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Committee on Industry, Research and Energy

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AMENDMENTS 603 - 716

Draft report
Catherine Trautmann
(PE398.542v02-00)

amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services

Proposal for a directive – amending act
(COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))

Amendment 603
Erika Mann

Proposal for a directive – amending act

Article 1 – point 22

Directive 2002/21/EC

Article 21 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Any party may refer the dispute to the national regulatory authorities concerned. The competent national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the objectives set out in Article 8.

Amendment

2. Any party may refer the dispute to the national regulatory authorities concerned. The national regulatory authorities shall coordinate their efforts ***within BERT*** in order to bring about a resolution of the dispute, in accordance with the objectives set out in Article 8. ***Any obligations imposed on an undertaking by the national regulatory authorities in resolving a dispute shall comply with the provisions of this Directive and the Specific Directives.***

Or. en

Justification

This amendment provides for the role of BERT in the resolution of cross-border disputes.

Amendment 604
Erika Mann

Proposal for a directive – amending act

Article 1 – point 24 a (new)

Directive 2002/21/EC

Article 25 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(24a) In Article 25, the following paragraph is inserted:

"1a. By January 2014, the Commission shall evaluate whether there is a need to extend the duration of the provisions on

sector specific ex-ante regulation of this Directive, Articles 8 to 13a of the Access Directive and Article 17 of the Universal Service Directive. This evaluation shall be undertaken in the light of competitive developments in infrastructure and services in electronic communications. If sector specific ex-ante regulation appears to be necessary, the Commission shall confine such regulation to such markets, and put an end to it in those Member States and sub-national markets where infrastructure competition is not yet feasible. The Commission shall propose amendments to the existing regulatory framework to the Council and the European Parliament with a view to the adoption of a reformed regulatory framework."

Or. en

Justification

In January 2014 the new regulatory framework will have been introduced for a couple of years so that its effects can be analysed. In the light of this analysis the phase-out of sector specific ex-ante regulation can be evaluated so that such regulation then can be confined to such Member States and sub-national markets where infrastructure competition will not yet be feasible.

Amendment 605 **Herbert Reul**

Proposal for a directive – amending act

Article 1 – point 24 a (new)

Directive 2002/21/EC

Article 25 – paragraph 1a (new)

Text proposed by the Commission

Amendment

*(24a) In Article 25, the following paragraph 1a is inserted:
"1a. The Commission shall evaluate whether, and if so to what extent, in the light of developments in the market and with regard to competition, there is a need*

to extend the duration of the sector-specific price and access regulation provisions of this Directive, and of Directive 2002/19/EC (Access Directive), beyond the period referred to in Articles 29a and 19a of this Directive and of Directive 2002/19/EC respectively, or to amend it. If the Commission finds that there is such a need, it shall submit a proposal to the European Parliament and the Council accordingly."

Or. de

Justification

Regulation was supposed from the outset to be a transitional solution. It should be rolled back as competition develops on the markets. Regulatory intervention has constantly expanded, however, despite further, dynamic development of competition. A binding transition clause in keeping with that goal should therefore be introduced.

Amendment 606

Paul Rübiger

Proposal for a directive – amending act

Article 1 – point 24 a (new)

Directive 2002/21/EC

Article 25 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(24a) In Article 25, the following paragraph is inserted:

"1a. The Commission shall evaluate whether, in the light of developments in the market and with regard to competition, there is a need to extend the duration of the provisions of this Directive regarding sector specific ex-ante regulation and of the Access Directive beyond the period set out in Article 2aa, or to amend it. If the Commission finds that there is such a need, it shall submit a proposal to the European Parliament and

the Council."

Or. en

Justification

The European Commission as well as the European Parliament have repeatedly confirmed the transitory nature of sector specific price and access regulation. The amendment is modelled along the lines of the recently adopted Regulation on International Roaming. The provisions related to ex-ante regulation will expire on a given date, unless the Commission proposes to Parliament and the Council to prolong regulation in specific areas based on a report to be published before the review date.

Amendment 607
Nikolaos Vakalis

Proposal for a directive – amending act

Article 1 – point 24 a (new)

Directive 2002/21/EC

Article 25

Text proposed by the Commission

Amendment

(24a) Article 25 is replaced by the following:

"The Commission shall [...] review the functioning of this Directive and report to the European Parliament and the Council no later than five years after the date of its entry into force. In its report, the Commission shall include its reasoning regarding the continued need for regulation or the possibility of its repeal, in the light of developments in the market and with regard to competition. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay."

Or. en

Justification

Regulation was from the outset supposed to be temporary in nature and should be rolled back as competition develops on the markets. Therefore, a review clause must be introduced to finally achieve the political aim of progressive deregulation. If deemed necessary, the Commission will propose to the Parliament and the Council to prolong regulation in specific areas based on a report to be published before the review date.

Amendment 608
Angelika Niebler

Proposal for a directive – amending act

Article 1 – point 25 a (new)

Directive 2002/21/EC

Article 29a (new)

Text proposed by the Commission

Amendment

(25a) The following Article 29a is inserted:

"Article 29a

The sector-specific regulatory measures based on this Directive shall be repealed by 31 December 2016."

Or. de

Justification

The underlying objective of the telecomms legal framework was to bring the sector into the competition law domain. That can in fact be ensured only by enshrining it in the legal framework itself. On the basis of its right of initiative, however, the Commission may propose an extension if it concludes in the light of market developments, in 2016, that making the sector subject to competition law would be premature.

Amendment 609
Herbert Reul

Proposal for a directive – amending act
Article 1 – point 25 a (new)
Directive 2002/21/EC
Article 29a (new)

Text proposed by the Commission

Amendment

(25a) The following Article 29a is inserted:

"Article 29a

Expiry

Articles 14 to 16 shall expire on 1 January 2014."

Or. de

Justification

It must be ensured that the transition from ex ante regulation to application of general competition law in the telecommunications sector is reviewed after five years.

Amendment 610
Paul Rübzig

Proposal for a directive – amending act
Article 1 – point 25 a (new)
Directive 2002/21/EC
Article 29a (new)

Text proposed by the Commission

Amendment

(25a) The following Article is inserted:

"Article 29a

Articles 14 to 16 shall expire on 31 December 2014."

Or. en

Justification

The European Commission as well as the European Parliament have repeatedly confirmed the transitory nature of sector specific price and access regulation. The amendment is modelled along the lines of the recently adopted Regulation on International Roaming. The provisions related to ex-ante regulation will expire on a given date, unless the Commission proposes to Parliament and the Council to prolong regulation in specific areas based on a report to be published before the review date.

Amendment 611 Gunnar Hökmark

Proposal for a directive – amending act

Article 1 – point 26

Directive 2002/21/EC

Annexes I and II

Text proposed by the Commission

(26) *Annexes I and II are* deleted.

Amendment

(26) *Annex I is deleted and Annex II is replaced by the following:*

"ANNEX II

Criteria to be used by national regulatory authorities in making an assessment of joint dominance in accordance with Article 14(2), second subparagraph

Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market *which is characterised by a lack of effective competition and in which no single undertaking has significant market power*. Without prejudice to the case law of the Court of Justice on joint dominance, this is likely to be the case where the market *is concentrated and exhibits a number of appropriate characteristics of which the following may be the most relevant in the context of communications:*

- [...]
- low elasticity of demand
- [...]
- similar market shares
- [...]
- high legal or economic barriers to entry
- vertical integration with collective refusal to supply
- lack of countervailing buyer power
- lack of potential competition
- [...]

The above is an indicative list and is not exhaustive, nor are the criteria cumulative. Rather, the list is intended to illustrate only the sorts of evidence that could be used to support assertions concerning the existence of joint dominance."

Or. en

Justification

Joint dominance remains an untested and difficult concept in the telecoms sector in both ex post and ex ante context, yet may become increasingly important as markets consolidate. It is important that guidance is not deleted but is rather clarified through the Framework.

Amendment 612

Gabriele Albertini, Aldo Patriciello

Proposal for a directive – amending act

Article 1 – point 26

Directive 2002/21/EC

Annexes I and II

Text proposed by the Commission

(26) *Annexes I and II are deleted.*

Amendment

(26) *Annex I is deleted and Annex II is replaced by the following:*

"ANNEX II

Criteria to be used by national regulatory authorities in making an assessment of joint dominance in accordance with Article 14(2), second subparagraph

Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market *which is characterised by a lack of effective competition and in which no single undertaking has significant market power*. Without prejudice to the case law of the Court of Justice on joint dominance, this is likely to be the case where the market *is concentrated and exhibits a number of appropriate characteristics of which the following may be the most relevant in the context of communications*:

- [...]
- low elasticity of demand
- [...]
- similar market shares
- [...]
- high *legal or economic* barriers to entry
- *vertical integration with collective refusal to supply*
- lack of countervailing buyer power
- lack of potential competition
- [...]

The above *is an indicative list and is not exhaustive*, nor are the criteria cumulative. Rather, the list is intended to illustrate only the sorts of evidence that could be used to support assertions concerning the existence of joint dominance."

Or. en

Justification

Joint dominance remains an untested and difficult concept in the telecoms sector in both an ex post and ex ante context, yet may become increasingly important as markets consolidate. It is important that guidance is not deleted but is rather clarified through the Framework.

Amendment 613

Patrizia Toia

Proposal for a directive – amending act

Article 1 – point 26

Directive 2002/21/EC

Annexes I and II

Text proposed by the Commission

(26) *Annexes I and II are* deleted.

Amendment

(26) *Annex I is* deleted *and Annex II is replaced by the following:*

"ANNEX II

Criteria to be used by national regulatory authorities in making an assessment of joint dominance in accordance with Article 14(2), second subparagraph

Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market *which is characterised by a lack of effective competition and in which no single undertaking has significant market power.* Without prejudice to the case law of the Court of Justice on joint dominance, this is likely to be the case where the market *is concentrated and exhibits a number of appropriate characteristics of which the following may be the most relevant in the context of communications:*

- [...]

- low elasticity of demand

- [...]

- similar market shares
- [...]
- high legal or economic barriers to entry
- vertical integration with collective refusal to supply
- lack of countervailing buyer power
- lack of potential competition
- [...]

The above is an indicative list and is not exhaustive, nor are the criteria cumulative. Rather, the list is intended to illustrate only the sorts of evidence that could be used to support assertions concerning the existence of joint dominance."

