



2016/0288(COD)

6.4.2017

AMENDMENTS

833 - 1152

Draft report
Pilar del Castillo Vera
(PE601.017v01-00)

European Electronic Communications Code (Recast)

Proposal for a directive
(COM(2016)0590 – C8-0379/2016 – 2016/0288(COD))

Amendment 833

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 65 – paragraph 2 – point b

Text proposed by the Commission

(b) ***all*** relevant competitive constraints, including at retail level, irrespective of whether the sources of such constraints are deemed to be electronic communications networks, electronic communications services, or other types of services or applications which are comparable from the perspective of the end-user, and irrespective of whether such constraints are part of the relevant market;

Amendment

(b) ***absence of significant*** relevant competitive constraints, including at retail level, irrespective of whether the sources of such constraints are deemed to be electronic communications networks, electronic communications services, or other types of services or applications which are comparable from the perspective of the end-user, and irrespective of whether such constraints are part of the relevant market;

Or. en

Amendment 834

Miapetra Kumpula-Natri, Jeppe Kofod, Dan Nica, Carlos Zorrinho, Victor Negrescu, Zigmantas Balčytis, Flavio Zanonato

Proposal for a directive

Article 65 – paragraph 2 – point c

Text proposed by the Commission

(c) ***other types of regulation or measures imposed and affecting the relevant market or related retail market or markets throughout the relevant period, including, without limitation, obligations imposed in accordance with Articles 44, 58 and 59; and***

Amendment

deleted

Or. en

Justification

The Commission's proposal weakens the SMP regime. The 3-criteria test is described in the draft Code differs from the version of the test that has been applied, successfully, by NRAs over the last 15 years and which is set out in Recommendation 2014/710/EU.

Amendment 835

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda

Proposal for a directive

Article 65 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) other types of regulation or measures imposed and affecting the relevant market or related retail market or markets throughout the relevant period, including, without limitation, obligations imposed in accordance with Articles 44, 58 and 59; and

deleted

Or. en

Amendment 836

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 65 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) other types of regulation or measures imposed and affecting the relevant market or related retail market or markets throughout the relevant period, including, without limitation, obligations imposed in accordance with Articles 44, 58 and 59; and

(c) other types of regulation or measures imposed and affecting the relevant market or related retail market or markets throughout the relevant period, including, without limitation, obligations imposed in accordance with Articles 44, 58 and 59 *are insufficient to adequately address the identified market failure(s);* and

Or. en

Amendment 837

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda

Proposal for a directive

Article 65 – paragraph 2 – point d

PE602.952v01-00

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Text proposed by the Commission

Amendment

(d) regulation imposed on other relevant markets on the basis of this Article.

deleted

Or. en

Amendment 838

Miapetra Kumpula-Natri, Jeppe Kofod, Dan Nica, Carlos Zorrinho, Victor Negrescu, Zigmantas Balčytis, Flavio Zanonato

Proposal for a directive

Article 65 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) regulation imposed on other relevant markets on the basis of this Article.

deleted

Or. en

Justification

Constraints on NRAs' ability to impose regulations have to be avoided. The focus on commercial agreements undermines the SMP regime, as it is linked to a deregulatory promise and might in the long run create tight oligopolies. We should carefully assess whether watering down the well-functioning SMP-regime is useful for the citizens.

Amendment 839

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 65 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) regulation imposed on other relevant markets on the basis of this Article.

(d) regulation imposed on other relevant markets on the basis of this Article is insufficient to adequately address the identified market failure(s).

Or. en

Amendment 840
Kaja Kallas, Marietje Schaake

Proposal for a directive
Article 65 – paragraph 4

Text proposed by the Commission

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist if it considers that one or more **retail** markets would not be effectively competitive in the absence of those obligations.

Amendment

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power , ***or might significantly impede effective competition*** on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist if it considers that one or more markets would not be effectively competitive in the absence of those obligations. ***In the case of significant impediment to effective competition, the national regulatory authority shall consider the proper circumstances of the case, take due account of the need for proportionality and consider the adoption of the least burdensome remedies.***

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 841
Anna Záborská, Ivan Štefanec

Proposal for a directive
Article 65 – paragraph 4

Text proposed by the Commission

Amendment

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist if ***it considers that*** one or more retail markets would not be effectively competitive in the absence of those obligations.

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist if ***the following criteria are cumulatively met:*** (a) one or more retail markets would not be effectively competitive in the absence of those obligations; ***and*** (b) ***there are no obligations imposed in other wholesale markets, which address the identified competition problem in the retail market in question.***

Or. en

Amendment 842
Fulvio Martusciello

Proposal for a directive
Article 65 – paragraph 4

Text proposed by the Commission

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist ***if it considers that one or more retail markets would not be effectively competitive in the***

Amendment

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist.

absence of those obligations.

Or. en

Amendment 843

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 65 – paragraph 4

Text proposed by the Commission

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist ***if it considers that one or more retail markets would not be effectively competitive in the absence of those obligations.***

Amendment

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist.

Or. en

Justification

The proposed Directive puts the focus of regulatory intervention on competitive conditions in retail markets. Before intervening in wholesale markets to solve a problem or to enable future competition on networks, NRAs would have to demonstrate that there is a present lack of competition in retail markets. This approach is problematic because it is wholesale competition that creates retail competition, although often not immediately. The rules that create competition today are focused on wholesale markets for a reason: retail competition and differentiation between operators exists thanks to the capacity to compete at wholesale level. The focus on retail markets would lead to the automatic de-regulation of wholesale markets in many cases, and would ultimately lead to the monopolisation or 'duopolisation' in countries/regions with a strong cable footprint. In addition, retail competition of the kind where all retail providers are dependent on one wholesale provider is not sustainable in the long run and only amounts to 'fake-competition'. Ultimately, the resulting reduction in competition could lead to higher prices and less innovation and choice for end-users.

Amendment 844

Patrizia Toia

Proposal for a directive

Article 65 – paragraph 4

Text proposed by the Commission

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist ***if it considers that one or more retail markets would not be effectively competitive in the absence of those obligations.***

Amendment

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist.

Or. en

Justification

The amendment aims at removing the reference to retail markets, given the fact that competition is strictly linked to wholesale access conditions

Amendment 845

David Borrelli, Dario Tamburrano

Proposal for a directive

Article 65 – paragraph 4

Text proposed by the Commission

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which

Amendment

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which

individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist *if it considers that one or more retail markets would not be effectively competitive in the absence of those obligations.*

individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist.

Or. en

Justification

The amendment aims to avoid the focus on retail market, as narrowing the scope of competition to the retail level could lead to great uncertainty.

Amendment 846

Pavel Telička

Proposal for a directive

Article 65 – paragraph 4

Text proposed by the Commission

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist *if it considers that one or more retail markets would not be effectively competitive in the absence of those obligations.*

Amendment

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist.

Or. en

Amendment 847

Miapetra Kumpula-Natri, Jeppe Kofod, Dan Nica, Carlos Zorrinho, Victor Negrescu, Zigmantas Balčytis, Flavio Zanonato

Proposal for a directive

Article 65 – paragraph 4

Text proposed by the Commission

4. Where a national regulatory authority determines that, ***in a relevant market*** the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61. ***The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 66 or maintain or amend such obligations where they already exist if it considers that one or more retail markets would not be effectively competitive in the absence of those obligations.***

Amendment

4. Where a national regulatory authority determines that the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify:
(a) any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 61(2); ***or in case of the absence thereof:***
(b) undertakings ***which enjoy a position of unilateral market power on that market in accordance with Article 61(3).***
The national regulatory authority shall on such undertakings impose appropriate specific regulatory obligations or maintain or amend such obligations where they already exist.

Or. en

Justification

The proposed Directive puts the focus of regulatory intervention on competitive conditions in retail markets. Before intervening in wholesale markets to solve a problem or to enable future competition on networks, NRAs would have to demonstrate that there is a present lack of competition in retail markets. This approach is problematic because it is wholesale competition that creates retail competition, although often not immediately. The rules that create competition today are focused on wholesale markets for a reason: retail competition and differentiation between operators exists thanks to the capacity to compete at wholesale level. The focus on retail markets would lead to the automatic de-regulation of wholesale markets in many cases, and would ultimately lead to the monopolisation or 'duopolisation' in countries/regions with a strong cable footprint. In addition, retail competition of the kind where all retail providers are dependent on one wholesale provider is not sustainable in the long run and only amounts to 'fake-competition'. Ultimately, the resulting reduction in competition could lead to higher prices and less innovation and choice for end-users. Furthermore, we should place a finding of UMP on the comparable position as a finding of SMP.

Amendment 848

Evžen Tošenovský

Proposal for a directive
Article 65 – paragraph 5 – point a

Text proposed by the Commission

(a) within five years from the adoption of a previous measure where the national regulatory authority has defined the relevant market and determined which undertakings have significant market power. Exceptionally, that five-year period may be extended for up to **one** additional **year**, where the national regulatory authority has notified a reasoned proposed extension to the Commission no later than four months before the expiry of the five years period, and the Commission has not objected within one month of the notified extension;

Amendment

(a) within five years from the adoption of a previous measure where the national regulatory authority has defined the relevant market and determined which undertakings have significant market power. Exceptionally, that five-year period may be extended for up to **three** additional **years**, where the national regulatory authority has notified a reasoned proposed extension to the Commission no later than four months before the expiry of the five years period, and the Commission has not objected within one month of the notified extension;

Or. en

Amendment 849
Anna Záborská, Ivan Štefanec

Proposal for a directive
Article 65 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6 a. Where, on a forward-looking basis, three access network operators are present or are expected to be present and to sustainably compete in the same retail market, national regulatory authorities shall not identify an operator as having significant market power.

Or. en

Amendment 850
Michel Reimon
on behalf of the Verts/ALE Group
Julia Reda, Marisa Matias, Cornelia Ernst

Proposal for a directive

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Article 66 – paragraph 2

Text proposed by the Commission

2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 65 of this Directive, national regulatory authorities shall **be able to** impose any of the obligations set out in Articles 67 to 75 and 77 of this Directive **as appropriate**.

Amendment

2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 65 of this Directive, national regulatory authorities shall impose any of the obligations set out in Articles 67 to 75 and 77 of this Directive.

Or. en

Justification

The Commission's proposal makes it optional for NRAs to decide whether or not to take action to address problems caused by SMP. This undermines the SMP regime by opening the door to inaction on the part of NRAs

Amendment 851

Miapetra Kumpula-Natri, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod

Proposal for a directive

Article 66 – paragraph 2

Text proposed by the Commission

2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 65 of this Directive, national regulatory authorities shall **be able to** impose any of the obligations set out in Articles 67 to 75 and 77 of this Directive **as appropriate**.

Amendment

2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 65 of this Directive, national regulatory authorities shall impose any of the obligations set out in Articles 67 to 75 and 77 of this Directive;

Or. en

Justification

The Commission's proposal makes it optional for NRAs to decide whether or not to take action to address problems caused by SMP. This undermines the SMP regime by opening the door to inaction on the part of NRAs

Amendment 852

Kaja Kallas, Marietje Schaake

Proposal for a directive

Article 66 – paragraph 4

Text proposed by the Commission

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified, ***in particular at retail level*** and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

Amendment

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified ***in the relevant markets to safeguard long term sustainable competition***, and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32. ***In cases of one or more undertakings considered as significantly impeding effective competition, national regulatory authorities shall take due account of the specific circumstances of the case and consider the least burdensome remedies, taking into account their proportionality and their potential benefits for end-users.***

Or. en

Justification

The impact of undertakings that create a situation of significant impediment to effective competition should be addressed in a proportionate manner, with remedies imposed being adapted to the specific circumstances of each market, and to guarantee the best outcome for end users. In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 853

Evžen Tošenovský

Proposal for a directive

Article 66 – paragraph 4

Text proposed by the Commission

Amendment

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified, in particular at retail level ***and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be*** justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified, in particular at retail level. ***They shall be proportionate, have regard to the costs and benefits, considering in particular whether the undertaking designated as having significant market power operates only at wholesale level and*** justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. en

Amendment 854

Miapetra Kumpula-Natri, Flavio Zanonato, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod

**Proposal for a directive
Article 66 – paragraph 4**

Text proposed by the Commission

Amendment

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified, ***in particular at*** retail level and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified ***on wholesale or*** retail level and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. en

Justification

We should avoid the focus only on retail market.

Amendment 855

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 66 – paragraph 4

Text proposed by the Commission

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified, ***in particular at retail level*** and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

Amendment

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. en

Justification

The proposed Directive puts the focus of regulatory intervention on competitive conditions in retail markets. Before intervening in wholesale markets, NRAs would have to demonstrate that their intervention corresponds to a retail problem. The focus on retail markets would lead to the automatic de-regulation of wholesale markets in many cases, and would ultimately lead to the monopolisation or ‘duopolisation’ in countries/regions with a strong cable footprint. In addition, retail competition of the kind where all retail providers are dependent on one wholesale provider is not sustainable in the long run and only amounts to ‘fake-competition’. Ultimately, the resulting reduction in competition could lead to higher prices and less innovation and choice for end-users.

Amendment 856

Fulvio Martusciello

Proposal for a directive

Article 66 – paragraph 4

Text proposed by the Commission

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified, ***in***

Amendment

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified and where

particular at retail level and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. en

Amendment 857

David Borrelli, Dario Tamburrano

Proposal for a directive Article 66 – paragraph 4

Text proposed by the Commission

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified, *in particular at retail level* and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

Amendment

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. en

Justification

The amendment aims to avoid the focus on retail market, as narrowing the scope of competition to the retail level could lead to great uncertainty.

Amendment 858

José Blanco López

Proposal for a directive Article 66 – paragraph 4

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified, ***in particular at*** retail level and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified ***on wholesale or*** retail level and where appropriate taking into account the identification of transnational demand pursuant to Article 64. They shall be proportionate, have regard to the costs and benefits, and be justified in the light of the objectives laid down in Article 3 of this Directive. Such obligations shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. en

Amendment 859

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 66 – paragraph 6

6. National regulatory authorities shall consider the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, ***which have been concluded or unforeseeably breached or terminated affecting competitive dynamics. If these*** developments are not sufficiently important in order to ***determine the need to undertake*** a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations ***imposed*** on operators designated with significant market power in order to ensure that such obligations continue to meet the ***conditions in paragraph 4. Such amendments*** shall only be ***imposed*** following consultation in accordance with Articles 23 and 32.

6. National regulatory authorities shall consider the impact of new ***or planned*** market developments ***which are reasonably likely to affect competitive dynamics***, such as in relation to commercial agreements, including ***without limitation*** co-investment agreements ***and/or undertakings absent from any retail market for electronic communications services.*** ***National regulatory authorities shall do so:***
(a) on their own initiative, taking account of the need for predictable market conditions, or
(b) on a reasoned request. ***If the*** developments are not sufficiently important in order to ***require*** a new market analysis in accordance with Article 65, the national regulatory authority shall assess ***without delay*** whether it is necessary to review the obligations ***and amend any***

previous decision, including by withdrawing obligations or imposing new obligations on operators designated with significant market power in order to ensure that such obligations continue to meet the *requirements of this Directive, or whether to decide that no, fewer or less onerous obligations shall be imposed with respect to a planned development. Such decisions* shall only be *made* following consultation in accordance with Articles 23 and 32.

Or. en

Amendment 860

Miapetra Kumpula-Natri, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Victor Negrescu, Zigmantas Balčytis, Flavio Zanonato

Proposal for a directive

Article 66 – paragraph 6

Text proposed by the Commission

6. National regulatory authorities shall consider the impact of new market developments, *such as in relation to commercial agreements, including co-investment agreements, which have been concluded or unforeseeably breached or terminated affecting competitive dynamics*. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

Amendment

6. National regulatory authorities shall consider the impact of new market developments. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. en

Justification

Commercial agreements are diverse, and some of them have the potential to create ineffectively competitive market outcomes. If not properly managed, co-investments may lead to coordinated behaviour and even reduced competition and investment in long term.

Amendment 861

Pavel Telička

Proposal for a directive

Article 66 – paragraph 6

Text proposed by the Commission

6. National regulatory authorities shall consider the impact of new market developments, ***such as in relation to commercial agreements, including co-investment agreements, which have been concluded or unforeseeably breached or terminated affecting competitive dynamics***. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

Amendment

6. National regulatory authorities shall consider the impact of new market developments. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. en

Amendment 862

David Borrelli, Dario Tamburrano

Proposal for a directive

Article 66 – paragraph 6

Text proposed by the Commission

6. National regulatory authorities shall consider the impact of new market

Amendment

6. National regulatory authorities shall consider the impact of new market

developments, *such as in relation to commercial agreements, including co-investment agreements, which have been concluded or unforeseeably breached or terminated affecting competitive dynamics*. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

developments. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. en

Justification

Necessary because in this paragraph the Commission's proposal weakens the SMP regime, as it shifts the focus from the SMP regime to commercial access agreements.

Amendment 863 Fulvio Martusciello

Proposal for a directive Article 66 – paragraph 6

Text proposed by the Commission

6. National regulatory authorities shall consider the impact of new market developments, *such as in relation to commercial agreements, including co-investment agreements, which have been concluded or unforeseeably breached or terminated affecting competitive dynamics*. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power

Amendment

6. National regulatory authorities shall consider the impact of new market developments. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. en

Amendment 864

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 66 – paragraph 6

Text proposed by the Commission

6. National regulatory authorities shall consider the impact of new market developments, ***such as in relation to commercial agreements, including co-investment agreements, which have been concluded or unforeseeably breached or terminated affecting competitive dynamics***. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

Amendment

6. National regulatory authorities shall consider the impact of new market developments. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. en

Justification

The Commission's proposal weakens the SMP regime. Commercial agreements are diverse, and some of them have the potential to create ineffectively competitive market outcomes. While the Commission's proposal includes criteria in Annex IV as well as conditions against which coinvestment offers should be judged (compliance with which would entitle the co-investment to effectively benefit from a regulatory holiday), these do not provide sufficient competition protections to warrant a relaxation of SMP regulation. It is also worth bearing in

mind that coinvestments by their nature can lead to coordinated behaviour, which in turn could produce uncompetitive outcomes. Ultimately, the resulting reduction in competition could lead to higher prices and less innovation and choice for end-users. In its opinion BoR (16) 213 (p. 7), BEREC recognises “Once again, the risk is that in seeking to incentivise investment through regulatory forbearance, the Commission’s proposals could undermine competition, which in turn would impact on the virtuous cycle of competition- and demand-driven investment. The Commission’s proposals would therefore undermine their own ultimate goal of increasing high-speed connectivity.”

Amendment 865

Herbert Reul, Markus Pieper, Angelika Niebler

Proposal for a directive

Article 66 – paragraph 6

Text proposed by the Commission

6. National regulatory authorities shall consider the impact of new market developments, such as in relation to ***commercial agreements, including co-investment*** agreements, ***which have been concluded or unforeseeably breached or terminated*** affecting competitive dynamics. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

Amendment

6. National regulatory authorities shall consider the impact of new market developments, such as in relation to ***existing commercial*** agreements, affecting competitive dynamics. If these developments are not sufficiently important in order to determine the need to undertake a new market analysis in accordance with Article 65, the national regulatory authority shall assess whether it is necessary to review the obligations imposed on operators designated with significant market power in order to ensure that such obligations continue to meet the conditions in paragraph 4. Such amendments shall only be imposed following consultation in accordance with Articles 23 and 32.

