitute</p>	national	Elion	1 - access	<p>Inclusion of Cable infrastructure into the market definition</p> <p>Sideamet's market definition includes services provided over the cable TV network.</p> <p>The Commission would like to draw Sideamet's attention to the definition of</p> <p>wholesale broadband access as provided in the Annex to the Recommendation, which</p> <p>covers both PSTN-based bitstream access and <i>“wholesale access provided over other infrastructures, if and when they offer facilities equivalent to bit-stream access.”</i> It follows thereof that, before including cable TV networks in the relevant market</p> <p>definition, the NRAs should give due consideration to the technical, practical and</p> <p>economic feasibility for cable operators to offer facilities equivalent to bitstream</p> <p>access.</p> <p>Sideamet has not assessed in sufficient detail demand-substitutability considerations at the</p>
2 - transparency					

				<p>3 – non discrimination</p>	<p>wholesale level. Furthermore, the above test whether cable offers facilities equivalent to bitstream access has not been carried out. It may therefore be questioned at this stage whether these conditions are met and whether broadband access via the cable networks can indeed be included in the relevant product market.</p> <p>However, in this case the inclusion or exclusion of bitstream access provided via cable TV networks from the relevant product market of wholesale bitstream access would not lead to a different result in the SMP analysis.</p>
				<p>4 – accounting separation</p>	<p>Consequently, the Commission considers that a conclusion on the exact scope of the relevant product market is not relevant for the purposes of SMP assessment.</p> <p>Timeframe for the review</p> <p>Sideamet intends to review the notified market in three years. The Commission considers this timeframe to be unreasonably long, especially taking into account that Sideamet itself refers to changing terms of competition at the retail level. Therefore, the</p>

				5 – price control	Commission would invite Sideamet to consider a shorter review period.
LV/2006/0540	Similar to the Recommendation	national	Lattelekom	1 – access	No comments made by the Commission.
				2 – transparency	
				3 – non-discrimination	
				4 – accounting separation	
				5 – price control	

<p>FI/2006/0548</p>	<p>FICORA confirms the conclusion reached in its previous market review that the market includes wholesale broadband services provided over the PSTN and cable network.</p>	<p>regional</p>	<p>39 operators</p>	<p>1 - obligation to lease transmission capacity (including necessary equipment) to the other operators as a wholesale broadband access;</p>	<p>Cost-orientation and cost accounting obligations</p> <p>The Commission recalls the comment made in the first round notification with regard to the fact that FICORA did not specify the method on which cost orientation would be assessed. In the context of the adoption of the final measure, FICORA justified it by explaining that since the Finnish Communication Market Act leaves each operator free to select the cost-accounting procedures, it cannot decide on the cost-accounting methodology. The Commission continues to believe that this limits the measure's contribution to consumer benefit, the enhancement of competition and the development of the internal market.</p> <p>Lack of price regulation for wholesale bitstream access</p> <p>FICORA does not propose any price control obligation in the wholesale broadband access market. However, there are a number of</p>
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				<p>2 – transparency</p>	<p>factors raised by FICORA that may call for price regulation. First, FICORA indicates that prices have recently increased in the retail market. Secondly, FICORA indicates that the national competition authority has been investigating potential price squeezes in the broadband market since 2003. Price squeezes can be avoided through effective wholesale price regulation. FICORA also recognises that the prices for wholesale broadband access</p> <p>vary greatly from one region to the other. This coupled with the fact that especially in</p> <p>sparsely populated areas wholesale broadband access from the SMP operator remains the only cost-effective way of competing in the retail market raises concerns that without proper price regulation it is difficult for a new entrant to build a competitive retail offer on a nationwide basis. Against this background the Commission invites FICORA to consider imposing appropriate price regulation in the wholesale broadband access market.</p> <p>Inclusion of cable in the definition of the wholesale broadband access market</p> <p>The Commission reiterates its comment made in the first round notification about the</p> <p>concerns related to the inclusion of cable into the market definition for wholesale</p> <p>broadband access. However, the Commission maintains that the conclusion on the exact scope of the market is not relevant in the present case</p>
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					for the purposes of the SMP assessment.
				3 – non-discrimination	

Market 13: Wholesale terminating segments of leased lines

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			Access / interconnection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria	YES	1 operator	YES	YES	YES	YES	YES
Finland	YES	43 operators	YES	YES	YES	NO	NO
Hungary	YES	1 operator	YES	YES	YES	YES	YES
Ireland	YES	1 operator	YES	YES	YES	YES	YES
Portugal	YES	1 operator	YES	YES	YES	YES	YES
Sweden	YES	1 operator	YES	YES	YES	YES	YES
United Kingdom	NO**	2 operators	YES	YES	YES	YES*	YES*
Austria ***	YES	1 operator	YES	YES	YES	YES	YES
Belgium	YES	1 operator	YES	YES	YES	YES	NO
Cyprus	YES	1 operator	YES	YES	YES	YES	YES

Czech Republic	YES	1 operator	YES	YES	YES	YES	YES
Denmark	YES	1 operator	YES	YES	YES	YES	YES
France	YES	1 operator	YES	YES	YES	YES	YES
Greece	NO**	1 operator	YES	YES	YES	YES	YES
Italy	YES	1 operator	YES	YES	YES	YES	YES
Latvia	YES	1 operator	YES	YES	YES	YES	YES
Lithuania	YES	1 operator	YES	YES	YES	YES	YES
Luxemburg	NO**	1 operator	YES	YES	YES	YES	YES
Malta	YES	1 operator	YES	YES	YES	YES	YES
Netherlands	NO**	1 operator	YES	YES	YES	YES	YES
Poland	NO**	1 operator	YES	YES	YES	YES	YES
Slovakia	NO**	1 operator	YES	YES	YES	YES	YES
Slovenia	YES	1 operator	YES	YES	YES	YES	NO
Spain	YES	1 operator	YES	YES	YES	YES	YES

**Differentiated or no remedy imposed on certain SMP operators*

*** Refinement, broader/narrower market and/or merger of markets*

**** Second round*

Overview of notifications assessed until 31 March 2007

Market 13: Terminating segments of leased lines

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
UK/2003/0037-0038	Refinement of the market definition in the Recommendation, four wholesale markets in the UK excluding the Hull area and in the Hull area: – wholesale low bandwidth traditional interface symmetric broadband origination (up to and including 8Mbit/s); – wholesale high bandwidth traditional interface symmetric broadband	National market with local characteristics (UK excluding the Hull area and the Hull area)	BT (with the exception of the very high capacity segment, where no SMP was found) and Kingston (with the exception of the very high capacity segment)	1 - Provision of network access on reasonable request	The Commission made comments on: Market definition: On the basis of the existence of different competitive conditions, Oftel has refined the leased line product markets as defined in the Recommendation, allowing proposing the removal of existing regulation on the market for very high bandwidth circuits. Oftel has defined a national market with local characteristics taking account of certain variations in the level of competition in different areas. Oftel's analysis is consistent with the methodology set out in the Recommendation and in the Commission's Guidelines on market analysis and the assessment of significant market power. Ofcom is invited to monitor closely the market developments and examine whether the proposed wholesale obligations (and in particular the ability for tariffs for wholesale trunk
				2 - Non-discrimination	
				3 - Basis of charges obligation (cost orientation and a cost accounting system)	
				4 -Transparency (reference offer and technical information)	
				5 - Price control (BT only)	

	<p>origination (above 8Mbit/s up to and including 155Mbit/s); – wholesale very high bandwidth traditional interface symmetric broadband origination (above 155Mbit/s) in the UK excluding the Hull area; – wholesale alternative interface symmetric broadband origination.</p>			<p>6 - Accounting separation (BT only)</p>	<p>segments to be geographically de-averaged) change the geographic variations to such a degree as to make the definition of an alternative geographic market more appropriate in the future.</p> <p>National consultation run in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>
				<p>7 - Requirement to provide advance notification of changes to (or introduction of) prices, terms and conditions (BT only)</p>	
				<p>8 - Requirement to provide quality of service information (BT only)</p>	
				<p>9 - Obligations relating to requests for new network access (BT only)</p>	
<p>UK/2004/0077</p>	<p>See Cases UK/2003/0037-0038.</p>			<p>Amendments to the interim charge control obligations imposed on BT</p>	<p>No comments made by the Commission.</p>

UK/2004/0123	See Cases UK/2003/0037-0038.			Slight modification of the remedies already notified because of the establishment of the Telecommunications Adjudicator.	No comments made by the Commission.
FI/2004/0080	Leased lines including a connection to the end-user (similar to the Recommendation).	Regional	43 operators	1 - Obligation to provide line rental of a leased line 2 - Obligation to publish delivery terms and tariff information 3 - Non-discrimination	No comments made by the Commission.
AT/2004/00100	Similar to the Recommendation.	National	Telekom Austria	1 - Provision of access to terminating segments on reasonable request 2 - Cost orientation and cost accounting 3 - Non-discrimination 4 - Transparency (reference offer) 5 - Accounting separation	The Commission made a comment encouraging TKK to make clear that the proposed remedies would apply to all products within the relevant market and that the specific obligations set down in national legislation relating to leased lines used for the purpose of network interconnection are above and beyond those proposed for this market.

HU/2005/0168	Similar to the Recommendation.	National	Matáv Rt.	1 - Transparency	No comments made by the Commission.
				2 - Non-discrimination	
				3 - Accounting separation	
				4 - Access obligation	
				5 - Price control (retail minus)	
IE/2005/0139	Similar to the Recommendation.	National	eircom	1 - Access obligation	The Commission made a comment on: The further consultation planned by ComReg: The draft measures relating to the details and implementation of the accounting separation and cost accounting obligations are required to be notified under Article 7(3) of the Framework Directive.
				2 - Non-discrimination	
				3 - Transparency	
				4 - Accounting separation	
				5 - Price control and cost accounting	
PT/2005/0156	Similar to the Recommendation (in addition to traditional terminating leased	National	PT Comunicações	1 - Access obligation	No comments made by the Commission.
				2 - Non-discrimination	

	lines, the market definition covers also symmetric xDSL technologies with capacity up to and including 2 Mbps).			3 - Transparency	
				4 - Accounting separation	
				5 - Price control (cost orientation and retail minus) and cost accounting	
SE/2005/0200	Facilities providing for transparent symmetric transmission capacity between network termination points which do not include on-demand switching (similar to the Recommendation).	National	TeliaSonera	1 - Provision of terminating segments on reasonable request	<p>The Commission made a comment on:</p> <p>Market share data: The market share data collected by PTS indicate an aggregated market share with regard to all types of wholesale leased lines i.e. terminating and trunk segments considered jointly. When notifying the market for trunk segments, PTS is encouraged to provide more specific figures or estimations for that market, excluding terminating segments.</p>
				2 - Price regulation of certain terminating segments (cost-orientation based on fully distributed costs)	
				3 - Obligation to interconnect networks on reasonable request	
				4 - Notification of price changes and submission of accounts statements	
				5 - Non-discrimination	
				6 - Publication of important terms and conditions	
				7 - Accounting separation	
SI/2005/0219	Withdrawn by the National Regulatory Authority				

DK/2005/0245	Similar to the Recommendation	National	TDC A/S	1 - Requirement to provide wholesale access to terminating segments of leased lines regardless of transmission capacity and underlying technology and co-location on reasonable request;	The Commission made a comment on: Conditions of competition in low and high bandwidth terminating segments, and scope of remedies: Since NITA indicates that there are different competitive conditions for high and low capacity terminating segments of leased lines, the Commission invited NITA to consider whether such different conditions would justify a differentiation of the remedies imposed on the operator designated as having SMP.
				2 - Price control (based on modified historic costs);	
				3 - Cost accounting;	
				4 - Non-discrimination;	
				5 - Requirement to publish a reference offer;	
				6 - Accounting separation	
NL/2005/0282	Three separate markets: (i) wholesale terminating segments of leased lines of <2Mbit/s; (ii) wholesale terminating segments of leased lines of 2Mbit/s;	National	KPN	wholesale terminating segments of leased lines of <2Mbit/s	No comments made by the Commission.
				1- Access,	
				2 - Non-discrimination,	
				3 - Obligation not to unreasonably bundle services,	
				4 – Transparency (publication of a reference offer)	
5 - Price regulation					

				6 - Accounting separation	
	(iii) wholesale terminating segments of leased lines of >2Mbit/s			wholesale terminating segments of leased lines of 2Mbit/s 1- Access, 2 - Non-discrimination,	
				3 - Transparency (publication of a reference offer)	
				4 - Price regulation	
				5 – Accounting separation	
				wholesale terminating segments of leased lines of >2Mbit/s 1 – Access obligation	
IT/2005/0272		Similar to the Recommendation.	National	Telecom Italia	

				2 - Non-discrimination,	
				3 - Transparency (publication of a reference offer)	
				4 – Price control (based on a <i>network cap</i> mechanism) and cost accounting	
				5 – Accounting separation	
SI/2005/0305	Similar to the Recommendation.	National	Telekom Slovenije	1- Access and use of specific network resources,	No comments made by the Commission.
				2 - Non-discrimination,	
				3 – Transparency,	
				4 – Price control	
MT/2006/0374	Similar to the Recommendation.	National	Maltacom	1- Access,	No comments made by the Commission.
				2 - Non-discrimination,	

				3 – Transparency,	
				4 – Cost orientation and cost accounting	
				5 – Accounting separation	
FR/2006/0416	Similar to the Recommendation.	National	France Telecom	1 - Access, including the obligation to maintain the wholesale offers currently in place	<p>The Commission made a comment on:</p> <p>Remedies for terminating segments of leased lines</p> <p>ARCEP proposed to differentiate remedies relating to price control for terminating segments of leased lines, depending on bandwidths.</p> <p>Although the Commission does not object to the imposition of a differentiated set of remedies in the market for terminating segments of leased lines, such differential treatment should be adequately reasoned.</p> <p>Further, Article 8.2 (c) of the Framework Directive states that NRAs shall encourage efficient investment in infrastructure. Nevertheless, the roll-out of new infrastructure for all terminating segments which require a bandwidth of more than 10 Mbit/s might not be</p>
				2 - Non-discrimination	
				3 - Transparency (including the publication of service quality indicators and a reference offer)	
				4 - Price control	
				5 - Accounting separation	

					economically viable in all geographic areas, in particular in rural areas. Therefore the Commission invited ARCEP to consider extending the obligation not to charge excessive prices imposed on the market for trunk segments also to terminating segments of leased lines above 10 Mbit/s.
SK/2006/0386	The market definition includes loops provided via metallic, optical as well as wireless networks (such as fixed wireless access networks (“FWA”) and microwave networks)	National	Slovak Telekom	1 - Access obligation	<p>The Commission made comments on:</p> <p>Inclusion of optical and wireless networks in the market for wholesale terminating segments of leased lines</p> <p>Despite the absence of the demand- and supply-side substitutability analysis based on competition law that would justify the inclusion of these technologies in a single market for wholesale terminating segments of leased lines, the exclusion of these technologies from the market definition would not have affected the finding of SMP or the scope of regulation.</p> <p>Parallel imposition of cost orientation obligation and price cap</p> <p>In accordance with Article 13 of the Access Directive, where an operator has an obligation regarding the cost orientation of its prices, the burden of proof that prices are based on costs, including a reasonable rate of return on investment, shall lie with the operator concerned. TÚSR may require Slovak Telekom to provide full justification for</p>
				2 - Non-discrimination	
				3 - Transparency	
				4 - Accounting separation	
				5 – Price cap and cost orientation: prices cannot exceed a maximum level and shall be oriented to costs on the basis of the fully allocated historical costs method)	

					its prices, and may, where appropriate, require prices to be adjusted. However, this is without prejudice to the possibility for Slovak Telekom to adopt prices that are higher than currently valid prices, provided of course, that the adopted prices are derived from fully justified and relevant costs. This may be the case, in particular, if there is reliable evidence from cost accounting analysis as approved by TÚSR that the price cap would result in a price level below the efficient costs of the underlying network elements and the services being requested including a reasonable rate of return.
EL/2006/0422	Two separate relevant markets: (i) up to and including 2 Mbps; (ii) above 2 Mbps.	National	OTE	1 - Access (as well as co-location and use of special facilities)	No comments made by the Commission.
				2 - Non discrimination	
				3 - Transparency (publication of a reference offer, including Service Level Agreements)	
				4 – Cost orientation and cost accounting	
				5 – Accounting separation	
CY/2006/0482	Similar to the	National	CYTA	1 - Access (as well as co-location and use of	No comments made by the Commission.

	Recommendation			special facilities)	
				2 - Non discrimination	
				3 - Transparency	
				4 – Price control (based on cost orientation) and cost accounting	
				5 – Accounting separation	
LT/2006/0430	<p>Similar to Recommendation.</p> <p>Two separate markets:</p> <p>(i) low speed terminating segments of leased lines (leased lines below 2048 kbps including 2048 kbps), and</p> <p>(ii) high speed terminating segments of leased</p>	National	TEO LT AB	1 - Access	No comments made by the Commission.
				2 - Non discrimination	
				3 - Transparency	
				4 – Price control and cost accounting	
				5 – Accounting separation	

	lines (leased lines above 2048 kbps).				
CZ/2006/0450	Similar to the Recommendation	National	Český Telecom a.s.	1 - Access	No comments made by the Commission.
				2 - Non discrimination	
				3 - Transparency	
				4 – Price control (based on cost orientation) and accounting separation	
ES/2006/0458	Similar to the Recommendation	National	TESAU	1 - Access	The Commission made comments on: Limitation of the scope of the remedies in the market of terminating leased lines to services based on traditional interfaces Although CMT includes both traditional interfaces and Ethernet technologies in the market for wholesale terminating
				2 - Non discrimination	
				3 - Transparency (publication of a Reference offer)	

				<p>4 – Price control (based on cost orientation) and accounting separation</p>	<p>leased lines, it proposes to limit the scope of the remedies to the services based on traditional interfaces. The Commission notes that some alternative operators raised concerns during the national consultation regarding their inability to compete with TESAU’s retail offers based on Ethernet technology on the basis of the already existing wholesale products of TESAU.</p> <p>In accordance with Article 8(4) of the Access Directive, the obligations imposed on SMP operators shall be based on the nature of the problem identified, proportionate and justified in the light of the regulatory objectives laid down in Article 8 of the Framework Directive.</p> <p>In the light hereof, the Commission invites CMT to assess, before adopting the final measure, whether alternative operators can compete efficiently with TESAU in the retail market – both from a technical and an economic point of view considering the high prices for terminating segments in Spain and the lack of wholesale offers with speeds corresponding to those Ethernet services offered by TESAU at retail level – on the basis of the wholesale products actually offered by TESAU. In the case such analysis would show that alternative operators are not able to efficiently compete at retail level on the basis of the existing wholesale offers, the Commission invites CMT to reconsider</p>
				<p>5 - Obligation to report the quality parameters for the supply of the relevant services.</p>	

					the scope of the remedies.
DE/2006/0480	Withdrawn by the National Regulatory Authority				
AT/2006/0508	Similar to the Recommendation	National	Telekom Austria	<p>Terminating segments of leased lines with bandwidth up to 155 Mbit/s and with a bandwidth < 34 Mbit/s</p> <p>only in the 9 capital cities of the Austrian Länder</p> <p>1 - Access</p> <p>2 - Non discrimination</p> <p>3 - Transparency (publication of a Reference offer)</p> <p>4 - Price control (based on cost orientation) and cost accounting</p> <p>5 - Accounting separation</p>	No comments made by the Commission.