Or. en

Justification

Joint dominance remains an untested and difficult concept in the telecoms sector in both an ex post and ex ante context, yet may become increasingly important as markets consolidate. It is important that guidance is not deleted but is rather clarified through the Framework.

Amendment 614 **Rebecca Harms**

Proposal for a directive – amending act
Article 1 – point 26
Directive 2002/21/EC
Annexes I and II

Text proposed by the Commission

(26) *Annexes I and II are* deleted.

Amendment

(26) *Annex I is* deleted *and Annex II is replaced by the following:*

"ANNEX II

Criteria to be used by national regulatory authorities in making an assessment of joint dominance in accordance with Article 14(2), second

subparagraph

Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market *which is characterised by a lack of effective competition and in which no single undertaking has significant market power*. Without prejudice to the case law of the Court of Justice on joint dominance, this is likely to be the case where the market *is concentrated and exhibits a number of appropriate characteristics of which the following may be the most relevant in the context of communications:*

- [...]
- low elasticity of demand
- [...]
- similar market shares
- [...]
- high *legal or economic* barriers to entry
- *vertical integration with collective refusal to supply*
- lack of countervailing buyer power
- lack of potential competition
- [...]

The above is an *indicative list and is not exhaustive*, nor are the criteria cumulative. Rather, the list is intended to illustrate only the sorts of evidence that could be used to support assertions concerning the existence of joint dominance."

Or. en

Justification

Joint dominance remains an untested and difficult concept in the telecoms sector in both an ex post and ex ante context, yet may become increasingly important as markets consolidate. It is

important that guidance is not deleted but is rather clarified through the Framework.

Amendment 615

Francisca Pleguezuelos Aguilar

Proposal for a directive – amending act

Article 2 – point 1

Directive 2002/19/EC

Article 2 – point a

Text proposed by the Commission

‘(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services **or delivering information society services or broadcast content services**. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.’

Amendment

‘(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services, **or to other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive)**. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; **and** access to virtual network services.’

Or. es

Justification

Broadcasting and information society service providers have the status of end-users as defined in Article 2 of the Framework Directive: the directive under consideration here, therefore, does not apply.

However, as a result of convergence, electronic communications network and service providers may require access not just to deliver communications services to their customers, but also to offer broadcast content services. The reference to Article 4 thus serves to clarify the definition.

Amendment 616
Paul Rübiger

Proposal for a directive – amending act

Article 2 – point 1

Directive 2002/19/EC

Article 2 – point a

Text proposed by the Commission

“access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services or delivering information society services or broadcast content services. It covers *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services..

Amendment

“access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services or delivering information society services or broadcast content services. It covers *inter alia*: access to network elements (***including wavelength transfer unless optical fibre capacity can be made available***) and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.

Or. de

Justification

An access obligation needs to be imposed, though in itself it is not sufficient, to enable competitors to offer, in particular, broadband connections and derived services on the basis of their own infrastructure. As regards access variants, accordingly, allowance must be made for instances where no free optical fibre capacity can be made available. In such instances, transfer of wavelength (colour) would be the appropriate way of connecting cable distribution frames to competitors' networks.

Amendment 617 **Gabriele Albertini**

Proposal for a directive – amending act

Article 2 – point 1

Directive 2002/19/EC

Article 2 – point a

Text proposed by the Commission

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services or delivering information society services or broadcast content services. It covers *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.

Amendment

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services or delivering information society services or broadcast content services. It covers *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; ***access to billing and collection services and to subscriber databases for the provision of directory services***; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.

Justification

Directory Enquiry services are a critical service for disabled and elderly users and for users in general. Billing and collection services and access to subscriber databases are essential facilities which a telecommunications operator controlling access to end-users must provide to directory enquiry providers in order to permit the provision of competitive directory enquiry services in accordance with the Competition Directive (Article 5). Access to subscriber databases is specifically addressed in Article 25.2 of the Universal Service Directive.

Amendment 618

Dominique Vlasto, Erna Hennicot-Schoepges

Proposal for a directive – amending act

Article 2 – point 1

Directive 2002/19/EC

Article 2 – point a

Text proposed by the Commission

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services or delivering information society services or broadcast content services. It covers *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual

Amendment

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services or delivering information society services or broadcast content services. It covers *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; ***access to billing and collection services and to subscriber databases for the provision of directory services***; access to fixed and mobile networks, in particular for

network services.

roaming; access to conditional access systems for digital television services; access to virtual network services.

Or. en

Justification

Directory Enquiry services are a critical service for disabled and elderly users and for users in general. Billing and collection services and access to subscriber databases are essential facilities which a telecommunications operator controlling access to end-users must provide to directory enquiry providers in order to permit the provision of competitive directory enquiry services in accordance with the Competition Directive (Article 5). Access to subscriber databases is specifically addressed in Article 25.2 of the Universal Service Directive.

Amendment 619 **Stefano Zappalà**

Proposal for a directive – amending act

Article 2 – point 1

Directive 2002/19/EC

Article 2 – point a

Text proposed by the Commission

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services or delivering information society services or broadcast content services. It covers *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or

Amendment

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services or delivering information society services or broadcast content services. It covers *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or

systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.

systems offering equivalent functionality; ***access to billing and collection services and to subscriber databases for the provision of directory services***; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.

Or. en

Justification

Directory Enquiry services are a critical service for disabled and elderly users and for users in general. Billing and collection services and access to subscriber databases are essential facilities which a telecommunications operator controlling access to end-users must provide to directory enquiry providers in order to permit the provision of competitive directory enquiry services in accordance with the Competition Directive (Article 5). Access to subscriber databases is specifically addressed in Article 25.2 of the Universal Service Directive.

Amendment 620 **Patrizia Toia**

Proposal for a directive – amending act **Article 2 – point 1** Directive 2002/19/EC Article 2 – point a

Text proposed by the Commission

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services or delivering information society services or broadcast content services. It covers *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over

Amendment

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services or delivering information society services or broadcast content services. It covers *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over

the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.

the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; ***access to subscriber databases for the provision of directory services; access to third-party billing services;*** access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.

Or. en

Justification

Directory Enquiry services are a critical service for disabled and elderly users and for users in general. Third party billing and access to subscriber databases are essential facilities which a telecommunications operator controlling access to end-users must provide to directory enquiry providers in order to permit the provision of competitive directory enquiry services in accordance with the Competition Directive (Article 5). Access to subscriber databases is specifically addressed in Article 25.2 of the Universal Service Directive.

Amendment 621 Gunnar Hökmark

Proposal for a directive – amending act
Article 2 – point 1a (new)
Directive 2002/19/EC
Article 2 – point e

Text proposed by the Commission

Amendment

(1a) In Article 2, point (e) is replaced by the following:

"(e) "local loop" means the physical circuit connecting the network termination point [...] to a distribution frame or equivalent facility in the fixed public electronic communications network, where the connection can technically be accessed."

Justification

The amendment updates the definition of local loop in the Access Directive to ensure technological neutrality and bring it into line with the new definition in the Commission's Relevant Markets. By the time the amendments are approved, many loops may be partly or wholly composed of fibre and thus technological neutrality is required to ensure the Framework is futureproof.

Amendment 622

Gabriele Albertini, Aldo Patriciello

Proposal for a directive – amending act

Article 2 – point 1 a (new)

Directive 2002/19/EC

Article 2 – point e

Text proposed by the Commission

Amendment

(1a) In Article 2, point (e) is replaced by the following:

"(e) "local loop" means the physical circuit connecting the network termination point [...] to a distribution frame or equivalent facility in the fixed public electronic communications network, where the connection can technically be accessed."

Or. en

Justification

The amendment updates the definition of local loop in the Access Directive to ensure technological neutrality and bring it into line with the new definition in the Commission's Relevant Markets. By the time the amendments are approved, many loops may be partly or wholly composed of fibre and thus technological neutrality is required to ensure the Framework is futureproof.

Amendment 623
Reino Paasilinna

Proposal for a directive – amending act
Article 2 – point 1 a (new)
Directive 2002/19/EC
Article 2 – point e

Text proposed by the Commission

Amendment

(1a) In Article 2, point (e) is replaced by the following:

"(e) 'local loop' means the physical circuit connecting the network termination point [...] to a distribution frame or equivalent facility in the fixed public *electronic communications* network, where the connection can technically be accessed."

Or. en

Justification

The definition of local loop in the Access Directive should be updated in order to ensure technological neutrality and bring the definition in line with the new definition in the Commission's Relevant Markets. By the time the amendments are approved, many loops may be partly or wholly composed of fibre and thus technological neutrality is required to ensure the Framework is futureproof.

Amendment 624
Mary Honeyball

Proposal for a directive – amending act
Article 2 – point 1 a (new)
Directive 2002/19/EC
Article 2 – point e

Text proposed by the Commission

Amendment

(1a) In Article 2, point (e) is replaced by the following:

"(e) "local loop" means the physical circuit connecting the network termination point [...] to a distribution

frame or equivalent facility in the fixed public *electronic communications* network, where the connection can technically be accessed."

Or. en

Justification

Point (e) in the original directive needs updating to reflect that the "local loop" ensures access to electronic communications networks, not just access to the public telephone network. This also ensures technological neutrality.

Amendment 625
Rebecca Harms

Proposal for a directive – amending act

Article 2 – point 1 a (new)

Directive 2002/19/EC

Article 2 – point e

Text proposed by the Commission

Amendment

(1a) In Article 2, point (e) is replaced by the following:

"(e) "local loop" means the physical circuit connecting the network termination point [...] to a distribution frame or equivalent facility in the fixed public *electronic communications* network, where the connection can technically be accessed."

Or. en

Justification

The amendment updates the definition of local loop in the Access Directive to ensure technological neutrality and bring it into line with the new definition in the Commission's Relevant Markets. By the time the amendments are approved, many loops may be partly or wholly composed of fibre and thus technological neutrality is required to ensure the Framework is futureproof.

Amendment 626
Francisca Pleguezuelos Aguilar

Proposal for a directive – amending act

Article 2 – point 2

Directive 2002/19/EC

Article 4 – paragraph 1

Text proposed by the Commission

‘1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8.’

Amendment

‘1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services **or delivering broadcast content or information society services**, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8.’

Or. es

Justification

For consistency with the proposed definition of access.