Or. de

Justification

All existing agreements which could influence the promotion of sustainable competition should be taken into account in assessing the development of the market.

Amendment 866

Werner Langen, Sabine Verheyen, Norbert Lins, Markus Pieper

Proposal for a directive
Article 66 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. National regulatory authorities shall ensure that the requirements which they impose are complied with. Depending on the nature of an infringement, national regulatory authorities should have the option of imposing the predetermined penalties in the form of fines ((i) on the authority, (ii) on retail customers, and/or (iii) on other undertakings).

Or. de

Amendment 867

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive
Article 66 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6 a. National regulatory authorities shall ensure that the obligations they impose are effective, even by way of imposing pecuniary sanctions in the event of a breach of the SMP obligations and the terms and conditions of access approved by the national regulatory authority.

Or. en

Justification

The provision aims at ensuring that obligations imposed by NRAs are effectively taken into account and fulfilled, even by introducing pecuniary sanctions.

Amendment 868

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 67 – paragraph 3

Text proposed by the Commission

3. National regulatory authorities may specify the precise information to be made available, the level of detail required and the manner of publication.

Amendment

3. National regulatory authorities may specify the precise information to be made available, the level of detail required and the manner of publication. ***In particular, where an operator has obligations of access to civil engineering and/or obligations of access to, and use of, specific network facilities, national regulatory authorities shall specify key performance indicators, and corresponding service level agreements, and if needed associated fee penalties, to be made available on the access provided, respectively, to the operators' own downstream activities and to beneficiaries of the access obligations.***

Or. en

Justification

This provision aims at reinforcing the obligation of transparency by providing sufficient, clear and objective elements to evaluate the access provided.

Amendment 869

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 67 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. In particular where an operator has obligations of access to civil engineering and/or obligations of access to, and use of, specific network facilities, national regulatory authorities shall specify key performance indicators as well as corresponding service level agreements and associated fee penalties, to be made available on the access provided, respectively, to the operators' own downstream activities and to beneficiaries

of the access obligations.

Notwithstanding paragraphs 2, 3 and 4, where an operator designated as having significant market power has obligations of access to civil engineering and/or obligations of access to, and use of, specific network facilities in accordance with Article (INSERT REFERENCE), national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex (INSERT REFERENCE).

Or. en

Amendment 870

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive Article 68 – paragraph 2

Text proposed by the Commission

2. Obligations of non-discrimination shall ensure, in particular, that the operator applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners. ***In particular, in cases where the operator is deploying new systems, national*** regulatory authorities may impose on that operator obligations to supply access products and services to all undertakings, including to itself, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes, in order to ensure equivalence of access.

Amendment

2. Obligations of non-discrimination shall ensure, in particular, that the operator applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners. National regulatory authorities may impose on that operator obligations to supply access products and services to all undertakings, including to itself, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes, in order to ensure equivalence of access.

Or. en

Amendment 871

Michel Reimon
on behalf of the Verts/ALE Group
Julia Reda, Cornelia Ernst

Proposal for a directive
Article 68 – paragraph 2

Text proposed by the Commission

2. Obligations of non-discrimination shall ensure, in particular, that the operator applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners. ***In particular, in cases where the operator is deploying new systems, national*** regulatory authorities may impose on that operator obligations to supply access products and services to all undertakings, including to itself, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes, in order to ensure equivalence of access.

Amendment

2. Obligations of non-discrimination shall ensure, in particular, that the operator applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners. National regulatory authorities may impose on that operator obligations to supply ***relevant information***, access products and services to all undertakings, including to itself, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes, in order to ensure equivalence of access ***input***.

Or. en

Justification

Limiting the obligation to “new systems” could ultimately render the whole Equivalence of Input (EoI) obligation redundant, as SMP operators will design any additional features always as an upgrade of existing systems. The NRA will have to prove if a system is new, but is prone to gaming by the SMP operator, which designed the system in the first place and hence has a clear advantage in terms of information and knowledge.

Amendment 872
Anna Záborská, Ivan Štefanec

Proposal for a directive
Article 70

Text proposed by the Commission

Article 70

Amendment

deleted

Access to civil engineering

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.

2. National regulatory authorities may impose obligations on an operator to provide access in accordance with this Article, irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that the obligation is necessary and proportionate to meet the objectives of Article 3.

Or. en

Amendment 873 **Fulvio Martusciello**

Proposal for a directive **Article 70 – title**

Text proposed by the Commission

Access to civil engineering

Amendment

Access to civil engineering *and to entire and shared physical network elements*

Or. en

Amendment 874

Miapetra Kumpula-Natri, Edouard Martin, Dan Nica, Jeppe Kofod, Carlos Zorrinho, Victor Negrescu, Zigmantas Balčytis

Proposal for a directive
Article 70 – title

Text proposed by the Commission

Amendment

Access to civil engineering

Access to civil engineering *and to entire and shared physical network elements*

Or. en

Justification

To comply with content

Amendment 875

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Marisa Matias, Cornelia Ernst

Proposal for a directive
Article 70 – title

Text proposed by the Commission

Amendment

Access to civil engineering

Access to civil engineering *and to entire and shared physical network elements*

Or. en

Amendment 876

Miapetra Kumpula-Natri, Edouard Martin, Flavio Zanonato, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod

Proposal for a directive
Article 70 – paragraph 1

Text proposed by the Commission

Amendment

1. A national regulatory authority may, in accordance with Article 66, impose obligations *on operators* to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae,

1. A national regulatory authority may, in accordance with Article 66, *where it considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market and would not be in the end-user's*

towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, ***in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.***

interest:

a. impose obligations to meet reasonable requests for access to, and use of civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets;
b. impose obligations of access to, and use of, specific entire physical network elements and associated facilities, including unbundled access to the metallic local loop and sub-loop as well as unbundled access to fibre loops and fiber terminating segments;
c. impose obligations to share with third parties specified network elements, including shared access to the metallic local loop and sub-loop as well as shared access to fibre loops and fibre terminating segments including wavelength division multiplexing and similar sharing solutions.

Or. en

Justification

Narrowing the scope of competition problems to the retail level creates uncertainty to the regulatory framework. Sufficient competition on the retail market results from functioning wholesale markets. However, we should not undermine the functioning of wholesale only model.

Amendment 877

Pavel Telička

Proposal for a directive

Article 70 – paragraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with Article 66, ***impose obligations on operators*** to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae,

Amendment

1. A national regulatory authority may, in accordance with Article 66, ***where it considers that denying access or setting conditions with a similar effect would hinder the emergence of a highly competitive market and would not be in the end-user's interest:***

towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, *in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.*

a. impose obligations to meet reasonable requests for access to, and use of civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets;
b. impose obligations of access to, and use of, specific entire physical network elements and associated facilities, including unbundled access to the metallic local loop and sub-loop as well as unbundled access to fibre loops and fiber terminating segments;
c. impose obligations to share with third parties specified network elements, including shared access to the metallic local loop and sub-loop as well as shared access to fibre loops and fibre terminating segments including wavelength division multiplexing and similar sharing solutions.

Or. en

Amendment 878

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Marisa Matias, Cornelia Ernst

Proposal for a directive

Article 70 – paragraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with Article 66, *impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under*

Amendment

1. A national regulatory authority may, in accordance with Article 66, where *it considers* that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market and would not in the end-user's interest:

unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market *at the retail level* and would not *be* in the end-user's interest.

Or. en

Amendment 879
Fulvio Martusciello

Proposal for a directive
Article 70 – paragraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with Article 66, ***impose*** obligations ***on operators*** to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, ***in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.***

Amendment

1. A national regulatory authority may, in accordance with Article 66:
a.impose obligations to meet reasonable requests for access to, and use of civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets;;
b. impose obligations of access to, and use of, specific entire physical network elements and associated facilities, including unbundled access to the metallic local loop and sub-loop as well as unbundled access to fiber loops and fiber terminating segments;
c. impose obligations to share with third parties specified network elements, including shared access to the metallic local loop and sub-loop as well as shared access to fibred loops and fiber terminating segments including wavelength division multiplexing and similar sharing solutions.

Or. en

Amendment 880
Michał Boni, Henna Virkkunen, Jerzy Buzek

Proposal for a directive
Article 70 – paragraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.

Amendment

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering **and passive infrastructure** including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, **inactive wireline transmission infrastructure including cable and fiber**, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.

Or. en

Justification

It is proposed to extend the scope of this Article to all passive infrastructure.

Amendment 881
Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive
Article 70 – paragraph 1

Text proposed by the Commission

I. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection

Amendment

I. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering **and passive infrastructure** including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles,

chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.

masts, ducts, *inactive transmission infrastructure (such as optical fibre and cables)*, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.

Or. de

Amendment 882
Krišjānis Kariņš

Proposal for a directive
Article 70 – paragraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.

Amendment

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, *if they are owned by the operator with significant market power*, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.

Or. en

Amendment 883
Herbert Reul, Angelika Niebler

Proposal for a directive
Article 70 – paragraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.

Amendment

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering **and passive infrastructure** including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, **inactive cabling**, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level and would not be in the end-user's interest.

Or. de

Justification

In order to promote network development, in imposing access requirements, priority should be assigned to access to passive infrastructure or civil engineering. Only if this is insufficient to promote sustainable competition at retail and wholesale level in the interests of end users should active shared use of network elements be made possible.

Amendment 884
Kaja Kallas, Marietje Schaake

Proposal for a directive
Article 70 – paragraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles,

Amendment

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles,

masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of **a sustainable competitive market at the retail level** and would not be in the end-user's interest.

masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of **long-term sustainable competition in the relevant markets** and would not be in the end-user's interest.

Or. en

Justification

There are often several retail markets linked to one larger wholesale market, that might evolve more rapidly in different manners while barriers to entry remain in the relevant wholesale market, therefore the sole focus on retail market is not appropriate and should be replaced by long term sustainable competition in the relevant markets. In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 885

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 70 – paragraph 1

Text proposed by the Commission

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market **at the retail level** and would not be in the end-user's interest.

Amendment

1. A national regulatory authority may, in accordance with Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where the market analysis indicates that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market and would not be in the end-user's interest.

Or. en

Amendment 886

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Marisa Matias, Cornelia Ernst

Proposal for a directive

Article 70 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a) impose obligations to meet reasonable requests for access to, and use of civil engineering including, without limitation, buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets

Or. en

Amendment 887

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Marisa Matias, Cornelia Ernst

Proposal for a directive

Article 70 – paragraph 1 – point b (new)

Text proposed by the Commission

Amendment

(b) impose obligations of access to, and use of, specific entire physical network elements and associated facilities, including unbundled access to the metallic local loop and sub-loop as well as unbundled access to fibre loops and fiber terminating segments;

Or. en

Amendment 888

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Marisa Matias, Cornelia Ernst

Proposal for a directive

Article 70 – paragraph 1 – point c (new)

Text proposed by the Commission

Amendment

(c) impose obligations to share with third parties specified network elements, including shared access to the metallic local loop and subloop as well as shared access to fibre loops and fibre terminating segments including wavelength division multiplexing and similar sharing solutions.

Or. en

Amendment 889

Miapetra Kumpula-Natri, Edouard Martin, Dan Nica, Jeppe Kofod, Carlos Zorrinho, Victor Negrescu, Zigmantas Balčytis

Proposal for a directive

Article 70 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. National regulatory authorities shall take account in particular of the following factors:

(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/or access involved, including the viability of other upstream access products such as access to ducts;

(b) the technological evolution affecting network design and management

(cb) the feasibility of providing the access proposed, in relation to the capacity available;

(dc) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;

(ed) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition;

(fe) where appropriate, any relevant intellectual property rights;

(g) the provision of pan-European services.

Or. en

Justification

Civil engineering access enhances infrastructure-based-competition but should not be treated as the sole or primary remedy. That is what it is necessary to include the complementary obligation of giving access to the entire physical network elements (i.e. passive access). Passive remedies, compared to active ones, remain the main wholesale access products that ensure and promote sustainable infrastructure-based competition. The amendment therefore gives priority to passive over active remedies.

Amendment 890
Eva Kaili

Proposal for a directive
Article 70 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. National regulatory authorities shall take account in particular of the following factors:

(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/or access involved, including the viability of other upstream access products such as access to ducts;

(b) the technological evolution affecting network design and management

(cb) the feasibility of providing the access proposed, in relation to the capacity available;

(dc) the initial investment by the facility owner, taking account of any public

investment made and the risks involved in making the investment;

(ed) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition;

(fe) where appropriate, any relevant intellectual property rights;

(g) the provision of pan-European services.

Or. en

Amendment 891

Patrizia Toia

Proposal for a directive

Article 70 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. National regulators should however not impose access to ducts, conduits, inspection chambers, manholes, and cabinets from wholesale-only operators in the sense of Article 77, when these operators offer a viable and similar alternative means of access to end-users in accordance with Article 3(3) of the Directive 2014/61/EU.

Or. en

Justification

In order to make the business model of vertically separate undertakings sustainable, wholesale only operators should not be obliged to provide access to their ducts to for example vertically integrated operators. This would take away economic incentives of the latter to use the networks of wholesale only operators and put at risk the prospective returns of investors in wholesale only networks.

Amendment 892

Kaja Kallas

Proposal for a directive

Article 70 – paragraph 1 a (new)

PE602.952v01-00

40/177

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1 a. A national regulatory authority shall ensure that where access to civil engineering such as access to ducts is limited due to availability, alternatives means of access such as dark fiber are imposed in accordance with article 71.

Or. en

Justification

Access to civil engineering is important to contribute to sustainable competition, however it should take into account the limited availability or physical constraints of granting such access

Amendment 893
Pavel Telička

Proposal for a directive
Article 70 – paragraph 2

2. National regulatory authorities ***may impose obligations on an operator to provide access in accordance with this Article, irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that the obligation is necessary and proportionate to meet the objectives of Article 3.***

2. National regulatory authorities ***shall take account in particular of the following factors:***
(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/or access involved, including the viability of other upstream access products such as access to ducts;
(b) the technological evolution affecting network design and management
(c) the feasibility of providing the access proposed, in relation to the capacity available;
(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;
(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-

*based competition;
(f) where appropriate, any relevant intellectual property rights;
(g) the provision of pan-European services.*

Or. en

Amendment 894

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 70 – paragraph 2

Text proposed by the Commission

2. National regulatory authorities *may impose obligations on an operator to provide access in accordance with this Article, irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that the obligation is necessary and proportionate to meet the objectives of Article 3.*

Amendment

2. National regulatory authorities *shall take account in particular of the following factors:*

Or. en

Justification

Civil engineering access enhances infrastructure-based-competition but should not be treated as the sole or primary remedy. That is what it is necessary to include the complementary obligation of giving access to the entire physical network elements (i.e. passive access). Passive remedies, compared to active ones, remain the main wholesale access products that ensure and promote sustainable infrastructure-based competition. The amendment therefore gives priority to passive over active remedies.

Amendment 895

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 70 – paragraph 2 – point a (new)

Text proposed by the Commission

Amendment

(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/or access involved, including the viability of other upstream access products such as access to ducts;

Or. en

Amendment 896

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 70 – paragraph 2 – point b (new)

Text proposed by the Commission

Amendment

(b) the technological evolution affecting network design and management

Or. en

Amendment 897

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 70 – paragraph 2 – point c (new)

Text proposed by the Commission

Amendment

(c) the feasibility of providing the access proposed, in relation to the capacity available;

Or. en

Amendment 898

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 70 – paragraph 2 – point d (new)

Text proposed by the Commission

Amendment

(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;

Or. en

Amendment 899

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 70 – paragraph 2 – point e (new)

Text proposed by the Commission

Amendment

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure based competition;

Or. en

Amendment 900

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 70 – paragraph 2 – point f (new)

Text proposed by the Commission

Amendment

(f) the provision of pan-European services.

Amendment 901

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 70 a (new)

Text proposed by the Commission

Amendment

Article 70 a

Access obligations beyond civil engineering

In geographic areas where two access networks can be expected on a forward-looking basis and where at least one of the network operators offers wholesale access to any interested undertaking, on reasonable commercial terms permitting sustainable competition on the retail market, national regulatory authorities shall not impose or maintain wholesale access obligations, beyond access to civil infrastructure according to Article 3 of Directive 2014/61/EU.

Or. en

Amendment 902

Miapetra Kumpula-Natri, Patrizia Toia, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod

Proposal for a directive

Article 71 – title

Text proposed by the Commission

Amendment

Obligations of access to, and use of, *specific* network *facilities*

Obligations of access to, and use of, *entire and shared physical* network *elements*

Or. en

Justification

In line with other AMs.

Amendment 903
Pavel Telička

Proposal for a directive
Article 71 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article 66, impose obligations on operators *to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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, and would not be in the end-user's interest.*

Amendment

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article 66, impose obligations on operators:

Or. en

Amendment 904
Fulvio Martusciello

Proposal for a directive
Article 71 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article 66, impose obligations on operators *to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions*

Amendment

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article 66, impose obligations on operators:

having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, and would not be in the end-user's interest.

Or. en

Amendment 905

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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, and*** would not be in the end-user's interest.

Amendment

A national regulatory authority may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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, ***or*** would not be in the end-user's interest.

Or. en

Justification

We need to ensure effective access to ducts and poles of SMP operators to ensure competition persists in the European markets.

Amendment 906

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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, and would not be in the end-user's interest.

Amendment

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 3 of **Directive 2014/61/EU** would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in situations **where this is not to the detriment of innovative developments such as very high capacity networks and software emulated networks, and** 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, and would not be in the end-user's interest.

Or. en

Amendment 907

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would

Amendment

A national regulatory authority may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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, and would not be in the end-user's interest.

hinder the emergence of a sustainable competitive market at the retail level, and would not be in the end-user's interest.

Or. en

Amendment 908

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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, and would not be in the end-user's interest.

Amendment

A national regulatory authority may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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, and would not be in the end-user's interest.

Or. en

Amendment 909

Kaja Kallas

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article

Amendment

A national regulatory authority may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in situations where the

66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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**, and would not be in the end-user's interest.

national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of **long-term sustainable competition in the relevant markets**, and would not be in the end-user's interest.

Or. en

Justification

Access to civil engineering is important to contribute to sustainable competition, however it should take into account the limited availability or physical constraints of granting such access, therefore the national regulatory authority shall look at the most efficient remedies and not necessarily prioritise one over the other.

In addition, the sole focus on retail market is not appropriate and should be replaced by long term sustainable competition in the relevant markets. In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 910

Herbert Reul, Angelika Niebler

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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, and would not be in the end-user's interest.

Amendment

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not on their own lead to the achievement of the objectives set out in Article 3, it may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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 **and wholesale** level, and would not be in the

end-user's interest.

Or. de

Justification

It must be ensured that sustainable competition develops at all levels, including therefore on the wholesale market.

Amendment 911
Evžen Tošenovský

Proposal for a directive
Article 71 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not ***on their own lead to the achievement of the objectives set out in Article 3***, it may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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, and would not be in the end-user's interest.

Amendment

Only where a national regulatory authority concludes that the obligations imposed in accordance with Article 70 would not ***address the competition problems identified in the relevant market***, it may, in accordance with the provisions of Article 66, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, 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, and would not be in the end-user's interest.