PL/2006/0516	Leased lines connecting the end customer with the Point of Presence (PoP) of the requesting operator in the network of an operator providing leased lines.	National	Telekomunikacja Polska S.A. ("TP SA")	1 - Access	<p>The Commission made a comment on:</p> <p>Market definition</p> <p>As a consequence of the market definition the exact boundaries of the market for trunk and terminating segments are not stable, as they will depend (in each case) on the location of the PoP of an alternative operator within the network of TP SA.</p> <p>Assuming that different alternative operators interconnect at different points and at different levels in TP SA's network, the same network components of TP SA's network may be characterised as trunk or terminating segments</p>
				2 - Non discrimination	
				3 - Transparency (publication of a Reference offer)	
				4 – Price control and cost accounting	
				5 - Accounting separation	

					<p>depending on the customer.</p> <p>Such market definition does not have an impact on the SMP assessment in this market, but it may have some undesirable side-effects if UKE would find it appropriate to impose less stringent regulation in the market for trunk segments of leased lines or would find that market to be competitive. In such circumstances, alternative operators may be discouraged from interconnecting with TP SA at a lower (i.e. local) level in the network, as interconnection at higher (i.e. regional or national) level would enable them to benefit more from the (stricter) regulated terminating segments.</p> <p>Most other Member States have defined terminating segments of leased lines as leased lines between the end customer and the nearest</p> <p>point of interconnection <i>offered</i> in the incumbent's network, independently of whether the alternative operator effectively makes use of that offer.</p>
BE/2006/0552	Similar to the Recommendation.	National	Belgacom	1 - Access obligation	<p>The Commission made a comment on:</p> <p>Cost accounting for wholesale terminating segments of leased lines:</p> <p>The Commission notes that currently IBPT does not apply a cost accounting system for all products included in</p>
				2 - Non-discrimination	
				3 - Transparency	

				4 - Price control and cost accounting	market 1316 as defined by IBTP and that a consultation on the cost modelling methodology is planned to take place six months after adoption of the final measures in market 13. Given the relevance of a cost accounting system in relation to all products included in market 13 and in particular alternative interfaces, the Commission invites IBPT to shorten the timeframe for elaborating the details of the cost accounting model and its implementing measures.
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LU/2006/0561	One product market including terminating and trunk segments of leased lines	National	EPT	1 - Access obligation	<p>The Commission made a comment on: Lack of sufficient evidence for not separating the markets for terminating and trunk segments of leased lines</p> <p>ILR proposes to define one single wholesale market for terminating segments and trunk segments. ILR justifies this approach in particular with the absence of the emergence of a trunk leased lines market given</p> <p>that the tarification system of EPT does not provide incentives to alternative operators to duplicate the infrastructure between the points of presence of EPT (five points of interconnection). The Commission however takes the view that the market delineation should be based on a thorough assessment of demand and supply side substitutability. In this respect the inclusion of the trunk segment into the terminating segment of the leased lines market is not well justified. In particular, the Commission is not convinced about ILR's argument to define one market on the</p> <p>basis of supply side substitutability given that operators offering the trunk segment would still need to duplicate relevant infrastructure if they wanted to offer terminating segments as well.</p>
				2 - Non-discrimination	

				3 - Transparency (publication of a reference offer)	Notwithstanding that further evidence should have been provided by ILR that trunk and terminating segments of leased lines are (currently or prospectively) in the same market, the SMP analysis of the trunk segment of the leased lines market would not
				4 - Price control (based on cost orientation) and cost accounting	
				5 – Accounting separation	
					have led to a different result. Consequently, the Commission considers that in the present case a conclusion on the exact scope of the market is not critical for the
					designation of SMP. Furthermore, the Commission notes that ILR intends to modify the tariff structure of EPT such as to allow for the emergence of a trunk leased line market. If, as a consequence of the modification of the tariff structure, ILR observes
					the development of a product offer in the trunk part of the wholesale leased line market, the Commission invites ILR to reassess the market boundaries and to analyse the competition conditions for the market(s) identified without delay.
LV/2006/0572	Similar to the Recommendation	National	SIA Lattelecom	1 - Access	No comments made by the Commission.
				2 - Non discrimination	

				3 - Transparency (publication of a Reference offer)	
				4 – Price control (based on cost orientation) and cost accounting	
				5 - Accounting separation	

Market 14: Wholesale trunk segments of leased lines

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			Access / interconnection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria	YES	No SMP found					
Finland	YES	No SMP found					
Hungary	YES	No SMP found					
Ireland	YES	1 operator	YES	YES	YES	YES	YES
Portugal	YES	1 operator	YES	YES	YES	YES	YES
United Kingdom	YES	1 operator	YES	YES	YES	YES	YES
Austria ***	YES	No SMP found					
Belgium	YES	No SMP found					
Cyprus	YES	1 operator	YES	YES	YES	YES	YES
Czech Republic	YES	No SMP found					
Denmark	YES	No SMP found					

France	NO**	1 operator	YES	YES	YES	YES	YES
Greece	YES	1 operator	YES	YES	YES	YES	YES
Italy	NO**	1 operator	YES	YES	YES	YES	YES
Latvia	YES	No SMP found					
Lithuania	NO**	1 operator	YES	YES	YES	YES	YES
Luxemburg	NO**	1 operator	YES	YES	YES	YES	YES
Malta	NO**	1 operator	YES	YES	YES	YES	YES
The Netherlands	YES	No SMP found					
Slovenia	YES	No SMP found					
Spain	YES	1 operator	YES	NO	YES	NO	NO
Sweden		No SMP found					

**Differentiated or no remedy imposed on certain SMP operators*

*** Refinement, broader/narrower market and/or merger of markets*

Overview of notifications assessed until 31 March 2007

Market 14: Wholesale trunk segments of leased lines - notifications assessed until 30 September 2005

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
UK/2003/0039	Similar to the Recommendation.	National	BT	1 - Obligation to provide network access on reasonable request	<p>The Commission made comments on:</p> <p>Market definition: The Commission invites Ofcom to monitor closely the market developments and examine whether the proposed wholesale obligations (and in particular the ability for tariffs for wholesale trunk segments to be geographically de-averaged) change the geographic variations to such a degree as to make the definition of an alternative geographic market more appropriate in the future.</p> <p>National consultation run in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified under Article 7(3) of the Framework</p>
				2 - Requirement not to discriminate unduly	
				3 - Basis of charges obligation (cost orientation and a cost accounting system)	
				4 -Transparency (reference offer and technical information)	
				5 - Price control	
				6 - Accounting separation	

				7 - Requirement to provide advance notification of changes to (or introduction of) prices, terms and conditions;	Directive.
				8 - Requirement to provide quality of service information	
				9 - Obligations relating to requests for new network access	
UK/2004/0123	See Cases UK/2003/0037-0038 .			Slight modification of the remedies already notified because of the establishment of the Telecommunications Adjudicator.	No comments made by the Commission.
FI/2004/0081	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.

AT/2004/0074	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.
HU/2005/0169	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.
IE/2005/0140	Similar to the Recommendation.	National	eircom	1 - Access obligation	The Commission made a comment on: Further consultation planned by ComReg: ComReg states in its draft measures that a further consultation will be held on the details and implementation of accounting separation and cost accounting obligations. The Commission services would like to remind ComReg that draft measures relating to these regulatory obligations are required to be notified under Article 7(3) of the Framework Directive.
				2 - Non-discrimination	
				3 - Transparency	
				4 - Accounting separation	

				5 - Price control and cost accounting	
PT/2005/0157	Similar to the Recommendation.	National	PT Comunicações	1 – Access obligation	No comments made by the Commission.
				2 – Non-discrimination	
				3 – Transparency	
				4 – Accounting separation	
				5 – Price control	
SI/2005/0220	Withdrawn by the National Regulatory Authority				
NL/2005/0283	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.

IT/2005/0273	Analogue and digital circuits from 2 Mbps to 2,5 Gbps	National	Telecom Italia ("TI")	1- Access and use of specific network resources,	<p>The Commission made a comment on:</p> <p>Exclusion of trunk segments below 2 Mbps from the definition of market for trunk segments of leased lines</p> <p>AGCOM hereafter concludes that circuits with transmission capacities below 2 Mbps only constitutes a marginal part of the market, and that consequently the wholesale market for trunk segments of leased lines should not include circuits below such capacities. AGCOM does not provide any further argumentation as to why trunk segments below 2 Mbps, from a demand-side or a supply-side perspective, should be excluded from the relevant market.</p> <p>The Commission considers that the fact that trunk segments with transmission capacities below 2 Mbps only constitute a marginal part of the whole offer in the trunk market does not seem sufficient to exclude such segments from the market definition. Therefore, the Commission would like to invite AGCOM to reconsider its conclusion and include circuits with transmission capacities below 2 Mbps in the definition of the relevant market in its final measure. In any event, as the Commission has previously pointed out in other cases, it does not consider that in these particular circumstances the exclusion of such marginal segment from the definition of the relevant market would affect trade</p>
				2 – Non-discrimination	
				3 – Transparency (publication of a reference offer)	
				4 - Price control (based on a <i>network cap</i> mechanism and cost accounting	
				5- Accounting separation	

					between Member States within the meaning of Article 7 (4) and recital 38 of the Framework Directive. Such measure is not likely to have an influence on the pattern of trade between Member States in a manner which might create a barrier to the single market. Therefore, the Commission has limited its reaction to the above comment.
SE/2005/0341	Similar to the Recommendation.	National	No SMP found	No remedies imposed	<p>The Commission made a comment on:</p> <p>Additional information provided: The Commission would like to encourage PTS to consider strengthening the motivation of its final decision by including the additional information provided to the Commission in the course of this procedure, mainly relating to the availability of alternative supply at the regional exchanges and the absence of significant switching costs.</p> <p>Susceptibility to ex ante regulation: On the basis of the information provided by PTS, the Commission considers that the market under consideration does not meet the three criteria test and hence is not susceptible to ex ante regulation. In particular, the market seems to exhibit relatively low barriers to entry, due inter alia to the widespread existence of dark fibre infrastructure which can be utilized by alternative operators as a wholesale input to provide trunk segments of leased lines. Alternative operators have moreover entered the market and are capturing customers from TeliaSonera, which is reflected in decreasing market shares of TeliaSonera and a competitive constraint being</p>

					<p>exercised on the pricing behaviour of TeliaSonera. Under those circumstances, it might be concluded that the market tends towards effective competition.</p> <p>Non-SMP finding: The factual data provided by PTS are insufficient for the Commission to reach a definitive view on whether TeliaSonera has SMP on the relevant market or not (in particular the market share information, market share trends and pricing data are too vague). However, the Commission is of the view that a detailed SMP analysis with more factual evidence would not have led to a different regulatory outcome in this particular case since in any event the market for trunk segments of leased lines in Sweden does not exhibit the features that make it susceptible to ex ante regulation.</p>
SI/2005/0362	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.
SK/2006/0414	Withdrawn by the National Regulatory Authority				

FR/2006/0417	Two markets for trunk segments of leased lines: (i) intra-territory trunk segments and (ii) inter-territory trunk segments.	in and between: mainland France, the French overseas departments and Mayotte	France Telecom	1 - Access, including the obligation to maintain the wholesale offers currently in place	No comments made by the Commission.
				2 - Non-discrimination	
				3 - Transparency (including the publication of service quality indicators and a reference offer)	
				4 - Price control - the prohibition of predatory prices for all services in the wholesale markets; - a cost orientation obligation for (i) terminal segments of leased lines below 10 Mbit/s, (ii) the connecting links between cable landing points and the first node of leased lines, and (iii) the inter-territory trunk segments linking mainland France and Réunion; - the prohibition to charge excessive prices for all intra-territory and inter-territory trunk segments (with the exception of the segments linking mainland France and Réunion);	

				5 - Accounting separation	
MT/2006/0375	International segments included	National	Maltacom	1- Access,	<p>The Commission made a comment on:</p> <p>The inclusion of international lines in the wholesale and retail market definitions: By including international lines in the retail markets for the provision of leased lines and wholesale trunk segments of leased lines respectively, the MCA deviates from the Recommendation. In its notification, the MCA did not conduct the three criteria test considering this unnecessary as in its view the two markets as defined in the Recommendation include international leased lines. Without contesting the MCA's conclusions, the Commission invited the MCA to clarify in its final measure (i) that two new markets have been defined by including international lines, thereby deviating from the Recommendation, (ii) that the three criteria test has been carried out for these markets and (iii) that the cumulative criteria of this test are fulfilled.</p> <p>Remedies imposed in the market of the international segments of leased lines</p> <p>MCA considered that prices would inevitably rise if not regulated. Accordingly it proposed to maintain the current price regulation on the retail market of the international leased lines (cost-oriented prices approved by the MCA). The Commission invited the MCA to consider whether imposing a less stringent type of price regulation rather than maintaining the current cost-oriented prices would be more justified and proportionate</p>
				2 - Non-discrimination,	
				3 – Transparency,	
				4 – Cost orientation,	
				5 – Cost accounting and accounting separation	

					in relation to the achievement of the regulatory objectives - taking into account both the short term objective to protect consumers and the longer term objective to induce effective competition.
EL/2006/0423	Similar to the Recommendation	National	OTE	1 - Access (as well as co-location and use of special facilities)	No comments made by the Commission.
				2 - Non discrimination	
				3 - Transparency (publication of a reference offer, including Service Level Agreements)	
				4 - Cost orientation and cost accounting	
				5 - Accounting separation	
LT/2006/0431	Two markets for trunk segments of leased lines: (i) national trunk segments and (ii) international trunk segments.	National	TEO LT AB	1 - Access	The Commission made a comment on: The wholesale market for international leased lines RRT defines and analyses a separate wholesale market for international trunk segments of leased lines (i.e. trunk leased lines with one point in
				2 - Non discrimination	
				3 - Transparency	

				4 – Price control and cost accounting	Lithuania and the other point abroad), which deviates from the Recommendation. NRAs may identify markets that differ from those of the Recommendation, but they should carry out the three criteria test, i.e that: (1) there are high and non-transitory entry barriers, (2) the structure of the market does not tend towards effective competition within the relevant time horizon and (3) the application of competition law alone would not adequately address the market failure(s) concerned. In its notification, RRT does not conduct the three criteria test for the international trunk leased lines market taking the specific national circumstances into account. However, since RRT does not find any undertaking to have SMP on this market, the possible exclusion of the relevant market from market analysis on the basis of the three criteria test would not have led to a different regulatory outcome in this particular case.
				5 – Accounting separation	
CY/2006/0483	Similar to the Recommendation (including trunk segments of partial leased lines and backhaul services connecting with the international submarine cable systems reaching Cyprus)	National	CYTA	1 - Access (as well as co-location and use of special facilities)	No comments made by the Commission.
				2 - Non discrimination	
				3 - Transparency	
				4 – Price control (based on cost orientation) and cost accounting	

				5 – Accounting separation	
CZ/2006/0451	Similar to the Recommendation	National	No SMP found	No remedies imposed	No comments made by the Commission.
ES/2006/0459	Similar to the Recommendation	National	TESAU	1 - Access	No comments made by the Commission.
				2 - Transparency (publication of a Reference offer)	
DE/2006/0481	Withdrawn by the National Regulatory Authority				

AT/2006/0467	Similar to the Recommendation	National	No SMP found	No remedies imposed	No comments made by the Commission.
BE/2006/0553	Similar to the Recommendation	National	No SMP found	No remedies imposed	No comments made by the Commission.
LU/2006/0562	One product market including terminating and trunk segments of leased lines	National	EPT	1 - Access obligation	The Commission made a comment on: Lack of sufficient evidence for not separating the markets for terminating and trunk segments of leased lines ILR proposes to define one single wholesale market for terminating segments and trunk segments. ILR justifies this approach in particular with the absence of the emergence of a trunk
				2 - Non-discrimination	
				3 - Transparency (publication of a reference offer)	

				<p>4 - Price control (based on cost orientation) and cost accounting</p>	<p>leased lines market given</p> <p>that the tarification system of EPT does not provide incentives to alternative operators to duplicate the infrastructure between the points of presence of EPT (five points of interconnection). The Commission however takes the view that the market delineation should be based on a thorough assessment of demand and supply side substitutability. In this respect the inclusion of the trunk segment into the terminating segment of the leased lines market is not well justified. In particular, the Commission is not convinced about ILR's argument to define one market on the</p>
				<p>5 – Accounting separation</p>	<p>basis of supply side substitutability given that operators offering the trunk segment would still need to duplicate relevant infrastructure if they wanted to offer terminating segments as well.</p> <p>Notwithstanding that further evidence should have been provided by ILR that trunk and terminating segments of leased lines are (currently or prospectively) in the same market, the SMP analysis of the trunk segment of the leased lines market would not</p> <p>have led to a different result. Consequently, the Commission considers that in the present case a conclusion on the exact scope of the market is not critical for the designation of SMP. Furthermore, the Commission notes that ILR intends to modify the tariff structure of EPT such as to allow for the emergence of a trunk leased line market. If, as a consequence of the modification of the tariff structure, ILR observes the development of a product offer in the trunk part of the wholesale leased line market, the Commission invites ILR to</p>

					reassess the market boundaries and to analyse the competition conditions for the market(s) identified without delay.
LV/2006/0573	Similar to the Recommendation	National	No SMP found	No remedies imposed	No comments made by the Commission.
DK/2007/0586	Withdrawn by the National Regulatory Authority				

Market 15: Access and call origination on public mobile telephone networks

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			Access / interconnection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria	YES	No SMP found					
Finland	YES	No SMP found*					
Hungary**	YES	No SMP found					
Ireland	YES	2 operators (joint SMP)	YES	YES	NO	YES	YES
Slovenia	YES	1 operator	YES	YES	NO	YES	NO
Sweden	YES	No SMP found					
United Kingdom	YES	No SMP found					
Luxembourg	YES	No SMP found					
Denmark	YES	No SMP found					