Amendment 627
Dominique Vlasto

Proposal for a directive – amending act

Article 2 – point 2

Directive 2002/19/EC

Article 4 – paragraph 1

Text proposed by the Commission

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8.

Amendment

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8. ***However, the terms and conditions for interconnection shall not introduce unjustified barriers to interoperability.***

Or. en

Justification

Interconnection is a right which shall not be overturned through unjustified conditions. Without direct link to the service required logo network infrastructure scheme rendered unnecessarily complex in order to create barriers to interconnection (higher costs, etc.).

Amendment 628
Gianni De Michelis

Proposal for a directive – amending act
Article 2 – point 3 – point -a
Directive 2002/19/EC
Article 5 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(-a) Subparagraph 1 of paragraph 1 is replaced by the following:

"1. National regulatory authorities shall, acting in pursuit of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), encourage and where appropriate ensure, in accordance with the provisions of this Directive, adequate access and interconnection, and interoperability of services, exercising their responsibility in a way that promotes efficiency, *infrastructure-based and sustainable competition, investment and innovation*, and gives the maximum benefit to end-users."

Or. en

Justification

Explicit inclusion of infrastructure investment and innovation is necessary for NRAs to take into account these two key issues in the application of access remedies. Infrastructure investment and innovation are key for a modern and up to date European telecommunications infrastructure.

Amendment 629

Francisca Pleguezuelos Aguilar

Proposal for a directive – amending act

Article 2 – point 3 – point -a (new)

Directive 2002/19/EC

Article 5 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(-a) Point a of paragraph 1 is replaced by the following:

‘(a) to the extent that is necessary to ensure end-to-end connectivity, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks or make their services interoperable where this is not already the case;’

Or. es

Justification

For consistency with the proposed definition of access.

Amendment 630

Gabriele Albertini, Aldo Patriciello, Pia Elda Locatelli

Proposal for a directive – amending act

Article 2 – point 3 – point -a (new)

Directive 2002/19/EC

Article 5 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(-a) Point (a) of the second subparagraph of paragraph 1 is replaced by the following:

"(a) to the extent that is necessary to ensure end-to-end connectivity and access to services, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks on fair and reasonable terms where this is not already the case;"

Or. en

Justification

The definition of ‘interconnection’ includes allowing the user of one network to access services provided by another. However, NRA’s ability to ensure this or to set fair and reasonable terms for such interconnection or access is not clear in the text. Issues of ensuring availability of access to services may become increasingly relevant in an environment where there may be a degree of competition (i.e. no dominance) but insufficient dynamism to ensure customer needs are met.

Amendment 631
Rebecca Harms

Proposal for a directive – amending act

Article 2 – point 3 – point -a (new)

Directive 2002/19/EC

Article 5 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(-a) Point (a) of the second subparagraph of paragraph 1 is replaced by the following:

"(a) to the extent that is necessary to ensure end-to-end connectivity and access to services, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks on fair and reasonable terms where this is not already the case;"

Or. en

Justification

The definition of ‘interconnection’ includes allowing the user of one network to access services provided by another. However, NRA’s ability to ensure this or to set fair and reasonable terms for such interconnection or access is not clear in the text.

Amendment 632
Stefano Zappalà

Proposal for a directive – amending act

Article 2 – point 3 – point -a (new)

Directive 2002/19/EC

Article 5 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(-a) Point (a) of the second subparagraph of paragraph 1 is replaced by the following:

"(a) to the extent that is necessary to ensure end-to-end connectivity or fair

and reasonable access to services, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks or to do so on objective, transparent, cost-oriented and non-discriminatory terms, where this is not already the case;"

Or. en

Justification

Directory Enquiry services are a critical service for disabled and elderly users, and for users in general. Currently unregulated access operators charge exorbitant prices for connecting directory enquiry calls and also impede the ability of the directory enquiry providers to set their own retail prices (see, for instance, page 41 of the Commission's new Markets Recommendation). There is no justification for access operators to charge any differently to other similar interconnection products which consist in the transport of traffic to and from an interconnection point. These problems need to be addressed in order to permit the benefits of competition in directory enquiry services are fully delivered to end users.

Amendment 633 Gabriele Albertini

Proposal for a directive – amending act

Article 2 – point 3 – point -a (new)

Directive 2002/19/EC

Article 5 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(-a) Point (a) of the second subparagraph of paragraph 1 is replaced by the following:

"(a) to the extent that is necessary to ensure end-to-end connectivity or fair and reasonable access to services, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their

networks or to do so on objective, transparent, cost-oriented and non-discriminatory terms, where this is not already the case;"

Or. en

Justification

Directory Enquiry services are a critical service for disabled and elderly users, and for users in general. Currently unregulated access operators charge exorbitant prices for connecting directory enquiry calls and also impede the ability of the directory enquiry providers to set their own retail prices (see, for instance, page 41 of the Commission's new Markets Recommendation). There is no justification for access operators to charge any differently to other similar interconnection products which consist in the transport of traffic to and from an interconnection point. These problems need to be addressed in order to permit the benefits of competition in directory enquiry services are fully delivered to end users.

Amendment 634

Fiona Hall

Proposal for a directive – amending act

Article 2 – point 3 – point -a (new)

Directive 2002/19/EC

Article 5 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(-a) Point (a) of the second subparagraph of paragraph 1 is replaced by the following:

"(a) to the extent that is necessary to ensure end-to-end connectivity or fair and reasonable access to services, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks or to do so on objective, transparent, cost-orientated and non-discriminatory terms, where this is not already the case;"

Or. en

Justification

Directory Enquiry services are a critical service for disabled and elderly users, and for users in general. Currently unregulated access operators charge exorbitant prices for connecting directory enquiry calls and also impede the ability of the directory enquiry providers to set their own retail prices (see, for instance, page 41 of the Commission's new Markets Recommendation). There is no justification for access operators to charge any differently to other similar interconnection products which consist in the transport of traffic to and from an interconnection point. These problems need to be addressed in order to permit the benefits of competition in directory enquiry services are fully delivered to end users.

Amendment 635

Catherine Trautmann

Proposal for a directive – amending act

Article 2 – point 3 - point -a (new)

Directive 2002/19/EC

Article 5 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(-a) Point (a) of the second subparagraph of paragraph 1 is replaced by the following:

"(a) to the extent that is necessary to ensure end-to-end connectivity or fair and reasonable access to third-party services, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks or to do so in a non-discriminatory way, where this is not already the case;"

Or. en

Justification

End-users should be able to access third-party services such as Directory Enquiry services which are a critical service for disabled and elderly users, and for users in general. Currently unregulated access operators charge higher prices for connecting directory enquiry without justification to charge any differently to other similar interconnection products which consist in the transport of traffic to and from an interconnection point. These problems need to be addressed in order to permit the benefits of competition in directory enquiry.

Amendment 636

Robert Goebbels, Catherine Trautmann

Proposal for a directive – amending act

Article 2 – point 3 – point -a a (new)

Directive 2002/19/EC

Article 5 – paragraph 1 – subparagraph 2 – point ba (new)

Text proposed by the Commission

Amendment

(-aa) In the second subparagraph of paragraph 1, the following point is added:

"(ba) ensure the efficient use of spectrum."

Or. en

Justification

Any risk of “harmful interference” is a “serious risk”.

The proposed mechanism to review existing rights is not realistic, as justified for the amendments to Article 9a of the Framework Directive.

Amendment 637

Francisca Pleguezuelos Aguilar

Proposal for a directive – amending act

Article 2 – point 3 – point a

Directive 2002/19/EC

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

‘2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).’

‘2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6 and 7 of Directive 2002/21/EC (Framework Directive). ***When assessing the proportionality of the measures required, the national regulatory authorities of a***

Member State shall take into account the differing competition situations existing in different parts of that Member State. Where there is competition in a given geographical area, national regulatory authorities may abolish unnecessary obligations in order to enable deregulation to be geared to market needs. To that end they shall allow for the need to preserve infrastructure competition.

Or. es

Justification

The idea is to make the point that the wholesale level will be regulated according to the competition situations existing in the EU's different geographical areas, thus helping to do away with unnecessary forms of regulation.

Amendment 638
Gianni De Michelis

Proposal for a directive – amending act
Article 2 – point 3 – point a
Directive 2002/19/EC
Article 5 – paragraph 2

Text proposed by the Commission

2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

Amendment

2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6 and 7 of Directive 2002/21/EC (Framework Directive). ***When assessing the proportionality of the obligations and conditions to be imposed, national regulatory authorities shall take into account the different competitive conditions existing in the different areas within their Member States.***

Or. en

Justification

Explicit inclusion of infrastructure investment and innovation is necessary for NRAs to take into account these two key issues in the application of access remedies. Infrastructure investment and innovation are key for a modern and up to date European telecommunications infrastructure.

Amendment 639
Angelika Niebler

Proposal for a directive – amending act

Article 2 – point 3

Directive 2002/19/EC

Article 5 – paragraph 2

Text proposed by the Commission

2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

Amendment

2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, ***shall furthermore take account of the differences in the development of competition in the individual geographic regions of Member States*** and shall be implemented in accordance with the procedures referred to in Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

Or. de

Justification

Competition has developed in differing ways in the Member States. Accordingly, powerful competition exists in metropolitan regions above all. That should be appropriately taken into account by national regulatory authorities.

Amendment 640
Erika Mann

Proposal for a directive – amending act
Article 2 – point 3 – point a a (new)
Directive 2002/19/EC
Article 5 – paragraph 2a (new)

Text proposed by the Commission

Amendment

(aa) The following paragraph is added:
"2a. Where assessing measures to be imposed in light of developing infrastructure competition, national regulatory authorities shall take into account the different competitive conditions existing in the different geographic areas within their Member States. National regulatory authorities shall remove unnecessary obligations in order to ensure that the transition from sector specific ex-ante regulation to competition law is not being impeded or delayed where infrastructure competition in a geographic area is competitive or almost competitive."

Or. en

Justification

The proposed addendum to Art. 5 paragraph 2 Access Directive aims at a transition regime applicable for different geographic areas within Member States which removes sector specific ex-ante regulation in such geographic areas with infrastructure competition.