Or. en

Amendment 912
Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive
Article 71 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Operators may be required inter alia:

Amendment

National regulatory authorities may impose inter alia:

Amendment 913

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

Operators may be required *inter alia*:

Operators may be required:

Or. en

Amendment 914

Pavel Telička

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) to give third parties access to specified *network elements and/or facilities, as appropriate including access to* network elements *which are either not active or physical and/or active or virtual unbundled access to the local loop*;

(a) to give third parties access to specified *non-physical* network elements *including active services*;

Or. en

Amendment 915

Fulvio Martusciello

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) to give third parties access to specified *network elements and/or facilities, as appropriate including access to* network elements *which are either not active or physical and/or active or virtual unbundled access to the local loop*;

(a) to give third parties access to specified *non-physical* network elements *including active services*;

Amendment 916

David Borrelli, Dario Tamburrano

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) to give third parties access to specified ***network elements and/or facilities, as appropriate including access to network elements which are either not active or physical and/or active or virtual unbundled access to the local loop;***

Amendment

(a) to give third parties access to specified ***non-physical*** network elements ***including active services;***

Or. en

Justification

This amendment aims at ensuring the priority of passive access over active access remedies.

Amendment 917

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) to give third parties access to specified network elements and/or facilities, as appropriate including ***access to network elements which are either not active or physical and/or active or virtual unbundled access to the local loop;***

Amendment

(a) to give third parties access to specified ***non-physical*** network elements and/or facilities, as appropriate including ***active services under transparent and regulated tariff conditions, which at least make it possible to reproduce the tariffs of the retail offers of the regulated operator;***

Or. en

Amendment 918

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) to give third parties access *to specified* network *elements and/or facilities*, as appropriate including access to network elements which are either not active or physical *and/or* active or virtual *unbundled* access to the local loop;

Amendment

(a) to give third parties access *at a single* network *layer that best addresses the problem identified at retail level* as appropriate including access to network elements which are either not active (or physical) *or* active (or virtual) access to the local loop;

Or. en

Amendment 919

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) *to give third parties access to specified* network elements *and/or* facilities, *as appropriate including* access to *network elements which are either not active or physical and/or active or virtual* unbundled access to *the local loop*;

Amendment

(a) *obligations of access to, and use of, specific entire physical* network elements *and associated* facilities, *including unbundled* access to *the metallic local loop and sub-loop as well as* unbundled access to *fibre loops and fibre terminating segments*

Or. en

Amendment 920

Michal Boni

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) to give third parties access to specified network elements and/or facilities, as appropriate including access to *network elements which are either not active or physical and/or active or* virtual

Amendment

(a) to give third parties access to specified network elements and/or facilities, as appropriate including access to *any* active *network elements and/or* virtual unbundled access to the local loop;

unbundled access to the local loop;

Or. en

Justification

It is suggested to clarify that Article 71 applies to active network elements only, while Article 70 addresses the regulation of passive infrastructure.

Amendment 921

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) to give third parties access to specified network elements and/or facilities, as appropriate including access to ***network elements which are either not active or physical and/or active or*** virtual unbundled access to the local loop;

Amendment

(a) to give third parties access to specified network elements and/or facilities, as appropriate including access to ***all active network elements and/or*** virtual unbundled access to the local loop;

Or. de

Amendment 922

Herbert Reul, Angelika Niebler

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) to give third parties access to specified network elements and/or facilities, as appropriate including access to ***network elements which are either not active or physical and/or active or*** virtual unbundled access to the local loop;

Amendment

(a) to give third parties access to specified network elements and/or facilities, as appropriate including access to active ***network elements*** and/or active or virtual unbundled access to the local loop;

Or. de

Justification

In order to promote network development, in imposing access requirements, priority should be assigned to access to passive infrastructure or civil engineering. Only if this is insufficient

to promote sustainable competition at retail and wholesale level in the interests of end users should active shared use of network elements be made possible.

Amendment 923

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(a a) obligations to share with third parties specified network elements, including shared access to the metallic local loop and sub-loop as well as shared access to fibre loops and fibre terminating segments, including wavelength division multiplexing and similar sharing solutions;

Or. en

Amendment 924

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) to negotiate in good faith with undertakings requesting access; *deleted*

Or. en

Amendment 925

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) not to withdraw access to facilities already granted; *deleted*

Or. en

Amendment 926
Fulvio Martusciello

Proposal for a directive
Article 71 – paragraph 1 – subparagraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(c a) to provide specified services on a wholesale basis for resale by third parties;

Or. en

Amendment 927
David Borrelli, Dario Tamburrano

Proposal for a directive
Article 71 – paragraph 1 – subparagraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(c a) to provide specified services on a wholesale basis for resale by third parties;

Or. en

Justification

This is a new point b. This amendment aims at ensuring the priority of passive access over active access remedies.

Amendment 928
Michel Reimon
on behalf of the Verts/ALE Group
Julia Reda, Cornelia Ernst

Proposal for a directive
Article 71 – paragraph 1 – subparagraph 2 – point c a (new)

Text proposed by the Commission

Amendment

**(c a) to provide specified services on a
wholesale basis for resale by third parties;**

Or. en

Justification

This amendments are aimed at ensuring the priority of passive access over active access remedies. The main reason is that active products, although important for operators in order to climb the ladder of investment, are not a valid substitute to passive wholesale access both in copper and fibre networks.

Amendment 929

Evžen Tošenovský

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point c a (new)

Text proposed by the Commission

Amendment

**(c a) to provide specified services on a
wholesale basis for resale by third parties**

Or. en

Amendment 930

**Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu,
Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia**

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

**(d) to grant open access to technical
interfaces, protocols or other key
technologies that are indispensable for the
interoperability of services or virtual
network services;** **deleted**

Or. en

Amendment 931

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point d

Text proposed by the Commission

Amendment

(d) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services ***or virtual network services***;

(d) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services;

Or. en

Amendment 932

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point e

Text proposed by the Commission

Amendment

(e) ***to provide co-location or other forms of associated facilities sharing***;

deleted

Or. en

Amendment 933

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point f

Text proposed by the Commission

Amendment

(f) ***to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for software emulated networks or roaming on mobile networks***;

deleted

Or. en

Amendment 934
Anna Záborská, Ivan Štefanec

Proposal for a directive
Article 71 – paragraph 1 – subparagraph 2 – point f

Text proposed by the Commission

Amendment

(f) to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for *software emulated networks or* roaming on mobile networks;

(f) to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for roaming on mobile networks;

Or. en

Amendment 935
Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive
Article 71 – paragraph 1 – subparagraph 2 – point g

Text proposed by the Commission

Amendment

(g) *to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;*

deleted

Or. en

Amendment 936
Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive
Article 71 – paragraph 1 – subparagraph 2 – point h

Text proposed by the Commission

Amendment

(h) *to interconnect networks or network facilities;*

deleted

Or. en

Amendment 937

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 2 – point i

Text proposed by the Commission

Amendment

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

Or. en

Amendment 938

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

National regulatory authorities may attach to those obligations conditions covering fairness, reasonableness and timeliness. *deleted*

Or. en

Amendment 939

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 71 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. *When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle*

2. They shall take account in particular of the following factors:

of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing or prospective commercial access offers, regulated access pursuant to Article 59, or existing or contemplated regulated access to other wholesale inputs pursuant to this Article. They shall take account in particular of the following factors:

Or. en

Justification

Before intervening in wholesale markets, NRAs would have to demonstrate that their intervention corresponds to a retail problem. The focus on retail markets would lead to the automatic de-regulation of wholesale markets in many cases, and would ultimately lead to the monopolisation or ‘duopolisation’. In addition, retail competition of the kind where all retail providers are dependent on one wholesale provider is not sustainable in the long run and only amounts to ‘fake-competition’ and could lead to higher prices and less innovation and choice for end-users.

The mere existence of a “prospective commercial access offer” should not be a sufficient basis upon which to require regulatory forbearance – if it were, then the absence of take-up could result in a de facto unregulated monopoly (see also BEREC opinion BoR (16) 213 (p. 7)).

Amendment 940

David Borrelli, Dario Tamburrano

Proposal for a directive

Article 71 – paragraph 2 – introductory part

Text proposed by the Commission

2. ***When national*** regulatory authorities ***are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to***

Amendment

2. National regulatory authorities shall take account in particular of the following factors:

wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing or prospective commercial access offers, regulated access pursuant to Article 59, or existing or contemplated regulated access to other wholesale inputs pursuant to this Article. They shall take account in particular of the following factors:

Or. en

Justification

The focus on retail markets would lead to the automatic de-regulation of wholesale markets in many cases. Furthermore, The mere existence of a “prospective commercial access offer” should not be a sufficient basis upon which to require regulatory forbearance.

Amendment 941
Pavel Telička

Proposal for a directive
Article 71 – paragraph 2 – introductory part

Text proposed by the Commission

2. *When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing or prospective commercial access offers, regulated access pursuant to Article 59, or existing or contemplated regulated access to other wholesale inputs pursuant to this Article. They shall take account in particular of the following factors:*

Amendment

2. National regulatory authorities shall take account in particular of the following factors:

Amendment 942
Fulvio Martusciello

Proposal for a directive
Article 71 – paragraph 2 – introductory part

Text proposed by the Commission

2. When national regulatory authorities ***are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing or prospective commercial access offers, regulated access pursuant to Article 59, or existing or contemplated regulated access to other wholesale inputs pursuant to this Article. They shall take account in particular of the following factors:***

Amendment

2. When national regulatory authorities shall take account in particular of the following factors:

Or. en

Amendment 943
Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive
Article 71 – paragraph 2 – introductory part

Text proposed by the Commission

2. ***When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when***

Amendment

2. ***They shall take account in particular of the following factors:(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development,***

assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing or prospective commercial access offers, regulated access pursuant to Article 59, or existing or contemplated regulated access to other wholesale inputs pursuant to this Article. They shall take account in particular of the following factors:

taking into account the nature and type of interconnection and/or access involved, including the viability of other upstream access products such as access to ducts;
(b) the technological evolution affecting network design and management
(cb) the feasibility of providing the access proposed, in relation to the capacity available;
(dc) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment ;
(ed) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition;
(fe) where appropriate, any relevant intellectual property rights;
(g) the provision of pan-European services.

Or. en

Amendment 944

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 71 – paragraph 2 – introductory part

Text proposed by the Commission

2. When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing or prospective commercial access offers, regulated access pursuant to Article 59, or existing or contemplated regulated access to other wholesale inputs

Amendment

2. When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing or prospective commercial access offers, regulated access pursuant to Article 59, or existing or contemplated regulated access to other wholesale inputs

pursuant to this Article. They shall take account in particular of the following factors:

pursuant to this Article, ***but shall when needed be adapted so as to reflect significant market changes***. They shall take account in particular of the following factors:

Or. en

Justification

This provision aims at ensuring that the assessment should reflect significant market changes

Amendment 945

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Article 71 – paragraph 2 – introductory part

Text proposed by the Commission

2. When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing ***or prospective*** commercial access offers, regulated access pursuant to Article 59, or existing ***or contemplated*** regulated access to other wholesale inputs pursuant to this Article. They shall take account in particular of the following factors:

Amendment

2. When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing commercial access offers, regulated access pursuant to Article 59, or existing regulated access to other wholesale inputs pursuant to this Article. ***In order to take into account substantial market changes, it should be possible to alter the analysis at any time.*** They shall take account in particular of the following factors:

Or. de

Amendment 946

Michał Boni

Proposal for a directive
Article 71 – paragraph 2 – introductory part

Text proposed by the Commission

2. When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing **or prospective** commercial access offers, regulated access pursuant to Article 59, or existing **or contemplated** regulated access to other wholesale inputs pursuant to this Article. They shall take account in particular of the following factors:

Amendment

2. When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem at the retail level. The assessment shall include existing commercial access offers, regulated access pursuant to Article 59, or existing regulated access to other wholesale inputs pursuant to this Article **but shall at all time be adapted so as to reflect significant market changes**. They shall take account in particular of the following factors:

Or. en

Justification

Article 71 provides that, in their assessment, NRAs should include existing or prospective commercial access offers and existing or contemplated regulated access. Including prospective offers and contemplated access however reduces predictability and legal certainty for providers of electronic communications services and networks. Consequently, only existing commercial access offers or regulated access should be taken into account. In addition, this provision should expressly provide that such assessment should at all times reflect significant market changes so as to avoid the situation that obligations that are no longer justified are maintained.

Amendment 947
Kaja Kallas

Proposal for a directive
Article 71 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem **at the retail level**. The assessment shall include existing or prospective commercial access offers, regulated access pursuant to Article 59, or existing or contemplated regulated access to other wholesale inputs pursuant to this Article. They shall take account in particular of the following factors:

2. When national regulatory authorities are considering the appropriateness of imposing any of the possible specific obligations referred in paragraph 1, and in particular when assessing, in conformity with the principle of proportionality, whether and how such obligations should be imposed, they shall analyse whether other forms of access to wholesale inputs either on the same or a related wholesale market, would already be sufficient to address the identified problem **in the relevant markets**. The assessment shall include existing or prospective commercial access offers, regulated access pursuant to Article 59, or existing or contemplated regulated access to other wholesale inputs pursuant to this Article. They shall take account in particular of the following factors:

Or. en

Justification

There are often several retail markets linked to one larger wholesale market, that might evolve more rapidly in different manners while barriers to entry remain in the relevant wholesale market, therefore the sole focus on retail market is not appropriate and should be replaced by long term sustainable competition in the relevant markets. In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 948

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(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/or access involved, including the viability of other upstream access products such as access to ducts;

deleted

Amendment 949

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) *the expected technological evolution affecting network design and management*

deleted

Or. en

Amendment 950

Pavel Telička

Proposal for a directive

Article 71 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the *expected* technological evolution affecting network design and management

(b) the technological evolution affecting network design and management

Or. en

Amendment 951

Fulvio Martusciello

Proposal for a directive

Article 71 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the *expected* technological evolution affecting network design and management

(b) the technological evolution affecting network design and management

Or. en

Amendment 952

Kaja Kallas

Proposal for a directive

Article 71 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the need to ensure technology neutrality enabling access seekers to design and manage their own network

Or. en

Justification

Without prejudice to SMP operators freedom to develop their own network architecture, regulators should ensure that the remedies adopted are forward looking by providing incentives for the development of open and flexible network architecture, that would enable the adoption of less burdensome and complex remedies.

Amendment 953

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the feasibility of providing the access proposed, in relation to the capacity available; **deleted**

Or. en

Amendment 954

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) *the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment with particular regard to investments in and risk levels associated with very high capacity networks;*

deleted

Or. en

Amendment 955
Fulvio Martusciello

Proposal for a directive
Article 71 – paragraph 2 – point d

Text proposed by the Commission

(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment *with particular regard to investments in and risk levels associated with very high capacity networks;*

Amendment

(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;

Or. en

Amendment 956
Pavel Telička

Proposal for a directive
Article 71 – paragraph 2 – point d

Text proposed by the Commission

(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment *with particular regard to investments in and risk levels associated with very high capacity networks;*

Amendment

(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;

Or. en

Amendment 957
David Borrelli, Dario Tamburrano

Proposal for a directive
Article 71 – paragraph 2 – point d

Text proposed by the Commission

(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment ***with particular regard to investments in and risk levels associated with very high capacity networks***;

Amendment

(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;

Or. en

Justification

Necessary in order to avoid that virtual products would be considered as a substitute (instead of a complement) to passive access products.

Amendment 958
Michel Reimon
on behalf of the Verts/ALE Group
Julia Reda, Cornelia Ernst

Proposal for a directive
Article 71 – paragraph 2 – point d

Text proposed by the Commission

(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment with particular regard to investments ***in and risk levels associated with very high capacity networks***;

Amendment

(d) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment with particular regard to investments;

Or. en

Amendment 959
Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu,
Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive
Article 71 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) *the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition and to sustainable competition based on co-investment in networks;*

deleted

Or. en

Amendment 960
Anna Záborská, Ivan Štefanec

Proposal for a directive
Article 71 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition and to sustainable competition based on co-investment in networks;

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition and to sustainable competition *such as those* based on co-investment in networks *and other innovative commercial business models;*

Or. en

Amendment 961
José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive
Article 71 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition and to sustainable competition based on co-investment in networks;

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition and to sustainable competition based on *innovative commercial business models such as, but not only,* co-investment in networks;

Justification

Recital 166 introduces the need to take into account newly concluded voluntary agreements between operators in order to provide regulatory flexibility. Co-investment is a particular case, but not the only one

Amendment 962

David Borrelli, Dario Tamburrano

Proposal for a directive**Article 71 – paragraph 2 – point e***Text proposed by the Commission*

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition ***and to sustainable competition based on co-investment in networks;***

Amendment

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition;

Justification

Necessary because some of the co-investment schemes have the potential to create ineffectively competitive market outcomes.

Amendment 963

Pavel Telička

Proposal for a directive**Article 71 – paragraph 2 – point e***Text proposed by the Commission*

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition ***and to sustainable competition based on co-investment in networks;***

Amendment

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition;

Amendment 964
Fulvio Martusciello

Proposal for a directive
Article 71 – paragraph 2 – point e

Text proposed by the Commission

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition ***and to sustainable competition based on co-investment in networks***;

Amendment

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition;

Or. en

Amendment 965
Michel Reimon
on behalf of the Verts/ALE Group
Julia Reda, Cornelia Ernst

Proposal for a directive
Article 71 – paragraph 2 – point e

Text proposed by the Commission

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition ***and to sustainable competition based on co-investment in networks***;

Amendment

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition;

Or. en

Justification

Concerning, co-investment schemes: some of them have the potential to create ineffectively competitive market outcomes. The Commission's proposal includes criteria in Annex IV as well as conditions against which co-investment offers should be judged (compliance with which would entitle the co-investment to effectively benefit from a regulatory holiday). However, these do not provide sufficient competition protections to warrant a relaxation of SMP regulation. It is also worth bearing in mind that co-investments by their nature can lead to coordinated behaviour, which in turn could produce uncompetitive outcomes. Ultimately, the resulting reduction in competition could lead to higher prices and less innovation and choice for end-users. In its opinion BoR (16) 213 (p. 7), BEREC recognises "[T]he risk is that in seeking to incentivise investment through regulatory forbearance, the Commission's proposals could undermine competition, which in turn would impact on the virtuous cycle of

competition- and demand driven investment. The Commission's proposals would therefore undermine their own ultimate goal of increasing high-speed connectivity."

Amendment 966

Kaja Kallas

Proposal for a directive

Article 71 – paragraph 2 – point e

Text proposed by the Commission

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition ***and to sustainable competition based on co-investment in networks;***

Amendment

(e) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition ;

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 967

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 2 – point f

Text proposed by the Commission

(f) ***where appropriate, any relevant intellectual property rights;***

Amendment

deleted

Or. en

Amendment 968

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive

Article 71 – paragraph 2 – point g

Text proposed by the Commission

Amendment

(g) the provision of pan-European services.

deleted

Or. en

Amendment 969

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 71 – paragraph 2 – point g a (new)

Text proposed by the Commission

Amendment

(g a) the existence of a broad choice of offers and providers for fixed and mobile access, for each consumer in Europe irrespective of their place of residence;

Or. en

Amendment 970

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Marisa Matias, Cornelia Ernst

Proposal for a directive

Article 71 – paragraph 2 – point g b (new)

Text proposed by the Commission

Amendment

(g b) the development of a democratic society in the digital era allowing free access to information and expression for all citizens of Europe;

Or. en

Amendment 971

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 71 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. In order to account for the long-term interest of end-users, national regulatory authorities should focus more on facilitating network investments by all operators. Regulation should not be to the detriment of innovative developments, in particular very high capacity networks, software defined networks and network function virtualisation. Only where strictly necessary to safeguard competition and where no alternative access possibilities, including access based on commercial agreements, exist, regulated access should be maintained in an appropriate and balanced manner, i.e. at a single network layer. Regulated access at multiple network layers has led to unnecessarily high complexity with regard to the consistency of regulated wholesale products at different network layers and unduly restricts flexibility and commercial freedom in the dynamic telecoms market environment. Limiting access to a single network layer that best addresses the problem identified at the retail level will significantly reduce regulatory costs and the potential for regulatory gaming by market players, leading to more efficient and appropriate outcomes. In this regard, national regulatory authorities should assess whether active or passive access is more appropriate in consideration of national or local circumstances. As unbundling is detrimental to network investments by allowing 'cream-skimming' of the most profitable customers at average cost, there should no longer be an obligation to provide unbundled access, which undermines investment models based on product and price differentiation.