Netherlands	YES	No SMP found					
Czech Republic	YES	No SMP found					
Spain	YES	3 operators (joint SMP)	YES	NO	NO	YES	NO
Italy	YES	No SMP found					
Malta	YES	2 operators (joint SMP)	YES	YES	YES	YES	YES
Cyprus	YES	1 operator	YES	YES	YES	YES	YES
Slovakia	YES	No SMP found					
Lithuania	YES	No SMP found					
Greece	YES	No SMP found					
Latvia	YES	No SMP found					
<p><i>* In its notification FI/2004/0082, Ficora proposed to designate one operator with SMP. The notified draft measure was vetoed by the Commission on 5 October 2004. On 13 October 2004, following the veto decision, Ficora adopted a final measure taking into account the Commission veto decision and concluded that the market is effectively competitive. Therefore, there is no operator with SMP in the market.</i></p> <p><i>** second round of a market review</i></p>							

Overview of notifications assessed until 31 March 2007

Market 15: Access and call origination on public mobile telephone networks

Overview of notifications assessed until 28 February 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
UK/2003/0001	Similar to the Recommendation.	National	No SMP found	No remedies imposed	<p>The Commission made comments on:</p> <p>Reliance on comments from parties other than the Commission and other NRAs: Any material modification to the draft measure as a result of comments from third parties will require re-notification.</p> <p>Inclusion of 3G telephony in the market definition: Market definition should be technology-neutral. 3G voice and SMS services offered at present or in the near future are, from demand-side perspective, not distinguishable from their 2G equivalents, and appear to be part of the same relevant market.</p> <p>Market share analysis: The use of derived market shares is broadly in line with the Commission's practice when assessing hypothetical markets or markets with a high degree of vertical integration. When calculating market shares, preference should be given to volume based as opposed to</p>

					<p>value-based calculation.</p> <p>Use of international benchmarking and concentration measures: The fact that the UK market has a lower Herfindahl-Hirschmann-Index ("HHI") score than markets in other Member States is not in itself an indication of its propensity towards or away from collective dominance.</p>
AT/2004/0063	Similar to the Recommendation.	National	No SMP found	No remedies imposed	<p>The Commission made comments on:</p> <p>Monitoring of the market: Opinions from competitors and the conduct of undertakings should be monitored very closely and be taken into consideration when assessing this market in a future review.</p> <p>National consultation running in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>

FI/2004/0082	Similar to the Recommendation.	National	Sonera Mobile Networks Oy*	1 - Obligation to relinquish access rights	<p>The Commission vetoed the draft measure based on :</p> <p>Lack of taking into consideration the apparent market dynamics: Even though there is currently no regulatory obligation for mobile network operators ("MNOs") to provide access, both service providers ("SPs") and mobile virtual network operators ("MVNOs") have been able to conclude agreements on a commercial basis with each of the three nationwide-operating MNOs.</p> <p>Lack of evidence of capacity constraints: There is not sufficient evidence as to the existence of barriers to expansion in the relevant market.</p> <p>Lack of evidence as to high switching costs and the absence of countervailing buying power: The incentives of MNOs to bear the costs of switching themselves was not considered. The largest SP has made an MVNO agreement with two MNOs. SPs ask for competing offers from different MNOs.</p> <p>Undue weight given to evidence of network</p>
				2 - Interconnection	

				3 - Non-discrimination (pricing and other terms)	<p>effects, economies of scale and scope, and substantial financial advantages: Differences in capacity utilisation do not offer a sustainable competitive advantage to an operator and can be overcome by attracting a larger number of customers onto existing capacity. Network effects are claimed to be particularly strong due to differences in prices for on-net and off-net calls, which are mainly relevant for the assessment of the retail mobile market. Concerning financial advantages, TeliaSonera's competitors are also parts of large vertically and horizontally integrated telecommunications groups.</p>
				4 - Obligation to negotiate on national roaming with a network operator that has a license for a third generation mobile network	
<p>*) On 13 October 2004, following the veto decision, Ficora adopted a final measure taking into account the Commission veto decision of 5 October 2004 and concluded that the market is effectively competitive. Therefore, there is no operator with SMP in the market.</p>					
<p>HU/2004/0096 HU/2007/0594</p>	<p>Similar to the Recommendation.</p>	<p>National</p>	<p>No SMP found</p>	<p>No remedies imposed</p>	<p>The Commission made a comment on: Absence of analysis of the wholesale market:</p>

					The fact that at the wholesale level no transactions are taking place on the merchant market does not exclude the possibility to analyse the relevant market. NHH is invited to monitor the relevant market, especially with regard to the fact that it can be presumed that within the timeframe of its review market players will appear on the demand side of the relevant market.
HU/2004/0108 (Re-notification related to HU/2004/0096)	Similar to the Recommendation.	National	No SMP found	No remedies imposed	The Commission made a comment on: Comment made in previous case: As the re-notified draft measure does not contain any changes of substance, the comment made in case HU/2004/0096 remains valid in the context of this case.
IE/2004/0121	Similar to the Recommendation.	National	Vodafone and 02 (joint SMP)	1 - Provision of network access following a reasonable request by an access seeker	The Commission made comments on: Analysis based on the retail market: Where all supply on the relevant market is captive, the structure of supply at the wholesale level can be derived from supply at the retail level.

				<p>2 - Non-discrimination obligation</p> <hr/> <p>3 - Price control - cost orientation and cost accounting</p> <hr/> <p>4 - Accounting separation</p>	<p>Fringe competitors: ComReg should monitor the effective developments of the emergent competitors very closely in the near future and, when appropriate, review its SMP analysis and the regulatory measures imposed. For a competitor to be able to disrupt tacit collusion, it is not necessary to be a strong competitor of the tacitly colluding parties.</p> <p>Further consultation planned by ComReg: Draft measures relating to price control and cost accounting obligations are required to be notified.</p> <p>Additional consultation run in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>
FR/2005/0179	Withdrawn by the National Regulatory Authority				

SE/2005/0203	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.
SI/2005/0230	Similar to the Recommendation.	National	Mobitel	1 -Provision of access in response to a reasonable request	<p>The Commission made comments on:</p> <p>Effectiveness of the proposed wholesale remedies in light of the competitive situation at the retail level: Remedies imposed on the mobile access and call origination market should be complemented as soon as possible by effective regulation of the wholesale markets for call termination on mobile networks. The Commission stresses the importance of measures taken under competition law to avoid restrictions of competition at retail level.</p> <p>Implementation of the proposed price control obligation: Price regulation should be applied only if commercial negotiations between parties do not result in an agreement. The benchmark analysis for termination rates does not seem to form an appropriate point of reference for assessing the reasonability of wholesale access and call origination prices.</p>
				2 –Obligation of non-discrimination	
				3 –Price control	
SK/2006/0248	Withdrawn by the National Regulatory Authority				

LU/2005/0320	Withdrawn by the National Regulatory Authority				
DK/2005/0243	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.
NL/2005/0242	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.
SK/2005/0248	Withdrawn by the National Regulatory Authority				

IT/2005/0259	Similar to the Recommendation	National	No SMP found	No remedies imposed	<p>The Commission made comments on:</p> <p>Close monitoring of market developments</p> <p>It is only recently that the market has started showing evidence of a more competitive functioning. In fact, in its reply to the Commission's request for information, AGCOM provided more recent market data in order to further substantiate its conclusions as to the improvements of market conditions.</p> <p>The further information supplied to the Commission by AGCOM shows that i) the third MNO (in terms of market share) has decreased prices in a considerable manner in 2004 and its prices are no longer aligned with the prices of the first and second MNOs, and that ii) the fourth MNO has increased its market share (4,6 million customers according to recent data for 2005), to the detriment especially of the larger MNOs. Overall, the recent data supplied by AGCOM show that at least since 2003 onwards, there have been some positive developments in terms of price evolution and market shares.</p> <p>Given that these are recent market developments and that MNOs have so far not granted access to MVNOs so that these could have been in a position to offer competitive retail services like convergent fixed/mobile services, the Commission strongly recommends and invites AGCOM to closely monitor the market so as to identify whether the market irreversibly tends towards a competitive structure in which any tacitly co-ordinated outcome is unlikely to happen.</p>
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					<p>Finally the Commission invites AGCOM to analyse the wholesale market of access and call origination for non-geographic numbers and notify it according to Article 7(3) of the Framework Directive in the earliest possible timeframe.</p> <p>Assessment of the notification and the additional information provided</p> <p>The Commission reiterates that the assessment of a notified draft measure should be based on the most recent information and data available. Therefore, AGCOM should complement its final measure with the more recent information supplied to the Commission in its reply to the latter's request for information</p>
ES/2005/0330	Similar to the Recommendation	National	Telefónica, Vodafone and Amena	Access	<p>The Commission made comments on:</p> <p>The competitive conditions at the retail level</p> <p>CMT does not find collective dominance at the retail level and states that the retail market for mobile telephony services develops in a "competitive environment".</p> <p>Nonetheless, CMT also argues that there is a "failure of competition" in the retail market and identifies certain market "defficiencies", such as: i) the high level of prices, ii) the limited evolution of prices, iii) parallel marketing strategies as well as iv) high levels of profitability sustained by the three operators over a longer period of time.</p>
				Obligation to charge reasonable prices	

				<p>It should be noted that in order to find joint SMP in the wholesale market of mobile access and call origination, it is not indispensable to find joint SMP at the retail level.</p> <p>Retail market conditions may inform an NRA of the structure of the wholesale market, but they may and need not in themselves be conclusive as regards the finding of SMP at the wholesale level. However, in order to render credible the finding of collusion at the wholesale level CMT had to demonstrate that the level of rents at the retail level is sufficiently high to provide incentives to collectively refuse access to third operators. If at the retail level there were no rents to protect, then the incentive of mobile network operators not to grant access to MVNOs is difficult to demonstrate.</p> <p>A finding of collective dominance raises particularly complex issues of an economic nature notwithstanding the guidance given both in the regulatory framework and the recent case law of the EU. Within that framework, for a finding of collective dominance to be sustained, there must be an incentive not to depart from the common policy.</p> <p>CMT's analysis of the dynamics of the retail market mainly relies on the evolution of Average Revenue per Minute (ARPM) data on an aggregate basis. While such data is both valuable and informative, data regarding the evolution of prices on a less aggregate basis would provide a better indication of the dynamic of the retail market given the fact</p>
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that operators are not always equally represented in the individual market segments (e.g. pre-pay/post-pay, high, medium, or low usage).

The Commission would therefore invite CMT to monitor for the purpose of a future

market review the evolution of retail prices by market segment and/or customer

profiles.

In the present case the Commission nonetheless notes that the retail market appears to be characterised by a number of structural features, such as the high level of prices, the limited evolution of prices, and most notably high levels of profitability sustained by the three operators which appear to provide sufficient incentives to the three

operators, Telefónica, Vodafone and Amena, to collectively refuse access to MVNOs at the wholesale level.

The focal point

According to the case law of the Court of Justice, for a finding of collective

dominance in the form of tacit collusion, members of the dominant oligopoly must be aware, sufficiently precisely and quickly, of the way in which the other members' market conduct is evolving. The degree of transparency is important for the purpose of permitting each member of the oligopoly to detect deviation from the common policy and to ascertain whether it is necessary to react to any such deviations by punishing them.

				<p>CMT defines one focal point consisting in the denial of wholesale access to third parties. The Commission services consider that this focal point is transparent and that non deviator MNOs can easily detect any deviation resulting in the entry of a new competitor at the retail level.</p> <p>CMT does not explicitly identify a focal point at the retail level which, although not indispensable, could have further supported the finding of sustainable coordinated outcome at wholesale level since it may allow operators to directly observe the commercial implications of their conduct at the retail level. CMT has, nevertheless, demonstrated an alignment of commercial strategies of the three operators Telefónica, Vodafone and Amena and that it seems plausible that a deviation of any one operator towards a more aggressive (and less profitable) price competition should be easily detected by the non-deviating MNOs.</p> <p>The retaliation mechanism</p> <p>For a finding of collective dominance, there must be an incentive not to depart from the common policy. Demonstrating the possibility and sustainability of a common line of action presupposes, in particular, proof of the existence of efficient, credible retaliatory measures against any company that deviates from the common policy/strategy (i.e. the focal point). For a retaliation mechanism to be credible, it needs to be easily and quickly implemented.</p>
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CMT considers that the most credible retaliation would occur at wholesale level. If an MNO were to grant network access, the other firms could retaliate by granting access to another MVNO.

The Commission notes that the networks of all three MNOs are dimensioned to support only forecasted traffic in the short to medium term. However, according to CMT, all three MNOs appear to have sufficient spectrum enabling them to adapt rapidly the capacity of the network to the evolution of the traffic. Hence the retaliation mechanism can be implemented as there is scope for increasing capacity in a short period of time for all the MNOs.

It appears that signing an access contract may, however, require negotiation on pricing, commercial and technical terms of supply. In consequence retaliation may be less immediate and the “cheating” firm may benefit from a certain first-mover advantage.

CMT could have provided further evidence which would have allowed it to assess whether such mechanism would be more immediate and is sufficiently strong to discipline the deviating firm. Specifically, NRAs are invited to assess in a market review whether the non deviator MNOs could easily conclude a contract with a MVNO, whose entry and specific commercial strategy is likely to discipline the deviator MNO.

As regards retaliation at the retail level, CMT

suggests that non deviator MNOs could start a price war in the retail market or, more generally, deviate from the principles of the commercial strategy followed by all three MNOs to date (complex and non transparent pricing schemes, high prices subsidised handsets).

The Commission considers that a reduction of retail prices through specific offers (be it through effective reduction of the nominal prices or through a more aggressive promotion policy) and also the deviation from the common principles of the commercial strategy is likely to have a disciplinary effect on the deviating firm. In particular, such retaliation mechanism appears to be quickly implemented based on the level of number portability in Spain.

Portability and churn rates show that a high proportion of consumers are able to switch from one operator to another in the Spanish market. Data on the extent of

SIM-locking, and presence of operators in the various market segments could have

further substantiated the assumed responsiveness of consumers to price changes, and hence the credibility of the retaliation mechanism at the retail level.

Overall and on the basis of particular facts set out above it seems plausible that the

initial deviation and the subsequent response of the non deviator MNOs could result in a new market equilibrium featuring lower retail prices and subsequent lower profitability with

no increase of market share for individual MNOs. These mechanisms at the retail level can be considered as credible tools of retaliation.

Close monitoring of the market and entry of the fourth MNO

The Commission emphasises that the fourth network licence was already granted in March 2000 to Xfera but the company has not yet entered the market. The Commission invites the Spanish authorities to explore appropriate measures in order to ensure efficient use of the available spectrum with a view to enhance competition in the retail market. CMT should closely monitor the effects of a possible entry of Xfera in 2006 on the future sustainability of the collectively dominant position. Any concrete evidence of developments in the retail market not linked to the regulatory measures in the relevant market that would cast doubt on the sustainability of the collectively dominant position will require a review of the relevant market. The Commission recalls that any market review should be notified in accordance with Article 7(3) of the Framework Directive.

Assessment of the notification and the additional information provided by CMT

The additional information provided by CMT (relating to, *inter alia*, price trends, profitability measures, the unsatisfactory level of wholesale demand, the description of the retaliation mechanism) has been crucial in the Commission's assessment of CMT's notification.

					Therefore, CMT should complement its final measure with the more recent information supplied to the Commission in its replies to the request for information. In any event, CMT should base its final measure on the most recent available information.
CY/2006/0333	Similar to the Recommendation.	National	CYTA	1 - carrier selection;	<p>Effectiveness of remedies in the mobile access and call origination market</p> <p>The retail mobile market in Cyprus has been opened for competition only in September 2004. It still is in the early stage of transition from a monopoly situation to a competitive situation, with the incumbent operator having a market share well above 90%. The new entrant, Areeba, has entered the market relatively recently and is still rolling out its network.</p> <p>Under such circumstances OCECPR argues that it would be ineffective at this stage to oblige CYTA to provide MVNOs access to its network, since this would undermine Areeba's chances to develop into a sustainable competing MNO on the market. Indeed, in a market which is more or less mature, the arrival of MVNOs would make it more difficult for Areeba to acquire the necessary customer base to support the further roll out of its network.</p> <p>In absence of mandatory MVNO access, however, OCECPR should ensure through stringent and effective wholesale regulation that the two MNOs currently on the market in Cyprus are able to compete at arms length. In particular, the Commission would like to invite OCECPR to impose price regulation with</p>
				2 – provision of call origination services (to carrier select operators) under the conditions of transparency, non-discrimination, price control and cost accounting;	
				3 - accounting separation;	
				4 - obligation to provide co-location;	
				5 - obligation to provide national roaming.	

regard to the roaming services which CYTA is obliged to offer to Areeba16. Such price regulation should, in the opinion of the Commission, ensure cost-orientation and an appropriate margin between CYTA's retail tariffs and its wholesale national roaming tariffs.

Exclusion of 3G termination from the voice call termination markets

OCECPR justifies the exclusion of 3G termination from the voice call termination markets by the fact that at the time of the analysis both MNOs terminated calls to their respective networks using a 2G interface only. The Commission would like to remind OCECPR in this context that market definition should be technology-neutral, i.e. based on the nature of the products or services provided, not on the technological platform used to provide them. To the extent that a MNO operates both a 2G and a 3G network, there seems to be substitution from the supply-side between 2G and 3G termination services (at least for calls to customers with a dual mode handset). In such a case, both services would also from the demand-side appear to be substitutable. Therefore, the Commission would like to invite OCECPR to reconsider whether on a forward-looking basis 3G termination services do not already at this stage belong to the same market as 2G services, or at least to monitor closely the market and to analyse 3G termination services as soon as these services become available in Cyprus. An additional market analysis and/or separate remedies imposed for 3G termination services should be notified to the Commission under Article 7(3) of the Framework Directive.

LU/2006/0369	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission
PL/2006/0378	Withdrawn by the National Regulatory Authority				
CZ/2006/0405	Similar to the Recommendation.	National	No SMP found.	No remedies imposed	No comments made by the Commission.
LT/2006/0406	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission
SK/2006/0442	Similar to the Recommendation	National	No SMP found	No remedies imposed	The Commission made comments on: Absence of analysis of the wholesale market While TÚSR concludes that it is impossible to assess the degree of market power on the market for wholesale mobile call origination and access, the Commission points out that the fact that at the wholesale level no transactions are taking place on the merchant

market (i.e. no sales to independent third parties) does not exclude the possibility to analyse the relevant market. In fact, the absence of such transactions merely indicates that all supply on the relevant market, as defined by TUSR, is captive, i.e. provided internally by vertically integrated mobile network operators. In such a case the structure of supply at the wholesale level (e.g. market shares of the undertakings active on the relevant market) may be derived from supply at the retail level, and the relevant market would need to be analysed on the basis of the competitive conditions at the retail level.