Amendment 641
Karsten Friedrich Hoppenstedt

Proposal for a directive – amending act
Article 2 – point 3 – point a a (new)
Directive 2002/19/EC
Article 5 – paragraph 2a (new)

Text proposed by the Commission

Amendment

(aa) The following paragraph is added:

"2a. Where assessing the proportionality of the measures to be imposed, national regulatory authorities shall take into account the different competitive conditions existing in the different areas within their Member States.

When a geographic area is competitive, national regulatory authorities shall remove unnecessary obligations in order to ensure that deregulation is adapted to market needs. In that respect, national regulatory authorities shall take into account the need to safeguard infrastructure competition."

Or. en

Justification

Ex-ante regulation as a rule must be limited to economic bottlenecks only. Thus, if in certain regions effective competition has developed, regulation must be removed accordingly.

Amendment 642

Gabriele Albertini, Aldo Patriciello

Proposal for a directive – amending act

Article 2 – point 3 – point b

Directive 2002/19/EC

Article 5 – paragraphs 3 and 4

Text proposed by the Commission

Amendment

(b) Paragraphs 3 and 4 are deleted

deleted

Or. en

Justification

The definition of ‘interconnection’ includes allowing the user of one network to access services provided by another. However, NRA’s ability to ensure this or to set fair and

reasonable terms for such interconnection or access is not clear in the text and would be further undermined through the deletion of these provisions. Issues of ensuring availability of access to services may become increasingly relevant in an environment where there may be a degree of competition (i.e. no dominance) but insufficient dynamism to ensure customer needs are met.

Amendment 643

Francisca Pleguezuelos Aguilar

Proposal for a directive – amending act

Article 2 – point 6 – point b – point ii

Directive 2002/19/EC

Article 8 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

(ii) The following sentence is included as the second sentence of the second subparagraph:

deleted

‘The Commission shall take the utmost account of the opinion of the Authority submitted in accordance with Article 4(3)(m) of Regulation [/EC].’

Or. es

Amendment 644

Paul Rübzig

Proposal for a directive – amending act

Article 2 – point 6 a (new)

Directive 2002/19/EC

Article 9 – paragraph 1

Text proposed by the Commission

Amendment

(6a) In Article 9, paragraph 1 is replaced by the following:

"1. National regulatory authorities may, in accordance with the provisions of Article 8, impose obligations for transparency in relation to interconnection and/or access, requiring operators to make public specified

information, such as accounting information, technical specifications, network characteristics, restrictions on access to services and applications, traffic management policies, terms and conditions for supply and use, and prices."

Or. en

Justification

National regulators need clear authority to impose transparency obligations regarding traffic management policies regarding any restrictions on end-user access and traffic management policies.

Amendment 645

Gabriele Albertini, Aldo Patriciello

Proposal for a directive – amending act

Article 2 – point 6 b (new)

Directive 2002/19/EC

Article 9 – paragraph 4

Text proposed by the Commission

Amendment

(6b) In Article 9, paragraph 4 is replaced by the following:

"4. Notwithstanding paragraph 3, where an operator has been found to have SMP in a relevant market under Article [15 of the Framework Directive] relating to local access at a fixed location, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex II."

Or. en

Justification

The amendment updates the description of access resulting from dominance in the local loop in the Access Directive to ensure technological neutrality and bring it into line with the new

definition in the Commission's Relevant Markets. By the time the amendments are approved, many loops may be partly or wholly composed of fibre and thus technological neutrality is required to ensure the Framework is futureproof.

Amendment 646
Gunnar Hökmark

Proposal for a directive – amending act

Article 2 – point 6 b (new)

Directive 2002/19/EC

Article 9 – paragraph 4

Text proposed by the Commission

Amendment

(6b) In Article 9, paragraph 4 is replaced by the following:

"4. Notwithstanding paragraph 3, where an operator has been found to have SMP in a relevant market under Article [15 of the Framework Directive] relating to local access at a fixed location, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex II."

Or. en

Justification

The amendment updates the description of access resulting from dominance in the local loop in the Access Directive to ensure technological neutrality and bring it into line with the new definition in the Commission's Relevant Markets. By the time the amendments are approved, many loops may be partly or wholly composed of fibre and thus technological neutrality is required to ensure the Framework is futureproof.

Amendment 647

Patrizia Toia

Proposal for a directive – amending act

Article 2 – point 6 b (new)

Directive 2002/19/EC

Article 9 – paragraph 4

Text proposed by the Commission

Amendment

(6b) In Article 9, paragraph 4 is replaced by the following:

"4. Notwithstanding paragraph 3, where an operator has been found to have SMP in a relevant market under Article [15 of the Framework Directive] relating to local access at a fixed location, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex II."

Or. en

Justification

The amendment updates the description of access resulting from dominance in the local loop in the Access Directive to ensure technological neutrality and bring it into line with the new definition in the Commission's Relevant Markets. By the time the amendments are approved, many loops may be partly or wholly composed of fibre and thus technological neutrality is required to ensure the Framework is future proof.

Amendment 648

Francisca Pleguezuelos Aguilar

Proposal for a directive – amending act

Article 2 – point 7

Directive 2002/19/EC

Article 9 – paragraph 5

Text proposed by the Commission

Amendment

‘5. The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in***

‘5. The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). In implementing the provisions of this paragraph, the Commission may be

Article 14(4). In implementing the provisions of this paragraph, the Commission may be assisted by the **Authority.**'

assisted by the **BERT.**'

Or. es

Amendment 649

Francisca Pleguezuelos Aguilar

Proposal for a directive – amending act

Article 2 – point 8 – point -a (new)

Directive 2002/19/EC

Article 12 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(-a) Subparagraph 1 of paragraph 1 is replaced by the following:

"1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, inter alia in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest. *In the particular context of next-generation access networks, access obligations must comprise a single access obligation at the lowest value-added level of the legacy bottleneck, ducts and masts, so as to ensure maximised infrastructure competition. National regulatory authorities must refrain from imposing or regulating access if voluntary commercial agreements have been concluded between the parties. In the absence of such voluntary commercial agreements, operators may be required inter alia:*"

Justification

Regulation must not protect particular business models; rather, it must zero in on economic bottlenecks. Regulation, to minimise the market distortions it causes, must in all instances, as a matter of principle, be confined to the lowest value-added level.

Amendment 650
Gianni De Michelis

Proposal for a directive – amending act

Article 2 – point 8 – point -a (new)

Directive 2002/19/EC

Article 12 – paragraph 1 – subparagraph 2 - introductory wording

Text proposed by the Commission

Amendment

(-a) The introductory wording of subparagraph 2 of paragraph 1 shall be replaced by the following:

"National regulatory authorities shall not impose access obligations if appropriate commercial voluntary agreements are in place between undertakings. When commercial voluntary negotiation fails, operators may be required inter alia:"

Justification

Facility sharing should be imposed exclusively where there is shortage of supply which prevents market forces to work properly.

Amendment 651
Herbert Reul

Proposal for a directive – amending act

Article 2 – point 8 – point a

Directive 2002/19/EC

Article 12 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) to provide co-location or other forms of facility sharing, including the sharing of ducts, buildings or entry to buildings, antennae or masts, manholes and street cabinets; ***deleted***

Or. de

Justification

Access to facilities is already addressed in Article 12 of the Framework Directive. Reinclusion under Article 12(1)(f) of the Access Directive is therefore superfluous. Moreover, further extension of access obligations to user identity, location and presence is not warranted, since this does not involve economic bottlenecks and accordingly, to date, has quite rightly not been subject to ex ante regulation either.

Amendment 652

Karsten Friedrich Hoppenstedt

Proposal for a directive – amending act

Article 2 – point 8 – point a

Directive 2002/19/EC

Article 12 – paragraph 1 – subparagraph 2 – point f

Text proposed by the Commission

Amendment

(f) to provide co-location or other forms of facility sharing, including the sharing of ducts, buildings or entry to buildings, antennae or masts, manholes and street cabinets; ***deleted***

Or. en

Justification

Facility sharing is already being coped with under Art. 12 FD. Thus, Art. 12 para. 1 lit. (f) is redundant.

Amendment 653
Gianni De Michelis

Proposal for a directive – amending act

Article 2 – point 8 – point a

Directive 2002/19/EC

Article 12 – paragraph 1 – subparagraph 2 – point f

Text proposed by the Commission

Amendment

(f) to provide co-location or other forms of facility sharing, including the sharing of ducts, buildings or entry to buildings, **antennae or masts, manholes and street cabinets**;

(f) to provide co-location or other forms of facility sharing, including the sharing of ducts, buildings or entry to buildings, masts **and** manholes;

Or. en

Justification

Street cabinet should not be explicitly mentioned within the list of facilities susceptible of regulatory imposition. This is because sharing a street cabinet is extremely complicated and might lead to complications due to the presence within the same container of electronic equipment of different operators.

Amendment 654
Catherine Trautmann

Proposal for a directive – amending act

Article 2 – point 8 – point a a (new)

Directive 2002/19/EC

Article 12 – paragraph 1 – subparagraph 2 – point fa (new)

Text proposed by the Commission

Amendment

(aa) In the second subparagraph of paragraph 1, the following point is inserted:

"(fa) to provide third parties with a reference offer for the granting of access to ducts;"

Or. en

Justification

New entrants should be able to access the ducts of SMP operators in a fair and non-discriminatory way. This will facilitate infrastructure competition and the transition to a full competitive market.

Amendment 655

Herbert Reul

Proposal for a directive – amending act

Article 2 – point 8 – point b

Directive 2002/19/EC

Article 12 – paragraph 1 – point j

Text proposed by the Commission

Amendment

(j) to provide access to associated services such as identity, location and presence capability. ***deleted***

Or. de

Justification

Access to facilities is already addressed in Article 12 of the Framework Directive. Reinclusion under Article 12(1)(f) of the Access Directive is therefore superfluous. Moreover, further extension of access obligations to user identity, location and presence is not warranted, since this does not involve economic bottlenecks and accordingly, to date, has quite rightly not been subject to ex ante regulation either.

Amendment 656

Gianni De Michelis

Proposal for a directive – amending act

Article 2 – point 8 – point b

Directive 2002/19/EC

Article 12 – paragraph 1 – subparagraph 2 – point j

Text proposed by the Commission

Amendment

(j) to provide access to associated services such as identity, location and presence capability. ***deleted***

Justification

Accordingly, a proportionate ex ante policy on new investments requires to focus the regulatory intervention on the relevant bottleneck, avoiding ex ante regulation when commercial agreement is possible. Where is emerging competition at the upstream access products (e.g. ducts) the extension of regulation to downstream level should be assessed under the proportionality principle.