Or. en

Amendment 972

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Proposal for a directive
Article 71 – 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 39.***

Amendment

3. ***This is without prejudice to national regulatory authorities giving consideration in addition to imposing each of the obligations on an operator in accordance with Article 72.***

Or. en

Amendment 973
Anna Záborská, Ivan Štefanec

Proposal for a directive
Article 72 – paragraph 1 – subparagraph 1

Text proposed by the Commission

A national regulatory authority may, in accordance with the provisions of Article 66, 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 may sustain prices at an excessively high level, or may apply a price squeeze,*** to the detriment of end-users.

Amendment

A national regulatory authority may, in accordance with the provisions of Article 66, impose obligations relating to cost recovery and price controls, including obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates a lack of effective competition. ***A national regulatory authority may only impose price controls that ensure fair and reasonable prices and do not negatively impact investments. When applied, a price control shall meet the following cumulative conditions:***
(a) the price control ensures recovery of all investments connected to the

deployment of new networks and fully incorporates the risks associated with these investments;
(b) the price control does not lead to a situation where the investing operator is put at a disadvantage compared to non-investing operators or lead to a situation under which an investment would not have been made in the first place;
(c) the price control avoids undue profit margins for access seekers to the detriment of the investing operator and appropriately reflects differences in the risks taken by different access seekers.

Or. en

Amendment 974
Patrizia Toia

Proposal for a directive
Article 72 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In determining whether or not price control obligations would be appropriate, national regulatory authorities shall take into account long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very high capacity networks. In particular, to encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. Where the national regulatory authorities deem price controls appropriate, they shall allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

Amendment

To encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. Where the national regulatory authorities deem price controls appropriate, they shall allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

Or. en

Justification

Principles of cost orientation and economic replicability should allow NRA to guarantee low prices for consumers

Amendment 975

David Borrelli, Dario Tamburrano

Proposal for a directive

Article 72 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In determining whether or not price control obligations would be appropriate, national regulatory authorities shall take into account long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very high capacity networks.

In particular, to encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. Where the national regulatory authorities deem price controls appropriate, they shall allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

Amendment

To encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. Where the national regulatory authorities deem price controls appropriate, they shall allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

Or. en

Justification

This amendment aims at avoiding the removal and replacement of cost orientation with economic replicability tests, because these tests are not substitute of price control.

Amendment 976

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 72 – paragraph 1 – subparagraph 2

In determining whether or not price control obligations would be appropriate, national regulatory authorities shall take into account long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very high capacity networks.

In particular, to encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. Where the national regulatory authorities deem price controls appropriate, they shall allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

To encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. Where the national regulatory authorities deem price controls appropriate, they shall allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

Or. en

Justification

Price control is an essential element of access regulation and should not be conditioned to any other criteria.

Amendment 977

Kaja Kallas

Proposal for a directive

Article 72 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

In determining whether or not price control obligations would be appropriate, national regulatory authorities shall take into account long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very high capacity networks. In particular, to encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. ***Where the national regulatory authorities deem price controls***

In determining whether or not price control obligations would be appropriate, national regulatory authorities shall take into account long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very high capacity networks. In particular, to encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator.

appropriate, they shall allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 978

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 72 – paragraph 1 – subparagraph 2

Text proposed by the Commission

In determining whether or not price control obligations would be appropriate, national regulatory authorities shall take into account long-term end-user interests related to *the deployment and take-up of next-generation networks, and in particular of very high capacity* networks. In particular, to encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. Where the national regulatory authorities deem price controls appropriate, they shall allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

Amendment

In determining whether or not price control obligations would be appropriate, national regulatory authorities shall take into account long-term end-user interests related to *investment in, the deployment of and take-up of next-generation* networks. In particular, to encourage investments by the operator, including in next-generation networks, national regulatory authorities shall take into account the investment made by the operator. Where the national regulatory authorities deem price controls appropriate, they shall allow the operator a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.

Or. en

Amendment 979

Kaja Kallas

Proposal for a directive

Article 72 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

National regulatory authorities shall not impose or maintain obligations pursuant to this Article, where they establish that a demonstrable retail price constraint is present and that any obligations imposed in accordance with Articles 67 to 71, including in particular any economic replicability test imposed in accordance with Article 68 ensures effective and non discriminatory access. ***deleted***

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 980

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 72 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

National regulatory authorities shall not impose or maintain obligations pursuant to this Article, where they establish that a demonstrable retail price constraint is present and that any obligations imposed in accordance with Articles 67 to 71, including in particular any economic replicability test imposed in accordance with Article 68 ensures effective and non discriminatory access. ***deleted***

Or. en

Justification

Current provisions for co-investment practices do not allow non-profit or local ISPs to participate in the investments, restricting this opportunity only to larger and incumbent actors. Although Community Networks (CN) and local actors have proven succesful in

connecting underprivileged communities both in urban and rural areas, it would be only normal to consider them equal members of the telecoms ecosystem, thus giving them fair and equal access to co-investment opportunities.

Moreover, co-investment in a certain area must be considered as an oligopoly of a few powerful actors that work as a cartel.

This is thus not acceptable to reduce the obligations. Furthermore, the access to co-investment agreement shall be affordable for small operators.

Amendment 981

David Borrelli, Dario Tamburrano

Proposal for a directive

Article 72 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

National regulatory authorities shall not impose or maintain obligations pursuant to this Article, where they establish that a demonstrable retail price constraint is present and that any obligations imposed in accordance with Articles 67 to 71, including in particular any economic replicability test imposed in accordance with Article 68 ensures effective and non discriminatory access.

deleted

Or. en

Justification

This amendment aims at avoiding the removal and replacement of cost orientation with economic replicability tests, because these tests are not substitute of price control.

Amendment 982

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 72 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

National regulatory authorities shall not impose or maintain obligations pursuant to this Article, where they establish that a demonstrable retail price constraint is

National regulatory authorities shall not impose or maintain obligations pursuant to this Article, *either for new network elements in case a network roll-out*

present and that any obligations imposed in accordance with Articles 67 to 71, including in particular any economic replicability test imposed in accordance with Article 68 ensures effective **and non discriminatory** access.

contributes to the availability of very-high capacity networks or where they establish that a demonstrable retail price constraint is present and that any obligations imposed in accordance with Articles 67 to 71, including in particular any economic replicability test imposed in accordance with Article 68 ensures effective **non discrimination of** access.

Or. en

Amendment 983

Anna Záborská, Ivan Štefanec

Proposal for a directive Article 72 – paragraph 3

Text proposed by the Commission

Amendment

3. Where an operator has an obligation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs including a reasonable rate of return on investment shall lie with the operator concerned. For the purpose of calculating the cost of efficient provision of services, national regulatory authorities may use cost accounting methods independent of those used by the undertaking. National regulatory authorities may require an operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

deleted

Or. en

Amendment 984

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive Article 72 a (new)

Text proposed by the Commission

Amendment

Article 72 a

Other access-related obligations

1. A national regulatory authority

may, in accordance with the provisions of Article 66, impose:

- (a) to give third parties access to specified active network elements and services;***
- (b) to provide specified services on a wholesale basis for resale by third parties;***
- (c) to negotiate in good faith with undertakings requesting access;***
- (d) not to withdraw access to facilities already granted;***
- (ee) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;***
- (ff) to provide co-location or other forms of associated facilities sharing;***
- (gg) to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for software emulated networks or roaming on mobile networks;***
- (hh) to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;***
- (i) to interconnect networks or network facilities;***
- (j) to provide access to associated services such as identity, location and presence service.***

National regulatory authorities may attach to those obligations conditions covering fairness, reasonableness and timeliness.

2. They shall take account in particular of the following factors:

- (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/or access involved, including the viability of other upstream access products such as access to ducts;

(b) the technological evolution affecting network design and management

(cb) the feasibility of providing the access proposed, in relation to the capacity available;

(dc) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment ;

(ed) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition;

(fe) where appropriate, any relevant intellectual property rights;

(g) the provision of pan-European services.

Or. en

Amendment 985

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 73

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 986

Edouard Martin

Proposal for a directive

Article 73 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Where a national regulatory authority imposes obligations relating to cost recovery and price controls on ***operators designated as having significant market power on*** a market for wholesale voice call termination, it shall set maximum symmetric termination rates based on the costs incurred by an efficient operator. The evaluation of efficient costs shall be based on current cost values. The cost methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice call termination service to third parties.

Where a national regulatory authority imposes obligations relating to cost recovery and price controls on a market for wholesale voice call termination, it shall set maximum symmetric termination rates based on the costs incurred by an efficient operator. The evaluation of efficient costs shall be based on current cost values. The cost methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice call termination service to third parties.

Or. en

Amendment 987
Evžen Tošenovský

Proposal for a directive
Article 73 – paragraph 2

Text proposed by the Commission

Amendment

2. By [date] the Commission shall, after having consulted BEREC, adopt delegated acts in accordance with Article 109 concerning a single maximum termination rate to be imposed by national regulatory authorities on undertakings designated as having significant market power in fixed and mobile voice termination markets respectively in the Union.

deleted

Or. en

Amendment 988
Dan Nica, Peter Kouroumbashev, Miapetra Kumpula-Natri

Proposal for a directive
Article 73 – paragraph 2

Text proposed by the Commission

Amendment

2. *By [date] the Commission shall, after having consulted BEREC, adopt delegated acts in accordance with Article 109 concerning a single maximum termination rate to be imposed by national regulatory authorities on undertakings designated as having significant market power in fixed and mobile voice termination markets respectively in the Union.* *deleted*

Or. en

Amendment 989

Evžen Tošenovský

Proposal for a directive

Article 73 – paragraph 3

Text proposed by the Commission

Amendment

3. *When adopting these delegated acts, the Commission shall follow the principles laid down in the first subparagraph of paragraph 1 and shall comply with the criteria and parameters provided in Annex III.* *deleted*

Or. en

Amendment 990

Dan Nica, Peter Kouroumbashev, Miapetra Kumpula-Natri

Proposal for a directive

Article 73 – paragraph 3

Text proposed by the Commission

Amendment

3. *When adopting these delegated acts, the Commission shall follow the principles laid down in the first subparagraph of paragraph 1 and shall comply with the criteria and parameters provided in Annex III.* *deleted*

Amendment 991
Evžen Tošenovský

Proposal for a directive
Article 73 – paragraph 4

Text proposed by the Commission

Amendment

4. In applying paragraph 2, the Commission shall ensure that the single voice call termination rate in mobile networks shall not exceed 1.23 €cent per minute and the single voice call termination rate in fixed networks shall not exceed 0.14 €cent per minute. The Commission shall take into account the weighted average of maximum termination rates in fixed and mobile networks established in accordance with the principles provided in the first subparagraph of paragraph 1 applied across the Union when setting the single maximum termination rate for the first time. **deleted**

Or. en

Amendment 992
Kaja Kallas

Proposal for a directive
Article 73 – paragraph 4

Text proposed by the Commission

Amendment

4. In applying paragraph 2, the Commission shall ensure that the single voice call termination rate in mobile networks shall not exceed 1.23 €cent per minute and the single voice call termination rate in fixed networks shall not exceed 0.14 €cent per minute. The Commission shall take into account the weighted average of maximum termination rates in fixed and mobile **deleted**

networks established in accordance with the principles provided in the first subparagraph of paragraph 1 applied across the Union when setting the single maximum termination rate for the first time.

Or. en

Justification

This maximum rate should be adopted in a delegated act and not in the main legislation. In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 993

Dan Nica, Peter Kouroumbashev, Miapetra Kumpula-Natri

Proposal for a directive

Article 73 – paragraph 4

Text proposed by the Commission

4. *In applying paragraph 2, the Commission shall ensure that the single voice call termination rate in mobile networks shall not exceed **1.23** €cent per minute and the single voice call termination rate in fixed networks shall not exceed **0.14** €cent per minute. **The Commission shall take into account the weighted average of maximum termination rates in fixed and mobile networks established in accordance with the principles provided in the first subparagraph of paragraph 1 applied across the Union when setting the single maximum termination rate for the first time.***

Amendment

4. The Commission shall ensure that the single voice call termination rate in mobile networks shall not exceed **1** €cent per minute and the single voice call termination rate in fixed networks shall not exceed **0.12** €cent per minute.

Or. en

Amendment 994

Krišjānis Kariņš

Proposal for a directive

Article 73 – paragraph 4

Text proposed by the Commission

Amendment

4. In applying paragraph 2, the Commission shall ensure that the single voice call termination rate in mobile networks shall not exceed **1.23** €cent per minute and the single voice call termination rate in fixed networks shall not exceed 0.14 €cent per minute. The Commission shall take into account the weighted average of maximum termination rates in fixed and mobile networks established in accordance with the principles provided in the first subparagraph of paragraph 1 applied across the Union when setting the single maximum termination rate for the first time.

4. In applying paragraph 2, the Commission shall ensure that the single voice call termination rate in mobile networks shall not exceed **0.94** €cent per minute and the single voice call termination rate in fixed networks shall not exceed 0.14 €cent per minute. The Commission shall take into account the weighted average of maximum termination rates in fixed and mobile networks established in accordance with the principles provided in the first subparagraph of paragraph 1 applied across the Union when setting the single maximum termination rate for the first time.

Or. en

Amendment 995

Dan Nica, Peter Kouroumbashev, Miapetra Kumpula-Natri

Proposal for a directive

Article 73 – paragraph 5

Text proposed by the Commission

Amendment

5. When adopting delegated acts pursuant to paragraph 2, the Commission shall take into account the total number of end-users in each Member State, in order to ensure a proper weighting of the maximum termination rates, as well as national circumstances which result in significant differences between Member States when determining the maximum termination rates in the Union

deleted

Or. en

Amendment 996

Evžen Tošenovský

Proposal for a directive

Article 73 – paragraph 5

Text proposed by the Commission

Amendment

5. *When adopting delegated acts pursuant to paragraph 2, the Commission shall take into account the total number of end-users in each Member State, in order to ensure a proper weighting of the maximum termination rates, as well as national circumstances which result in significant differences between Member States when determining the maximum termination rates in the Union* **deleted**

Or. en

Amendment 997

Evžen Tošenovský

Proposal for a directive

Article 73 – paragraph 6

Text proposed by the Commission

Amendment

6. *The Commission may request BEREK to develop an economic model in order to assist the Commission in determining the maximum termination rates in the Union. The Commission shall take into account market information provided by BEREK, national regulatory authorities or, directly, by undertakings providing electronic communications networks and services.* **deleted**

Or. en

Amendment 998

Dan Nica, Peter Kouroumbashev, Miapetra Kumpula-Natri

Proposal for a directive

Article 73 – paragraph 7

Text proposed by the Commission

Amendment

7. *The Commission shall review the* **deleted**

*delegated acts adopted pursuant this
Article every five years.*

Or. en

Amendment 999
Evžen Tošenovský

Proposal for a directive
Article 73 – paragraph 7

Text proposed by the Commission

Amendment

7. *The Commission shall review the* *deleted*
delegated acts adopted pursuant this
Article every five years.

Or. en

Amendment 1000
David Borrelli, Dario Tamburrano

Proposal for a directive
Article 74

Text proposed by the Commission

Amendment

Article 74 *deleted*

***Regulatory treatment of new network
elements***

1.

***A national regulatory authority shall not
impose obligations as regards new
network elements that are part of the
relevant market on which it intends to
impose or maintain obligations in
accordance with Articles 66 and Articles
67 to 72 and that the operator designated
as significant market power on that
relevant market has deployed or is
planning to deploy, if the following
cumulative conditions are met:***

***(a) the deployment of the new network
elements is open to co-investment offers
according to a transparent process and on***

terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

(b) the deployment of the new network elements contributes significantly to the deployment of very high capacity networks;

(c) access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

When assessing co-investment offers and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.

Or. en

Justification

Necessary because this article could pave the way for the existence of new fiber networks without allowing NRAs to intervene efficiently where it becomes necessary.

Amendment 1001

Miapetra Kumpula-Natri, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod, Patrizia Toia

Proposal for a directive Article 74

Text proposed by the Commission

Amendment

Regulatory treatment of new network elements

1.

A national regulatory authority shall not impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

(a) the deployment of the new network elements is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

(b) the deployment of the new network elements contributes significantly to the deployment of very high capacity networks;

(c) access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

When assessing co-investment offers and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers and processes comply with the criteria set

out in Annex IV.

Or. en

Justification

Current framework does not prevent co-investment. While the article may help to facilitate new fiber networks, it will not allow NRAs to intervene efficiently where it becomes necessary. It is problematic that the reference made in Art 74 (b) to the “deployment of very high capacity networks” establishes a hierarchy between the regulatory objectives set out in Article 3. Also, co-investments by their nature can lead to coordinated behaviour, which in turn yield uncompetitive outcomes.

Amendment 1002

Kaja Kallas

Proposal for a directive

Article 74 – title

Text proposed by the Commission

Amendment

Regulatory treatment of new network elements

Regulatory treatment of new network elements *of very high capacity networks*

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1003

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 74 – paragraph 1

Text proposed by the Commission

Amendment

1. A national regulatory authority shall not impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated

deleted

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as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

(a) the deployment of the new network elements is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

(b) the deployment of the new network elements contributes significantly to the deployment of very high capacity networks;

(c) access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

When assessing co-investment offers and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.

Or. en

Justification

The proposed provisions on “new network elements” in Article 74 are problematic firstly because the concept remains undefined. Secondly, Article 74 impedes NRAs from intervening on “new network elements” if there are co-investment offers. This could be problematic because SMP operators can use their market position to the detriment of smaller companies. Operators investing in VHC networks should not profit from regulatory holidays. The successful ex-ante regulatory regime should apply as much to VHC networks as to Next Generation Networks and legacy networks (e.g. copper).

The explicit reference made in Art 74 (b) to the “deployment of very high capacity networks” establishes a hierarchy between the regulatory objectives set out in Article 3.

In addition, co-investment schemes are diverse, and some of them have the potential to create ineffectively competitive market outcomes. While the Commission’s proposal includes criteria in Annex IV as well as conditions against which co-investment offers should be judged (compliance with which would entitle the co-investment to effectively benefit from a regulatory holiday), these do not provide sufficient competition protections to warrant a relaxation of SMP regulation. It is also worth bearing in mind that co-investments by their nature can lead to coordinated behaviour, which in turn could produce uncompetitive outcomes. Deregulation subject to weak safeguards has to be prevented. Independent from the concept of co-investment, commercial agreements must not artificially lead to non-SMP findings and to the removal of the wholesale access obligations that are necessary to enable and maintain sustainable competition and thus consumer well-being in the form of lower prices, increased choice and more innovative products.