Nevertheless, on the basis of the information provided by TUSR regarding the retail market, the Commission considers that the conclusions reached by TUSR in the draft measure remain unaffected.

Monitoring of market developments

TUSR's conclusion on the absence of collective dominance is mainly based on the absence of pent-up demand at the wholesale level. Indeed, TUSR considers that even though some companies might have shown a potential interest in concluding MVNO agreements, this was never proven by starting binding negotiations. The Commission takes note that in those circumstances TUSR has no indication of a tacitly coordinated refusal to provide access which could support a finding of collective dominance. It observes that there are moreover a number of indications that T-Mobile and Orange may not have parallel interest in refusing access should a reasonable demand arise, such as the significantly different profitability margins of both operators.

					<p>However, in the light of potential future developments in the market, such as the market entry of a third operator which may give rise in the short term to a demand for national roaming, the Commission invites TÚSR to closely monitor the market developments. Should pent-up demand for MVNO or roaming access arise in the future and should there be indication of rents to be protected at retail level, then TÚSR is invited to review the relevant market.</p>
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MT/2006/0443	Similar to the Recommendation.	National	Vodafone Malta Ltd and MobIsle Communications Ltd ("Go mobile")	1 – access	<p>The Commission made comments on:</p> <p>The competitive conditions at retail level Although MCA does not find collective dominance at retail level, MCA states that Vodafone and go mobile have incentives to limit competition on the retail market. MCA considers that i) the high level of prices compared to other EU countries, ii) the fact that nominal prices have remained stable since 2004, and iii) retail rates which are on average three times higher than wholesale rates point to high levels of profitability by the two operators, which is “not consistent with an effectively competitive market”. It should be noted that a finding of joint SMP at retail level is not indispensable in order to find joint SMP in the wholesale market of mobile access and call origination. Retail market conditions may, however, inform an NRA of the structure of the wholesale market, but they may and need not in themselves be conclusive as regards the finding of SMP at wholesale level. In order to render the finding of collusion at wholesale level credible, MCA had to demonstrate that the level of rents at</p>
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retail level are sufficiently high to provide incentives to collectively refuse access to third operators at wholesale level.

MCA's analysis has shown that this appears to be the case in Malta thus far, given in particular that the high price level and the limited evolution of prices have resulted in high levels of profitability of the two MNOs. MCA points out, however, that the impact of recently launched cheap on-net tariffs on the overall revenues of both operators still needs to be examined. Further, full number portability, introduced in March 2006, might alter the equilibrium on the retail market during the timeframe of the market review. The Commission therefore invites MCA to monitor the aforementioned developments closely for the purpose of a future market review.

2 – non discrimination

The existence of pent-up demand

The Commission understands from the notification and in particular from the additional information provided that there is actual and credible demand for access which so far has remained unsatisfied. It invites MCA to

substantiate this point further in its definitive measure with reference to the concrete demand formulated and a description of the response by the MNOs.

The retaliation mechanism

Given that both Vodafone and go mobile dispose of excess capacity throughout the year, MCA considers that two retaliation mechanisms exist at wholesale level in the event of a deviation from the focal point (through the granting of network access to a MVNO). The non-deviating MNO could • either attract the MVNO hosted by the deviating MNO to the network of the non-deviating MNO; or • host another MVNO on its network.

The Commission services would like to remind MCA that the first option is only credible if (i) the hosting agreement between the deviating MNO and its MVNO contains no exclusivity clauses and that (ii) transaction costs (including costs of negotiations with the non-deviating MNO) might deter the MNVO from switching the hosting MNO.

Regarding the second option, it should be recalled that according to the MCA, it takes 6 month

3 - transparency

				<p>4 – price control and cost accounting</p>	<p>to conclude a MVNO agreement, provided that the MNO is willing to negotiate on reasonable terms. Since retaliation does not occur immediately (unless the non-deviating MNO has already progressed far in ongoing negotiations with another MVNO), the deviating MNO might enjoy a first mover advantage. The Commission invites MCA to substantiate in further detail why this first mover advantage would not suffice to render the retaliation mechanism at wholesale level incredible.</p> <p>The Commission notes, however, that the non-deviating MNO could also retaliate at retail level by decreasing its prices. In the past, price reductions by one MNO (since 2004 only through special offers) were matched by the other MNO within a few days. It can be expected that the same would be true in the event a MNO deviated from the common policy. As the retail market in Malta is relatively mature, the MVNO hosted by the deviating MNO would most likely be obliged to offer prices below the levels of the two existing MNOs in order to attract customers.</p>
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				5 – accounting separation	<p>The non deviating MNO would respond by decreasing its own prices to prevent its customers from switching to the MVNO of the deviating MNO. Market shares would remain the same, albeit at lower prices. Given that this outcome would lower the profitability levels of the MNOs, the retaliation mechanism at retail level constitutes a credible incentive not to deviate from the common policy.</p> <p>Market entry of a third MNO MCA states in its reply to the RFI that the entry of a third operator with a successful strategy could possibly destabilise the market equilibrium that allows Vodafone and go mobile high levels of profitability. The Commission notes that a third operator has requested frequencies and invites MCA to monitor closely the impact of a possible market entry of a third operator on the future sustainability of the collectively dominant position.</p> <p>ANY CONCRETE EVIDENCE OF DEVELOPMENTS IN THE MARKET NOT LINKED TO THE REGULATORY MEASURES IMPOSED THAT WOULD CAST DOUBT ON THE SUSTAINABILITY OF THE COLLECTIVELY DOMINANT POSITION WILL REQUIRE A REVIEW OF THE RELEVANT MARKET.</p>
EL/2006/0492	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission

LV/2006/0545	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission
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Market 16: Voice call termination on individual mobile networks

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			access/interconnection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Austria	YES	6 operators	YES	YES	YES	YES	NO
Denmark	YES	5 operators	YES	YES	YES	YES*	NO
France	YES	8 operators	YES	YES	YES	YES	YES
Greece	YES	4 operators	YES	YES	YES	YES*	NO
Hungary	YES	3 operators	YES	YES	YES	YES	YES
Ireland	YES	4 operators	YES	YES	YES	YES*	YES*
Lithuania	YES	3 operators	YES	YES	YES	YES	NO
Malta	YES	2 operators	YES	YES	YES	YES	YES
Netherlands	YES	6 operators	YES	YES	YES	YES*	NO
Portugal	YES	3 operators	YES	YES	YES	YES	YES
Slovakia	YES	2 operators	YES	YES	YES	YES	YES
Sweden	YES	5 operators	YES	YES	YES	YES*	YES*
United Kingdom	YES	6 operators	YES*	YES*	YES	YES*	NO
Belgium	YES	3 operators	YES	YES*	YES	YES	YES*

Luxembourg	YES	3 operators	YES	YES	YES	YES	NO
Finland**	YES	3 operators	YES	YES	YES	YES	YES
Germany	YES	4 operators	YES	YES	YES	YES	NO
Poland	YES	3 operators	YES	YES	YES	YES	NO
Greece	YES	3 operators	YES	YES	YES	YES	NO
Italy	YES	4 operators	YES	YES	YES	YES*	NO
Hungary	YES	3 operators	YES	YES	YES	YES	YES
Latvia	YES	4 operators	YES*	YES	YES	YES*	YES*
Spain	YES	3 operators	YES	NO	NO	YES	YES
Cyprus	YES	2 operators	YES	YES	YES*	YES*	YES*
Estonia	YES	3 operators	YES	YES	YES	YES	NO
Slovenia	YES	3 operators	YES*	YES*	YES	YES*	YES*

* Differentiated or no remedy imposed on certain SMP operators

** the Finnish Supreme Administrative Court annulled the decisions issued by Ficora on 6 February 2004 (notified the Commission and registered under the ref. number: FI/2003/0031 relating to the position of significant market power

Overview of notifications assessed until 31 March 2007

Market 16: Voice call termination on individual mobile networks

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
FI/2003/0031	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	Sonera Mobile Networks Oy Radiolinja Origo Oy Finnet Verkot Oy Ålands Mobiltelefon Ab	1 - Interconnection 2 - Transparency - publish delivery terms and tariff information	<p>The Commission made comments on:</p> <p>The limitation of the remedies to the termination of calls originating on mobile networks in Finland or originating abroad: The remedies imposed should not be limited on the basis of the originating network. By limiting the remedies as is proposed, Ficora does not base the remedy on the nature of the problem identified. It is recognized that the basis for excluding calls originating on a fixed network in Finland from the proposed remedies is the Finnish Communications Act. The primacy of Community law requires any provision of national law which contravenes a Community rule to be disappled.</p>

				3 - Obligations concerning pricing and other terms - Non-discrimination	<p>The asymmetrical application of certain remedies, which are imposed on three SMP operators but not on Ålands Mobiltelefon Ab: In circumstances where it is likely that the market failure identified will be the same in all markets, where a NRA intends to impose different remedies on different operators within similarly defined markets, such differential treatment should be adequately reasoned.</p> <p>Cost-orientation and cost accounting obligations: Where each operator is to select the cost-accounting procedures it wishes to use, this limits the measures' contribution to consumer benefit, the enhancement of competition and the development of the internal market.</p>
				4 - Use of cost accounting procedure	
				5 - Accounting separation	
				Ålands Mobiltelefon Ab: only the first 2 remedies and non-discrimination	

UK/2003/0040	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	Hutchison 3G UK Ltd	1 - Provision of network access	<p>The Commission made comments on:</p> <p>The appropriateness of the proposed set of obligations: Termination of voice calls on 3G networks is not as such to be considered as a novel service or a newly emerging market. It might be appropriate for Ofcom to impose in certain transparency obligations on “3”, O2, Orange, T-Mobile and Vodafone regarding 3G termination.</p> <p>Designation of Inquam as an operator having SMP: As Inquam’s subscribers are predominantly small- and medium-sized enterprises sensitive to the cost of customers calling them, this could limit Inquam’s freedom to set termination charges at an excessive level.</p> <p>National consultation run in parallel with Article 7 consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>
			O2 Ltd	2 - Non-discrimination	
			Orange plc		
			T Mobile Ltd		
			Vodafone Ltd		
Inquam Telecom Holdings Ltd	3 - Control of charges				
			4 - Transparency - to publish access contracts		
			5 -Transparency - to publish charges and an advanced notice of changes to charges		

				Hutchinson 3G UK and Inquam Telecom Holdings Ltd.: only the obligation to publish charges and an advanced notice of changes to charges.	
UK/2004/0087 (Remedies related to case UK/2003/0040)	See case UK/2004/0040.			Amendment of the charge controls set for 2G voice call termination.	No comments made by the Commission
UK/2005/0199 (Remedies related to case UK/2003/0040)	See case UK/2004/0041.			Prolongation of the charge control imposed on Vodafone, O2, Orange and T-Mobile, foreseen to expire on 31 March 2006, until 31 March 2007.	No comments made by the Commission
SE/2004/0052	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	TeliaSonera Sverige AB Tele2 Vodafone Sverige AB Hi3G Access AB Telenor Mobile	1 - Provision of network access and interconnection on reasonable request 2 - Transparency 3- Non-discrimination 4 - Accounting separation	The Commission made comments on: Asymmetrical application of remedies: PTS is invited to monitor closely the development of the cost structures of the operators on which the obligation to charge 'fair and reasonable prices' is imposed and to assess whether its current assumptions on 'fair and reasonable prices' will remain relevant over the period of the market review.

			Sweden AB	<p>5 - Control of charges and cost orientation obligation (LRIC Model)</p> <p>6 - Accounting separation obligation (provide PTS with specified cost and revenues for interconnection services, including internal prices)</p> <p>7 - Obligation to apply a fair and reasonable price</p> <p>Asymmetrical application of remedies: remedies 1 - 3 for all five operators, 4 & 5 to TeliaSonera, Tele2 & Vodafone and 6 & 7 to Hi3G/3 and Djuice</p>	<p>Parallel consultation: Any material modification to the draft measure as a consequence of comments made by interested parties in the framework of the national consultation will require the draft measure to be re-notified.</p>	
<p>IE/2004/0073, IE/2005/0216 (remedies)</p>	<p>Operator-specific relevant markets.</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	Vodafone Ireland Ltd	1- Access (all operators)		<p>The Commission made a comment on:</p> <p>The further consultation planned by ComReg: The draft measures relating to the details and implementation of the accounting separation and cost accounting obligations are required to be notified under Article 7(3) of the Framework Directive.</p>
			O2 Ireland Ltd	2 - Non-discrimination (all operators)		
			Meteor Mobile Communications Ltd	3 - Cost orientation (all operators)		
			Hutchison 3G Ireland Ltd	4 - Cost accounting (Vodafone and O2)		
				5 - Accounting separation (Vodafone and O2)		

<p>EL/2004/0078</p>	<p>Operator-specific relevant markets.</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>Cosmote SA Info-Quest AEBE Stet Hellas SA Vodafone-Panafon SA</p>	<p>1 - Price control: cost orientation for the first 3 operators but only an obligation of fair and reasonable price for Q-Telecom</p>	<p>The Commission made comments on:</p> <p>Formal notification ahead of transposition: EETT is entitled to carry out any market analysis prior to transposition of the EU regulatory framework into national law. The validity of the outcome of the present assessment is based on the assumption of a correct transposition of the EU regulatory framework into national law to the extent that the provisions concerned by this assessment are relevant.</p> <p>Asymmetrical application of remedies: EETT is invited to monitor closely the development of the cost structures of the operators on which the obligation to charge “fair and reasonable prices” is imposed and to assess whether its current assumptions on “fair and reasonable prices” will remain relevant over the period of the market review.</p> <p>Obligation of non-discrimination in respect of GSM gateways: EETT is invited to demonstrate that the non-discrimination obligation in respect of GSM gateways either pertains to the finding of SMP in the relevant product market or is sufficiently justified as an essential element without which the proposed obligation of cost-orientation imposed on the relevant market would be ineffective.</p> <p>National consultation on details of generic</p>
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					<p>remedies: When an NRA intends to provide details linked to a generic ex-ante regulatory obligation, interested parties should be given the opportunity to comment on the draft measure within a reasonable period.</p>
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<p>EL/2005/0178 (renotification of case EL/2004/0078</p>	<p>Operator-specific relevant markets.</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>Cosmote SA Info-Quest AEBE Stet Hellas SA Vodafone-Panafon SA</p>	<p>1 - Price control obligations: obligation of cost orientation for the first 3 operators but only an obligation of fair and reasonable price for Q-Telecom</p>	<p>The Commission made a comment on: Formal notification ahead of transposition: The validity of the outcome of the present assessment is based on the assumption of a correct transposition of the EU regulatory framework into national law to the extent that the provisions concerned by this assessment are relevant to the current infringement proceedings pending against Greece. The time period between the market reviews, the national and Community consultations and the adoption of the resulting final measure should be kept as short as possible.</p>
				<p>2 - Obligation of non-discrimination</p>	
				<p>3 - Obligation of access to, and use of, specific network facilities</p>	
				<p>4 - Obligation of transparency</p>	
				<p>5 - Obligation to publish a reference interconnection offer</p>	
<p>AT/2004/0099</p>	<p>Operator-specific relevant markets.</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>Mobilkom Austria AG & Co KG T-Mobile Austria GmbH One GmbH tele.ring Telekom Service GmbH</p>	<p>1 - Obligation to interconnect on reasonable request</p> <p>2 - Non discrimination concerning quality & external non discrimination obligation concerning prices</p> <p>3 - Transparency - publication of reference offer</p>	<p>The Commission made a comment on: Implementation of the proposed cost-orientation obligation: Leaving the setting of cost oriented termination charges to commercial negotiations between operators does not seem the most effective way of dealing with the identified competition problem. By not specifying the LRAIC model and the costs which can be taken</p>

			Hutchison 3G Austria GmbH	4 - Price control: cost orientation (on the basis of LRAIC)	into account in advance, there is no guarantee that termination rates will be oriented on efficient costs only.
AT/2005/0238	Operator-specific relevant markets.	National	Tele2 (in addition to the five operators designated as having SMP in Case AT/2004/0099)	1 - Obligation to interconnect on reasonable request	No comments made by the Commission.
				2 - Non discrimination concerning quality & external non discrimination obligation concerning prices	
				3 - Transparency - publication of reference offer	
				4 - Price control: cost orientation (on the basis of LRAIC)	
HU/2004/0101	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	T-Mobile Magyarország Távközlési Rt	1 - Provision of access and interconnection	The Commission made a comment on: Implementation of the proposed cost-orientation obligation: In order to be able to assess the compatibility of the implementing measures with the requirements of Article 8(4) of the Access Directive, NHH is invited to notify, once adopted, the implementing measures setting out the timeframe and stages applicable for the reduction of termination charges.
			Pannon GSM Távközlési Rt	2 - Transparency	
			Vodafone Magyarország Mobil Távközlési Rt.	3 - Non-discrimination	

				4 - Accounting separation	
				5 - Cost orientation and “controllability” of charges	
FR/2004/0104 FR/2007/0592 (details of remedies)	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	Bouygues Télécom s.a. Orange France s.a SFR s.a.	1 - Access to, and use of, specific network facilities	<p>The Commission made comments on:</p> <p>Formal notification ahead of full transposition and of adoption of secondary legislation: The resulting measure will need to be re-notified as a draft measure, should any material/substantial elements of ART’s analysis be altered due to further delays in the transposition process, given that data and market structure may still change by a later date of transposition.</p> <p>Market analyses in overseas territories: The compatibility with Community law of the analysis of the relevant markets in the overseas territories will be assessed when ART notifies the corresponding SMP analyses pursuant to Article 7(3) of the Framework Directive.</p> <p>Market definition and GSM gateways: While</p>
				2 - Transparency	
				3 - Non-discrimination	

				4 - Accounting separation (modalities of which and costing methodologies to be notified)	<p>there remain doubts as to the inclusion of termination of fixed-to-mobile calls through GSM gateways in the relevant market, its exclusion from the market definition in this particular case would not have led to a different result in the SMP analysis.</p> <p>Accounting separation and price control obligations: Decisions setting (i) the modalities of the accounting separation obligation and the costing methodologies, and (ii) the price ceiling for the year 2007 in respect of SMP undertakings are required to be notified.</p>
				5 - Price control	
				6 - Cost accounting obligation	
<p>FR/2004/0120 (French Overseas Territories)</p> <p>FR/2007/0592 (details of remedies)</p> <p>FR/2007/0596</p>	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	<p>Bouygues Télécom Caraïbe s.a., Dauphin Télécom s.u., Orange Caraïbe s.a. and Saint-Martin Mobile s.u. in Guadeloupe, Martinique and Guyane; Société Réunionnaise du Radiotéléphone s.a. in Mayotte; Orange</p>	<p>1 - Provision of access to, and use of, specific network facilities</p> <p>2 - Transparency</p>	<p>The Commission made comments on:</p> <p>Market definition and GSM gateways: While there remain doubts as to the inclusion of termination of fixed-to-mobile calls through GSM gateways in the relevant market, its exclusion from the market definition in this particular case would not have led to a different result in the SMP analysis.</p>