Amendment 657
Gabriele Albertini

Proposal for a directive – amending act

Article 2 – point 8 – point b a (new)

Directive 2002/19/EC

Article 12 – paragraph 1 – subparagraph 2 – point ja (new)

Text proposed by the Commission

Amendment

(ba) In the second subparagraph of paragraph 1, the following point is added:

"(ja) to provide third-party billing services and access to subscriber databases to providers of directory enquiry services."

Justification

Directory Enquiry services are a critical service for disabled and elderly users, and for users in general. Third party billing and access to subscriber databases are essential facilities which a telecommunications operator controlling access to end-users must provide to directory enquiry providers in order to permit the provision of competitive directory enquiry services in accordance with the Competition Directive (Article 5). Access to subscriber databases is specifically addressed in Article 25.2 of the Universal Service Directive.

Amendment 658

Dominique Vlasto, Erna Hennicot-Schoepges

Proposal for a directive – amending act

Article 2 – point 8 – point b a (new)

Directive 2002/19/EC

Article 12 – paragraph 1 – subparagraph 2 – point ja (new)

Text proposed by the Commission

Amendment

(ba) In the second subparagraph of paragraph 1, the following point is added:

"(ja) to provide third-party billing services and access to subscriber databases to providers of directory enquiry services."

Or. en

Justification

Directory Enquiry services are a critical service for disabled and elderly users, and for users in general. Third party billing and access to subscriber databases are essential facilities which a telecommunications operator controlling access to end-users must provide to directory enquiry providers in order to permit the provision of competitive directory enquiry services in accordance with the Competition Directive (Article 5). Access to subscriber databases is specifically addressed in Article 25.2 of the Universal Service Directive.

Amendment 659

Stefano Zappalà

Proposal for a directive – amending act

Article 2 – point 8 – point b a (new)

Directive 2002/19/EC

Article 12 – paragraph 1 – subparagraph 2 – point ja (new)

Text proposed by the Commission

Amendment

(ba) In the second subparagraph of paragraph 1, the following point is added:

"(ja) to provide third-party billing services and access to subscriber databases to providers of directory enquiry services."

Or. en

Justification

Directory Enquiry services are a critical service for disabled and elderly users, and for users in general. Third party billing and access to subscriber databases are essential facilities which a telecommunications operator controlling access to end-users must provide to directory enquiry providers in order to permit the provision of competitive directory enquiry services in accordance with the Competition Directive (Article 5). Access to subscriber databases is specifically addressed in Article 25.2 of the Universal Service Directive.

Amendment 660

Dominique Vlasto, Erna Hennicot-Schoepges

Proposal for a directive – amending act

Article 2 – point 8 – point b b (new)

Directive 2002/19/EC

Article 12 – paragraph 1 – subparagraph 2 – point jb (new)

Text proposed by the Commission

Amendment

(bb) In the second subparagraph of paragraph 1, the following point is added:

"(jb) network operators shall propose and offer cross-border interconnection to requesting operators under reasonable and non-discriminatory conditions to allow for the further decrease of international calls."

Or. en

Justification

Unjustified barriers to interoperability shall be removed either through interconnection or roaming modalities. Such barriers have a direct effect on competition hence on the offers available to consumers.

Amendment 661

Dominique Vlasto, Erna Hennicot-Schoepges

Proposal for a directive – amending act

Article 2 – point 8 – point b c (new)

Directive 2002/19/EC

Article 12 – paragraph 1 – subparagraph 2 – point jc (new)

Text proposed by the Commission

Amendment

(bc) In the second subparagraph of paragraph 1, the following point is added:

"(jc) network operators shall propose and offer roaming to requesting operators under reasonable and non-discriminatory conditions."

Or. en

Justification

Unjustified barriers to interoperability shall be removed either through interconnection or roaming modalities. Such barriers have a direct effect on competition hence on the offers available to consumers.

Amendment 662

Herbert Reul

Proposal for a directive – amending act

Article 2 – point 8 – point b a (new)

Directive 2002/19/EC

Article 12 – paragraph 2 – point -a (new)

Text proposed by the Commission

Amendment

(ba) In paragraph 2, the following point -a is inserted:

"(-a) provided that wholesale access at a low value-added level is sufficient to ensure competition on the end client market, no access obligation must be imposed at a higher value-added level."

Or. de

Justification

Regulation must not protect particular business models; rather, it must zero in on economic bottlenecks. Regulation, to minimise the market distortions it causes, must in all instances, as a matter of principle, be confined to the lowest value-added level.

Amendment 663
Herbert Reul

Proposal for a directive – amending act
Article 2 – point 8 – point b e (new)
Directive 2002/19/EC
Article 12 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(be) In paragraph 2, point (a) is replaced by the following:

"(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved; and, in particular, where other upstream access products, such as ducts, are available, no further access obligation must be imposed for a wholesale product downstream from any such access product."

Or. de

Justification

Regulation must not protect particular business models; rather, it must zero in on economic bottlenecks. Regulation, to minimise the market distortions it causes, must in all instances, as a matter of principle, be confined to the lowest value-added level.

Amendment 664
Gianni De Michelis

Proposal for a directive – amending act
Article 2 – point 8 – point b e (new)
Directive 2002/19/EC
Article 12 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(be) In paragraph 2, point (a) is replaced by the following:

"(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved and in particular the availability of other wholesale access products, such as ducts;"

Or. en

Justification

Accordingly, a proportionate ex ante policy on new investments requires to focus the regulatory intervention on the relevant bottleneck, avoiding ex ante regulation when commercial agreement is possible. Where is emerging competition at the upstream access products (e.g. ducts) the extension of regulation to downstream level should be assessed under the proportionality principle.

Amendment 665
Angelika Niebler

Proposal for a directive – amending act
Article 2 – point 8 – point b f (new)
Directive 2002/19/EC
Article 12 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(bf) In paragraph 2, point (c) is replaced by the following:

"(c) the initial investment by the facility owner, bearing in mind the risks involved in making the investment, including appropriate risk-sharing among those undertakings which enjoy access to the new facilities;"

Justification

It is necessary, that the investment risks are properly taken into account by the National Regulators.

Amendment 666
Werner Langen

Proposal for a directive – amending act
Article 2 – point 8 – point b f (new)
Directive 2002/19/EC
Article 12 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(bf) In paragraph 2, point (c) is replaced by the following:

"(c) the initial investment by the facility owner, bearing in mind the risks involved in making the investment, including appropriate risk-sharing among those undertakings which enjoy access to the new facilities;"

Justification

It is necessary and useful, that the investment risks are properly taken into account by the National Regulators.

Amendment 667
Herbert Reul

Proposal for a directive – amending act
Article 2 – point 8 – point b g (new)
Directive 2002/19/EC
Article 12 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(bg) In paragraph 2, point (d) is replaced by the following:

"(d) the need to safeguard competition in the long term, in particular infrastructure competition;"

Or. de

Justification

Regulation must not protect particular business models; rather, it must zero in on economic bottlenecks. Regulation, to minimise the market distortions it causes, must in all instances, as a matter of principle, be confined to the lowest value-added level.

Amendment 668
Gianni De Michelis

Proposal for a directive – amending act
Article 2 – point 8 – point b g (new)
Directive 2002/19/EC
Article 12 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(bg) In paragraph 2, point (d) is replaced by the following:

"(d) the need to safeguard competition in the long term, in particular infrastructure-based competition;"

Or. en

Justification

Accordingly, a proportionate ex ante policy on new investments requires to focus the regulatory intervention on the relevant bottleneck, avoiding ex ante regulation when commercial agreement is possible. Where is emerging competition at the upstream access products (e.g. ducts) the extension of regulation to downstream level should be assessed under the proportionality principle.

Amendment 669
Francisca Pleguezuelos Aguilar

Proposal for a directive – amending act

Article 2 – point 8 – point c

Directive 2002/19/EC

Article 12 – paragraph 3

Text proposed by the Commission

‘3. When imposing obligations on an operator to provide access in accordance with the provisions of this Article, national regulatory authorities may lay down technical or operational conditions to be met by the provider and/or beneficiaries of such access where necessary to ensure normal operation of the network. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications laid down in accordance with **Article 17(1)** of Directive 2002/21/EC (Framework Directive).’

Amendment

‘3. When imposing obligations on an operator to provide access in accordance with the provisions of this Article, national regulatory authorities may lay down technical or operational conditions to be met by the provider and/or beneficiaries of such access where necessary to ensure normal operation of the network. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications laid down in accordance with **Article 17** of Directive 2002/21/EC (Framework Directive).’

Or. es

Justification

The object is to empower NRAs to lay down other technical specifications in addition to those detailed in the list of technical standards published in the Official Journal.

Amendment 670
Alexander Alvaro

Proposal for a directive – amending act

Article 2 – point 8 a (new)

Directive 2002/19/EC

Article 12a (new)

Text proposed by the Commission

Amendment

(8a) The following Article 12a is inserted:

"Article 12a

1. A national regulatory authority shall,

in accordance with the provisions of Article 8, impose obligations on operators designated as having significant market power on the market for access to the public telephone network at fixed locations to offer all interconnected providers of publicly available telephone services access to services via which calls made by end users

(a) on a call-by-call basis by dialling a carrier selection code, or

(b) by means of carrier preselection can be routed to the interconnected provider.

With carrier preselection, there shall be a facility to override any preselected choice by dialling a carrier selection.

National regulatory authorities shall ensure that pricing for access and interconnection related to the provision of the facilities in this paragraph is cost-oriented and that direct charges to subscribers, if any, do not act as a disincentive for the use of the facilities."

Or. de

Justification

If in practice, on legal grounds, carrier selection and preselection were not made mandatory, even temporarily, that would entail an irreparable competitive disadvantage accompanied by major scaling-back of competitors' infrastructure investment.