Amendment 1004
Fulvio Martusciello

Proposal for a directive
Article 74 – paragraph 1

Text proposed by the Commission

Amendment

1. A national regulatory authority shall not impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met: **deleted**

(a) the deployment of the new network elements is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-

invested infrastructure;

(b) the deployment of the new network elements contributes significantly to the deployment of very high capacity networks;

(c) access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

When assessing co-investment offers and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.

Or. en

Amendment 1005 **Edouard Martin**

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

A national regulatory authority shall not impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

Amendment

A national regulatory authority shall not impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the ***national regulatory authority concludes that the*** following cumulative conditions are met:

Or. en

Amendment 1006

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

A national regulatory authority *shall* not impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

Amendment

Irrespective of its ex-post monitoring powers, a national regulatory authority ***may*** not impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

Or. en

Amendment 1007

Kaja Kallas

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

A national regulatory authority ***shall not*** impose obligations as regards new network elements ***that are part of the relevant market on which it intends to impose or maintain obligations*** in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, ***if*** the following cumulative conditions ***are met***:

Amendment

A national regulatory authority ***which intends to impose or maintain*** obligations as regards new network elements ***of very high capacity networks*** in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, ***shall take into account*** the following cumulative conditions ***to ensure such obligations are proportionate and justified*** :

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1008

Evžen Tošenovský

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

A national regulatory authority ***shall not*** impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

Amendment

A national regulatory authority ***may determine not to*** impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

Or. en

Amendment 1009

Anne Sander, Françoise Grossetête

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

A national regulatory authority ***shall not*** impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

Amendment

A national regulatory authority ***may determine not to*** impose obligations as regards new network elements that are part of the relevant market on which it intends to impose or maintain obligations in accordance with Articles 66 and Articles 67 to 72 and that the operator designated as significant market power on that relevant market has deployed or is planning to deploy, if the following cumulative conditions are met:

Or. en

Amendment 1010

Eva Kaili

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the deployment of the new network elements is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

Amendment

(a) the deployment of the new network elements
(i) is conducted by a joint venture established by two or more undertakings with shared ownership, and one or more undertaking participating in the joint venture provides wholesale access or competes on retail level; or
(ii) is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure; *or*
(iii) is conducted by a single undertaking that provides a wholesale offer on terms which, similar to conditions for co-investment in subparagraph ii), favour competition in the long term by including, inter alia, fair, reasonable and non-discriminatory terms offered to potential access seekers; flexibility in terms of the value and timing of the commitment provided by each access seeker; possibility to increase such commitment in the future;

Or. en

Amendment 1011

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the deployment of the new network elements is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

(a) the deployment of the new network elements is ***either:***
i) open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure; compliance with the criteria set out in Annex IV; or
ii) is conducted by a single undertaking that provides a wholesale offer on terms which favour competition in the long term by including, inter alia, fair, reasonable and non-discriminatory terms offered to potential access seekers; mechanisms for risk-sharing; flexibility in terms of the value and timing of the commitment provided by each access seeker; possibility to increase such commitment in the future;

Or. en

Justification

As indicated in the amendment to Article 71 2 e, recital 166 states the need to take into account newly concluded voluntary agreements between operators in order to provide regulatory flexibility. Co-investment is a particular case of a commercial agreement, but not the only one

Amendment 1012

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the deployment of the new network elements ***is open to co-investment offers according to a transparent process and on***

(a) the deployment of the new network elements

terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

Or. en

Amendment 1013

Angelika Niebler, Herbert Reul, Markus Pieper

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the deployment of the new network elements is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

Amendment

(a) the deployment of the new network elements is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure. ***National regulatory authorities shall lay down clear conditions for co-investment in the respective Member States. Co-investment must prevent co-investors or other undertakings from being placed at a competitive disadvantage on the market. Co-investment shall ensure open access for all undertakings wishing to participate in it.***

Or. de

Justification

The regulatory authorities must lay down clear conditions for co-investment models.

Amendment 1014

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the deployment of the new network elements is *open to co-investment offers according to a transparent process and on terms which favour* sustainable competition *in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;*

Amendment

(a) the deployment of the new network elements is *the result of co-investment which creates effective and* sustainable competition *on the objectively relevant market or which can reasonably be expected to do so. This is the case where the criteria laid down in Annex IV are met;*

Or. de

Amendment 1015

Kaja Kallas

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the deployment of the new network elements is *open to* co-investment *offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to*

Amendment

(a) the deployment of the new network elements is *subject to a* co-investment *agreement where co-investment terms are open to any potential co-investors and are agreed between undertakings on the basis of fair, reasonable, non-discriminatory terms, including technical and financial terms ; favour sustainable competition in the long term,* flexibility in terms of the value and timing of the commitment

increase such commitment in the future;
reciprocal rights awarded by the co-
investors after the deployment of the co-
invested infrastructure;

provided by each co-investor; possibility to
increase such commitment in the future;
reciprocal rights awarded by the co-
investors after the deployment of the co-
invested infrastructure;

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1016
Herbert Reul, Angelika Niebler

Proposal for a directive
Article 74 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) ***the deployment of*** the new network elements ***is open to co-investment offers*** according to a transparent process and on terms which favour sustainable competition in the long term ***including*** inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

Amendment

(a) ***in deploying*** the new network elements, ***investment models shall be used*** according to a transparent process and on terms which favour sustainable competition in the long term. ***These shall include*** inter alia ***co-investment models marked by*** fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future, ***and*** reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

Or. de

Justification

The actual use of investment which promotes competition should provide an opportunity for deregulation, as the promotion of competition-based expansion of infrastructure is preferable to market regulation. In the assessment, all investment models which promote sustainable competition should therefore be taken into account equally.

Amendment 1017

Edouard Martin

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the deployment of the new network elements is ***open to*** co-investment ***offers*** according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

Amendment

(a) the deployment of the new network elements is ***the subject of a*** co-investment ***agreement*** according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

Or. en

Amendment 1018

Anne Sander, Françoise Grossetête

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the deployment of the new network elements is open to co-investment ***offers*** according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

Amendment

(a) the deployment of the new network elements is open to co-investment ***agreement*** according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

Or. en

Amendment 1019

Gunnar Hökmark, Michal Boni, Bendt Bendtsen

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) the deployment of the new network elements is ***open to*** co-investment ***offers*** according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

Amendment

(a) the deployment of the new network elements is ***done through*** co-investment according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure;

Or. en

Amendment 1020

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a – point i (new)

Text proposed by the Commission

Amendment

i) is conducted by a joint venture established by two or more undertakings with shared ownership, and one or more undertaking participating in the joint venture provides wholesale access or competes on retail level; or

Or. en

Amendment 1021

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a – point ii (new)

Text proposed by the Commission

Amendment

ii) is open to co-investment offers according to a transparent process and on terms which favour sustainable competition in the long term including inter alia fair, reasonable and non-discriminatory terms offered to potential co-investors; flexibility in terms of the value and timing of the commitment provided by each co-investor; possibility to increase such commitment in the future; reciprocal rights awarded by the co-investors after the deployment of the co-invested infrastructure; or

Or. en

Amendment 1022

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point a – point iii (new)

Text proposed by the Commission

Amendment

iii) is conducted by a single undertaking that provides a wholesale offer on terms which, similar to conditions for co-investment in subparagraph ii), favour competition in the long term by including, inter alia, fair, reasonable and non-discriminatory terms offered to potential access seekers; flexibility in terms of the value and timing of the commitment provided by each access seeker; possibility to increase such commitment in the future;

Or. en

Amendment 1023

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

(b) the deployment of the new network elements ***contributes significantly to*** the deployment of very high capacity networks;

Amendment

(b) the deployment of the new network elements ***results in*** the deployment of very high capacity networks ***or there is a reasonable expectation that it will do so.***

Or. de

Amendment 1024

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) ***access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;***

Amendment

deleted

Or. de

Amendment 1025

Eva Kaili

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) access seekers not participating in ***the co-investment*** can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access

Amendment

(c) access seekers not participating in ***one of the deployment models listed in point (a)*** can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of

maintained or adapted by the national regulatory authority;

regulated access maintained or adapted by the national regulatory authority *until 8 years after entry into force of this Directive.*

Or. en

Amendment 1026
Evžen Tošenovský

Proposal for a directive
Article 74 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, *either* through commercial agreements based on fair and reasonable terms *or by means of regulated access maintained or adapted by the national regulatory authority*;

Amendment

(c) access seekers not participating in the co-investment can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, through commercial agreements based on fair and reasonable terms;

Or. en

Amendment 1027
José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive
Article 74 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) access seekers not participating in *the co-investment* can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

Amendment

(c) access seekers not participating in *one of the deployment models listed in point (a)* can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms *assessed by*, or by means of regulated access maintained or adapted by, the national regulatory authority;

Or. en

Justification

Coherence with amendment to Article 74 – paragraph 1 – subparagraph 1 – point a

Amendment 1028

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) access seekers not participating in *the co-investment* can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

Amendment

(c) access seekers not participating in *one of the deployment models listed in point (a)* can benefit from the same quality, speed, conditions and end-user reach as was available before the deployment, either through commercial agreements based on fair and reasonable terms or by means of regulated access maintained or adapted by the national regulatory authority;

Or. en

Amendment 1029

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 2

Text proposed by the Commission

When assessing co-investment offers and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.

Amendment

deleted

Or. en

Justification

Coherence with amendment to Article 74 – paragraph 1 – subparagraph 1 – point a

Amendment 1030

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Proposal for a directive

Article 74 – paragraph 1 – subparagraph 2

Text proposed by the Commission

When assessing co-investment ***offers*** and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those ***offers*** and processes comply with the criteria set out in Annex IV.

Amendment

When assessing co-investment ***terms*** and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those ***terms*** and processes comply with the criteria set out in Annex IV ***and are compliant with competition law.***

When co-investment terms comply with Annex IV but may create a situation of significant impediment to effective competition, national regulatory authorities shall ensure that proportionate and justified obligations are imposed to address the situation in accordance with articles 66 to 72.

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1031

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 2

Text proposed by the Commission

When assessing co-investment offers and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.

Amendment

The national regulatory authority shall ensure that the conditions for the application of the first paragraph are met. If it establishes that these conditions are not met, it may impose requirements in accordance with Article 66 and Articles 67 to 72.

Or. de

Amendment 1032
Anne Sander, Françoise Grossetête

Proposal for a directive
Article 74 – paragraph 1 – subparagraph 2

Text proposed by the Commission

When assessing co-investment offers and ***processes*** referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers and ***processes*** comply with the criteria set out in Annex IV.

Amendment

When assessing co-investment offers and ***agreements*** referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those offers and ***agreements*** comply with the criteria set out in Annex IV.

Or. en

Amendment 1033
Edouard Martin

Proposal for a directive
Article 74 – paragraph 1 – subparagraph 2

Text proposed by the Commission

When assessing co-investment ***offers*** and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those ***offers*** and processes comply with the criteria set out in Annex IV.

Amendment

When assessing co-investment ***terms*** and processes referred to in point (a) of the first subparagraph, national regulatory authorities shall ensure that those ***terms*** and processes comply with the criteria set out in Annex IV.

Or. en

Amendment 1034
Eva Kaili

Proposal for a directive
Article 74 – paragraph 1 – subparagraph 2

Text proposed by the Commission

When assessing ***co-investment offers and processes referred to in point (a) of the first subparagraph***, national regulatory authorities shall ensure that those offers and processes comply with the criteria set

Amendment

When assessing ***deployment models listed in subparagraphs (ii) and (iii) of point (a)***, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.

out in Annex IV.

Or. en

Amendment 1035

Anna Záborská, Ivan Štefanec

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 2

Text proposed by the Commission

When assessing *co-investment offers and processes referred to in point (a) of the first subparagraph*, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.

Amendment

When assessing *deployment models listed in subparagraphs (ii) and (iii) of point (a)*, national regulatory authorities shall ensure that those offers and processes comply with the criteria set out in Annex IV.

Or. en

Amendment 1036

Gunnar Hökmark, Henna Virkkunen, Bendt Bendtsen

Proposal for a directive

Article 74 – paragraph 1 – point 1 (new)

Text proposed by the Commission

Amendment

(1) In order to promote effective competition and the deployment of new network elements, and pro-competitive regulatory conditions, Member States shall, in consultation with BEREC, establish fair and reasonable rules for shared networks and commercial access agreements between operators and virtual service providers. Such rules and regulatory conditions shall serve to increase the level of network traffic, so as to facilitate return on investment, thereby promoting effective competition and development towards trans-European networks.

Or. en

Amendment 1037

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 74 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

In case the market analyses conducted by the national regulatory authority results in a finding that the co-investment offers and/or the commercial agreements do not favour sustainable competition, appropriate regulatory obligations on the operators designated as having significant market power on the relevant market shall be maintained or adapted by the national regulatory authority.

Or. en

Justification

Commercial agreements must not artificially lead to the removal of access obligations if they are necessary to enable and maintain sustainable competition.

Amendment 1038

Patrizia Toia

Proposal for a directive

Article 75 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Where the national regulatory authority concludes that the appropriate obligations imposed under Articles 67 to 72 have failed to achieve effective competition and that there are important and persisting competition problems and/or market failures identified in relation to the wholesale provision of certain access product markets, it may, as an exceptional measure, in accordance with the provisions of the second subparagraph of Article 66(3), impose an obligation on vertically integrated undertakings to place activities

Where the national regulatory authority concludes that the appropriate obligations imposed under Articles 67 to 72 have failed to achieve effective competition and that there are important and persisting competition problems and/or market failures identified in relation to the wholesale provision of certain access product markets, it may, as an exceptional measure, in accordance with the provisions of the second subparagraph of Article 66(3), impose an obligation on vertically integrated undertakings to place activities

related to the wholesale provision of relevant access products in an independently operating business entity.

related to the wholesale provision of relevant access products in an independently operating business entity ***or in a separate legal entity.***

Or. en

Amendment 1039

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 75 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where the national regulatory authority concludes that the appropriate obligations imposed under Articles 67 to 72 ***have failed*** to achieve effective competition and that there are important and persisting competition problems and/or market failures identified in relation to the wholesale provision of certain access product markets, it may, as an exceptional measure, in accordance with the provisions of the second subparagraph of Article 66(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of relevant access products in an independently operating business entity.

Amendment

Where the national regulatory authority concludes that the appropriate obligations imposed under Articles 67 to 72 ***are not sufficient*** to achieve effective competition and that there are important and persisting competition problems and/or market failures identified in relation to the wholesale provision of certain access product markets, it may, as an exceptional measure, in accordance with the provisions of the second subparagraph of Article 66(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of relevant access products in an independently operating business entity.

Or. en

Justification

Functional separation should be in the toolbox of the NRAs not only as a last resort remedy but as a measure aimed at ensuring effective competition.

Amendment 1040

Patrizia Toia

Proposal for a directive

Article 75 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

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

In the case of functional separation, that business entity shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes.

Or. en

Justification

National regulators should have the possibility, when justified by the national circumstances, to go further than legal separation and impose full divestiture of wholesale operations from retail operations.

Amendment 1041

Patrizia Toia

Proposal for a directive

Article 75 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Where the national regulatory authority concludes that even the imposition of a functional separation obligation has failed to achieve effective competition, the national regulatory authority may impose an obligation for legal separation. This obligation may encompass a prohibition that the legally distinct companies are controlled by the same ultimate owner(s) and that any of the companies may exercise a decisive influence by rights, contracts or other means, on the other.

Or. en

Amendment 1042

Patrizia Toia

Proposal for a directive

Article 75 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 1043

Evžen Tošenovský

Proposal for a directive

Article 76 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 65 of this Directive shall inform the national regulatory authority in advance and in a timely manner, in order to allow the national regulatory authority to assess the effect of the intended transaction, when they intend to transfer their local access network assets or a substantial part thereof 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.

Amendment

Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 65 of this Directive shall inform the national regulatory authority **three months** in advance and in a timely manner, in order to allow the national regulatory authority to assess the effect of the intended transaction, when they intend to transfer their local access network assets or a substantial part thereof 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.

Or. en

Amendment 1044

Patrizia Toia

Proposal for a directive

Article 76 – paragraph 2 – subparagraph 4

Text proposed by the Commission

On the basis of its assessment, the national

Amendment

On the basis of its assessment, the national

regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 23 and 32, ***applying, if appropriate, the provisions of Article 77.*** In its decision, the national regulatory authority may make the commitments binding, wholly or in part. By way of exception to Article 65(5), the national regulatory authority may make some or all commitments binding for the entire period for which they are offered.

regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 23 and 32. In its decision, the national regulatory authority may make the commitments binding, wholly or in part. By way of exception to Article 65(5), the national regulatory authority may make some or all commitments binding for the entire period for which they are offered.

Or. en

Amendment 1045
Evžen Tošenovský

Proposal for a directive
Article 77

Text proposed by the Commission

Amendment

Article 77

deleted

Vertically separate undertakings

1. A national regulatory authority that designates an undertaking which is absent from any retail markets for electronic communications services as having significant market power in one or several wholesale markets in accordance with Article 65 shall consider whether that undertaking has the following characteristics:

(a) all companies and business units within the undertaking, including all companies that are controlled but not necessarily wholly owned by the same ultimate owner(s), only have activities, current and planned for the future, in wholesale markets for electronic communications services and therefore do not have activities in any retail market for electronic communications services provided to end-users in the Union;

(b) the undertaking does not hold an exclusive agreement, or an agreement which de facto amounts to an exclusive

agreement, with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to private or commercial end-users.

2. If the national regulatory authority concludes that the conditions laid down in points (a) and (b) of paragraph 1 of this Article are fulfilled, it may only impose on that undertaking obligations pursuant to Articles 70 or 71.

3. The national regulatory authority shall review obligations imposed on the undertaking in accordance with this Article at any time if it concludes that the conditions laid down in points (a) and (b) of paragraph 1 of this Article are no longer met and shall apply Articles 65 to 72, as appropriate.

4. The national regulatory authority shall also review obligations imposed on the undertaking in accordance with this Article if on the basis of evidence of terms and conditions offered by the undertaking to its downstream customers, the authority concludes that competition problems have arisen to the detriment of end-users which require the imposition of one or more obligations provided in Articles 67, 68, 69 or 72, or the modification of the obligations imposed in accordance with paragraph 2.

5. The imposition of obligations and their review in accordance with this Article shall be implemented in accordance with the procedures referred to in Articles 23, 32 and 33.

Or. en

Amendment 1046

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 77 – paragraph 1 – point b

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Text proposed by the Commission

(b) the undertaking does not hold an exclusive agreement, or an agreement which de facto amounts to an exclusive agreement, with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to private or commercial end-users.

Amendment

(b) the undertaking does not hold an exclusive agreement, or an agreement which de ***jure or de*** facto amounts to an exclusive agreement, with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to private or commercial end-users, ***and/or limiting third party access to civil engineering and/or limiting third party access to, and use of specific network elements and associated facilities.***

Or. en

Justification

It is essential that wholesale only undertakings do not leverage on their monopoly position by limiting third party access. Open access requirements are therefore essential. In doing so they should be submitted to obligations of accounting separation and price control to ensure full transparency.

Amendment 1047
Kaja Kallas

Proposal for a directive
Article 77 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) the undertaking is not a separated undertaking as referred to in article 75 and 76 ;

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1048
Anne Sander, Françoise Grossetête

Proposal for a directive
PE602.952v01-00

Article 77 – paragraph 2

Text proposed by the Commission

2. If the national regulatory authority concludes that the conditions laid down in points (a) and (b) of paragraph 1 of this Article are fulfilled, it may only impose on that undertaking obligations pursuant to Articles **70 or 71**.

