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*****I** **REPORT**

on the proposal for a directive of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities
(COM(2000) 384 – C5-0433/2000 – 2000/0186(COD))

Committee on Industry, External Trade, Research and Energy

Rapporteur: Renato Brunetta

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

By letter of 25 August 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 95 of the EC Treaty, the proposal for a directive of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities (COM(2000) 384 - 2000/0186 (COD)).

At the sitting of 8 September 2000 the President of Parliament announced that she had referred this proposal to the Committee on Industry, External Trade, Research and Energy as the committee responsible and the Committee on Budgets, the Committee on Legal Affairs and the Internal Market, the Committee on the Environment, Public Health and Consumer Policy and the Committee on Culture, Youth, Education, the Media and Sport for their opinions (C5-0433/2000).

The Committee on Industry, External Trade, Research and Energy had appointed Renato Brunetta rapporteur at its meeting of 22 June 2000.

It considered the Commission proposal and draft report at its meetings of 13 September 2000, 8, 24 and 30 January 2001 and 13 February 2001.

At the last meeting it adopted the draft legislative resolution by 47 votes to 1, with 2 abstentions.

Before the beginning of the vote, Mr Christian Foldberg Rovsing announced that he had interests in this field and consequently would not take part in it.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Nuala Ahern and Peter Michael Mombaur, vice-chairmen; Renato Brunetta, rapporteur and vice-chairman; Konstantinos Alyssandrakis, Ward Beysen (for Willy C.E.H. De Clercq), Guido Bodrato, Felipe Camisón Asensio (for Werner Langen), Massimo Carraro, Giles Bryan Chichester, Nicholas Clegg, Claude J.-M.J. Desama, Harlem Désir, Garrelt Duin (for Mechtild Rothe pursuant to Rule 153(2)), Raina A. Mercedes Echerer (for Nelly Maes), Alain Esclopé (for Yves Butel pursuant to Rule 153(2)), Concepció Ferrer, Christos Folias, Glyn Ford, Jacqueline Foster (for Godelieve Quisthoudt-Rowohl), Neena Gill (for Myrsini Zorba), Norbert Glante, Lisbeth Grönfeldt Bergman (for Marjo Matikainen-Kallström), Michel Hansenne, Malcolm Harbour (for Roger Helmer), Hans Karlsson, Bashir Khanbhai (for Konrad K. Schwaiger), Rolf Linkohr, Eryl Margaret McNally, Hans-Peter Martin (for Erika Mann), Angelika Niebler, Giuseppe Nisticò (for Umberto Scapagnini), Barbara O'Toole (for Elena Valenciano Martínez-Orozco), Reino Paasilinna, Yves Piétrasanta, Elly Plooij-van Gorsel, Samuli Pohjamo (for Colette Flesch), John Purvis, Daniela Raschhofer, Imelda Mary Read, Christian Foldberg Rovsing, Paul Rübig, Ilka Schröder, Esko Olavi Seppänen, Astrid Thors, Jaime Valdivielso de Cué, W.G. van Velzen, Alejo Vidal-Quadras Roca, Dominique Vlasto and Anders Wijkman.

The opinion of the Committee on Culture, Youth, Education, the Media and Sport is attached; the Committee on Budgets decided on 14 September 2000, the Committee on the Environment, Public Health and Consumer Policy decided on 19 September 2000 and the Committee on Legal Affairs and the Internal Market decided on 17 October 2000, not to deliver opinions.

The report was tabled on 14 February 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a directive of the European Parliament and the of the Council on access to, and interconnection of, electronic communications networks and associated facilities (COM(2000) 384 – C5-0433/2000 – 2000/0186(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

(Amendment 1)

Recital 7

(7) Directive 95/47/EC provided an initial regulatory framework for the nascent digital television industry which should be maintained, including in particular the obligation to provide conditional access on fair, reasonable and non-discriminatory terms. Technological and market developments make it necessary to review these obligations on a regular basis, in particular to determine whether there is justification for extending obligations to new gateways, *such as electronic programme guides (EPGs) and applications program interfaces (APIs) for the benefit of European citizens.*

(7) ***Competition rules alone are not sufficient to ensure cultural diversity and media pluralism in the area of digital television.*** Directive 95/47/EC provided an initial regulatory framework for the nascent digital television industry which should be maintained, including in particular the obligation to provide conditional access on fair, reasonable and non-discriminatory terms, ***in order to make sure that a wide variety of programming and services is available.*** Technological and market developments make it necessary to review these obligations on a regular basis, in particular to determine whether there is justification for extending obligations to new gateways.

Justification:

It should be made clear why the principle of access on fair and reasonable terms needs to be maintained. The extension of the obligation to provide conditional access on fair, reasonable and non-discriminatory terms so as to include EPGs, APIs and other associated facilities should be provided for in the directive itself, rather than left to a regulatory committee procedure.