Amendment 671
Astrid Lulling

Proposal for a directive – amending act
Article 2 – point 8 b (new)
Directive 2002/19/EC
Article 13 – paragraph 1

(8b) In Article 13, paragraph 1 is replaced by the following:

"1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. National regulatory authorities shall take into account the investment made by the operator and allow him a reasonable rate of return on adequate capital employed, taking into account the risks involved *and the necessity that the risk of investment be equally shared between market players.*"

Or. en

Justification

Regulation of Next Generation Access Networks must take into account the significant amount of risk associated with the investment decision. The investment is mainly "sunk" and is completely lost in case the investment fails. Thus, the regulatory approach has to be modified in order to achieve a fair amount of risk sharing between the investor and the access-seeker since otherwise the investor will be the only party to completely bear the investment risk while third parties could access the new network without any risk.

Amendment 672
Herbert Reul

Proposal for a directive – amending act
Article 2 – point 8 b (new)
Directive 2002/19/EC
Article 13 – paragraph 1

Text proposed by the Commission

Amendment

(8b) In Article 13, paragraph 1 is replaced by the following:

"1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. National regulatory authorities shall take into account the investment made by the operator and allow him a reasonable rate of return on adequate capital employed, taking into account the risks involved *and the need for the investment risk to be equally shared between market players.*"

Or. de

Justification

Regulation of next-generation access networks must take account of the significant investment risk. The current regulatory regime must therefore be modified accordingly and, in particular, contain mechanisms for fair risk-sharing between investor and access seeker.

Amendment 673
Herbert Reul

Proposal for a directive – amending act
Article 2 – point 8 c (new)
Directive 2002/19/EC
Article 13 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(8c) In Article 13, the following paragraph is inserted:

"1a. Where no voluntary commercial agreement can be concluded, and where, on economic grounds, infrastructure competition is not possible, a national regulatory authority may regulate access to new-generation access networks, provided that it is ensured that access seekers bear a reasonable share of the risk incurred by the investor. Risk sharing contracts may either include an upfront payment covering the risk premium for a particular volume of accesses in particular regions, or take the form of long-term access contracts with minimum quantities for given time periods. Short-term contracts without minimum quantities shall include a price premium which covers the investment risk of the investor on the assumption that the full investment risk is borne by him or her. Price control in respect of such long-term and short-term access contracts shall be carried out in accordance with Article 13(6) of this Directive. Long-term access contracts shall reflect the time period necessary to allow amortisation of investment costs in new markets."

Or. de

Justification

Regulation of next-generation access networks must take account of the significant investment risk. The current regulatory regime must therefore be modified accordingly and, in particular, contain mechanisms for fair risk-sharing between investor and access seeker.

Amendment 674
Paul Rübzig

Proposal for a directive – amending act

Article 2 – point 8 c (new)

Directive 2002/19/EC

Article 13 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(8c) In Article 13, the following paragraph is inserted:

"1a. Where no voluntary commercial agreement can be concluded, a national regulatory authority may regulate access to new generation access networks whilst ensuring that access seekers bear a reasonable share of the risk incurred by the investing operator. Risk sharing contracts may either include an upfront payment covering the risk premium for a certain amount of accesses in particular regions, or take the form of long-term access contracts with minimum quantities for given time periods. Short-term contracts without minimum quantities shall include a price premium which covers the investment risk of the investor under the assumption that the full investment risk is born by him or her. Long-term access contracts shall reflect the time period necessary to allow amortisation of investment costs in new markets."

Or. en

Justification

Regulation of Next Generation Access Networks must take into account the significant amount of risk associated with the investment decision. The investment is mainly “sunk” and is completely lost in case the investment fails. Thus, the regulatory approach has to be modified in order to achieve a fair amount of risk sharing between the investor and the access-seeker since otherwise the investor will be the only party to completely bear the investment risk while third parties could access the new network without any risk.

Amendment 675
Karsten Friedrich Hoppenstedt

Proposal for a directive – amending act

Article 2 – point 8 c (new)

Directive 2002/19/EC

Article 13 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(8c) In Article 13, the following paragraph is inserted:

"1a. In order to promote incentives for investments in new high-speed networks, when access fees are stipulated, the undertaking providing access shall be left with a yield which at least corresponds to the capital costs related to the investment and the risk specific to it."

Or. en

Justification

The key issue for the coming years is to give appropriate incentives for investments in new high speed networks that will support innovation in content-rich internet services. Such networks have enormous potential to deliver benefits to consumers across the European Union. It is therefore vital that there is no impediment to sustainable investment in the development of these new networks, while boosting competition and consumer choice.

Amendment 676
Angelika Niebler

Proposal for a directive – amending act

Article 2 – point 8 c (new)

Directive 2002/19/EC

Article 13 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(8c) In Article 13, the following paragraph is inserted:

"1a. In order to promote incentives for

investments in new high-speed networks, when access fees are stipulated, the undertaking providing access shall be left with a yield which at least corresponds to the capital costs related to the investment and the risk specific to it."

Or. en

Justification

The key issue for the coming years is to give appropriate incentives for investments in new high speed networks that will support innovation in content-rich internet services.

Amendment 677
Erika Mann

Proposal for a directive – amending act
Article 2 – point 8 c (new)
Directive 2002/19/EC
Article 13 – paragraph 1a (new)

Text proposed by the Commission

Amendment

(8c) In Article 13, the following paragraph is inserted:

"1a. In regulating access to new generation access networks, national regulatory authorities shall ensure that access seekers bear a reasonable share of the risk incurred by the investing operator. Risk sharing contracts may either include an upfront payment covering the risk premium for a certain amount of accesses in particular regions, or take the form of long-term access contracts with minimum quantities for given time periods. Short-term contracts without minimum quantities shall include a price premium which covers the investment risk of the investor under the assumption that the full investment risk is born by him or her. Access prices for such long-term and short-term access contracts may be regulated in accordance with

paragraph 4a. Long-term access contracts shall reflect the time period necessary to allow amortisation of investment costs in new markets."

Or. en

Justification

Art. 13 paragraph 1 a (together with paragraphs 4a) introduces an option model which differentiates between risk-sharing contracts and short-term contracts with a risk-premium. The idea is to combine investment incentives with access options for access seekers, so that these operators may choose the adequate type of access contract which fits into their business models. The new access regime provides stability and predictability for the investors and flexibility for access seekers.

Amendment 678
Karsten Friedrich Hoppenstedt

Proposal for a directive – amending act

Article 2 – point 8 d (new)

Directive 2002/19/EC

Article 13 – paragraph 1b (new)

Text proposed by the Commission

Amendment

(8d) In Article 13, the following paragraph is inserted:

"1b. Where a national regulatory authority regulates access to new generation access networks, it may oblige access seekers to bear a reasonable share of the risk incurred by the investing operator. Risk sharing contracts may include an upfront payment covering the risk premium for a certain amount of accesses in particular regions, or take the form of long-term access contracts with minimum quantities for given time periods."

Or. en

Justification

Regulation of NGNs may take into account the risk associated with the investment decision. Risk sharing can be achieved by enabling access on the basis of an upfront payment or on the basis of long term access contracts with minimum purchase quantities. Short-term contracts without minimum quantities may include a price-premium which covers the investment risk of the investor under the assumption that the full investment risk is being born by the investor. Long-term access contracts may reflect the time period necessary to allow amortisation of investment costs in new markets.

Amendment 679

Erika Mann

Proposal for a directive – amending act

Article 2 – point 8 e (new)

Directive 2002/19/EC

Article 13 – paragraph 4a (new)

Text proposed by the Commission

Amendment

(8e) In Article 13, the following paragraph is inserted:

"4a. National regulatory authorities shall ensure that regulation of access prices for long-term risk-sharing contracts are in line with the long-term incremental cost of an efficient operator, taking into account the operator's calculated rate of penetration of new markets and that access prices for short-term contracts include a risk premium. Such risk premium shall phase out with ongoing market penetration of new access. Margin squeeze tests shall not be applied to short-term contracts when a risk premium is charged."

Or. en

Justification

Paragraph 4a differentiates between access prices for cost-sharing contracts and short-term contracts. Margin squeeze tests shall apply in case of risk-sharing contracts this will not be the case for short-term contracts, otherwise the investor would lose necessary flexibility to set penetration prices. Penetration prices have to reflect the learning process of how new products are accepted; any regulation which would not allow flexibility in penetration prices

would be counterproductive.

Amendment 680
Herbert Reul

Proposal for a directive – amending act
Article 2 – point 8 e (new)
Directive 2002/19/EC
Article 13 – paragraph 4a (new)

Text proposed by the Commission

Amendment

(8e) In Article 13, the following paragraph is added:

"4a. Where there is access price regulation, national regulatory authorities shall enable mandated operators to take account, in their pricing, also of costs over and above an efficient operator's long-term incremental costs, provided that those costs are laid down by law or sufficiently substantiated. Such costs shall include costs which are necessary to operate a legacy network in tandem with a next-generation access network if this fosters sustainable competition or increases consumer benefit."

Or. de

Justification

Regulation of next-generation access networks must take account of the significant investment risk. The current regulatory regime must therefore be modified accordingly and, in particular, contain mechanisms for fair risk-sharing between investor and access seeker.

Amendment 681
Herbert Reul

Proposal for a directive – amending act
Article 2 – point 8 f (new)
Directive 2002/19/EC
Article 13 – paragraph 4b (new)

Text proposed by the Commission

Amendment

(8f) In Article 13, the following paragraph is added:

"4b. National regulatory authorities shall ensure that regulation of access prices for long-term risk-sharing contracts is in line with the long-term incremental cost of an efficient operator, taking into account the operator's calculated rate of penetration of new markets, and that access prices for short-term contracts include a risk premium. Such risk premiums shall be phased out with increasing new-market penetration, e.g. increasing penetration with next-generation connections. For this period, wholesale prices may be set on the basis of end customer rates."

Or. de

Justification

Regulation of next-generation access networks must take account of the significant investment risk. The current regulatory regime must therefore be modified accordingly and, in particular, contain mechanisms for fair risk-sharing between investor and access seeker.

Amendment 682

Astrid Lulling

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a

Text proposed by the Commission

Amendment

Article 13a

deleted

Functional separation

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an

obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a request to the Commission that includes.

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9 13 to achieve effective competition following a coordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in several of these product markets.

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and any potential entailing effects on consumers;

(c) a draft of the measure being proposed.

3. The draft measure shall include the following elements:

(a) the precise nature and level of separation, specifying in particular the legal status of the separate business

entity;

(b) identification of the assets of the separate business entity, and the products or services to be supplied by this entity;

(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(d) rules for ensuring compliance with the obligations;

(e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;

(f) a monitoring programme to ensure compliance, including publication of an annual report.