Amendment

2. If the national regulatory authority concludes that the conditions laid down in points (a) and (b) of paragraph 1 of this Article are fulfilled, it may only impose on that undertaking obligations pursuant to Articles **67, 70, 71 and 72**.

Or. en

Amendment 1049

Kaja Kallas

Proposal for a directive Article 77 – paragraph 2

Text proposed by the Commission

2. If the national regulatory authority concludes that the conditions laid down in points (a) and (b) of paragraph 1 of this Article are fulfilled, it may only impose on that undertaking obligations pursuant to Articles 70 or **71**.

Amendment

2. If the national regulatory authority concludes that the conditions laid down in points (a) and (b) of paragraph 1 of this Article are fulfilled, it may only impose on that undertaking obligations pursuant to Articles 70 or **72**.

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1050

Patrizia Toia

Proposal for a directive Article 77 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. The national regulatory authority shall deem that these conditions are fulfilled even if the undertaking offer physical connection to end-users or provide the conveyance of signals and

network elements for the realization or the development of a local physical infrastructure for crafts, businesses and professions.

Or. en

Amendment 1051
Patrizia Toia

Proposal for a directive
Article 77 – paragraph 4

Text proposed by the Commission

Amendment

4. *The national regulatory authority shall also review obligations imposed on the undertaking in accordance with this Article if on the basis of evidence of terms and conditions offered by the undertaking to its downstream customers, the authority concludes that competition problems have arisen to the detriment of end-users which require the imposition of one or more obligations provided in Articles 67, 68, 69 or 72, or the modification of the obligations imposed in accordance with paragraph 2.*

deleted

Or. en

Amendment 1052
José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive
Article 78 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

The national regulatory authority shall ensure that the decommissioning process includes a transparent timetable and conditions, including inter alia an appropriate period of notice and for transition, and establishes the availability of alternative comparable products providing access to network elements

The national regulatory authority shall ensure that the decommissioning process includes a transparent timetable and conditions, including inter alia an appropriate period of notice and for transition, and establishes the availability of alternative comparable products providing access to network elements

substituting the decommissioned infrastructure if necessary to safeguard competition and the rights of end-users.

substituting the decommissioned infrastructure ***in a timely manner*** if necessary to safeguard competition and the rights of end-users.

Or. en

Amendment 1053
Kaja Kallas

Proposal for a directive
Article 78 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The national regulatory authority shall ensure that the decommissioning process includes a transparent timetable and conditions, including inter alia an appropriate period of notice and for transition, and establishes the availability of ***alternative comparable*** products providing access to network elements substituting the decommissioned infrastructure if necessary to safeguard competition and the rights of end-users.

Amendment

The national regulatory authority shall ensure that the decommissioning process includes a transparent timetable and conditions, including inter alia ***a concrete deadline***, an appropriate period of notice and for transition, and establishes the availability of ***equivalent*** products providing access to network elements substituting the decommissioned infrastructure if necessary to safeguard competition and the rights of end-users.

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1054
José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive
Article 78 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) the access provider has demonstrably established the appropriate conditions for migration, including making available a comparable alternative access product enabling to reach the same end-

Amendment

(a) the access provider has demonstrably established the appropriate conditions for migration, including making available a comparable alternative access product ***in a timely manner*** enabling to

users, as was available using the legacy infrastructure; and

reach the same ***potential*** end-users, as was available using the legacy infrastructure; and

Or. en

Amendment 1055

Kaja Kallas

Proposal for a directive

Article 78 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) the access provider has demonstrably established the appropriate conditions for migration, including making available ***a comparable alternative*** access product enabling to reach the same end-users, as was available using the legacy infrastructure; and

(a) the access provider has demonstrably established the appropriate conditions for migration, including making available ***an equivalent*** access product enabling to reach the same end-users, as was available using the legacy infrastructure; and

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1056

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 79 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that all end-users in their territory have access at an affordable price, in the light of specific national conditions, to available ***functional*** internet access and voice communications services at the quality specified in their territory, including the underlying connection, at least at a fixed location.

1. Member States shall ensure that all end-users in their territory have access at an affordable price, in the light of specific national conditions, to available ***broadband*** internet access and voice communications services at the quality specified in their territory, including the underlying connection, at least at a fixed location.

Amendment 1057

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 79 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall define the functional internet access service referred to in paragraph 1 with a view to adequately reflect services used by the majority of end-users in their territory. To that end, the functional internet access service shall be capable of supporting the minimum set of services set out in Annex V.

deleted

Amendment 1058

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 79 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall define the functional internet access service referred to in paragraph 1 with a view to adequately reflect services used by the majority of end-users in their territory. To that end, the functional internet access service shall be capable of supporting the minimum set of services set out in Annex V.

2. Member States shall define the functional internet access service referred to in paragraph 1 with a view to adequately reflect services used by the majority of end-users in their territory. To that end, the functional internet access service shall be capable, *both in terms of speed and data volumes*, of supporting *at least* the minimum set of services set out in Annex V. *The functional internet access service shall comply with the obligations on open internet laid down in Regulation 2120/2015.*

Amendment 1059

Barbara Kappel, Lorenzo Fontana, Angelo Ciocca

Proposal for a directive

Article 81 – paragraph 1

Text proposed by the Commission

1. Where a Member State has duly demonstrated, account taken of the results of the geographical survey conducted in accordance with Article 22(1), that the availability at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service **cannot be** ensured under normal commercial circumstances or through other potential public policy tools, it may impose appropriate universal service obligations to meet all reasonable requests for accessing those services in its territory.

Amendment

1. Where a Member State has duly demonstrated, account taken of the results of the geographical survey conducted in accordance with Article 22(1), that the availability at a fixed location of functional internet access service as defined in accordance with Article 79(2) and of voice communications service **is not currently** ensured under normal commercial circumstances or through other potential public policy tools, it may impose appropriate universal service obligations to meet all reasonable requests for accessing those services in its territory.

Or. en

Amendment 1060

Barbara Kappel, Angelo Ciocca, Lorenzo Fontana

Proposal for a directive

Article 83 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that in providing facilities and services additional to those referred to in Article 79, those undertakings providing **the** services in accordance with Article 79, 81 and 82 establish terms and conditions in such a way that the end-user is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

Amendment

1. Member States shall ensure that in providing facilities and services additional to those referred to in Article 79, those undertakings providing **voice communications and internet access** services in accordance with Article 79, 81 and 82 establish terms and conditions in such a way that the end-user is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

Or. en

Amendment 1061

José Blanco López, Sergio Gutiérrez Prieto, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 85 – paragraph 1

Text proposed by the Commission

Where, on the basis of the net cost calculation referred to in Article 84, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States shall, upon request from the undertaking concerned, decide

Amendment

I. Where, on the basis of the net cost calculation referred to in Article 84, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States shall, upon request from the undertaking concerned, decide:

***a) to introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds; and/or
(b) to share the net cost of universal service obligations between providers of electronic communications networks and services and those undertakings providing information society services as defined in Directive 2000/31/EC and which account for a large broadband consumption.***

Or. en

Justification

Member States must continue having flexibility about the financing of the universal service obligation regime

Amendment 1062

José Blanco López, Sergio Gutiérrez Prieto, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 85 – paragraph 2

Text proposed by the Commission

to introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds. Only the net cost, as

Amendment

deleted

determined in accordance with Article 84, of the obligations laid down in Articles 79, 81 and 82 may be financed.

Or. en

Justification

Member States must continue having flexibility about the financing of the universal service obligation regime. Coherence with amendment to Article 85, paragraph 1

Amendment 1063

José Blanco López, Sergio Gutiérrez Prieto, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 85 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2. Where the net cost is shared under paragraph 1(b), Member States shall establish a sharing mechanism administered by the national regulatory authority or a body independent from the beneficiaries under the supervision of the national regulatory authority. Only the net cost, as determined in accordance with Article 84, of the obligations laid down in Articles 79, 81 and 82 may be financed.

Or. en

Justification

Member States must continue having flexibility about the financing of the universal service obligation regime. Coherence with amendment to Article 85, paragraph 1

Amendment 1064

José Blanco López, Sergio Gutiérrez Prieto, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 85 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

3. A sharing mechanism shall respect the principles of transparency, least market distortion, non-discrimination and proportionality, in accordance with the principles of Annex VII, Part B. Member States may choose not to require contributions from undertakings whose national turnover is less than a set limit.

Or. en

Justification

Member States must continue having flexibility about the financing of the universal service obligation regime. Coherence with amendment to Article 85, paragraph 1

Amendment 1065

José Blanco López, Sergio Gutiérrez Prieto, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 85 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

4. Any charges related to the sharing of the cost of universal service obligations shall be unbundled and identified separately for each undertaking. Such charges shall not be imposed or collected from undertakings that are not providing services in the territory of the Member State that has established the sharing mechanism.

Or. en

Justification

Member States must continue having flexibility about the financing of the universal service obligation regime. Coherence with amendment to Article 85, paragraph 1

Amendment 1066

Evžen Tošenovský

Proposal for a directive

Article 87 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Amendment

BEREC shall establish a central registry on the numbers with a right of extraterritorial use, to which national regulatory authorities shall transmit the relevant information.

deleted

Or. en

Amendment 1067

Kaja Kallas

Proposal for a directive

Article 88 – paragraph 6 – subparagraph 1

Text proposed by the Commission

Amendment

Where the right of use for numbers includes their extraterritorial use within the Union in accordance with Article 87(4), the national regulatory authority shall attach to the right of use specific conditions in order to ensure compliance with all the relevant national consumer protection rules and national laws related to the use of numbers applicable in the Member States where the numbers are used.

Where the right of use for numbers includes their extraterritorial use within the Union in accordance with Article 87(4), the national regulatory authority shall attach to the right of use specific conditions in order to ensure compliance with all the relevant national consumer protection rules and national laws related to the use of numbers applicable in the Member States where the numbers are used. ***Member states may not impose additional obligations to these rights of use thereafter.***

Or. en

Justification

The specific conditions for compliance in all relevant Member states being already attached to the rights of use, it should not be possible for Member states to add new requirements as it would create a barrier to the internal market. In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1068

Barbara Kappel, Angelo Ciocca, Lorenzo Fontana

Proposal for a directive

Article 91 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that, where technically and economically feasible, and except where a called end-user has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, national regulatory authorities take all necessary steps to ensure that end-users are able to:

Amendment

1. Member States shall ensure that, where technically and economically feasible, and except where a called end-user has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, national regulatory authorities take all necessary steps to ensure that end-users *of voice communications services* are able to:

Or. en

Amendment 1069
Morten Helveg Petersen

Proposal for a directive
Article 92 – paragraph 1

Text proposed by the Commission

Providers of electronic communications networks or services shall not apply any discriminatory requirements or conditions of access or use to end-users based on the end-user's nationality or place of residence unless such differences are objectively justified.

Amendment

Providers of electronic communications networks or services shall not apply any discriminatory requirements or conditions of access or use to end-users based on the end-user's nationality or place of residence unless such differences are objectively justified *and in compliance with the scope and interpretation of fundamental rights as provided for in Article 52 of the Charter*.

Or. en

Amendment 1070
José Blanco López, Sergio Gutiérrez Prieto, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive
Article 92 – paragraph 1

Text proposed by the Commission

Providers of electronic communications networks or services shall not apply any

Amendment

1. Providers of electronic communications networks or services shall not apply any

discriminatory requirements or conditions of access or use to end-users based on the end-user's nationality or place of residence unless such differences are objectively justified.

discriminatory requirements or conditions of access or use to end-users based on the end-user's nationality or place of residence unless such differences are objectively justified.

Or. en

Justification

In its proposal for a Telecoms Single Market, published on 11 September 2013, the Commission already proposed to regulate EU-intra calls and SMS originating in the country of mobile subscription and terminating in another Member State aiming at eliminating prohibitively surcharges. This provision reintroduces that proposal.

Amendment 1071

José Blanco López, Sergio Gutiérrez Prieto, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 92 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

2. Providers of electronic communications services to the public shall not apply tariffs for intra-Union communications terminating in another Member State which are higher, unless objectively justified:

a) as regards fixed communications, than tariffs for domestic long-distance communications;

b) as regards mobile communications, than the euro-tariffs for regulated voice, data and SMS roaming communications, respectively, established in Regulation (EU) No 2015/2120.

Or. en

Justification

In its proposal for a Telecoms Single Market, published on 11 September 2013, the Commission already proposed to regulate EU-intra calls and SMS originating in the country of mobile subscription and terminating in another Member State aiming at eliminating prohibitively surcharges. This provision reintroduces that proposal.

Amendment 1072

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Article 92 a (new)

Text proposed by the Commission

Amendment

Article 92 a

1. Providers of electronic communication services to the public shall not apply tariffs for intra-Union fixed and mobile communications services terminating in another Member State different from tariffs for services terminating in the same member state, unless the provider demonstrates the existence of direct costs that are objectively justified.

2. Six months after the entry into force of this Directive, BEREC shall provide guidelines on the recovery of such objectively justified direct costs pursuant to paragraph 1.

3. One year after the entry into force of this Directive and annually thereafter, the European Commission shall provide a report on the application of the obligations of paragraph 1, including an assessment of the evolution of intra-Union communication tariffs.

Or. en

Justification

This provision helps to build one pillar for a digital single market in telecoms and provides a simple and fair solution to expensive tariffs for international calls without having to regulate prices. Seeking to abolish any type of discriminatory practice, whether on access to services or prices for cross-border services, is very important for the creation of a true Digital Single Market for consumers. The prohibition of price differentiation based on the geographical origin and destination of a service is an adequate approach, and telecom providers should therefore never be allowed to have access or pricing policies based on these elements, unless unavoidable and significant additional costs need to be covered to offer the service. In these cases, the proposal foresees a wide exception where “objectively justified” additional costs are present. In that regard, the proposed Directive must include legal clarity as to what should be the general principles to determine exemptions to the non-discrimination rule and

mandate BEREK and NRAs to develop more detailed guidelines. Furthermore, the Directive should call on the Commission and NRAs to closely monitor on a case-by-case basis that service providers are respecting the criteria when their prices are discriminatory. Operators often denounce the amount of revenue they theoretically will stop receiving if they cannot overprice cross-border services. Yet it is of equal importance to understand that the disappearance of these expensive charges will increase the use of cross-border telecom services, generate more demand and therefore more revenue for operators.

Amendment 1073

Evžen Tošenovský

Proposal for a directive

Article 93 – title

Text proposed by the Commission

Amendment

Fundamental rights *safeguard*

Fundamental rights

Or. en

Amendment 1074

Evžen Tošenovský

Proposal for a directive

Article 93 – paragraph 1

Text proposed by the Commission

Amendment

1. National measures regarding end-users' access to, or use of, services and applications through electronic communications networks shall respect the *fundamental rights and freedoms, as guaranteed by the* Charter of Fundamental Rights of the Union and general principles of Union law.

1. National measures regarding end-users' access to, or use of, services and applications through electronic communications networks shall respect the Charter of Fundamental Rights of the Union and general principles of Union law.

Or. en

Amendment 1075

Evžen Tošenovský

Proposal for a directive

Article 93 – paragraph 2

2. Any of these measures regarding end-users' access to, or use of, services and applications through electronic communications networks liable to **restrict** those **fundamental** rights or freedoms may only be imposed if they are provided for by law and respect **the essence** of those rights or freedoms, are **appropriate**, proportionate and necessary, and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others in line with Article 52(1) of the Charter of Fundamental Rights of the European Union and with general principles of Union law, including **effective judicial protection and due process**.

Accordingly, these measures may only be taken with due respect for the principle of the presumption of innocence and the right to privacy. A prior, fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the Charter of **Fundamental Rights of the European Union. The right to effective and timely judicial review shall be guaranteed.**

2. Any of these measures regarding end-users' access to, or use of, services and applications through electronic communications networks liable to **limit the exercise of** those rights or freedoms may only be imposed if they are provided for by law and respect of those rights or freedoms **recognized by the Charter**, are proportionate and necessary, and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others in line with Article 52(1) of the Charter of Fundamental Rights of the European Union and with general principles of Union law, including **the right to an effective remedy and to a fair trial**. Accordingly, these measures may only be taken with due respect for the principle of the presumption of innocence and the right to privacy. A prior, fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the Charter.

Or. en

Amendment 1076

Morten Helveg Petersen

Proposal for a directive

Article 93 – paragraph 2 a (new)

2 a. By ...[date] in order to contribute to the consistent application of fundamental rights safeguard, BEREC shall, after consulting stakeholders and in close cooperation with the Commission and the European Union Agency for Fundamental Rights (FRA), issue

guidelines on common approaches to ensure that national measures regarding end-users' access to, or use of, services and applications through electronic communications networks respect the fundamental rights and freedoms, as guaranteed by the Charter and general principles of Union law

Or. en

Amendment 1077

András Gyürk

Proposal for a directive

Article 94 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall not maintain or introduce in their national law end-user protection provisions on the subject-matters covered by this Title and diverging from the provisions laid down in this Title, including more or less stringent provisions to ensure a different level of protection, unless otherwise provided for in this Title.

deleted

Or. en

Justification

We believe that the current approach allows Member States to adapt the EU framework to the specific national needs and technological evolution, defining solutions targeted to the specific commercial practices identified in national markets and setting reference benchmarks that help progressively improve sectoral end-user protection in the Union. Maximum harmonisation may result in reductions in end-user guarantees. The current legislation provides proper framework for the protection of end-users

Amendment 1078

José Blanco López, Sergio Gutiérrez Prieto, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 94 – paragraph 1

Text proposed by the Commission

Amendment

Member States shall ***not maintain or*** introduce in their national law end-user protection provisions ***on the subject-matters covered by this Title and diverging from*** the provisions laid down in this Title, ***including more or less stringent provisions to ensure a different*** level of protection, ***unless otherwise provided for in this Title.***

Member States shall ***under no circumstance*** introduce in their national law end-user protection provisions ***that undermine*** the provisions laid down in this Title ***as it constitutes the minimum*** level of end-user protection ***to be pursued in the Union.***

Or. en

Amendment 1079

Krišjānis Kariņš

Proposal for a directive

Article 95

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 1080

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz, Sergio Gutiérrez Prieto

Proposal for a directive

Article 95 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. Providers of publicly available electronic communications services other than number-independent interpersonal communications services shall incorporate the information mentioned in paragraphs 1, 2 and 4 as part of the contract itself.

Or. en

Amendment 1081

Evžen Tošenovský

Proposal for a directive

Article 95 – paragraph 5 – subparagraph 1 – introductory part

Text proposed by the Commission

By [entry into force + 12 months], **BEREC** shall issue a decision on a contract summary template, which identifies the main elements of the information requirements in accordance with paragraphs 1 and 2. Those main elements shall include at least complete information on:

Amendment

By [entry into force + 12 months], **the Commission** shall issue a decision on a contract summary template, which identifies the main elements of the information requirements in accordance with paragraphs 1 and 2. Those main elements shall include at least complete information on:

Or. en

Amendment 1082

Barbara Kappel, Angelo Ciocca, Lorenzo Fontana

Proposal for a directive

Article 95 – paragraph 6

Text proposed by the Commission

6. Providers of internet access services and providers of publicly available **number-based interpersonal** communications services shall offer end-users the facility to monitor and control the usage of each of those services which is billed on the basis of either time or volume consumption. This facility shall include access to timely information on the level of consumption of services included in a tariff plan.