(Amendment 2)

¹ OJ C 365, 19.12.2000, p. 215.

Recital 12a (new)

(12a) In order to ensure that the pan-European telecommunications market is effective and efficient and that non-discrimination requirements are met, the various taxation arrangements obtaining in this area need to be monitored and assessed by the Commission with a view to the introduction of a harmonised system in the Member States.

Justification:

Disparities in taxation arrangements can distort competition and result in discrimination against some operators. They should therefore be assessed and monitored.

(Amendment 3)
Recital 14

(14) Price control may be necessary when market analysis in a particular market reveals inefficient competition. The regulatory intervention may be relatively light, such as an obligation that prices for carrier selection are reasonable as laid down in Directive 97/33/EC, or much heavier such as an obligation that prices are cost oriented to provide full justification for those prices where competition is not sufficiently strong to prevent excessive pricing. In particular operators with significant market power should avoid a price squeeze whereby the difference between their retail prices and the interconnection prices charged to competitors who provide similar retail services is not adequate to ensure **sustainable** competition. In its Recommendation 98/195/EC of 8 January 1998 on interconnection in a liberalised telecommunications market (Part 1 – interconnection pricing)¹, the Commission recommended the use of long-run average

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¹ OJ L 73, 12.3.1998, p. 42.

² OJ L 73, 12.3.1998, p. 42.

incremental costs, as the basis for interconnection prices in the Community that serves to promote efficiency and sustainable competition.

incremental costs, as the basis for interconnection prices in the Community that serves to promote efficiency and sustainable competition.

This amendment applies to the whole text.

Justification:

'Sustainable competition' is not a technical term. The adjective modifies the standard term 'competition' in a way which is ultimately unclear and hence undesirable.

(Amendment 4)
Recital 15a (new)

(15a) Given that the development of the telecoms market must necessarily involve an increase in transmission infrastructure, which cannot but have an impact on the environment, the landscape and residents' peace of mind, this process should be continuously monitored with a view to minimising any adverse effects by means of appropriate agreements and other arrangements with governments and local authorities.

Justification:

The directive must take due account of the impact the antennas will have on the landscape and of the concerns of local residents about possible health hazards.

(Amendment 5)
Recital 15b (new)

(15b) Given that greater access and interconnection necessarily depends on commercial and non-commercial uses of radio frequencies being optimised and made more transparent, it must be ensured that the allocation of frequencies does not interfere with competition and the pan-European market.

Justification:

There are too many disparities in the arrangements used for the allocation of frequencies in Europe, with many countries reserving too large a portion of the frequency band for military use. Those arrangements should therefore be optimised and made more transparent.

(Amendment 6)
Recital 15c (new)

(15c) Considering that in order to realise a real pan-European market, with an increased efficiency, an effective competition, more and better services, and at a cheaper price for the final customers, it is needed that the undertaking, which receives the request for access or interconnection, enters into commercial negotiations and negotiates in good faith.

Justification:

The obligation to negotiate requests for access to infrastructure and for interconnection is the only way to ensure the development of a real competitive market, particularly in the mobile sector.

The Commission promotes commercial agreements between operators but without obliging the operators to agree to negotiate with new entrants. The result of this is a restricted, vertically integrated and oligopolistic market because existing operators often refuse to negotiate with existing operators. To remedy this situation it is important to oblige the existing operators to negotiate access.

This amendment can create a new market structure facilitating the participation of a great number of market players who will contribute to lower prices, increase consumer choice, and ensure efficient spectrum use.

(Amendment 7)
Article 2(a)

(a) 'access' means the making available of facilities and/or services, to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services. It covers *inter alia*: access to network elements and associated facilities and services, which may involve the connection of equipment, by **wire** or **wireless** means; access to physical infrastructure including buildings, ducts and masts; access to software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to **mobile networks**, in particular for roaming; access to conditional access systems for digital television services. Interconnection is a specific type of access implemented between public network operators. Access in this Directive does not refer to access by end users.

(a) 'access' means the making available of facilities and/or services, to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services. It covers *inter alia*: access to network elements and associated facilities and services, which may involve the connection of equipment, by **fixed** or **non-fixed** means (***in particular, this includes access to the local loop and to facilities and services necessary to provide services over the local loop***); access to physical infrastructure including buildings, ducts and masts; access to software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to networks, **fixed and mobile**, in particular for **national and international** roaming; access to conditional access systems for digital television services and **to electronic programme guides**. Interconnection is a specific type of access implemented between public network operators. Access in this Directive does not refer to access by end users.

Justification:

Any reference made to wire connections implies a degree of technological bias. Reference to fixed means, however, ensures that essential fibre connections are included.