4. Following the Commission's decision on the draft measure taken in accordance with Article 8(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive). On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 9–13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to paragraph 3 of Article 8.

Or. en

Amendment 683
Angelika Niebler

Proposal for a directive – amending act
Article 2 – point 9
Directive 2002/19/EC
Article 13a

Text proposed by the Commission

Amendment

Article 13a

deleted

Functional separation

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a request to the Commission that includes.

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9 13 to achieve effective competition following a co coordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in

several of these product markets.

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and any potential entailing effects on consumers;

(c) a draft of the measure being proposed.

3. The draft measure shall include the following elements:

(a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;

(b) identification of the assets of the separate business entity, and the products or services to be supplied by this entity;

(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(d) rules for ensuring compliance with the obligations;

(e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;

(f) a monitoring programme to ensure compliance, including publication of an annual report.

4. Following the Commission's decision on the draft measure taken in accordance with Article 8(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive). On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw

obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 9–13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to paragraph 3 of Article 8.

Or. de

Justification

The functional separation of vertically integrated telecommunications undertakings constitutes a massive and disproportionate intervention in the rights of companies. Such a drastic instrument for ensuring competition would only be needed, however, if regulation of the access markets had failed or was in danger of failing. But not even the Commission has been able to detect any such failure. On the contrary, the existing regulations guarantee sufficient access by competitors to the infrastructure of a network operator with significant market power. The Commission proposal should therefore be rejected.

Amendment 684

Francisca Pleguezuelos Aguilar

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a

Text proposed by the Commission

Amendment

Article 13a

deleted

Functional separation

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to

the wholesale provision of access products in an independently operating business unit.

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a request to the Commission that includes.

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in several of these product markets.

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and any potential entailing effects on consumers;

(c) a draft of the measure being proposed.

3. The draft measure shall include the following elements:

(a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;

(b) identification of the assets of the separate business entity, and the products or services to be supplied by this entity;

(c) the governance arrangements to

ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(d) rules for ensuring compliance with the obligations;

(e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;

(f) a monitoring programme to ensure compliance, including publication of an annual report.

4. Following the Commission's decision on the draft measure taken in accordance with Article 8(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive). On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 9–13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to paragraph 3 of Article 8.

Or. es

Justification

The article is superfluous because the existing framework already affords a sufficient legal basis for NRAs to impose functional separation (Article 8(3) of the Access Directive). This option is likewise covered by the present competition legislation. Lastly, from a practical point of view, given that the possibility already exists, the inclusion of Article 13a might send an unfortunate message to the industry at a time when new-generation networks need to be set up and investment accordingly has to be provided to make this happen.

Amendment 685
Herbert Reul

Proposal for a directive – amending act
Article 2 – point 9
Directive 2002/19/EC
Article 13a

Text proposed by the Commission

Amendment

Article 13a

deleted

Functional separation

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a request to the Commission that includes.

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9 13 to achieve effective competition following a co coordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition

problems/market failures identified in several of these product markets.

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and any potential entailing effects on consumers;

(c) a draft of the measure being proposed.

3. The draft measure shall include the following elements:

(a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;

(b) identification of the assets of the separate business entity, and the products or services to be supplied by this entity;

(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(d) rules for ensuring compliance with the obligations;

(e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;

(f) a monitoring programme to ensure compliance, including publication of an annual report.

4. Following the Commission's decision on the draft measure taken in accordance with Article 8(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive). On the basis of its assessment, the national regulatory authority shall

impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 9–13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to paragraph 3 of Article 8.

Or. de

Justification

The functional separation of vertically integrated telecommunications undertakings constitutes a massive and disproportionate intervention in the rights of companies. Such a drastic instrument for ensuring competition would only be needed, however, if regulation of the access markets had failed or was in danger of failing. But not even the Commission has been able to detect any such failure. On the contrary, the existing regulations guarantee sufficient access by competitors to the infrastructure of a network operator with significant market power. The Commission proposal should therefore be rejected.

Amendment 686 **Nikolaos Vakalis**

Proposal for a directive – amending act
Article 2 – point 9
Directive 2002/19/EC
Article 13a

Text proposed by the Commission

Amendment

Article 13a

deleted

Functional separation

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated

undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a request to the Commission that includes.

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in several of these product markets.

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and any potential entailing effects on consumers;

(c) a draft of the measure being proposed.

3. The draft measure shall include the following elements:

(a) the precise nature and level of separation, specifying in particular the

legal status of the separate business entity;

(b) identification of the assets of the separate business entity, and the products or services to be supplied by this entity;

(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(d) rules for ensuring compliance with the obligations;

(e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;

(f) a monitoring programme to ensure compliance, including publication of an annual report.

4. Following the Commission's decision on the draft measure taken in accordance with Article 8(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive). On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 9–13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission

pursuant to paragraph 3 of Article 8.

Or. en

Justification

Functional separation is an advanced tool, adequate for saturated markets. It will grow to vertically integrated companies disincentive to invest in new networks or in upgrading the existing ones and will consequently negatively affect the roll-out of next generation high-speed access networks. Instead of functional separation, we should have stronger guidelines to NRAs through BERT for more transparency on local loop unbundling, which is anyway foreseen under the current framework.

Amendment 687

Ivo Belet

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

Amendment

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit
where:

Or. en

Amendment 688

Zdzisław Kazimierz Chmielewski

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

Amendment

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit. ***This provision shall apply only where there are persisting competition problems on the market.***

Or. pl

Justification

This amendment seeks to ensure effective implementation of Article 13a(1).

Amendment 689

Marian-Jean Marinescu

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

Amendment

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose ***as an exceptional remedy*** an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

Or. en

Amendment 690
Silvia-Adriana Țicău

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

Amendment

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose, **as an exceptional measure**, an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

Or. ro

Justification

Separation of functions should be an exceptional measure. In areas where the penetration of communications services is very low, measures should be taken to encourage investment.

Amendment 691

Ivo Belet

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 1 – subparagraph 2

Text proposed by the Commission

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.

Amendment

deleted

Or. en

Amendment 692
Silvia-Adriana Țicău

Proposal for a directive – amending act
Article 2 – point 9
Directive 2002/19/EC
Article 13a – paragraph 1 – subparagraph 2

Text proposed by the Commission

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.

Amendment

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes. The national regulatory authorities may impose an obligation regarding the separation of functions *in markets where there is competition over access infrastructures for the end-consumers and where the degree of penetration of fixed telephony services is very low, but only in circumstances where all other measures to encourage competition have failed.*

Or. ro

Justification

Separation of functions should be an exceptional measure. In areas where the penetration of communications services is very low, measures should be taken to encourage investment.

Amendment 693
Ivo Belet

Proposal for a directive – amending act
Article 2 – point 9
Directive 2002/19/EC
Article 13a – paragraph 2 – point a

Text proposed by the Commission

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in several of these product markets.

Amendment

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition ***at retail level*** and that there are important and persisting competition problems/market failures identified in several of these product markets, ***and in particular a persistent failure to achieve effective non-discrimination in several of the markets concerned.***

Or. en

Amendment 694

Ivo Belet

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – point aa (new)

Text proposed by the Commission

Amendment

(aa) the national regulatory authority has taken all steps necessary to enforce the appropriate obligations from those set out in Articles 9 to 13, taking into account best practices of the European national regulatory authorities, and sufficient time has elapsed for those steps to take full effect;

Or. en

Amendment 695
Ivo Belet

Proposal for a directive – amending act
Article 2 – point 9
Directive 2002/19/EC
Article 13a – paragraph 2 – point ab (new)

Text proposed by the Commission

Amendment

(ab) there is little or no prospect of infrastructure competition within a reasonable timeframe;

Or. en

Amendment 696
Ivo Belet

Proposal for a directive – amending act
Article 2 – point 9
Directive 2002/19/EC
Article 13a – paragraph 2 – point ac (new)

Text proposed by the Commission

Amendment

(ac) the regulatory authority can demonstrate that the costs resulting from the obligation to be imposed on the undertaking, including the expected impact on the regulatory authority, on the incentives of the undertaking to invest in its network, on other stakeholders and in particular on infrastructure competition, and the potential consequent effects on consumers, are significantly lower than the resulting benefits;

Or. en

Amendment 697
Marian-Jean Marinescu

Proposal for a directive – amending act
Article 2 – point 9
Directive 2002/19/EC
Article 13a – paragraph 2 – subparagraph 1a (new)

Text proposed by the Commission

Amendment

A national regulatory authority shall not impose functional separation as a regulatory remedy in markets where infrastructure-based retail competition exists or/and penetration of fixed telecommunications services is very low.

Or. en

Amendment 698
Ivo Belet

Proposal for a directive – amending act
Article 2 – point 9
Directive 2002/19/EC
Article 13a – paragraph 2 – subparagraph 1 – introductory wording

Text proposed by the Commission

Amendment

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a request to the Commission that includes.

2. The separated business unit shall supply access products and services to all undertakings, including other business units within the parent company, in accordance with the same time frames, on the same terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.

Or. en

Amendment 699
Mary Honeyball

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – subparagraph 1 – introductory wording

Text proposed by the Commission

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a **request** to the Commission that includes.

Amendment

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a **proposal** to the Commission that includes.

Or. en

Justification

For serious economic bottlenecks functional separation should be available as a remedy to NRAs and would act as an incentive for incumbents to offer non-discriminatory terms. However, requiring NRAs to prove that competition has failed on an ongoing 'persistent basis' before proposing functional separation could lead to an unnecessary delay in establishing a competitive market. It could make functional separation virtually unavailable to NRAs.

Amendment 700
Gabriele Albertini, Aldo Patriciello

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – point a

Text proposed by the Commission

(a) evidence that ***the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective***

Amendment

(a) evidence that there are important and persisting competition problems/market failures identified in several product markets, ***and that this measure would constitute the most effective and efficient means of enforcing remedies designed to address such problems/failures.***

competition and that there are important and persisting competition problems/market failures identified in several **of these** product markets.