Amendment

6. Providers of internet access services and providers of publicly available **voice** communications services shall offer end-users the facility to monitor and control the usage of each of those services which is billed on the basis of either time or volume consumption. This facility shall include access to timely information on the level of consumption of services included in a tariff plan.

Or. en

Amendment 1083

Barbara Kappel, Angelo Ciocca, Lorenzo Fontana

Proposal for a directive

Article 96 – paragraph 1

Text proposed by the Commission

Amendment

1. National regulatory authorities shall ensure that the information referred to in Annex VIII is published in a clear, comprehensive and easily accessible form by the undertakings providing publicly available *electronic communications services other than number-independent interpersonal communications services, or by the national regulatory authority itself. National regulatory authorities may specify additional requirements regarding the form in which such information is to be published.*

1. National regulatory authorities shall ensure that the information referred to in Annex VIII is published in a clear, comprehensive and easily accessible form by the undertakings providing publicly available *voice communications services or publicly available internet access services.*

Or. en

Amendment 1084

Barbara Kappel, Angelo Ciocca, Lorenzo Fontana

Proposal for a directive

Article 96 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

National regulatory authorities *shall* ensure that end-users have access free of charge to at least one independent comparison tool which enables them to compare and evaluate prices and tariffs, and the quality of service performance of different publicly available electronic communications services other than number-independent interpersonal communications services.

National regulatory authorities *might* ensure that end-users have access free of charge to at least one independent comparison tool which enables them to compare and evaluate prices and tariffs, and the quality of service performance of different publicly available electronic communications services other than number-independent interpersonal communications services.

Or. en

Amendment 1085

José Blanco López, Sergio Gutiérrez Prieto, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 98 – paragraph 3

3. End-users shall have the right to terminate their contract without incurring any costs upon notice of changes in the contractual conditions proposed by the provider of publicly available electronic communications services other than number-independent interpersonal communications services, unless the proposed changes are ***exclusively to the benefit of the end-user or they are*** strictly necessary to implement legislative or regulatory changes. Providers shall notify end-users, at least one month in advance, of any such change, and shall inform them at the same time of their right to terminate their contract without incurring any costs if they do not accept the new conditions. Member States shall ensure that notification is made in a clear and comprehensible manner on a durable medium and in a format chosen by the end-user at the time of concluding the contract.

3. End-users shall have the right to terminate their contract without incurring any costs upon notice of changes in the contractual conditions proposed by the provider of publicly available electronic communications services other than number-independent interpersonal communications services, unless the proposed changes are strictly necessary to implement legislative or regulatory changes. Providers shall notify end-users, at least one month in advance, of any such change, and shall inform them at the same time of their right to terminate their contract without incurring any costs if they do not accept the new conditions. Member States shall ensure that notification is made in a clear and comprehensible manner on a durable medium and in a format chosen by the end-user at the time of concluding the contract.

Or. en

Amendment 1086

José Blanco López, Sergio Gutiérrez Prieto, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 98 – paragraph 4 a (new)

4 a. Any significant discrepancy, continuous or regularly recurring, between the actual performance of the electronic communication service regarding the quality of service parameters and the performance indicated by the provider of the electronic communication service, where the relevant facts are established by a monitoring mechanism certified by the national regulatory authority, be deemed to constitute non-conformity of performance for the purposes of

triggering the remedies available to the consumer in accordance with Union and national law.

Or. en

Amendment 1087

José Blanco López, Sergio Gutiérrez Prieto, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Article 99 – paragraph 1 – subparagraph 1

Text proposed by the Commission

In case of switching between providers of **internet access** services, the providers concerned shall provide the end-user with adequate information before and during the switching process and ensure continuity of the service. The receiving provider shall ensure that the activation of the service shall occur on the date agreed with the end-user. The transferring provider shall continue to provide its services on the same terms until the services of the receiving provider are activated. Loss of service during the switching process shall not exceed one working day.

Amendment

In case of switching between providers of **electronic communications services, other than number-independent interpersonal communications** services, the providers concerned shall provide the end-user with adequate information before and during the switching process and ensure continuity of the service. The receiving provider shall ensure that the activation of the service shall occur on the date agreed with the end-user. The transferring provider shall continue to provide its services on the same terms until the services of the receiving provider are activated. Loss of service during the switching process shall not exceed one working day.

Or. en

Amendment 1088

Pervenche Berès, Edouard Martin

Proposal for a directive

Article 105 – paragraph 1

Text proposed by the Commission

In accordance with the provisions of Annex X, Member States shall ensure the interoperability of the consumer digital television equipment referred to therein.

Amendment

In accordance with the provisions of Annex X, Member States shall ensure the interoperability of the consumer **radio and** digital television equipment referred to therein.

Amendment 1089**Pervenche Berès, Edouard Martin****Proposal for a directive****Article 105 – paragraph 1***Text proposed by the Commission*

In accordance with the provisions of Annex X, Member States shall ensure the interoperability of the consumer digital television equipment referred to therein.

Amendment

In accordance with the provisions of Annex X, Member States shall ensure the interoperability of the consumer **radio and** digital television equipment referred to therein.

Amendment 1090**Pervenche Berès, Edouard Martin****Proposal for a directive****Article 106 – paragraph 1 – subparagraph 1***Text proposed by the Commission*

Member States may impose reasonable ‘must carry’ obligations, for the transmission of **specified** radio **and television** broadcast channels and related complementary services, particularly accessibility services to enable appropriate access for disabled end-users and data supporting connected TV services and electronic programme guides, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio **or television broadcast channels** to the public where a significant number of end-users of such networks use them **as their principal means** to receive radio **and television broadcast channels**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate

Amendment

Member States may impose reasonable ‘must carry’ obligations, for the transmission of radio broadcast channels, **audiovisual media services** and related complementary services, particularly accessibility services to enable appropriate access for disabled end-users and data supporting **and ensuring end-user access to** connected TV services and **to the services specified in** electronic programme guides, on undertakings under their jurisdiction providing electronic communications networks **and services** used for the distribution of radio **broadcast channels and audiovisual media services** to the public where a significant number of end-users of such networks **and services** use them to receive radio **broadcast channels and audiovisual media services**. Such obligations shall only be imposed where they are necessary to meet general

and transparent.

interest objectives as clearly defined by each Member State and shall be proportionate and transparent.

Or. fr

Amendment 1091

Miapetra Kumpula-Natri, Flavio Zanonato, Theresa Griffin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod

Proposal for a directive

Article 106 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States may impose reasonable 'must carry' obligations, for the transmission of specified radio and **television broadcast channels** and related complementary services, particularly accessibility services to enable appropriate access for disabled end-users and data supporting connected TV services and electronic programme guides, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **television broadcast channels** to the public where a significant number of end-users of such networks use them **as their principal means** to receive radio and **television broadcast channels**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.

Amendment

Member States may impose reasonable 'must carry' obligations, for the transmission of specified radio and **audiovisual media services** and related complementary services, particularly accessibility services to enable appropriate access for disabled end-users and data supporting **and enabling end-user access to** connected TV services and **to the specified services on** electronic programme guides, on undertakings under their jurisdiction providing electronic communications networks **and services** used for the distribution of radio or **audiovisual media services** to the public where a significant number of end-users of such networks **and services** use them to receive radio and **audiovisual media services**. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.

Or. en

Justification

The reference to “television broadcast channels” should be updated by replacing it with “audiovisual media services”, to ensure the provision more future-proof and technologically neutral.

Amendment 1092
Pervenche Berès, Edouard Martin

Proposal for a directive
Article 106 – paragraph 2

Text proposed by the Commission

2. Neither paragraph 1 of this Article nor Article 57(2) shall prejudice the ability of Member States to determine appropriate remuneration, if any, in respect of measures taken in accordance with this Article while ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks. Where remuneration is provided for, Member States shall ensure that it is applied in a proportionate and transparent manner.

Amendment

2. Neither paragraph 1 of this Article nor Article 57(2) shall prejudice the ability of Member States to determine appropriate remuneration, if any, **by means of a legal provision**, in respect of measures taken in accordance with this Article while ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks **and services**. Where remuneration is provided for, Member States shall ensure that it is applied in a proportionate and transparent manner.

Or. fr

Amendment 1093
Barbara Kappel, Angelo Ciocca, Lorenzo Fontana

Proposal for a directive
Article 107 – paragraph 1

Text proposed by the Commission

1. Without prejudice to Article 83(2), Member States shall ensure that national regulatory authorities are able to require all undertakings that provide internet access services and/or **publicly available number-based interpersonal** communications services to make available all or part of the additional facilities listed in Part B of Annex VI, subject to technical feasibility and economic viability, as well as all or part of the additional facilities listed in Part A of Annex VI.

Amendment

1. Without prejudice to Article 83(2), Member States shall ensure that national regulatory authorities are able to require all undertakings that provide internet access services and/or **voice** communications services to make available all or part of the additional facilities listed in Part B of Annex VI, subject to technical feasibility and economic viability, as well as all or part of the additional facilities listed in Part A of Annex VI.

Or. en

Proposal for a directive
Article 109

Text proposed by the Commission

Amendment

Article 109

deleted

Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
- 2. The delegation of power referred to in Articles 40, 60, 73, 102 and 108 shall be conferred on the Commission for an indeterminate period of time from... [date of entry into force of the basic legislative act or any other date set by the co-legislators].***
- 3. The delegation of power referred to in Articles 40, 60, 73, 102 and 108 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.***
- 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.***
- 5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.***
- 6. A delegated act adopted pursuant to Article(s) 40, 60, 73, 102, and 108 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of***

that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Or. en

Amendment 1095
Herbert Reul, Markus Pieper

Proposal for a directive
Article 114 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In this context it shall assess in particular whether the definition of 'very high capacity networks' reflects the most effective technology currently in use on the market in terms of down- and uplink bandwidth, resilience, error-related parameters, and latency and its variation. If significant improvements occur there, or if other performance features have proven relevant, the definition may be amended.

Or. de

Justification

The definition of 'very high capacity networks' is based on the state-of-the-art technology currently being used on the market. Regular review of the definition will ensure that expansion of the most effective networks always continues to be promoted in future.

Amendment 1096
Angelika Niebler, Herbert Reul, Markus Pieper

Proposal for a directive
Article 114 – paragraph 3

Text proposed by the Commission

Amendment

3. This review shall be undertaken in the light of social, economic and technological developments, taking into account, inter alia, mobility and data rates in the light of the prevailing technologies used by the majority of end-users. The Commission shall submit a report to the European Parliament and the Council regarding the outcome of the review.

3. This review shall be undertaken in the light of social, economic and technological developments, taking into account, inter alia, mobility and data rates in the light of the prevailing technologies used by the majority of end-users. ***In the context of this review, the definition of 'very high capacity network' shall likewise be assessed, and it shall be reviewed whether the definition still meets current requirements on the basis of technological developments and changing conditions on the market.*** The Commission shall submit a report to the European Parliament and the Council regarding the outcome of the review.

Or. de

Justification

The existing communication network using fibre optic components currently yields the best available network performance in relation to the relevant performance parameters. However, technologies continue to develop, and new market conditions arise in the individual Member States. It should therefore be possible to change the existing definition in future.

Amendment 1097
Morten Helveg Petersen

Proposal for a directive
Article 114 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. The Commission shall periodically review the application of the fundamental rights safeguard referred to in Article 93. Such review shall be carried out every five year.

Or. en

Amendment 1098
Barbara Kappel, Angelo Ciocca, Lorenzo Fontana

Proposal for a directive
Annex I – paragraph 1

Text proposed by the Commission

Amendment

The conditions listed in this Annex provide the maximum list of conditions which may be attached to general authorisations for electronic communications networks and services, except number-independent interpersonal communications services, (Part A), electronic communications networks (Part B), **electronic communications services, except number-independent interpersonal communications services**, (Part C), rights to use radio frequencies (Part D) and rights to use numbers (Part E)

The conditions listed in this Annex provide the maximum list of conditions which may be attached to general authorisations for electronic communications networks and services, except number-independent interpersonal communications services (Part A), electronic communications networks (Part B), **voice communications services and internet access services** (Part C), rights to use radio frequencies (Part D) and rights to use numbers (Part E).

Or. en

Amendment 1099

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Annex I – part A – point 4

Text proposed by the Commission

Amendment

4. Enabling of legal interception by competent national authorities in conformity with Directive 2002/58/EC and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁵⁴.

deleted

⁵⁴ OJ L 281, 23.11.1995, p. 31.

Or. en

Amendment 1100

Barbara Kappel, Angelo Ciocca, Lorenzo Fontana

Proposal for a directive
Annex I – part A – point 4

Text proposed by the Commission

4. Enabling of legal interception by competent national authorities in conformity with Directive 2002/58/EC and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁵⁴.

Amendment

4. Enabling of legal interception by competent national authorities ***where the provider is established or operates an electronic communications network and*** in conformity with Directive 2002/58/EC and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ***and Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.***

⁵⁴ OJ L 281, 23.11.1995, p. 31.

Or. en

Amendment 1101

Miapetra Kumpula-Natri, Edouard Martin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod

Proposal for a directive
Annex I – part A – point 7

Text proposed by the Commission

7. Access obligations other than those provided for in Article 13 of this Directive applying to undertakings providing electronic communications networks or services.

Amendment

7. Access obligations other than those provided for in Article 13 of this Directive applying to undertakings providing electronic communications networks or services, ***including, for the avoidance of doubt, under Article 59(2)***

Or. en

Justification

To link with Article 59(2) on symmetrical obligation.

Amendment 1102
Edouard Martin

Proposal for a directive
Annex I – part B – point 6 a (new)

Text proposed by the Commission

Amendment

6 a. Conditions of a re-assessment of rights of use when their duration goes beyond the minimum defined in this Directive.

Or. en

Amendment 1103
Miapetra Kumpula-Natri, Theresa Griffin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod

Proposal for a directive
Annex I – part D – point 1

Text proposed by the Commission

Amendment

1. Obligation to provide a service or to use a type of technology within the limits of Article 49 of this Directive ***including***, where appropriate, ***coverage and*** quality of service requirements.

1. Obligation to provide a service or to use a type of technology, within the limits of Article 49 of this Directive, ***to cover close to 100 percent of European citizens and***, where appropriate, quality of service requirements.

Or. en

Amendment 1104
Eva Kaili

Proposal for a directive
Annex I – part D – point 1

Text proposed by the Commission

Amendment

1. Obligation to provide a service or to use a type of technology within the limits of Article 49 of this Directive ***including***, where appropriate, ***coverage and*** quality of service requirements.

1. Obligation to provide a service or to use a type of technology, within the limits of Article 49 of this Directive, ***to cover close to 100 percent of European citizens and***, where appropriate, quality of service requirements.

Amendment 1105

Pervenche Berès, Edouard Martin

Proposal for a directive

Annex II – part 2 – point b

Text proposed by the Commission

(b) Access to electronic programme guides (EPGs).

Amendment

(b) Access to electronic programme guides (EPGs), ***including for information enabling end-user access to connected television services.***

Or. fr

Amendment 1106

Miapetra Kumpula-Natri, Theresa Griffin, Zigmantas Balčytis, Victor Negrescu, Carlos Zorrinho, Dan Nica, Jeppe Kofod

Proposal for a directive

Annex II – part 2 – point b

Text proposed by the Commission

(b) Access to electronic programme guides (EPGs).

Amendment

(b) Access to electronic programme guides (EPGs), ***including for data supporting and enabling end-user access to connected TV services***

Or. en

Justification

Including "data supporting and enabling end-user access to connected TV services" in Annex II Part II (b) renders the conditions under which access must be granted technology neutral and future-proof. This way NRAs can impose access obligations to address practices hampering competition, to the detriment of European consumers (data supporting connected TV services may include audiovisual media services, radio and audio services, but also interactive services, such as applications, games and voting, clips, text, images and graphics).

Amendment 1107

Pervenche Berès

Proposal for a directive

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Annex II – part 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) (c) Access to caching functions.

Or. fr

Amendment 1108

Miapetra Kumpula-Natri, Jeppe Kofod, Dan Nica, Carlos Zorrinho, Victor Negrescu, Zigmantas Balčytis

Proposal for a directive

Annex II – part 2 a (new)

Text proposed by the Commission

Amendment

(c) Access to caching facilities.

Or. en

Justification

"Caching facilities" play an increasingly important role in the distribution of on-demand audiovisual services. We should assess this development and allow NRAs to impose access obligations if necessary.

Amendment 1109

Dan Nica, Peter Kouroumbashev, Miapetra Kumpula-Natri

Proposal for a directive

Annex III

Text proposed by the Commission

Amendment

***Criteria for the determination of
wholesale call termination rates***

deleted

***Criteria and parameters for the
determination of rates for wholesale call
termination on fixed and mobile markets,
referred to in Article 73 (4):***

***(a) the relevant incremental costs of the
wholesale voice call termination service
shall be determined by the difference
between the total long-run costs of an
operator providing its full range of
services and the total long-run costs of***

that operator not providing a wholesale voice call termination service to third parties;

(b) only those traffic related costs which would be avoided in the absence of a wholesale voice call termination service being provided shall be allocated to the relevant termination increment;

(c) costs related to additional network capacity shall be included only to the extent that they are driven by the need to increase capacity for the purpose of carrying additional wholesale voice call termination traffic;

(d) radio spectrum fees shall be excluded from the mobile termination increment;

(e) only those wholesale commercial costs shall be included which are directly related to the provision of the wholesale voice call termination service to third parties;

(f) all fixed network operators shall be deemed to provide voice call termination services at the same unit costs as the efficient operator, regardless of their size;

(g) for mobile network operators, the minimum efficient scale shall be set at a market share not below 20%;

(h) the relevant approach for asset depreciation shall be economic depreciation; and

(i) the technology choice of the modelled networks shall be forward looking, based on an IP core network, taking into account the various technologies likely to be used over the period of validity of the maximum rate. In the case of fixed networks, calls shall be considered to be exclusively packet switched.

Or. en

Amendment 1110

Miapetra Kumpula-Natri, Dan Nica, Jeppe Kofod, Carlos Zorrinho, Victor Negrescu, Zigmantas Balčytis

Proposal for a directive
Annex IV

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 1111
Kaja Kallas

Proposal for a directive
Annex IV – subheading 1

Text proposed by the Commission

Amendment

CRITERIA FOR ASSESSING CO-
INVESTMENT **OFFERS**

CRITERIA FOR ASSESSING CO-
INVESTMENT **TERMS**

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1112
Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive
Annex IV – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

When assessing a co-investment offer pursuant to Article 74 (1), the national regulatory authority shall verify whether the following criteria have been met:

When assessing a co-investment offer pursuant to Article 74 (1), the national regulatory authority shall verify whether the following criteria have been met ***or there is a reasonable expectation that they will be met:***

Or. de

Amendment 1113
Anna Záborská, Ivan Štefanec

Proposal for a directive
Annex IV – paragraph 1 – introductory part

Text proposed by the Commission

When assessing *a* co-investment *offer* pursuant to Article 74 (1), the national regulatory authority shall verify whether the following criteria have been met:

Amendment

When assessing *offers for* co-investment *or wholesale access* pursuant to Article 74 (1), the national regulatory authority shall verify whether the following criteria have been met:

Or. en

Amendment 1114
Kaja Kallas

Proposal for a directive
Annex IV – paragraph 1 – introductory part

Text proposed by the Commission

When assessing *a* co-investment *offer* pursuant to Article 74 (1), the national regulatory authority shall verify whether the following criteria have been met:

Amendment

When assessing co-investment *terms* pursuant to Article 74 (1), the national regulatory authority shall verify whether the following criteria have been met:

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1115
Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive
Annex IV – paragraph 1 – point a

Text proposed by the Commission

(a) *The co-investment offer shall be open to any undertaking over the lifetime of the network built under a co-investment offer on a non-discriminatory*

Amendment

(a) *At least three independent networks exist on the relevant market;*

basis. The SMP operator may include in the offer reasonable conditions regarding the financial capacity of any undertaking, so that for instance potential co-investors need to demonstrate their ability to deliver phased payments on the basis of which the deployment is planned, the acceptance of a strategic plan on the basis of which medium-term deployment plans are prepared, etc.