Roaming, in particular at national level, is an absolutely essential aspect of access to networks. It must be very clearly stated that all possible cases are covered, otherwise situations of joint dominance will inevitably occur.

It should also be made clear that any definition of access should encompass local-loop unbundling and electronic programme guides.

(Amendment 8)
Article 2(b)

(b) 'interconnection' means the physical and logical linking of public electronic communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking. Services may be provided by the parties involved or other parties who have access to the network.

(b) 'interconnection' means the physical and logical linking of public electronic communications networks used by the same or a different undertaking in order to allow the users of ***a network provided by*** one undertaking to communicate with users of ***a network provided by*** the same or another undertaking, or to access services provided by another undertaking. Services may be provided by the parties involved or other parties who have access to the network.

Justification:

This is intended to add further clarity to the text.

(Amendment 9)
Article 2(e)a (new)

(ea) 'associated facilities' means those facilities, including electronic programme guides, associated with an electronic communications network and/or an electronic communications service which enable services to be provided to users via that network or service.

Justification:

This should be added in order to avoid any doubt in relation to the definition of associated facilities and, at the same time inserts a cross-reference to Article 2 of the Framework Directive.

(Amendment 10)
Article 3(1)

1. Member States shall ensure that there are no restrictions which prevent undertakings in the same Member State or in different Member States from negotiating between themselves agreements on technical and commercial arrangements for access and/or interconnection, in accordance with Community law. The undertaking requesting **access or** interconnection does not need to be authorised to operate in the Member State where **access or** interconnection is requested, where it is not providing services in that Member State.

1. Member States shall ensure that there are no restrictions which prevent undertakings in the same Member State or in different Member States from negotiating between themselves agreements on technical and commercial arrangements for access and/or interconnection, in accordance with Community law. The undertaking requesting interconnection does not need to be authorised to operate in the Member State where interconnection is requested, where it is not providing services in that Member State.

Justification:

Cross-border interconnection is possible within the current framework. The enlargement of this concept to cross-border access would have many technical and operational implications that are almost impossible to foresee. This is due to the broad concept of access, as defined in this Directive.

(Amendment 11)
Article 3(2a) (new)

2a. All providers of audiovisual content shall have the right of access to electronic communications networks and associated facilities on fair, appropriate and non-discriminatory terms to enable them to convey their content unhindered, irrespective of the method of transmission.

Justification:

The new paragraph is intended to take account of the importance of audiovisual content and make it clear that content providers have a right of access on the customary terms.

(Amendment 12)
Article 4(1)

1. All undertakings authorised *to operate electronic communications networks for the provision of publicly available electronic communications services* shall have a right and, when requested by other undertakings *so* authorised, an obligation to negotiate interconnection with each other for the purpose of providing the services in question, in order to ensure provision and interoperability of services throughout the Community.

1. All undertakings authorised *by virtue of a general authorisation pursuant to Article 4a of Directive EC .../.../EC [on the authorisation of electronic communications networks and services]* to provide *electronic communications services accessible to the public* shall have a right and, when requested by other undertakings *authorised in one or more EU Member States* an obligation to negotiate interconnection *and access at commercial conditions* with each other for the purpose of providing the services in question, in order to ensure provision and interoperability of services throughout the Community.

Operators shall offer access and interconnection on terms consistent with the relevant decisions of national regulatory authorities pursuant to Articles 5 to 8.

Justification:

The wording of the Commission proposal could give rise to misunderstandings. The text of the legislation should make it clear that authorisations are no longer issued by means of an explicit decision or administrative act.

With a view to establishing a real European market, it is important to ensure that pan-European operators, in the possession of one or more licences (fixed or mobile) in different Member States, are given the opportunity of negotiating with existing operators in countries where they do not have a licence.

In addition, an obligation should be placed on operators to ensure that they abide by decisions made by national regulatory authorities in their dealings on access and intercommunication.

Operators having significant market power should be required to provide interconnection on a fair and reasonable basis. It should also be emphasised that operators having significant market power are required to co-operate in negotiations. Such measures could prove to be an incentive for operators with significant market power to react to demand without always requiring the intervention of national regulatory authorities.

The right/obligation to negotiate access must apply to all undertakings, irrespective of whether they have SMP or not, given that the aim is to 'ensure provision and interoperability of services throughout the Community'

(Amendment 13)
Article 4(1a) (new)

1a. Operators notified as having significant market power in the relevant market shall:

(a) provide interconnection to other public network operators on transparent, fair, reasonable and non-discriminatory terms; and

(b) meet reasonable requests for access on fair, reasonable and non-discriminatory terms.

Justification:

Operators with significant market power should have not just a duty to negotiate but also to provide interconnection and access on fair and reasonable terms.