Or. en

Justification

Since functional separation can provide a means to simplify enforcement for the Authority and regulated operator, it should be possible for Regulators to make use of this measure on a forward-looking basis (for serious enduring bottlenecks) and not only after there is a long-standing failure of enforcement which means that remedies have been ineffective over an extended period (and thus competition has failed to develop). It is important to refer to 'effective' competition as some infrastructure competition could exist without being sufficient to provide an effective constraint on the dominant operator (as in the UK).

Amendment 701 **Ivo Belet**

Proposal for a directive – amending act
Article 2 – point 9
Directive 2002/19/EC
Article 13a – paragraph 2 – point a

Text proposed by the Commission

(a) evidence that the **imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in several of these product markets.**

Amendment

(a) evidence that the **conditions listed in paragraph 1 have been met.**

Or. en

Amendment 702
Mary Honeyball

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – point a

Text proposed by the Commission

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets ***in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive)*** has failed and would fail on a persistent basis to achieve effective competition and that ***there are important and persisting competition problems/market failures identified in several of these product markets.***

Amendment

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets has failed and would fail on a persistent basis to achieve effective competition and that ***this measure would constitute the most effective and efficient means of enforcing remedies designed to address that failure.***

Or. en

Justification

For serious economic bottlenecks functional separation should be available as a remedy to NRAs and would act as an incentive for incumbents to offer non-discriminatory terms. However, requiring NRAs to prove that competition has failed on an ongoing 'persistent basis' before proposing functional separation could lead to an unnecessary delay in establishing a competitive market. It could make functional separation virtually unavailable to NRAs.

Amendment 703
Paul Rübiger

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) evidence that the imposition of appropriate obligations amongst those *identified* in Articles 9-13 to achieve effective competition following *a co-ordinated* analysis of the relevant *markets* in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail *on a persistent basis* to *achieve effective* competition *and that there are important and persisting competition problems/market failures identified in several of these product markets*.

(a) evidence that the imposition of appropriate obligations amongst those *set out* in Articles 9-13 to achieve effective competition following *an* analysis of the relevant *market* in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed or would fail to *address* competition *problems in that market*.

Or. en

Justification

Functional separation should not be seen as a last resort remedy after all else has failed and markets have been monopolized, but rather as a remedy which should be applied if it is an effective and efficient solution to the competitive problem identified by the NRA. The reason to delete paragraph b is that, according to Arts. 6 and 8 of the Framework Directive, the obligation to have a consultation process with interested parties and to decide proportionate measures taking into account social economic analysis, already exists.

Amendment 704

Ivo Belet

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and any potential entailing

deleted

effects on consumers;

Or. en

Amendment 705

Gabriele Albertini, Aldo Patriciello

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – point b

Text proposed by the Commission

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on *its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure* competition and *any potential entailing effects on* consumers;

Amendment

(b) an analysis of the *costs and benefits of the measure, including its* expected impact on the regulatory authority, on the undertaking, and on *investment,* competition and consumers;

Or. en

Justification

Since functional separation can provide a means to simplify enforcement for the Authority and regulated operator, it should be possible for Regulators to make use of this measure on a forward-looking basis (for serious enduring bottlenecks) and not only after there is a long-standing failure of enforcement which means that remedies have been ineffective over an extended period (and thus competition has failed to develop). It is important to refer to ‘effective’ competition as some infrastructure competition could exist without being sufficient to provide an effective constraint on the dominant operator (as in the UK).

Amendment 706

Mary Honeyball

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on ***its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure*** competition and ***any potential entailing effects on*** consumers;

(b) an analysis of the ***costs and benefits of the measure, including its*** expected impact on the regulatory authority, on the undertaking, and on ***investment,*** competition and consumers;

Or. en

Justification

For serious economic bottlenecks functional separation should be available as a remedy to NRAs and would act as an incentive for incumbents to offer non-discriminatory terms. However, requiring NRAs to prove that competition has failed on an ongoing 'persistent basis' before proposing functional separation could lead to an unnecessary delay in establishing a competitive market. It could make functional separation virtually unavailable to NRAs.

Amendment 707

Paul Rübiger

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and any potential entailing effects on consumers;

deleted

Or. en

Justification

Functional separation should not be seen as a last resort remedy after all else has failed and markets have been monopolized, but rather as a remedy which should be applied if it is an effective and efficient solution to the competitive problem identified by the NRA. The reason to delete paragraph b is that, according to Arts. 6 and 8 of the Framework Directive, the obligation to have a consultation process with interested parties and to decide proportionate measures taking into account social economic analysis, already exists.

Amendment 708

Ivo Belet

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) a draft of the measure being proposed.

deleted

Or. en

Amendment 709

Angelika Niebler

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13b

Text proposed by the Commission

Amendment

Article 13b

deleted

***Voluntary separation by a vertically
integrated undertaking***

***1. Undertakings which have been
designated as having significant market
power in one or several relevant markets
in accordance with Article 16 of Directive
2002/21/EC (Framework Directive) shall
inform the national regulatory authority
in advance if they intend to transfer their
local access network assets or a***

substantial part of them to a separate legal entity under different ownership, or to establish a separate business entity in order to provide to all retail providers, including its own retail divisions, fully equivalent access products.

2. The national regulatory authority shall assess the effect of the intended transaction on existing regulatory obligations under Directive 2002/21/EC (Framework Directive).

For that purpose, the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive).

On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

3. The legally and/or operationally separate business entity may be subject to any of the obligations identified in Articles 9-13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to paragraph 3 of Article 8.

Or. de

Justification

The voluntary sale of networks should not be the subject of legal regulation. Any potential impact on competition should be reviewed in the light of existing national and European competition rules. The Commission's proposal at this point should be rejected.

Amendment 710
Herbert Reul

Proposal for a directive – amending act
Article 2 – point 10 a (new)
Directive 2002/19/EC
Article 19a (new)

Text proposed by the Commission

Amendment

(10a) The following Article 19a is inserted:

"Article 19a

Expiry

Articles 8 to 13 shall expire on 1 January 2014."

Or. de

Justification

It must be ensured that the transition from ex ante regulation to application of general competition law in the telecommunications sector is reviewed after five years.

Amendment 711
Gunnar Hökmark

Proposal for a directive – amending act
Article 2 – point 10 b (new)
Directive 2002/19/EC
Annex II – introductory section – point a

Text proposed by the Commission

Amendment

(10b) In the introductory section of Annex II, point (a) is replaced by the following:

"(a) "local sub-loop" means a partial local loop connecting the network termination point [...] to a concentration point or a specified intermediate access point in the fixed public electronic communications network, where the connection can be technically accessed;"

Justification

The amendment updates the description of access resulting from dominance in the local loop in the Access Directive to ensure technological neutrality and bring it into line with the new definition in the Commission's Relevant Markets. By the time the amendments are approved, many loops may be partly or wholly composed of fibre and thus technological neutrality is required to ensure the Framework is futureproof.

Amendment 712
Gunnar Hökmark

Proposal for a directive – amending act
Article 2 – point 10 c (new)
Directive 2002/19/EC
Annex II – introductory section – point c

Text proposed by the Commission

Amendment

(10c) In the introductory section of Annex II, point (c) is replaced by the following:

"(c) "full unbundled access to the local loop" means the provision to a beneficiary of access to the local loop or local sub-loop of the notified operator authorising the use of the full capacity of the network infrastructure;"

Justification

See justification to amendment Hökmark to Annex II – subparagraph 1 – point a.

Amendment 713
Gunnar Hökmark

Proposal for a directive – amending act
Article 2 – point 10 d (new)
Directive 2002/19/EC
Annex II – introductory section – point d

Text proposed by the Commission

Amendment

(10d) In the introductory section of Annex II, point (d) is replaced by the following:

"(d) "shared access to the local loop" means the provision to a beneficiary of access to the local loop or local sub-loop of the notified operator, authorising the use of a specified part of the capacities of the network infrastructure, such as part of the frequencies or wavelengths available, for example the non-voice band frequency spectrum of the twisted metallic pair; [...]"

Or. en

Justification

See justification to amendment Hökmark to Annex II – subparagraph 1 – point a.

Amendment 714
Gunnar Hökmark

Proposal for a directive – amending act
Article 2 – point 10 e (new)
Directive 2002/19/EC
Annex II – introductory section – point da (new)

Text proposed by the Commission

Amendment

(10e) In the introductory section of Annex II, following point is added:

"(da) "wholesale broadband access" means non-physical or virtual network access to the local loop or local sub-loop, providing two-way data transmission across the local loop or sub-loop to specified access points in the fixed public electronic communications network."

Or. en

Justification

See justification to amendment Hökmark to Annex II – subparagraph 1 – point a.

Amendment 715 Gunnar Hökmark

Proposal for a directive – amending act
Article 2 – point 10 f (new)
Directive 2002/19/EC
Annex II – part A

Text proposed by the Commission

Amendment

(10f) In Annex II, part A is replaced by the following:

**"A. Conditions for unbundled access
[...]**

1. Network elements to which access is offered covering in particular the following elements, together with appropriate associated facilities:

(a) unbundled access to local loops and local subloops;

(b) duct access enabling installation of access and backhaul networks;

(c) wholesale broadband access at appropriate points in the network to ensure effective national competition and which shall allow equivalent functionality to unbundled access in circumstances where such access is not technically or economically feasible;

2. Information concerning the locations of physical access sites including street cabinets and distribution frames, availability of local loops and subloops, ducts and backhaul facilities in specific parts of the access network;

3. Technical conditions related to access and use of local loops, sub-loops

and ducts, including the technical characteristics of the twisted [...] pair and/or optical fibre, cable distributors, ducts and associated facilities;

4. Ordering and provisioning procedures, usage restrictions."

Or. en

Justification

See justification to amendment Hökmark to Annex II – subparagraph 1 – point a.

**Amendment 716
Gunnar Hökmark**

Proposal for a directive – amending act

Article 2 – point 10 g (new)

Directive 2002/19/EC

Annex II – part B – point 1

Text proposed by the Commission

Amendment

(10g) In part B of Annex II, point 1 is replaced by the following:

"1. Information on the notified operator's relevant sites or equipment locations."

Or. en

Justification

The amendment updates the description of access resulting from dominance in the local loop in the Access Directive to ensure technological neutrality and bring it into line with the new definition in the Commission's Relevant Markets. By the time the amendments are approved, many loops may be partly or wholly composed of fibre and thus technological neutrality is required to ensure the Framework is futureproof.