			Réunion s.a. and SRR in Réunion; Saint-Pierre-et-Miquelon Télécom s.a.s. in Saint-Pierre-et-Miquelon, Outremer	3 - Non-discrimination	Accounting separation and price control obligations: Decisions setting (i) the modalities of the accounting separation obligation and the costing methodologies, and (ii) the price ceiling for the year 2007 in respect of SMP undertakings are required to be notified.
				4 - Price control	
PT/2004/0129	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	Telecomunicações Móveis Nacionais, S.A. Vodafone Portugal - Comunicações Pessoais, S.A. Optimus - Telecomunicações, S.A.	1 - Access obligation	The Commission made a comment on: Further consultation planned by Anacom: Draft measures relating to implementation of the final cost orientation and cost accounting obligations are required to be notified.
				2 - Non-discrimination	
				3 - Transparency	
				4 - Accounting separation	
				5 - Price control and cost accounting. Pending adoption: progressive set of price reductions based on an international benchmark	
SK/2005/0136	Operator-specific relevant markets.	Geographic coverage of each network = geographic	Orange EuroTel	1 - Access obligation	The Commission made comments on: Implementation of the proposed cost

		extent of each relevant market		<p>2 - Non-discrimination</p> <p>3 - Transparency</p> <p>4 - Accounting separation and cost accounting</p> <p>5 - Price control, including cost orientation</p>	<p>orientation obligation: It is necessary to specify a cost model and the level of wholesale charges as soon as possible. By doing so, TÚSR will provide adequate transparency and legal certainty for market players, without causing further delays in bringing termination rates to the cost oriented level.</p> <p>Scope of access remedies: TÚSR should make clear that the proposed access obligations aim exclusively at remedying the lack of competition in the wholesale markets for voice call termination on individual mobile networks and would apply only to these relevant markets.</p> <p>National public consultation: NRAs must conduct a national consultation on each draft measure which have a significant impact on the relevant market, i.e. including the market definitions, and to give all interested parties the opportunity to comment the draft measures.</p>
LT/2005/0189	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	<p>Omnitel</p> <p>Bite GSM</p> <p>Tele 2</p>	<p>1 - Price control obligations based on FL-LRIC</p> <p>2 - Non-discrimination</p> <p>3 - Access to, and use of, specific network facilities</p> <p>4 - Transparency</p>	<p>No comments made by the Commission.</p>

<p>DK/2005/0204</p>	<p>Operator-specific relevant markets.</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>TDC SONOFON TeliaSonera “3” Tele 2 (MVNO)</p>	<p>1 - Price control obligations based on benchmarking for TDC, Sonofon and TeliaSonera, and an obligation to charge fair and reasonable prices for "3" and Tele 2</p>	<p>The Commission made comments on:</p> <p>Price control based on comparison with other countries: If a NRA decides to impose price regulation on the basis of a comparison with other countries, it should carefully select the objective criteria and clearly justify the reasons for which it believes that the relevant market(s) in these countries are, on the background of those criteria, most suited as the basis for the comparison taking into account differences between conditions prevailing on the relevant market(s) in the countries compared and its home market.</p> <p>Asymmetric regulation of Tele 2 (MVNO) and “3”: In circumstances where it is likely that the market failure identified will be the same in all markets and where a NRA intends to impose different remedies on different operators within similarly defined markets, the asymmetrical application of remedies should be adequately reasoned. NITA has not duly substantiated its intended decision not to impose price-control on Tele 2 and “3”.</p>
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MT/2005/0214	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	Vodafone Malta Ltd. Mobisle Communications Ltd.	1 - Price control and cost accounting	No comments made by the Commission.
				2 - Non-discrimination	
				3 - Accounting separation	
				4 - Transparency	
				5 - Access	
NL/2005/0215 NL/2006/0420	Operator-specific relevant markets.	Geographic coverage of each network = geographic extent of each relevant market	KPN Mobile Vodafone T-Mobile Orange Telfort Tele2 Mobiel	1 - Price control on the basis of cost orientation (FL-LRIC for all operators except for Tele2 Mobiel)	No comments made by the Commission.
2 - Provision of access upon reasonable request					
3 - Non-discrimination					
4 - Transparency					

<p>DE/2005/0249 DE/2006/0421</p>	<p>Operator-specific relevant markets</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>T-Mobile Deutschland GmbH (“D1-Netz”), Vodafone D2 GmbH (“D2-Netz”), E-Plus Mobilfunk GmbH Co. KG (“E1-Netz”) and O2 (Germany) GmbH & Co. OHG (“E2-Netz”)</p>	<p>1 – interconnection obligation</p> <p>2 - Obligation to terminate incoming calls on their relevant network</p> <p>3 - Obligation to provide co-location</p>	<p>Implementation of the proposed cost-orientation obligation</p> <p>In view of this finding and in view of the fact that mobile termination rates in Germany are at present, three years after the entry into force of the EU regulatory framework on electronic communications, still not regulated BNetzA should without further delay ensure effective (price) regulation in these markets.</p> <p>The approach chosen by BNetzA, namely to let mobile network operators propose termination charges that are then subject to authorisation by BNetzA fails to provide legal certainty and transparency to operators and consumers over a longer period of time. Therefore, BNetzA is invited to decide in an expedient manner on the requests for authorisation of their termination charges made by the various operators. In addition, in order to better safeguard the interest of consumers, BNetzA should further develop a cost model for calculating the termination rates of the mobile operators as soon as possible. This costing model should reflect the fact that operators may have different cost structures which can inherently be linked to different technical conditions of their network or can be a</p>
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4 – non discrimination	<p>result of different economies of scale due to different market shares. Operators should, however, become more efficient over time, especially if they gain market shares.</p> <p>Finally, the Commission invites BNetzA to take into account any specific</p>
4 - <i>Ex ante</i> price control for access and co-location	<p>characteristics of products such as T-Mobile@home, Genion and Vodafone</p> <p>Zuhause when calculating the costs and to examine whether the underlying costs for termination as part of those products would justify the setting of specific tariffs for those mobile termination services.</p> <p>Non-imposition of accounting separation</p>
5 – transparency	<p>Although tariff authorisation together with the annual reporting obligation might allow BNetzA to implement non-discrimination and to prevent cross subsidisation, the imposition of an obligation of separate cost accounting might nevertheless be necessary and proportionate to achieve further regulatory objectives such as rendering the tariff authorisation more efficient and making financial transactions more transparent. The Commission considers that in order to effectively remedy the market failures identified on the mobile termination markets, BNetzA should impose an obligation of accounting separation on the respective mobile operators. Without such an obligation, it seems more difficult for BNetzA to exercise effectively price control. Therefore, such an accounting separation obligation seems necessary to implement effectively the price control</p>

					obligation it intends to impose.
				6 - Indication of sites for the access and the co-location to interested undertakings at their request.	
SI/2005/0276 SI/2007/0591 (second round of market review)	Operator-specific relevant markets	Geographic coverage of each network = geographic extent of each relevant market	Mobitel, Si.Mobile	1 – access	In case SI/2005/0276 the Commission made the comment on: Proposed wholesale price control mechanism on Mobitel: APEK intends to address the problems for Mobitel’s competitors to effectively compete with Mobitel’s retail prices, in part, by proposing a remedy which links Mobitel’s termination rate to its retail on-net prices. This approach

				<p>2 - transparency</p>	<p>might nevertheless result in indirectly regulating retail prices through a remedy imposed at the wholesale level.</p> <p>The Commission reminds APEK that problems identified by APEK in this wholesale market at first stage should be remedied by the implementation of an effective price control mechanism ensuring cost-oriented level of Mobitel's termination rate at wholesale level. If APEK comes to the conclusion that the remedies available at wholesale level are not sufficient to solve the competitive problems identified at retail level but that there is also a need for price control of the retail prices, it may be</p> <p>appropriate to consider whether an intervention is required at that level. The</p> <p>Commission would like to emphasise that the retail prices of Mobitel may not be</p> <p>price regulated on the basis of the finding of</p>
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				3 – non-discrimination	<p>SMP at the wholesale market.</p> <p>Implementation of the unique fixed to mobile termination rates: The</p> <p>Commission notes that in respect of Mobitel and Si.Mobil APEK proposes that the</p> <p>operators should gradually apply the same level of termination tariffs for both calls</p> <p>originated from other mobile networks and fixed networks by 1 January 2008.</p> <p>The Commission considers, on the basis of the information supplied, that allowing</p> <p>further delays in bringing termination rates for mobile and fixed calls to a unique</p> <p>rate would not be in line with the aforementioned provisions of the Framework and the Access Directives and that delaying the implementation of this obligation until 1 January 2008 would not allow consumers to derive the</p>
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				4 – price control	<p>maximum benefit in terms of price.</p> <p>The Commission would like to emphasise that a unique termination rate for calls from mobile and fixed networks should be achieved without any excessive delay in order to ensure that the obligations imposed are effective and appropriate to address the competitive problems identified.</p> <p>Asymmetric application of remedies on Si.Mobil and WWI: The Commission invites APEK to monitor in the context of the annual market review provided for by national law, whether the remedies imposed on Si.Mobil and WWI will, in the longer term, be sufficient in the light of the competitive problems identified. Taking into account the bilateral nature of the termination agreements, the Commission in particular invites APEK to ensure a coherent and non-discriminatory development of the termination rates in Slovenia.</p> <p>In case SI/2005/0276 the Commission made the comment on:</p> <p>Proposed retail price control mechanism on Mobitel and Si.mobil: APEK intends</p> <p>to address the issue of asymmetric on net/off net tariffs in the Slovenian retail mobile market by proposing a remedy which links the MNOs' termination rate to their retail on-net prices. This approach would nevertheless result in retail regulation through a remedy imposed pursuant to market analysis on a wholesale market.</p> <p>In accordance with Article 8(4) of the Access</p>
				5 – accounting separation	

					<p>Directive, the obligations imposed on SMP operators shall be based on the nature of the problem identified, proportionate and justified in the light of the regulatory objectives laid down in Article 8 of the Framework Directive. In the present case APEK does not demonstrate as to how the linkage of MNOs' termination rates and their retail on-net prices would resolve the</p> <p>lack of competition in the termination market nor does it show how the imposition of</p> <p>such a remedy would render other proposed obligations in the termination market effective. Therefore the Commission asks APEK not to impose the proposed internal non-discrimination obligation.</p> <p>The Commission reminds APEK that problems identified by APEK in this wholesale market should be remedied by the implementation of an effective price control mechanism ensuring cost-oriented level of Mobitel's and Si.mobil's termination rate at wholesale level.</p>
IT/2005/0316	Operator-specific relevant markets	Geographic coverage of each network = geographic extent of each relevant	TIM, Vodafone, WIND, H3G	1- access	<p>Cost orientation and cost accounting obligations</p> <p>The Commission encourages AGCOM's intention to monitor the consistency of the imposed annual reduction of MTRs with the</p>
				2 - transparency	

		market		3 – non discrimination	costs and, in the event that there will be differences between the actual cost evolution and the price cap, to consider such differences with the view to ensuring the cost orientation of MTRs.
				4 – price control and cost accounting (except for H3G)	
LU/2005/0321	Operator-specific relevant markets	Geographic coverage of each network = geographic extent of each relevant market	EPT, Tango and Voxmobile	1- access and interconnectin	<p>The Commission made comments on:</p> <p>Timely implementation of the price control obligation</p> <p>ILR intends to implement the price control obligation on the basis of an international benchmarking no sooner than end of 2007 or 2008 following a separate national consultation. In the meantime, ILR will apply a 6% price reduction every six months for a period of at least two years and possibly three years.</p> <p>The implementation period envisaged by ILR appears disproportionate in light of these requirements, considering in particular that a price control model based on international benchmarking should not require that much time to implement.</p> <p>Consequently, the Commission invites ILR to implement by the end of 2006 its price control obligations based on an international benchmarking.</p>
				2 - transparency	

				3 – non-discrimination	<p>Price control based on comparison with other countries:</p> <p>Regarding the use of an international benchmarking to implement price control, the Commission considers that if an NRA decides to impose price regulation on the basis of comparison with other countries, it should carefully select on the basis of objective criteria the most appropriate countries of reference. Therefore, the Commission invites ILR to consider the development of a cost accounting model applicable to each SMP operator.</p> <p>Level of reductions</p> <p>The Commission urges ILR to further reduce the MTRs in Luxemburg already in the course of 2006, in order to achieve a cost oriented level as quickly as possible.</p>
				4 – price control	

CY/2006/0334	Operator-specific relevant markets	Geographic coverage of each network = geographic extent of each relevant market	CYTA, Areeba	1 - access	<p>Effectiveness of remedies in the mobile access and call origination market</p> <p>The retail mobile market in Cyprus has been opened for competition only in September 2004. It still is in the early stage of transition from a monopoly situation to a competitive situation, with the incumbent operator having a market share well above 90%. The new entrant, Areeba, has entered the market relatively recently and is still rolling out its network.</p> <p>Under such circumstances OCECPR argues that it would be ineffective at this stage to oblige CYTA to provide MVNOs access to its network, since this would undermine Areeba's chances to develop into a sustainable competing MNO on</p>
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				2 - transparency	<p>the market.</p> <p>Indeed, in a market which is more or less mature, the arrival of MVNOs would make it more difficult for Areeba to acquire the necessary customer base to support the further roll out of its network.</p> <p>In absence of mandatory MVNO access, however, OCECPR should ensure through stringent and effective wholesale regulation that the two MNOs currently on the market in Cyprus are able to compete at arms length. In particular, the Commission</p> <p>would like to invite OCECPR to impose price regulation with regard to the roaming services which CYTA is obliged to offer to Areeba¹⁶. Such price regulation should, in the opinion of the Commission, ensure cost-orientation and an</p>
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				3 – non discrimination	<p>appropriate margin between CYTA's retail tariffs and its wholesale national roaming tariffs.</p> <p>Exclusion of 3G termination from the voice call termination markets</p> <p>OCECPR justifies the exclusion of 3G termination from the voice call termination markets by the fact that at the time of the analysis both MNOs terminated calls to their respective networks using a 2G interface only. The Commission would like to remind</p> <p>OCECPR in this context that market definition should be technology-neutral, i.e. based on the nature of the products or services provided, not on the technological platform used to provide them. To the extent that a MNO operates both a 2G and a 3G network,</p>
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				4 – price control	<p>there seems to be substitution from the supply-side between 2G and 3G termination services (at least for calls to customers with a dual mode handset). In such a case, both services would also from the demand-side appear to be substitutable.</p> <p>Therefore, the Commission would like to invite OCECPR to reconsider whether on a forward-looking basis 3G termination services do not already at this stage belong to the same market as 2G services, or at least to monitor closely the market and to analyse 3G termination services as soon as these services become available in Cyprus. An additional market analysis and/or separate remedies imposed for 3G termination services should be notified to the Commission under Article 7(3) of the Framework Directive.</p>
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				5 – accounting separation	
UK/2005/0348	See case UK/2004/0040			Extension of remedies imposed in previous measures	No comments made by the Commission.
CZ/2006/0359	Operator-specific relevant markets	Geographic coverage of each network = geographic extent of each relevant market	Eurotel Praha, spol. s.r.o., T-Mobile Czech Republic, a.s. Oskar Mobil, a.s.	1 - access 2 - transparency 3 – non discrimination 4 – price control 5 – accounting separation	No comments made by the Commission.

<p>PL/2006/0379</p>	<p>Operator-specific relevant markets</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>Polkomtel SA, Polska Telefinia Cyfrowa Sp. z o.o., Polska telefonia Komorkowa Centertel Sp. z o.o.</p>	<p>1 - access</p>	<p>Price control obligation</p> <p>The Commission considers that the price regulation proposed by UKE is not sufficiently precise to address the identified concerns effectively. In particular, the draft measures do not specify the method on the basis of which the cost-orientation obligation will be implemented.</p> <p>The Commission invites UKE to impose a cost-calculation obligation, and to assess whether a forward looking long-run incremental cost (FL-LRIC) model would not be the most appropriate model (notably in terms of tariffs, and potential excessive costs and inefficiencies of the mobile operators), and to identify such model in the adopted measures.</p> <p>If cost orientation will only be achieved over time, the delay must not be unreasonably long. In such a case, moreover, UKE should foresee how mobile termination rates will already be reduced in the interim period so as to effectively remedy the market failures identified.</p> <p>If for this interim period UKE decides to impose price regulation on the basis of comparison with other countries, it should</p>
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				<p>2 – non discrimination</p>	<p>carefully select the objective criteria and justify the reasons for which it believes that relevant market(s) in these countries are, on the background of those criteria, most suited as the basis for the comparison, taking into account differences between conditions prevailing on the relevant market(s) in the countries compared and its home market. Furthermore, under the current circumstances of the provision of mobile call termination, only where the prices for those services have been set on the basis of an appropriate cost accounting model and relevant cost accounting data to reflect cost orientation, the prices can be considered as appropriate to serve as a basis for comparison.</p> <p>Transparency</p> <p>The Commission invites UKE to include in the transparency obligation an obligation to publish a reference offer. In the absence of such a reference offer, interconnection negotiations may be unduly prolonged and multiple disputes may arise rendering the access obligation imposed on this market less effective.</p>
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				3 – transparency	<p>Non-imposition of an obligation of accounting separation:</p> <p>The Commission considers that further imposition of an accounting separation obligation is necessary as an appropriate complement to the other proposed obligations.</p> <p>Only an accounting separation obligation allows internal transfers to be rendered visible, and permits UKE to check compliance with obligations of non-discrimination.</p> <p>Entrance of new market players</p> <p>The Commission invites UKE to analyse the market of wholesale call termination in the networks of new MNOs when they commence operations, and to notify the results of that analysis in accordance with Article 7(3) of the Framework Directive.</p>
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				4 – price control	
EL/2006/0392	Operator-specific relevant markets	Geographic coverage of each network = geographic	Cosmote SA (“Cosmote”), TIM/Q-Telecom SA	1 - access	Timeframe for reduction of the MTRs and non-imposition of accounting separation
				2 - transparency	

		extent of each relevant market	<p>(“TIM”), and Vodafone-Panafon SA</p> <p>(“Vodafone”)</p>	3 – non discrimination	<p>Taking into account the recent voluntary reductions of the MTRs which already ensure a significant part of the reduction towards EETT’s target, the Commission invites EETT to implement a shorter glide-path period for the remaining decreases in order to reach EETT’s target levels before June 2007.</p> <p>In addition, the Commission invites EETT to reconsider the need for keeping the minimum period of 30 seconds charged by mobile operators for terminating a call.</p> <p>Such a minimum charging period is generally passed-through at the retail level creating confusion and lack of transparency for end-users (in particular residential consumers), since the nominal retail tariff announced is not reflected in the final bill.</p> <p>Moreover, in view of the proposed cost-orientation obligation, the Commission reiterates that further imposition of an accounting separation obligation would seem justified as an appropriate complement to the other proposed obligations. An accounting separation obligation would permit EETT to easily obtain updated cost data from the operators based on an enforceable obligation and thus to ensure the cost-orientation obligation efficiently.</p>
4 - requirement to publish a reference interconnection offer, service level agreements and performance indicators					
5 – price control and cost accounting					