Or. de

Amendment 1116

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Annex IV – paragraph 1 – point b – introductory part

Text proposed by the Commission

(b) The co-investment offer shall be transparent:

Amendment

(b) The co-investment offer shall be *fair, reasonable, non-discriminatory and* transparent:

Or. en

Amendment 1117

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Annex IV – paragraph 1 – point b – introductory part

Text proposed by the Commission

(b) The co-investment *offer shall be transparent:*

Amendment

(b) The co-investment *project does not discriminate against any participant;*

Or. de

Amendment 1118

Kaja Kallas

Proposal for a directive
Annex IV – paragraph 1 – point b – introductory part

Text proposed by the Commission

Amendment

(b) The co-investment ***offer*** shall be transparent:

(b) The co-investment ***terms*** shall be transparent:

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1119
Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive
Annex IV – paragraph 1 – point b – indent 1

Text proposed by the Commission

Amendment

- ***the offer is available and easily identified on the website of the SMP operator;***

deleted

Or. de

Amendment 1120
Kaja Kallas

Proposal for a directive
Annex IV – paragraph 1 – point b – indent 1

Text proposed by the Commission

Amendment

- the ***offer is*** available and easily identified on the website of the SMP operator;

- the ***terms are*** available and easily identified on the website of the SMP operator;

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1121

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Annex IV – paragraph 1 – point b – indent 2

Text proposed by the Commission

Amendment

- *full detailed terms must be made available without undue delay to any potential bidder that has expressed an interest, including the legal form of the co-investment agreement and - when relevant - the heads of term of the governance rules of the co-investment vehicle; and* *deleted*

Or. de

Amendment 1122

Anna Záborská, Ivan Štefanec

Proposal for a directive

Annex IV – paragraph 1 – point b – indent 2

Text proposed by the Commission

Amendment

- full detailed terms must be made available without undue delay to any potential bidder that has expressed an interest, including the legal form of the co-investment agreement and - when relevant - the heads of term of the governance rules of the co-investment vehicle; and

- full detailed terms must be made available without undue delay to any potential bidder that has expressed an interest, including the legal form of the co-investment *or wholesale access* agreement and - when relevant - the heads of term of the governance rules of the co-investment vehicle; and

Or. en

Amendment 1123

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Annex IV – paragraph 1 – point b – indent 3

- *The process, like the road map for the establishment and development of the co-investment project must be set in advance, it must clearly explained in writing to any potential co-investor, and all significant milestones be clearly communicated to all undertakings without any discrimination.*

deleted

Or. de

Amendment 1124

Anna Záborská, Ivan Štefanec

Proposal for a directive

Annex IV – paragraph 1 – point b – indent 3

- The process, like the road map for the *establishment and development* of the *co-investment project* must be set in advance, it must clearly explained in writing to any potential co-investor, and all significant milestones be clearly communicated to all undertakings without any discrimination.

- The process, like the road map for the *deployment models pursuant to subparagraphs (ii) and (iii) of Article 74 (1) (a)* of the *new network elements* must be set in advance, it must clearly explained in writing to any potential co-investor *and access seeker*, and all significant milestones be clearly communicated to all undertakings without any discrimination.

Or. en

Amendment 1125

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Annex IV – paragraph 1 – point c – introductory part

(c) *The co-investment offer shall include terms to potential co-investors which favour sustainable competition in the long term, in particular:*

(c) *No supplier with substantial market power on the relevant market may hold a share of more than 50% of the retail market in the case of networks established by co-investment projects.*

Amendment 1126

Anna Záborská, Ivan Štefanec

Proposal for a directive

Annex IV – paragraph 1 – point c – introductory part

Text proposed by the Commission

(c) The ***co-investment*** offer shall include terms to potential co-investors which favour sustainable competition in the long term, in particular:

Amendment

(c) The offer shall include terms to potential co-investors ***and access seekers*** which favour sustainable competition in the long term, in particular:

Or. en

Amendment 1127

Kaja Kallas

Proposal for a directive

Annex IV – paragraph 1 – point c – introductory part

Text proposed by the Commission

(c) The co-investment ***offer*** shall include terms to potential co-investors which favour sustainable competition in the long term, in particular:

Amendment

(c) The co-investment ***terms*** shall include terms to potential co-investors which favour sustainable competition in the long term, in particular:

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1128

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Annex IV – paragraph 1 – point c – indent 1

Text proposed by the Commission

Amendment

- *All undertakings have to be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of the protection awarded to the co-investors by those rights both during the building phase and during the exploitation phase, for example by granting indefeasible rights of use (IRUs) for the expected lifetime of the co-invested network and in terms of the conditions for joining and potentially terminating the co-investment agreement. Non-discriminatory terms in this context do not entail that all potential co-investors must be offered exactly the same terms, including financial terms, but that all variations of the terms offered must be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as the number of end user lines committed for.*

deleted

Or. de

Amendment 1129

Anna Záborská, Ivan Štefanec

Proposal for a directive

Annex IV – paragraph 1 – point c – indent 1

Text proposed by the Commission

- All undertakings have to be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of the protection awarded to the **co-investors** by those rights both during the building phase and during the exploitation phase, for example by granting indefeasible rights of use (IRUs) for the expected lifetime of the **co-invested** network and in terms of the

Amendment

- All undertakings have to be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment **or wholesale access** agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of the protection awarded to the **coinvestors and access seekers** by those rights both during the building phase and during the exploitation phase, for example by granting indefeasible rights of use (IRUs) for the

conditions for joining and potentially terminating the co-investment agreement. Non-discriminatory terms in this context do not entail that all potential **co-investors** must be offered exactly the same terms, including financial terms, but that all variations of the terms offered must be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as **the number** of end user lines committed for.

expected lifetime of the **newly deployed** network **elements** and in terms of the conditions for joining and potentially terminating the co-investment **or wholesale access** agreement. **Fair, reasonable and non-discriminatory terms shall ensure cost recovery and take into account the risks associated to the investments by the operator.** Non-discriminatory terms in this context do not entail that all potential **coinvestors or access seekers** must be offered exactly the same terms, including financial terms, but that all variations of the terms offered must be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as **thenumber** of end user lines committed for.

Or. en

Amendment 1130

Michel Reimon

on behalf of the Verts/ALE Group

Julia Reda, Cornelia Ernst

Proposal for a directive

Annex IV – paragraph 1 – point c – indent 1

Text proposed by the Commission

- All undertakings have to be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of the protection awarded to the co-investors by those rights both during the building phase and during the exploitation phase, for example by granting indefeasible rights of use (IRUs) for the expected lifetime of the co-invested network and in terms of the conditions for joining and potentially terminating the co-investment agreement. Non-discriminatory terms in this context do not entail that all potential co-investors must be offered exactly the same terms,

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Amendment

- All undertakings have to be offered fair, reasonable and non-discriminatory terms and conditions for participation in the co-investment agreement relative to the time they join, including in terms of financial consideration required for the acquisition of specific rights, in terms of **access to individual lines, in terms of** the protection awarded to the co-investors by those rights both during the building phase and during the exploitation phase, for example by granting indefeasible rights of use (IRUs) for the expected lifetime of the co-invested network and in terms of the conditions for joining and potentially terminating the co-investment agreement. Non-discriminatory terms in this context do not entail that all potential co-investors

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including financial terms, but that all variations of the terms offered must be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as the number of end user lines committed for.

must be offered exactly the same terms, including financial terms, but that all variations of the terms offered must be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as the number of end user lines committed for.

Or. en

Justification

Current provisions for co-investment practices do not allow non-profit or local ISPs to participate in the investments, restricting this opportunity only to larger and incumbent actors. Although Community Networks (CN) and local actors have proven successful in connecting underprivileged communities both in urban and rural areas, it would be only normal to consider them equal members of the telecoms ecosystem, thus giving them fair and equal access to co-investment opportunities.

Amendment 1131

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Annex IV – paragraph 1 – point c – indent 2

Text proposed by the Commission

Amendment

- *The offer must allow flexibility in terms of the value and timing of the commitment provided by each co-investor, for example by means of an agreed and potentially increasing percentage of the total end user lines in a given area, to which co-investors have the possibility to commit gradually and which shall be set at a unit level enabling smaller co-investors to gradually increase their participation while ensuring adequate levels of initial commitment. The determination of the financial consideration to be provided by each co-investor needs to reflect the fact that early investors accept greater risks and engage capital sooner.* *deleted*

Or. de

Amendment 1132
Anna Záborská, Ivan Štefanec

Proposal for a directive
Annex IV – paragraph 1 – point c – indent 2

Text proposed by the Commission

- The offer must allow flexibility in terms of the value and timing of the commitment provided by each co-investor, for example by means of an agreed and potentially increasing percentage of the total end user lines in a given area, to which co-investors have the possibility to commit gradually ***and which shall be set at a unit level enabling smaller co-investors to gradually increase their participation*** while ensuring adequate levels of initial commitment. The determination of the financial consideration to be provided by each co-investor needs to reflect the fact that early investors accept greater risks and engage capital sooner.

Amendment

- – The offer must allow flexibility in terms of the value and timing of the commitment provided by each co-investor ***or wholesale access provider***, for example by means of an agreed and potentially increasing percentage of the total end user lines in a given area, to which co-investors ***or access seekers*** have the possibility to commit gradually while ensuring adequate levels of initial commitment. The determination of the financial consideration to be provided by each co-investor ***or access seeker*** needs to reflect the fact that early investors accept greater risks and engage capital sooner.

Or. en

Amendment 1133
Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive
Annex IV – paragraph 1 – point c – indent 3

Text proposed by the Commission

- ***A premium increasing over time has to be considered as justified for commitments made at later stages and for new co-investors entering the co-investment after the commencement of the project, to reflect diminishing risks and to counteract any incentive to withhold capital in the earlier stages.***

Amendment

deleted

Or. de

Amendment 1134

Anna Záborská, Ivan Štefanec

Proposal for a directive

Annex IV – paragraph 1 – point c – indent 3

Text proposed by the Commission

- A premium increasing over time has to be considered as justified for commitments made at later stages and for new co-investors ***entering the co-investment*** after the commencement of the project, to reflect diminishing risks and to counteract any incentive to withhold capital in the earlier stages.

Amendment

- A premium increasing over time has to be considered as justified for commitments made at later stages and for new co-investors ***or access seekers entering*** after the commencement of the project, to reflect diminishing risks and to counteract any incentive to withhold capital in the earlier stages.

Or. en

Amendment 1135

Anna Záborská, Ivan Štefanec

Proposal for a directive

Annex IV – paragraph 1 – point c – indent 3 a (new)

Text proposed by the Commission

Amendment

- ***Terms and conditions reflecting utilization risks stemming from e.g. low take-up rates compared to overall coverage have to be considered as justified.***

Or. en

Amendment 1136

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Annex IV – paragraph 1 – point c – indent 4

Text proposed by the Commission

Amendment

- ***The co-investment agreement has to allow the assignment of acquired rights by co-investors to other co-investors, or to third parties willing to enter into the co-investment agreement subject to the*** ***deleted***

transferee undertaking being obliged to fulfil all original obligations of the transferor under the co-investment agreement.

Or. de

Amendment 1137

Anna Záborská, Ivan Štefanec

Proposal for a directive

Annex IV – paragraph 1 – point c – indent 4

Text proposed by the Commission

- The co-investment ***agreement has*** to allow the assignment of acquired rights ***by co-investors*** to other co-investors, or to third parties willing to enter into the co-investment agreement subject to the transferee undertaking being obliged to fulfil all original obligations of the transferor under the co-investment agreement.

Amendment

- – The co-investment ***or wholesale access agreements have*** to allow the assignment of acquired rights to other co-investors, ***access seekers*** or to third parties willing to enter into the co-investment ***or wholesale access*** agreement subject to the transferee undertaking being obliged to fulfil all original obligations of the transferor under the co-investment ***or wholesale access*** agreement.

Or. en

Amendment 1138

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Annex IV – paragraph 1 – point c – indent 5

Text proposed by the Commission

- ***Co-investors have to grant each other reciprocal rights on fair and reasonable terms and conditions to access the co-invested infrastructure for the purposes of providing services downstream, including to end-users, according to transparent conditions which have to be made transparent in the co-investment offer and subsequent agreement, in particular where co-investors are individually and separately***

deleted

Amendment

responsible for the deployment of specific parts of the network. If a co-investment vehicle is created, it has to provide access to the network to all co-investors, whether directly or indirectly, on an equivalence of inputs basis and according to fair and reasonable terms and conditions, including financial conditions that reflect the different levels of risk accepted by the individual co-investors.

Or. de

Amendment 1139

Anna Záborská, Ivan Štefanec

Proposal for a directive

Annex IV – paragraph 1 – point c – indent 5

Text proposed by the Commission

- Co-investors have to grant each other reciprocal rights on fair and reasonable terms and conditions to access the co-invested infrastructure for the purposes of providing services downstream, including to end-users, according to transparent conditions which have to be made transparent in the co-investment offer and subsequent agreement, in particular where co-investors are individually and separately responsible for the deployment of specific parts of the network. If a co-investment vehicle is created, it has to provide access to the network to all co-investors, whether directly or indirectly, on an equivalence of *inputs* basis and according to fair and reasonable terms and conditions, including financial conditions that reflect the different levels of risk accepted by the individual co-investors.

Amendment

- Co-investors have to grant each other reciprocal rights on fair and reasonable terms and conditions to access the co-invested infrastructure for the purposes of providing services downstream, including to end-users, according to transparent conditions which have to be made transparent in the co-investment offer and subsequent agreement, in particular where co-investors are individually and separately responsible for the deployment of specific parts of the network. If a co-investment vehicle is created, it has to provide access to the network to all co-investors, whether directly or indirectly, on an equivalence of *output* basis and according to fair and reasonable terms and conditions, including financial conditions that reflect the different levels of risk accepted by the individual co-investors.

Or. en

Amendment 1140

Anna Záborská, Ivan Štefanec

Proposal for a directive
Annex IV – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) *The co-investment offer shall ensure a sustainable investment likely to meet future needs, by deploying new network elements that contribute significantly to the deployment of very high capacity networks.*

deleted

Or. en

Amendment 1141
Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive
Annex IV – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) The co-investment *offer shall ensure a sustainable investment likely to meet future needs, by deploying new network elements that contribute significantly to the deployment of very high capacity networks.*

(d) The co-investment *project must not have the aim of bringing about, or result in, any restriction of competition between participants or between participants and other suppliers on the same relevant market. Agreements or structures which would be classified as doing so would for example entail market sharing, exchanges of information, price agreements or agreements concerning technological innovations.*

Or. de

Amendment 1142
Kaja Kallas

Proposal for a directive
Annex IV – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) The co-investment *offer* shall ensure a sustainable investment likely to

(d) The co-investment *terms* shall ensure a sustainable investment likely to

meet future needs, by deploying new network elements that contribute significantly to the deployment of very high capacity networks.

meet future needs, by deploying new network elements that contribute significantly to the deployment of very high capacity networks.

Or. en

Justification

In accordance with rule 104 of the rules of procedure, this amendment is necessary for pressing reasons related to the internal logic of the text

Amendment 1143

Werner Langen, Sabine Verheyen, Norbert Lins

Proposal for a directive

Annex IV – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) The co-investment project must neither directly nor indirectly produce foreclosure effects which would prevent entry to the relevant market.

Or. de

Amendment 1144

Pervenche Berès, Edouard Martin

Proposal for a directive

Annex V – point 11 a (new)

Text proposed by the Commission

Amendment

(11a) (12) audiovisual media services

Or. fr

Amendment 1145

Miapetra Kumpula-Natri, Theresa Griffin, Dan Nica, Jeppe Kofod, Carlos Zorrinho, Victor Negrescu, Zigmantas Balčytis

Proposal for a directive

Annex V – point 11 a (new)

Text proposed by the Commission

Amendment

(11 a) audiovisual media services

Or. en

Justification

If the we retain the approach using a list to define the services which can be supported by functional internet access services, then audiovisual media services should be added to this list. Universal access to broadband networks plays a vital role for public service media services to serve inclusive digital society in an Internet era.

Amendment 1146

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Annex V – point 11 a (new)

Text proposed by the Commission

Amendment

(11 a) e-Health services

Or. en

Amendment 1147

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Annex VII – subheading 1

Text proposed by the Commission

Amendment

CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS IN ACCORDANCE WITH ARTICLES 84 AND 85

CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS **AND ESTABLISHING ANY RECOVERY OR SHARING MECHANISM** IN ACCORDANCE WITH ARTICLES 84 AND 85

Or. en

Justification

Member States must continue having flexibility about the financing of the universal service obligation regime. Coherence with amendment to Article 85, paragraph 1

Amendment 1148

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Annex VII – subheading 1 a (new)

Text proposed by the Commission

Amendment

**PART A: CALCULATION OF NET
COST**

Or. en

Justification

Member States must continue having flexibility about the financing of the universal service obligation regime. Coherence with amendment to Article 85, paragraph 1

Amendment 1149

José Blanco López, Inmaculada Rodríguez-Piñero Fernández, Soledad Cabezón Ruiz

Proposal for a directive

Annex VII – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

**PART B: RECOVERY OF ANY NET
COSTS OF UNIVERSAL SERVICE
OBLIGATIONS**

The recovery or financing of any net costs of universal service obligations requires designated undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions. Because such a compensation involves financial transfers, Member States are to ensure that these are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result in the least distortion to competition and to user demand.

In accordance with Article 85(3), a sharing mechanism based on a fund should use a transparent and neutral means for collecting contributions that avoids the danger of a double imposition

of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings which are assessed as liable to contribute to the net cost of universal service obligations in the Member State and is to oversee the transfer of sums due and/or administrative payments to the undertakings entitled to receive payments from the fund.

Or. en

Justification

Member States must continue having flexibility about the financing of the universal service obligation regime. Coherence with amendment to Article 85, paragraph 1

Amendment 1150
Pervenche Berès, Edouard Martin

Proposal for a directive
Annex X – subheading1

Text proposed by the Commission

Amendment

INTEROPERABILITY OF DIGITAL
CONSUMER EQUIPMENT REFERRED
TO IN ARTICLE 105

(Does not affect the English version.)

Or. fr

Amendment 1151
Pervenche Berès, Edouard Martin

Proposal for a directive
Annex X – part 2 a (new)

Text proposed by the Commission

Amendment

2a. Radio reception interoperability

Or. fr

Amendment 1152
Pervenche Berès

Proposal for a directive
Annex X – part 2 b (new)

Text proposed by the Commission

Amendment

2b. Any radio equipment placed on the market for sale or rent or made available in the Union must be able to receive digital and analog radio services in accordance with standards adopted by a recognised European standardisation organisation. Where portable equipment sold in the Union contains an analog and/or digital receiver, that receiver must be activated.

Or. fr