FI/2006/0403	Operator-specific relevant markets	Geographic coverage of each network = geographic extent of each relevant market	Finnet, Elisa, Sonera	1 - interconnection	<p>The exclusion from remedies of voice call termination in mobile networks when a call is originated in a fixed telephone network in Finland not using carrier selection or carrier pre-selection: a significant proportion of traffic from fixed to mobile networks – i.e. calls originated in a fixed telephone network in Finland not using carrier selection or carrier pre-selection – can still not be subject to any form of price regulation.</p> <p>The Commission points out that the Finnish law in this respect, in spite of the amendment of the CMA, continues to be in breach of Community law as set out in detail in case FI/2003/0031 and in the reasoned opinion issued by the Commission in the ongoing infringement case. The Commission also reminds Ficora of the comment made in case FI/2003/0031 regarding the primacy of Community law in line with the settled case law of the Court of Justice.</p> <p>Implementation of the proposed cost-orientation obligation:</p> <p>Despite the imposed cost-orientation obligation,</p>
				2 - transparency	

				3 – non discrimination	<p>Ficora does not intend to propose to control the level of termination rates <i>ex ante</i>. In practice the termination rates are negotiated between undertakings and Ficora controls the cost-orientation and non discrimination of termination rates <i>ex post</i> on a case-by-case basis.</p> <p>The Commission acknowledges that the current, commercially negotiated, termination rates applied by MNOs in Finland are well below the EU average.</p> <p>Nevertheless, the Commission invites Ficora to monitor the evolution of termination rates and in case the commercial negotiations in future fail to yield cost-oriented termination rates and would not resolve the current asymmetries in termination rates, Ficora should consider imposing a proper <i>ex ante</i> price control obligation supported by an appropriate cost-accounting methodology</p>
				4 – accounting separation	
				5 – price control	

BE/2006/0433	Operator-specific relevant markets	Geographic coverage of each network = geographic extent of each relevant market	Belgacom Mobile, Mobistar and Base	1 – access and interconnection (all operators)	<p>The Commission made comments on:</p> <p>Price control obligation</p> <p>The Commission considers that termination rates should normally be symmetric and that asymmetry, acceptable in number of cases, requires an adequate justification. It recognizes that, in certain exceptional cases, an asymmetry might be justified by objective cost differences which are outside the control of the operators concerned.</p>
				2 – external non discrimination (all operators); internal non discrimination imposed on Belgacom Mobile and Mobistar)	
				3 – transparency (all operators)	
				4 – price control and cost accounting (all operators)	
				5 – accounting separation (Belgacom Mobile and Mobistar)	

LV/2006/0464	Operator-specific relevant markets	Geographic coverage of each network = geographic extent of each relevant market	Latvia Mobilais Telefons, Tele2, Telecom Baltija and BITE Latvija	1 - access	<p>Market analysis relating to mobile call termination services provided by BITE</p> <p>Latvija :</p> <p>The Commission notes that SPRK did not analyse the relevant market with regard to call termination services provided by <i>BITE Latvija</i>. Therefore it urges SPRK to conduct the market analysis with regard to this particular undertaking as soon as possible.</p> <p>Effective cost accounting methodology:</p> <p>In order to ensure effective price regulation, the Commission invites SPRK to develop as quickly as possible its own cost model. In this context, the Commission would like to stress that termination rates should normally be symmetric and that asymmetry, acceptable in number of cases, requires an adequate justification. Therefore, in order to ensure the fulfilment of this principle in Latvia in the future, the cost model (for example based on the FL-LRIC methodology) should take into account costs of an efficient operator.</p>
				2 - transparency	
				3 – non discrimination	
				4 – price control	
HU/2006/0478	Operator-specific relevant markets	Geographic coverage of each network = geographic extent of each relevant	Magyar Telekom, Pannon GSM and Vodafone	1 - transparency	No comments made by the Commission
				2 – non discrimination	
				3 – accounting separation	

		market		4 – access and interconnection	
				5 – price control and cost accounting	

<p>ES/2005/0251</p> <p>ES/2006/0471</p>	<p>Operator-specific relevant markets</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>Telefonica Mobile SAU, Vodafone SA, Amena</p>	<p>1 - access</p>	<p>Imposition of remedies to the termination of calls originating on fixed networks only</p> <p>The Commission considers that CMT's approach to regulate only the wholesale voice termination of fixed-to-mobile calls may not allow consumers to derive the maximum benefit in terms of price.</p> <p>Accordingly, the Commission invites CMT to consider regulating the provision of mobile voice call termination services regardless of the origination of the call (M2M or F2M).</p> <p>Finally, the Commission invites CMT to specify as soon as possible all necessary details concerning the implementation of the cost-orientation obligation (cost accounting methodology, glide paths, if necessary, objectives and time-table).</p> <p>Minimum charging period of one minute for Amena</p> <p>The Commission invites CMT to reconsider the flexibility allowed to Amena to charge a minimum period of one minute for terminating a call. Such a minimum charging period is generally passed-through at the retail level creating confusion and lack of transparency for end-users (in particular residential consumers), since the nominal retail tariff announced is not reflected in the final bill. Consequently, such a tariff scheme may not be fully in line with the</p>
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				2 – price control	regulatory objectives laid down in Article 8 of the Framework Directive as well as Article 13(2) of the Access Directive, while not ensuring that the end-users derive the maximum benefit of the proposed regulatory obligations.
				3 – accounting separation	

<p>UK/2006/0498 UK/2006/0499</p>	<p>Operator-specific relevant markets</p>	<p>Geographic coverage of each network = geographic extent of each relevant market</p>	<p>Hutchison 3G UK Ltd O2 Ltd Orange plc T Mobile Ltd Vodafone Ltd Inquam Telecom Holdings Ltd</p>	<p>access</p> <hr/> <p>Non-discrimination</p> <hr/> <p>transparency</p>	<p>3G spectrum costs</p> <p>The value of 3G licences should be calculated at current value on a forward looking basis and not on the basis of spectrum values which approximate year 2000 levels.</p> <p>Termination rates should be set at the cost which would be faced by an efficient operator to provide the relevant service. What should be considered in the LRIC model, from today's perspective, are all the cost elements that are not sunk today.</p> <p>It is important that LRIC models use current costs and not historical costs which risks overestimating the appropriate costs considerably. This consideration is particularly relevant for spectrum fees which have been written off by operators since the relevant frequencies were auctioned and for which Ofcom considers that they may be an overstatement of the opportunity cost of 3G spectrum.</p> <p>In light of the above and with a view to fulfilling the objectives of the framework and allowing end-users, in particular retail fixed customers to obtain the benefits of the wholesale regulation proposed, the Commission invites Ofcom to reconsider the valuation of 3G licences.</p>
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				Price control and cost accounting	
UK/2006/0499	H3G's network (market redefined and assessed following the Appeal Body's decision)	Geographic coverage of its network = geographic extent of its relevant market	H3G	transparency	No comments made by the Commission.
AT/2006/0538	Operator-specific relevant markets	Geographic coverage of each network = geographic extent of each relevant market	Mobilkom Austria AG & Co KG ("Mobilkom"), T-Mobile Austria GmbH ("T-Mobile"), One GmbH ("One") and Hutchison 3G Austria GmbH ("Hutchison 3G"), Tele2UTA.	interconnection	Implementation of the proposed cost-orientation obligation While in principle the undertakings should themselves negotiate in good faith their access and interconnection agreements, the Commission would like to reiterate that the competitive problems identified should be tackled as soon and as efficiently as possible. In view of the monopoly power of MNOs over termination on their network, the absence of countervailing buying power and, in particular, in view of the number of dispute settlements procedures regarding mobile termination tariffs that the TKK continuously has to face, the Commission is of the opinion that it would be more effective for the TKK to specify already in
				Non-discrimination	
				Internal non-discrimination concerning prices for those convergent services allowing to terminate a call made to a geographical number onto a mobile network,	

				Obligation to publish RIO	this SMP decision rather than in the context of a dispute resolution how the cost-orientation obligation is to be implemented.
				Obligation to allow interconnection partners to contract out of an agreement within a period of maximum two months at any time	
				Price control	

Market 17: The wholesale national market for international roaming on public mobile networks

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed				
			access/interconnection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation
Slovenia	YES		No SMP found				
Czech Republic	YES		No SMP found				
Finland	YES		No SMP found				
Austria	YES		No SMP found				
Italy	YES		No SMP found				
Spain	YES		No SMP found				
Denmark	YES		No SMP found				
Poland	YES		No SMP found				
Ireland	YES		No SMP found				
Sweden	YES		No SMP found				

** Differentiated or no remedy imposed on certain SMP operators*

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
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SI/2006/0477	Similar to the Recommendation.	National	No SMP found	No remedies imposed	<p>Addressing high prices in the international roaming market</p> <p>The Commission notes that APEK has not found SMP in the market and therefore has not been in the position to regulate it despite concerns related to high prices. To deal with such difficulties, the Commission adopted on 12 July 2006 a proposal for a regulation of roaming on public mobile networks within the European Union</p>
PL/2006/0517	Similar to the Recommendation.	National	No SMP found	No remedies imposed	<p>No comments made by the Commission.</p>

CZ/2006/0452	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.
FI/2005/0304	Similar to the Recommendation.	National	No SMP found	No remedies imposed	<p>Development of effective IOTs net of discounts: Ficora concludes in its analysis of the wholesale national market for international roaming services that foreign MNO's ability to direct traffic onto preferred partner networks in Finland has not led to price competition at the wholesale level. Ficora expects, however, that traffic direction will lead to price competition in the future and considers the market to be effectively competitive.</p> <p>The factual evidence about the developments of average IOTs expressed in revenue per minute as well as a basket of wholesale prices does not seem to lend support to Ficora's assertion that prices will soon start to decline. Over the period of</p> <p>implementation of traffic direction techniques (2002-2005) prices have risen by 7% on average. Over the period of the first quarter 2003 until the third quarter 2005 prices (expressed as a basket of prices) of the two smaller of the three nationwide operators have risen disproportionately by [...] % and [...] % respectively. Operators with higher shares of directable traffic on their network should according to Ficora also face a greater competitive constraint. Contrary to these expectations, operators with higher shares of directable traffic on their networks appear to</p>

					<p>have raised prices to a greater extent. Further to that average wholesale prices (as expressed as revenue per minute) have over the period 2004 until June 2005 been aligned and are now within a narrower range and at a higher average level.</p> <p>The Commission acknowledges that discounts are yet to be included in the calculation of effective IOTs and that price baskets and average revenues may be overstating the true level of prices at least for the year 2004/2005.</p> <p>The Commission therefore asks Ficora to monitor the development of Finnish operators' effective IOTs net of all discounts and analyse very closely these findings.</p> <p>Should effective IOTs net of discounts continue to rise or remain at their present level despite the ongoing implementation of traffic direction techniques, then Ficora is invited to review the effectiveness of competition without any undue delay in close co-operation with the National Competition Authority ("NCA").</p>
AT/2006/0466	Similar to the Recommendation.	National	No SMP found	No remedies imposed	<p>Addressing high prices in the international roaming market</p> <p>The Commission notes that TKK has not found SMP in the market and therefore has not been in the position to regulate it despite concerns related to high prices. To deal with such difficulties, the Commission adopted on 12 July 2006 a proposal for a regulation of roaming on public mobile networks within the European</p>

					<p>Union.</p> <p>Calculation of market shares</p> <p>According to the practice of the Commission¹¹ and the case law of the Court of First Instance¹², the inclusion of captive sales into the relevant market may depend on whether the traffic generated by the foreign subsidiary would be made available in the open (noncaptive) market in case of an increase or decrease of market prices, or in other words, whether captive sales would be switched to the open market as a response to a change in competitive conditions. In the absence of such an analysis, the analysis of SMP should also be based on market shares excluding intra-group sales.</p> <p>In the present case, as changes in the market shares of operators depending on the inclusion or exclusion of intra-group sales would not materially alter the analysis</p> <p>provided by TKK, the exclusion of intra-group sales would not lead to a different outcome in terms of single or joint SMP findings.</p>
SE/2006/0496	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.

IT/2006/0393	Similar to the Recommendation.	National	No SMP found	No remedies imposed	<p>Addressing high prices in the international roaming market</p> <p>AGCOM recognises the high level of international roaming prices for end-users which may limit the use of mobile communication services outside national boundaries and which may constitute an obstacle to the development of the single European electronic communications market. The Commission notes in this respect that it has not so far been possible, for a national regulator alone, also because of the cross-border nature of</p> <p>international roaming services, to act effectively to address the high level of wholesale international roaming charges. The Commission is therefore considering the adoption of EU measures to address the high international roaming prices.</p> <p>The inclusion of captive sales</p> <p>When calculating the total size of the market as well as the market shares of the MNOs, AGCOM includes not only merchant sales (i.e. sales to third independent parties) but also (captive) intra-group sales.</p> <p>The Commission notes firstly that the traffic direction techniques available today allow the MNOs to direct a large majority of their traffic and secondly that contrary to TIM and WIND, Vodafone has a pan-European footprint and exchanges inbound roaming traffic within its own group. In this respect, a clear distinction is to be drawn between an</p>
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					<p>alliance of different undertakings, such as the Freemove alliance, and a group subject to sole control, which forms a single undertaking. Indeed, in an undertaking such as Vodafone, retail and wholesale prices are coordinated with the sole objective of coordinating the undertaking's overall profit. Partially owned subsidiaries may also subscribe, depending on circumstances such as, the degree of influence or control and/or commercial agreements, to the common strategy. In an alliance only mutually advantageous agreements can be reached. The alliance capability to coordinate in a similar manner as a sole undertaking like Vodafone and to apply prices independent of market conditions is therefore more limited and the sales between the alliance members are therefore in general not considered as captive.</p> <p>According to the Commission's practice and the case law of the Court of First Instance, the inclusion of captive sales into the relevant market may depend on whether the traffic generated by the foreign subsidiary of the group would be made available in</p> <p>the merchant market in case of an increase or decrease of market prices (i.e. whether the captive sales would be sufficiently quickly switched to the merchant market in response to a change in the competitive conditions).</p> <p>Therefore, the analysis of SMP should cover also the development of market shares of the MNOs excluding captive sales.</p> <p>Depending on whether captive sales are included</p>
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					<p>or not in the market, TIM's market share would be in a range between 38.8% and 51.2%.</p> <p>In this particular case the Commission notes that the market share of TIM based on a market excluding captive sales would amount to slightly above 50% both in volume (voice) and revenues (voice and SMS)¹¹. This market share is slightly declining from 2003 to 2005.</p> <p>Furthermore, for both SMS and voice, TIM's market share is higher in volume than in revenues indicating that TIM has not been able to maintain higher IOT than its competitors. Consequently, the exclusion of captive sales from the market definition would not have led to a different result in the SMP analysis in this case.</p>
ES/2006/0460	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.
DK/2006/0419	Similar to the Recommendation.	National	No SMP found	No remedies imposed	<p>Addressing high prices in the international roaming market</p> <p>The Commission notes that NITA has not found SMP in the market and therefore</p> <p>has not been in the position to regulate it despite the concerns related to high prices. To deal with such difficulties, the Commission has adopted on 12 July 2006 a proposal for a regulation of roaming on public mobile networks within the</p>

					<p>Community.</p> <p>Calculation of market shares</p> <p>According to the practice of the Commission¹⁸ and the case law of the Court of First Instance¹⁹, the inclusion of captive sales into the relevant market may</p> <p>depend on whether the traffic generated by the foreign subsidiary would be made</p> <p>available in the open (non-captive) market in case of an increase or decrease of</p> <p>market prices, or in other words, whether captive sales would be switched to the</p> <p>open market as a response to a change in competitive conditions. In the absence</p> <p>of such an analysis, the analysis of SMP should also be based on market shares</p> <p>excluding intra-group sales and both methods of calculation (i.e. including and</p> <p>excluding intra-group sales) should be included in the final measure.</p> <p>In the present case, market shares vary between [...] % and [...] % for the largest</p> <p>operator, between [...] % and [...] % for the second largest operator and between</p> <p>[...] % and [...] % for the third largest operator,</p>
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					<p>depending on the calculation method used. The relative sizes of the operators change depending on the inclusion or exclusion of intra-group sales. Most notably, the difference in market share between the first and the second largest operator increases from [...] to [...] percentage points when intra-group sales are excluded. However, the Commission</p> <p>agrees with NITA that these relative changes do not alter its analysis, i.e. the absence of a single company having SMP and the unlikelihood of the three large operators jointly dominating the market (“collective SMP”).</p> <p>Consequently, the exclusion of intra-group sales would not lead to a different outcome of the SMP analysis in this case.</p>
IE/2006/0477	Similar to the Recommendation.	National	No SMP found	No remedies imposed	No comments made by the Commission.

Market 18: Broadcasting transmission services, to deliver broadcast content to end users

Member State	Market definition similar to Recommendation	SMP found for	Remedies imposed
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			Access / interconnection	Non-discrimination	Transparency	Price control / cost accounting	Accounting separation	
Austria	NO*	SMP analysis not yet notified	YES	YES	YES	YES	YES	
Finland	NO*	1 operator	YES	YES	YES	YES	YES	
Ireland	NO*	1 operator	NO	YES	YES	NO	YES	
Sweden	NO*	1 operator	YES	YES	NO	YES	YES	
United Kingdom	NO*	2 operators	YES	YES	YES	YES	NO	
Czech Republic	NO*	1 operator	YES	NO	NO	NO	YES	
Spain	NO*	1 operator	YES	YES	NO	YES	NO	
Netherlands	NO*	5 operators	YES	YES	YES	YES**	NO	
Ireland	NO*	1 operator	NO	YES	YES	NO	NO	
France	NO*	1 operator	YES	YES	YES	YES	NO	
Lithuania	NO*	1 operator	NO	NO	NO	YES	YES	
Slovakia	NO*	1 operator	YES	YES	YES	YES	YES	
Germany	NO*	3 operators	Remedies not imposed					
Poland	NO*	1 operator	YES	YES	YES	YES	YES	
Slovenia	NO*	1 operator	YES	YES	YES	NO	NO	

Italy	NO*	2 operators	Remedies will be imposed at the later stage.
Cyprus	NO*	No SMP	Remedies not imposed

**Refinement, broader/narrower market and/or merger of markets*

*** only on certain operators*

Overview of notifications assessed until 31 March 2007

Market 18: Broadcasting transmission services, to deliver broadcast content to end users

Overview of notifications assessed until 31 March 2007

Case reference	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
<p style="text-align: center;">AT/2003/0002 (notification limited to market definition)</p>	<p style="text-align: center;">Terrestrial television broadcasting.</p>	<p>National</p>	<p>No SMP analysis</p>	<p>Not included in the notification</p>	<p>The Commission declared the notification incomplete on the following grounds:</p> <p>No information was provided on essential information such as the number of undertakings in the market, market shares and price levels.</p> <p>No information was provided on the degree of competition at retail level.</p> <p>No information was provided to support the conclusion on the geographic scope of the markets.</p>
	<p style="text-align: center;">Terrestrial FM radio broadcasting.</p>				

<p>AT/2003/0018 (notification limited to market definition)</p>	<p>Terrestrial television broadcasting.</p>	<p>National</p>	<p>No SMP analysis</p>	<p>Remedies not yet notified</p>	<p>The Commission made a comment on:</p> <p>Exclusion of the market for satellite television broadcasting transmission services from market analysis: Should a decision identifying trans-national market(s) under Article 15(4) of the Framework Directive be taken in the future, and/or should such decision provide guidance on how to treat the market for satellite broadcasting transmission services, NRAs concerned will be required to conduct the market analysis of these markets accordingly.</p>
<p>IE/2004/0042</p>	<p>Radio broadcasting transmission services on analogue terrestrial networks.</p>	<p>National</p>	<p>RTE Transmission Network Limited</p>	<p>1 - Transparency</p> <hr/> <p>2 - Non-discrimination</p>	<p>The Commission made a comment on:</p> <p>Market definition: The lack of competitive pressure exerted by cable transmission services on satellite transmission services and vice versa raises doubts as to whether transmission services provided over these platforms constitute a single market.</p>

<p>IE/2004/0114 (additional remedies related to case IE/2004/0042)</p>	<p>See case IE/2004/0042.</p>			<p>1 - Accounting separation</p>	<p>No comments made by the Commission.</p>	
<p>FI/2004/0076</p>	<p>Digital television transmission services in terrestrial digital television network in multiplexes A, B and C in compliance with the network licenses.</p>	<p>National, except for the autonomous area of Åland</p>	<p>Digita Oy</p>	<p>1 - Obligation to relinquish capacity in a terrestrial mass communication network</p>	<p>The Commission made comments on: Monitoring the appropriateness of proposed remedies: In light of the review by the Finnish authorities of the market for television activities in the course of 2007, the Finnish authorities are invited to monitor the appropriateness of the remedies imposed on Digita. Exclusion of satellite broadcasting transmission services from market analysis: The Finnish authorities are invited to have regard to any future Commission decision on trans-national satellite broadcasting transmission services under Article 15(4) of the Framework Directive and, to the extent that such decision may affect the Finnish authorities' current approach, the Commission invites them to revisit their current analysis with regard to wholesale satellite transmission.</p>	
<p>National analogue television transmission services in the terrestrial analogue television network.</p>	<p>2 - Transparency - publication of delivery terms and tariff information</p>					
<p>National digital radio transmission services in the terrestrial digital network.</p>	<p>3 - Cost-orientation cost accounting</p>					
				<p>4 - Non-discrimination</p>		
				<p>5 - Accounting separation</p>		

	National analogue radio transmission services in the terrestrial analogue radio network.				
UK/2004/0111				1 - Provision of network access on fair and reasonable terms (markets 1, 2 & 4)	Draft measures concerning managed transmission services withdrawn by NRA
	1/ Access to masts and sites operated by ntl.	Market 1: Coverage area of ntl		2 - Non-discrimination (markets 1, 2 & 4)	
	2/ Access to masts and sites operated by Crown Castle.	Market 2: Coverage area of Crown Castle	Market 1/ ntl	3 - Cost-orientation (markets 1, 2 & 4)	The Commission made a comment on: Exclusion of satellite broadcasting transmission services from market analysis: Ofcom is invited to have regard to any future Commission decision on trans-national satellite broadcasting transmission services under Article 15(4) of the Framework Directive. Should such a decision be taken, and should Ofcom be an NRA concerned by such a decision, it is required to conduct the market
	3/ Access to other masts and sites used for the provision of broadcasting services.	Market 3: National	Market 2/ Crown Castle	4 - Transparency (reference offer) (markets 1 & 2)	

	4/ National managed transmission services.	Market 4: National	Market 4/ ntl and Crown Castle (joint SMP)		analysis with regard to wholesale satellite transmission services with other NRAs identified in such a decision in line with Article 16(5) of the Framework Directive.
	5/ Regional/metropolitan/local managed transmission services.	Market 5: National			
SE/2005/0188 (notification limited to market definition and SMP analysis)	Analogue terrestrial television. Digital terrestrial television. Analogue terrestrial radio.	National	Teracom AB	access	The Commission made comments on: Broadcasting transmission services via satellite: Assuming that the market is trans-national as stated by PTS, the Commission invites PTS to take into account any future decision by the Commission concerning the trans-national nature of the market for satellite broadcasting services under Article 15(4) of the Framework Directive. Should such a decision be taken and should PTS be concerned by it, PTS

				Price regulation	<p>would – in accordance with Article 16(5) of the Framework Directive - be required to conduct the market analysis jointly with other NRAs concerned by the same decision.</p> <p>The exclusion from ex ante regulation of broadcasting transmission services via cable television networks: PTS considers that the barriers to enter the cable transmission market may not be sufficiently high and permanent (the first criterion) that this market would warrant ex ante regulation. The evidence provided by PTS does not enable the Commission to fully concur with such a conclusion. However, PTS has demonstrated to a sufficient extent that the structure of this market in Sweden is such that it tends towards effective competition (the second criterion) and therefore that no ex ante regulation is warranted.</p>
				Non discrimination	
				Accounting separation	

CZ/2006/0453	National analogue terrestrial radio and television broadcasting services.	national	RADIOKOM UNIKACE as	1 - Access	<p>The Commission made a comment on:</p> <p>Exclusion of other than nationwide analogue terrestrial broadcasting transmission services from market analysis</p> <p>In the current notification, CTU has defined and analysed only the wholesale market for nationwide analogue terrestrial radio and television broadcasting transmission services, which can be considered as part of the wider market 18, as defined in the Recommendation. Concerning other broadcasting transmission services, CTU declares that these do not belong to the same market as nationwide analogue terrestrial broadcasting transmission services but CTU does not carry out any further analysis as to whether these separate markets are susceptible to <i>ex ante</i> regulation.</p> <p>The Commission does not contest the market definition proposed by CTU (i.e. the division into various separate markets) but it would like to recall that each of these markets is part of market 18 as defined in the Recommendation. Whereas NRAs have the possibility, after having taken due account of particular national circumstances, to subdivide market 18 into a number of separate markets, whenever they do so, they have to determine</p>
				2 – Accounting separation	

					<p>which of the individual markets fulfil the three-criteria test and, thus, are susceptible to <i>ex ante</i> regulation and they have to carry out a market analysis of all markets they have determined as susceptible to <i>ex ante</i> regulation.</p> <p>With regard to the above, the Commission would like to invite CTU to analyse those broadcasting transmission services that have been excluded from the current notification, to determine which markets are susceptible to <i>ex ante</i> regulation and notify their analysis to the Commission. This concerns in particular nationwide digital terrestrial television broadcasting transmission services, where it follows from the notification that these services have started to develop in the Czech Republic while the geographical coverage will further develop in the coming years. The Commission points out that despite the fact that digital terrestrial broadcasting transmission services are still developing in the Czech Republic, CTU may want to ensure that certain market failures resulting from RADIOKOMUNIKACE's control over the analogue market (including the control over a nationwide network of masts and sites) do not jeopardise the</p>
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					<p>development of effective competition in the digital market.</p> <p>Non-imposition of transparency, non-discrimination and price regulation obligations</p> <p>The Commission would like to invite CTU to consider the imposition of transparency and non-discrimination obligations in order to make the access obligation more effective.</p> <p>Further, the Commission notes that the reasons put forward by CTU to justify its intention not to impose any price regulation are not convincing. Whereas CTU refers to the fact that the market analysis has not produced any evidence of application by RADIOKOMUNIKACE of excessive prices in the past, it seems to be difficult to make predictions as to its future pricing policy based on its past pricing behaviour given that RADIOKOMUNIKACE was subject to price regulation so far. Concerning CTU's argument that RADIOKOMUNIKACE's</p>
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					<p>market power will erode due to the planned switch-off of analogue terrestrial</p> <p>television broadcasting, this may only be relevant for a part of the market given</p> <p>that the relevant market, as defined by CTU in the current notification, includes</p> <p>both radio and television broadcasting transmission services.</p> <p>Therefore, the Commission would like to invite CTU to impose on</p> <p>RADIOKOMUNIKACE an obligation to charge fair and reasonable prices for the</p> <p>purpose of the implementation of the access obligation.</p>
<p>NL/2005/0246</p> <p>NL/2005/0270</p> <p>NL/2005/0277</p>	<p>1. broadcast cable transmission services of free radio and television packages</p> <p>2. broadcast cable transmission services of pay radio and television packages</p>	National	UPC, Essent, Casema	access	<p>Exclusion of satellite broadcasting transmission services from market analysis</p> <p>The Commission invites OPTA to have regard to any future Commission decision on transnational satellite broadcasting transmission services under Article 15(4) of the Framework Directive. Should such a decision be taken, and should OPTA be an NRA concerned by such a decision, it is required to conduct the market analysis with regard to wholesale satellite</p>
				Cost orientation	
				Non-discrimination	
				transparency	
			Multikabel,	access	

			Delta	Non-discrimination	transmission services with other NRAs identified in such a decision in line with Article 16(5) of the Framework Directive.
				transparency	
ES/2005/0252	Terrestrial analogue and digital television broadcasting transmission services	national	Abertis	1 - access	<p>The Commission made comment on:</p> <p>Inappropriateness of the proposed price control obligation: In accordance with Article 8(4) of the Access Directive⁸, the obligations imposed on SMP operators shall be based on the nature of the problem identified, proportionate and justified in the light of the regulatory objectives laid down in Article 8 of the Framework Directive, in particular the promotion of sustainable competition and efficient</p>

				<p>2 – obligation to charge reasonable prices</p>	<p>investment in infrastructure.</p> <p>The Commission considers that the requirement to charge reasonable prices, would not be effective without setting out the relevant details on the methodology and use of benchmarking. The Commission also invites CMT to set a clear framework for</p> <p>the commercial negotiations between operators and for the resolution of any dispute resulting there from.</p> <p>Non-imposition of a transparency obligation: CMT should also consider the</p>
				<p>3 – non-discrimination</p>	<p>imposition of a transparency obligation in order to make the overall access remedy</p> <p>more effective. Moreover, where an SMP operator has to comply with the non-discrimination obligation, the NRA may also require the publication of a reference offer (Article 9(2) Access Directive).</p>

NL/2006/0410	1 - Delivering transmission services of analogue AM radio signals (high power) to broadcasters (i.e. radio stations)	national	no SMP	No remedies imposed	<p>The Commission made comment on:</p> <p>Although OPTA has not explicitly applied the three criteria test as regards the infrastructure markets, it appears from OPTA's argumentation that competition law (including the structural separation imposed as a remedy in a merger control context) together with other legislative provisions can be deemed sufficient to address market failures that may arise on these markets. Hence, the Commission, in view of the elements set out above, agrees with OPTA's conclusion that the infrastructure markets are not susceptible to ex ante regulation.</p> <p>However, the Commission invites OPTA to monitor the development of competition in the transmission services market in order to ensure that the alternative mechanisms to redress possible market failures on the infrastructures markets are effective.</p>
	2 - Delivering transmission services of analogue FM radio signals (high power) to broadcasters (i.e. radio stations)				

AT/2006/0360	1 - The market for terrestrial television broadcasting;	national	SMP found for Österreichische Rundfunksender GmbH & Co KG5 ("ORS") in markets 1 and 4	access	<p>Time lag between market definition and market analysis:</p> <p>The Commission draws attention to the fact that the present market analysis on wholesale broadcasting transmission services is notified more than two years after the notification of market definitions. Therefore, the Commission invites KommAustria to consider in the future to conduct and notify all stages of a market review (market definition, market analysis and the imposition of regulatory obligations) as close to each other as possible.</p>
	2 - The market for television broadcasting via cable networks;			Non discrimination	
	3 - The market for satellite television broadcasting;			Accounting separation	
	4 - The market for terrestrial FM radio broadcasting;			Price control	

	5 - The market for terrestrial AM radio broadcasting;			Obligation to provide a reference offer	
FR/2006/0335	<p>Downstream wholesale market for TV broadcasting transmission services offered to broadcasters or multiplex operator</p> <p>Upstream wholesale market for radio and TV broadcasting transmission services</p>	Metropolitan France and its overseas territories.	TDF	1 - access	<p>Lack of analysis of the market for broadcasting transmission services offered to broadcasters or multiplex operators: Market 18 of the Recommendation is the</p> <p>wholesale market for broadcasting transmission services, to deliver broadcast content to end users. This market comprises commercial relationships where providers of broadcasting transmission services offer the delivery of broadcasting content to broadcasters (individual channels, multiplex operators or other content providers). ARCEP excludes these commercial relationships from its market</p> <p>analysis mainly on the ground that it claims not to be competent under French law to carry out such an analysis.</p>

				2 – non discrimination	<p>Pursuant to Article 16(1) of the Framework Directive, national regulatory authorities shall carry out an analysis of the relevant markets identified in the Recommendation.</p> <p>Pursuant to Article 3(1) of the Framework Directive, Member States shall ensure that each of the tasks assigned to national regulatory authorities in the Framework Directive is undertaken by a competent body.</p> <p>The Commission therefore notes that the market or markets for radio and TV broadcasting transmission services provided to broadcasters still need(s) to be analysed by a competent body and that the results of that analysis must be notified to the Commission, in accordance with the provisions of Article 3(1), 7(3) and 16(1) of the</p>
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				3 - transparency	<p>Framework Directive.</p> <p>In assessing the level of competition in the market(s) for broadcasting transmission services provided to broadcasters, the competent body should take into account the effect of i) any must carry, must offer or must deliver obligation imposed under national law and ii) the regulatory remedies proposed in the draft measure notified by ARCEP under case FR/2006/0335.</p> <p>Competitive conditions in the wholesale market for terrestrial FM radio</p> <p>broadcasting transmission services offered to other broadcasting transmission service providers: ARCEP defines the wholesale FM radio transmission market as being national and considers this market to be effectively competitive due to the easy replicability of TDF's sites (where the infrastructure such as masts with antennae are installed). ARCEP</p>
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concludes that barriers are neither high nor transitory and considers that competition law is capable of tackling market failures should these occur, ruling out as such the pertinence of *ex ante* regulation on this market.

The Commission, however, points to concerns raised by third parties during the

national consultation relating to what potentially could be a number of nonreplicable TDF sites. The Commission invites ARCEP to closely monitor the

evolution of the competitive conditions in this market, especially as regards these

4 – price control

potentially non replicable sites, and to do so notably in the context of the forthcoming call for tenders for broadcasting transmission services organised by Radio France.

ARCEP is further reminded that Article 12 of the Framework Directive allows

Member States to impose the sharing of facilities or property on operators where

undertakings are deprived of access to viable alternatives to a certain infrastructure

because of the need to protect the environment, public health, public security or to meet town and country planning objectives without the need to find SMP.

				Obligation to provide tariffs and conditions to ARCEP	
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<p>LT/2006/0376</p> <p>LT/2006/0468</p>	<p>1 - terrestrial analogue radio broadcasting transmission services where the radio frequency is allocated to the broadcaster;</p> <p>2 - terrestrial analogue radio broadcasting transmission services where the radio frequency is allocated to the broadcasting transmission service provider;</p>	<p>National except markets for satellite TV and radio broadcasting</p>	<p>Lietuvos radijo ir televizijos centras AB („LRTC“)</p>	<p>Accounting separation</p>	<p>Exclusion of digital terrestrial radio and TV broadcasting transmission services from market review</p> <p>According to the Decision No 1492 (25 November 2004) of the Government of Lithuania on the approval of the model concerning the implementation of digital TV in the Republic of Lithuania, it is planned that by 2009 95% of the territory of Lithuania should be covered by at least one terrestrial digital television network. TEO</p> <p>LT AB (formerly Lietuvos Telekomas AB) and LRTC have undertaken to install digital terrestrial transmission networks in Vilnius no later than 30 June 2006 and to transmit eight digital TV programmes each in</p>
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	<p>3 - terrestrial analogue television (TV) broadcasting transmission services where the radio frequency is allocated to the broadcaster;</p> <p>4 - terrestrial analogue TV broadcasting transmission services where the radio frequency is allocated to the broadcasting transmission service provider;</p> <p>5) wire radio broadcasting transmission services;</p> <p>6) radio broadcasting transmission services via cable TV networks;</p> <p>7) cable TV broadcasting transmission services;</p>			<p>Price control</p>	<p>other major cities no later than 31 December 2007. Therefore, the Commission would like to invite RRT to assess digital terrestrial radio and TV broadcasting transmission services, as has been done by other NRAs, and notify such an assessment to the Commission as soon as these services are provided based on the above timeframe.</p> <p>Remedies in the markets for terrestrial analogue radio and TV broadcasting transmission services where the radio frequency is allocated to the broadcaster</p> <p>In its notification, RRT assumes that the access to masts and sites (“broadcasting transmission facility services”) is a part of the markets for terrestrial analogue radio and TV broadcasting transmission services where the radio frequency is allocated to the broadcaster. It should be taken into account that as much as 93% of radio hours broadcast and 69% of TV hours broadcast are not transmitted through the broadcasting transmission services provided by LRTC, whereas most broadcasters do use the broadcasting transmission facility services of LRTC. Without contesting the delineation of these markets, the Commission however invites RRT to reconsider whether the imposition of the same set of remedies for both transmission services and transmission facility services would</p>
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	<p>8) satellite radio broadcasting transmission services;</p> <p>9) satellite TV broadcasting transmission services.</p>				<p>be proportionate and justified in the light of the objectives in Article 8 of Framework Directive. In particular, RRT is encouraged to consider lighter regulation for the broadcasting transmission services.</p> <p>Implementation of the cost accounting obligation and price control</p> <p>In accordance with Article 8(4) of the Access Directive⁷, the obligations imposed on SMP operators shall be based on the nature of the problem identified, proportionate and justified in the light of the regulatory objectives laid down in Article 8 of the Framework Directive, in particular the promotion of sustainable competition and</p> <p>efficient investment in infrastructure.</p> <p>The Commission considers that the period LRTC is allowed for introducing FDC based cost accounting is overly long, specifically in the light of the time normally required for an undertaking of the size of LRTC to develop such a cost accounting model (i.e. from six to twelve months).</p> <p>Further, the Commission is of opinion that the glide path of four years is too long because the switch-off of the analogue transmission will start from 2012, which means that analogue transmission will be of limited</p>
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					<p>interest for broadcasters by then.</p> <p>Therefore the Commission invites RRT to impose a considerably shorter period both for i) LRTC to introduce FDC based cost accounting and ii) the glide path.</p>
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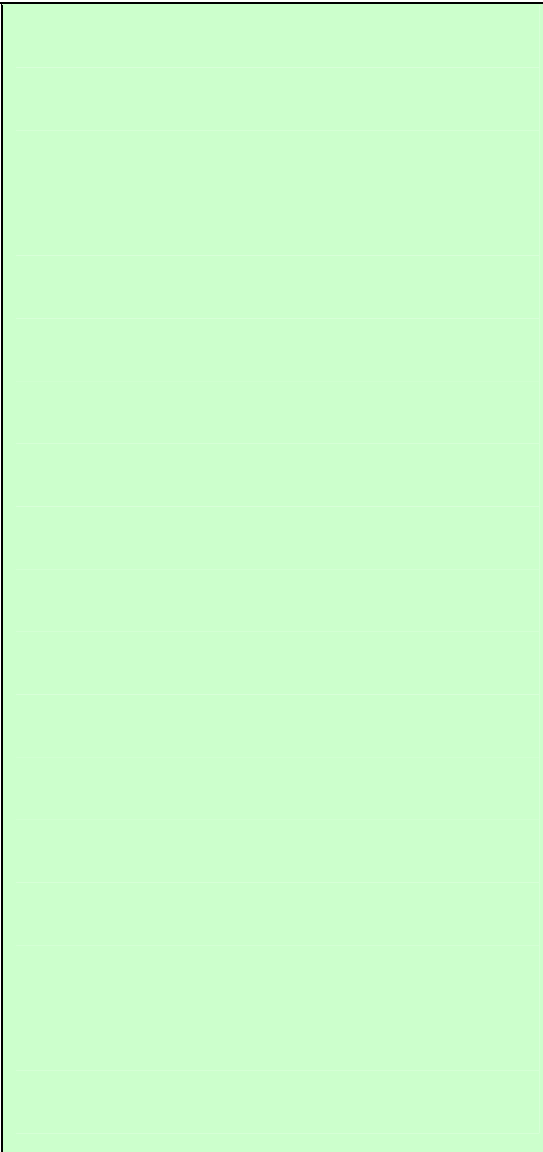
SK/2006/0456	The market limited to transmission over analogue terrestrial networks (including both transmission of radio and TV).	national	Slovak Telecom	transparency	<p>Exclusion of other services than analogue terrestrial broadcasting transmission</p> <p>services from the market analysis</p> <p>In the current notification, TÚSR has defined and analysed only the wholesale market for nationwide analogue terrestrial radio and television broadcasting transmission services, which may be considered as part of the wider market 18 as defined in the Recommendation. Concerning other broadcasting transmission services, TÚSR declares that these are not part of the analysed market but does not carry out any further analysis as to whether these separate markets are susceptible to <i>ex ante</i> regulation.</p> <p>The Commission recalls that market 18, as</p>
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				Non discrimination	<p>defined in the Recommendation,</p> <p>covers all types of broadcasting transmission services. NRAs have the possibility, after having taken due account of particular national circumstances, to subdivide market 18 into a number of separate relevant markets. However, whenever they do so and exclude some of these markets from the analysis, they have to demonstrate that individual markets excluded from the analysis do not fulfil the</p> <p>so called three-criteria test and, thus, are not susceptible to <i>ex ante</i> regulation.</p> <p>NRAs have to carry out a market analysis of all markets they have determined as</p> <p>susceptible to <i>ex ante</i> regulation.</p> <p>With regard to the above, the Commission</p>
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					<p>invites TÚSR to analyse those</p> <p>broadcasting transmission services that have been excluded from the current</p> <p>notification, to determine which markets are susceptible to <i>ex ante</i> regulation and</p> <p>notify their analysis to the Commission. This concerns: (i) cable transmission</p> <p>services, which are, according to information provided by TÚSR, provided by</p> <p>cable network operators that broadcast content to end users, thus in principle</p> <p>falling under the scope of market 18 as defined in the Recommendation, and in</p> <p>particular (ii) nationwide digital terrestrial television broadcasting transmission</p> <p>services, where it follows from the notification that these services have already</p> <p>started to develop in the Slovak Republic even if the geographical coverage will</p> <p>further develop in the coming years. The Commission points out that despite the</p> <p>fact that digital terrestrial broadcasting transmission services are still in a pilot</p> <p>stage in the Slovak Republic, TÚSR may want already at this stage to ensure that</p>
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Accounting separation

				<p>Access</p> <p>Price control</p>	<p>certain market failures resulting from Slovak Telekom's control over the analogue market (including the control over a nationwide network of masts and sites) do not jeopardise the development of effective competition in the digital market.</p>
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<p>DE/2006/0469</p>	<p>1) cable operators feeding broadcast signals into their networks; 2) cable operators delivering broadcast signals to network level 4 (“L4”) clusters,</p> <p>with a further refinement on the basis of the importance of the cluster;</p> <p>3) provision of satellite transponder capacity for the transmission of broadcast signals to content providers;</p> <p>4) provision of terrestrial transmission facilities for broadcasting analogue television signals to content providers;</p> <p>5) provision of terrestrial transmission</p>	<p>national</p>	<p>KDG, KBW and UM,</p>	<p>Remedies will be imposed in a separate decision.</p>	
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	<p>facilities for broadcasting digital television</p> <p>signals to content providers;</p> <p>6) provision of terrestrial transmission facilities for broadcasting analogue VHF</p> <p>radio signals to content providers;</p> <p>7) provision of terrestrial transmission facilities for broadcasting digital radio</p> <p>signals to content and telecommunication service providers;</p>				<p>No comments made by the Commission</p>
PL/2006/0455	(1)the provision of analogue transmission of television and radio	national	TP Emitel	access	
				Non discrimination	

	programmes services, (2) the provision of digital television and radio programmes transmissions			Accounting separation	<p>services (for radio and TV) to deliver broadcast content to end users. This market comprises commercial relationships where providers of broadcasting transmission services offer the delivery of the content to broadcasters (individual channels, multiplex operators or other content providers).</p> <p>UKE, after analysing the market, identified a number of competition problems present in the relationship between TP Emitel and the broadcasters, <i>inter alia</i> excessive pricing for those services which are not provided by alternative operators, while offering low prices on those segments of the market where there is competition, as well as discrimination of certain broadcasters. UKE indicates, however, that in accordance with Polish law it does not have the power to intervene in the relationship between transmission operators and broadcasters, as the latter are no electronic communications operators. In addition, UKE states that the competition problems identified as regards the provision of transmission services to broadcasters will be solved over time by the measures taken to foster the development of effective competition on the transmission services market, in particular by the obligation imposed on TP Emitel to offer alternative transmission operators access to its infrastructure at regulated conditions which should generate more competition between alternative suppliers of transmission services to broadcasters.</p> <p>The Commission shares UKE's view that, where possible, competition law problems such as excessive pricing should be regulated by</p>
				transparency	
				Price control	

fostering more competition rather than by imposing price regulation. However, where the development of effective competition on the transmission services market may take some time (which could be the case in view of the investment required), it may be necessary to impose for a transitory period of time, until the proposed regulatory obligations as regards access to infrastructure prove to be sufficient to remedy the identified competition problem, some form of price regulation which immediately prohibits TP Emitel from continuing its excessive pricing policy. For such excessive pricing, if continued, may lead to TP Emitel cross-subsidising those services for which it faces competition, which could undo the effectiveness of the access regulation imposed.

The Commission therefore, in view of the concrete competition problems identified on the Polish market, invites UKE to reconsider the possibility to impose price regulation on TP Emitel for the provision of transmission services to broadcasters. On the basis of the EU regulatory framework, UKE (or another competent body assigned for this purpose) must have the legal power to do so.

Exclusion of cable broadcasting transmission services from the market analysis

In the current notification, UKE has identified the market for cable broadcasting transmission services as a market separate from terrestrial broadcasting transmission services. UKE

concludes that it is not appropriate to impose remedies on the cable transmission market, however, without carrying out any analysis as to whether that separate market meets the three criteria test.

The Commission does not contest the market definition proposed by UKE (i.e. that cable broadcasting transmission services belong to a market separate from terrestrial broadcasting transmission services) but it would like to recall that market 18, as defined in the Recommendation, covers all types of broadcasting transmission services. While NRAs have the possibility, after having taken due account of particular national circumstances, to subdivide market 18 into a number of separate markets, whenever they do so, they have to determine which of the individual markets fulfil the three criteria test, and they have to carry out a market analysis of all markets susceptible to *ex ante* regulation.

The Commission takes note of the limited coverage, the limited penetration and the fragmentation of the cable networks in Poland. It understands that the limited group of consumers who receive broadcasting *via* the cable also have access to terrestrial broadcasting (but not vice versa), which seems to limit the market power of the cable network operators *vis à vis* the broadcasters. Under these circumstances it appears that, at present, the market for cable broadcasting transmission services in Poland does not meet the three criteria test (as it seems to tend towards effective competition) and therefore is not susceptible to *ex ante* regulation. Nevertheless, the Commission invites UKE to

					<p>clarify its views on this issue in the final measure.</p> <p>Possible differentiation of remedies as regards local terrestrial radio and television transmission services</p> <p>UKE identifies a single market for terrestrial radio and television transmission services, without distinguishing between local and national transmission services. The absence of a distinction between local and national services is in line with the Recommendation and the Commission does not have any indication that specific Polish circumstances should have led UKE to a different conclusion. However, in view of their experiences with notifications from other Member States, the Commission invites UKE to consider carefully whether it may be appropriate to differentiate the remedies imposed on this market so as to provide for more lenient access regulation regarding local broadcasting transmission infrastructure which may potentially be more easily duplicated than national broadcasting transmission infrastructure.</p> <p>Price control before approval of the cost calculation</p> <p>The Commission notes that UKE has not specified in its measure the basis of the verification of the appropriateness of charges for broadcasting transmission services proposed by</p>
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					<p>TP Emitel prior to the approval of its FL LRIC-based cost calculation by an independent auditor, enumerating various possible methods it may decide to use. This approach affects the transparency and legal certainty for market players, in particular since TP Emitel has not prepared cost calculation in the past, which may make swift implementation of this obligation difficult, and no timing is foreseen for the FL LRIC-based cost calculation and approval.</p> <p>The Commission therefore invites UKE to precisely clarify in the final measure which verification method it will use to approve the charges proposed by the SMP operator before the cost calculation has been conclusively approved.</p>
SI/2006/0476	<p>1) Transmission of content through terrestrial broadcast transmitters;</p> <p>2) Transmission of content through cable networks;</p> <p>3) Transmission of content through MMDS4 systems;</p>	national	RTV Slovenija	<p>access</p> <p>Non discrimination</p>	

	<p>4) Transmission of content through satellite;</p> <p>5) Transmission of content through Internet (IP) networks.</p>			transparency	<p>No comments made by the Commission</p>
IT/2006/0424	<p>a) National market for analogue terrestrial television broadcasting services,</p> <p>b) National market for digital terrestrial television broadcasting services,</p> <p>c) National market for terrestrial radio broadcasting services,</p> <p>d) Local market for terrestrial television broadcasting services,</p> <p>e) Local market for terrestrial radio broadcasting</p>	national	RAI and RTI in the market for national analogue terrestrial television	Remedies will be imposed at the later stage.	<p>Demand for analogue TV broadcasting transmission services</p> <p>In the absence of any past or current demand for analogue TV broadcasting transmission services, the Commission understands that any claimed tacit coordination can in principle be exercised vis-à-vis potential demand. However, AGCOM has not assessed the existence of such demand, in particular taking into account the forthcoming switch off of the analogue transmission. Therefore, the Commission invites AGCOM to make an assessment of the potential demand of analogue TV broadcasting transmission services.</p> <p>Basis for the calculation of the market shares</p> <p>AGCOM bases its estimation of market shares in the relevant market mainly on the</p> <p>number of installations/transmitters combined with the number of frequencies used in various transmission areas held by RAI and RTI18. According to the notification,</p> <p>however, a transmitter can cover between below</p>

	<p>services,</p> <p>f) National market for cable television broadcasting services,</p> <p>g) National market for satellite television broadcasting services.</p>				<p>15.000 and above 500.000 viewers. The Commission therefore considers that the absolute number of transmitters is not in itself the most appropriate indicator of market power in the relevant transmission market.</p> <p>AGCOM also uses the share of advertising revenue as an indicator of market power.</p> <p>Parties seeking access to transmission networks are exclusively interested in reaching a maximum coverage of the population and the audience (and hence advertising revenues) might differ significantly depending on the content of the TV programmes broadcasted.</p> <p>In the light hereof AGCOM should therefore strengthen its reasoning as to why the</p> <p>revenues from the advertising market should be an appropriate indication of market power on the upstream market. Programmes of vertically integrated operators with the same position/coverage in the broadcasting transmission market may achieve completely different shares of audiences (and hence advertising revenues) due to the attractiveness of the programme.</p> <p>Since coverage provided by transmission facilities is one of the most appropriate</p> <p>indicators of the position of each transmission provider, and considering that AGCOM does not today have fully reliable figures on this parameter, AGCOM is invited to continue monitoring the development of coverage in the</p>
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					<p>market and to re-notify this</p> <p>market in case the coverage of RAI and RTI as opposed to alternative networks do not</p> <p>any longer lead to the presumption of joint SMP.</p> <p>Ownership of facilities (masts and sites and antennas)</p> <p>The Commission understands that not all transmission facilities used by transmission</p> <p>service providers are owned by them, but are also rented from third parties. Therefore, the Commission invites AGCOM:</p> <p>(1) to clarify in its final measure to what extent the transmission service providers designated with SMP rely on facilities rented from third parties and to assess the duration and conditions of these contracts and their impact on the possible new entry (for example the presence of exclusivity clauses).</p> <p>(2) to assess to what extent new entrants would also have the possibility to rent facilities.</p> <p>Objective of collusion</p> <p>Considering the vertical integration of RAI and RTI, revenues from third parties are at present collected in the downstream advertising market. Rents to be protected by the colluding parties are at present only situated in that market. However, in its notification AGCOM does not give any indication of the level of rents achieved in the</p>
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					<p>advertising market. Therefore, the Commission invites AGCOM, in its final measure to define the boundaries of the advertising market (digital vs. analogue TV advertising, terrestrial vs. satellite vs. Internet-TV advertising) and to assess the level of rents and the development of price levels in that market, also in comparison to other EU Member States.</p> <p>Remedies to be notified</p> <p>The current notification does not contain remedies, which AGCOM intends to notify at a later stage.</p> <p>If, taking into account the comments above, AGCOM adopts the proposed measure, the Commission invites AGCOM to notify as soon as possible the appropriate remedies concerning the national analogue terrestrial television market.</p>
CY/2006/0497	<p>1) local analogue terrestrial radio broadcasting services;</p> <p>2) nation-wide analogue terrestrial radio broadcasting services;</p> <p>3) local analogue terrestrial television broadcasting services;</p>	national	As all defined markets are considered as non susceptible for ex ante regulation, no SMP had been found	No remedies imposed	

	4) nation-wide analogue terrestrial television broadcasting services;				
	5) digital broadcasting services				No comments made by the Commission

New Markets

Member State	Market	SMP found for	Remedies imposed				
			Access / interconnection	Non- discrimination	Transparency	Price control / cost accounting	Accounting separation
Ireland	Retail international leased lines	No SMP found					
Ireland	Retail leased lines above 2 Mbps	No SMP found					
United Kingdom	Wholesale	2 operators*	YES	YES	YES	NO	NO

	international services to termination points outside the UK						
France	SMS termination	3 operators	YES	YES	YES	YES	YES
Austria	Call termination on individual public telephone networks provided at a fixed location in Austria/convergent services	2 operators	NO	NO	NO	YES	NO
* 235 separate markets, 118 competitive							

Overview of notifications assessed until 31 March 2007

New Markets

Overview of notifications assessed until 31 March 2007

	Product Market Definition	Geographic Market Definition	SMP found for	Remedies Imposed	Results of Community Consultation
IE/2005/0194	Wholesale Market for call termination services to service providers at a fixed location.	Notification withdrawn by the National Regulatory Authority.			
IE/2004/0128	Retail international leased lines.	National	No SMP found	NONE, withdrawal of regulation	<p>The Commission made a comment on:</p> <p>NRA's finding is based on wholesale national leased lines. The Commission notes that the NRA will analyse possible leverage from wholesale markets when analysing this wholesale market and proposing remedies for these markets.</p>

UK/2006/0354	Wholesale international services	235 route by route markets	No SMP found	Withdrawal of ex ante obligations	No comments made by the Commission
FR/2006/0413 FR/2007/0592 (details of remedies)	SMS termination	Operator-specific relevant markets	Bouygues Télécom (“Bouygues”), Orange France (“Orange”) and SFR	1-access 2-transparency 3-non discrimination	<p>Accounting system and price control</p> <p>Obligations imposed under the Access Directive should be based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of the Framework Directive. The remedies should provide adequate transparency and legal certainty for market players. In order to increase legal certainty the Commission invites ARCEP to specify the way towards a symmetric price cap in the final measure. Moreover, the Commission invites ARCEP to specify the accounting system to be imposed on the SMP operators as well as the cost model for calculating the MNOs’ SMS termination rates, giving an incentive for all MNOs to become efficient as soon as</p>

				4-accounting separation	possible
				5-price control	
AT/2006/0432	Call termination on individual public telephone networks provided at a fixed location in Austria/convergent services	National	T-Mobile and One	an obligation to charge prices based on benchmarking, the reference price being the fixed termination rate charged by Telekom Austria at the regional level	No comments made by the Commission