(Amendment 14)
Article 4(2)

2. Electronic communications networks ***used*** for the distribution of digital television services shall be capable of distributing wide-screen television services and programmes. Network operators that receive and re-distribute wide-screen television services or programmes shall maintain that wide screen format.

2. Electronic communications networks ***primarily designed*** for the distribution of digital television services shall be capable of distributing wide-screen television services and programmes. Network operators that receive and re-distribute wide-screen television services or programmes ***as part of a 'must carry' obligation*** shall maintain that wide screen format.

Justification:

The text is technologically specific and overly restrictive on the distribution of digital TV signals. The limitation could be understandable with regard to "must carry" obligations but the barring of distribution of "digital TV" over for example ADSL networks simply because they cannot handle widescreen is overly restrictive.

The inclusion of "primarily designed" would contribute to clarity and thus avoid the risk of possibly very broad interpretations of the Directive.

(Amendment 15)

Article 4(3)

3. Without prejudice to Article 11 of Directive on [authorisation of electronic communications networks and services], national regulatory authorities shall ensure that undertakings that acquire information from another undertaking during the process of negotiating access or interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. The information shall not be passed on to any other party, in particular other departments, subsidiaries or partners, for whom such information could provide a competitive advantage.

3. Without prejudice to Article 11 of Directive on [authorisation of electronic communications networks and services], national regulatory authorities shall ensure that undertakings that acquire information from another undertaking during the process of negotiating access or interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. The information shall not be passed on to any other party, in particular other departments, subsidiaries or partners, for whom such information could provide a competitive advantage.

National regulatory authorities shall be granted powers by Member States to impose penalties in those cases.

Justification:

This addition is needed to strengthen the article. Concrete penalties are a strong incentive not to pass on the information to any other party for whom such information could provide a competitive advantage.

(Amendment 16) Article 5(1)

1. National regulatory authorities shall, acting in pursuit of the objectives set out in Article 7 of Directive [on a common regulatory framework for electronic communications networks and services], encourage and secure adequate network access and interconnection, ***and*** interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, and gives the maximum benefit to end-users.

1. National regulatory authorities shall, acting in pursuit of the objectives set out in Article 7 of Directive [on a common regulatory framework for electronic communications networks and services], ***take all reasonable measures to ensure the integrity of the networks,*** encourage and secure adequate network access and interconnection, interoperability of services ***and end-to-end connectivity of services designated as universal services,*** exercising their responsibility in a way that promotes

efficiency, sustainable competition, and gives the maximum benefit to end-users ***without giving rise to distortions. National regulatory authorities shall ensure that operators designated as having significant market power in the relevant market comply with the obligations set out under Article 4(1a).***

Justification:

It is important that steps are taken to ensure that national regulatory authorities have a duty to do whatever is necessary to ensure sufficient access and interconnection. Similarly, it should be made quite clear that national regulatory authorities are bound to impose the obligation on operators having significant market power to provide interconnection and comply with reasonable demands for access.

(Amendment 17)
Article 5(2)

2. Member States shall ensure that national regulatory authorities are empowered to impose the obligations identified in Articles 6 to 13 of this Directive on operators that have been designated as having significant market power in a relevant market. In the absence of agreement between undertakings on ***access and*** interconnection arrangements, Member States shall ensure that the national regulatory authority is empowered to intervene at the request of either of the parties involved ***or at its own initiative***, taking account of the policy objectives and procedures included in Articles 6, 7, and 13 to 18 of Directive [on a common regulatory framework for electronic communications networks and services].

2. Member States shall ensure that national regulatory authorities are empowered to impose the obligations identified in Articles 6 to 13 of this Directive on operators that have been designated as having significant market power in a relevant market. ***In a competitive market, interconnection of and access to networks should in principle be agreed on the basis of commercial negotiation between the companies concerned.*** In the absence of agreement between undertakings on interconnection arrangements, Member States shall ensure that the national regulatory authority is empowered to intervene at the request of either of the parties involved ***but only impose obligations on an operator who is designated as having SMP***, taking account of the policy objectives and procedures included in Articles 6, 7, and 13 to 18 of Directive [on a common regulatory framework for electronic communications networks and services].

The national regulatory authority shall intervene at the request of either of the parties involved or on its own initiative if the national regulatory authority or one of the parties considers that denial of commercial agreement would hinder the emergence of a competitive market and would not be in the user's interest and/or if negotiations break down because the host operator is imposing unreasonable terms on the undertaking requesting access or interconnection.

Justification:

The reference to the principle of commercial negotiations in the main body of the Directive is necessary in order to properly reflect it. The Commission proposal reflects it in point 3 of the explanatory memorandum, and the current regulatory framework also contains the principle (Art. 3(1) of the interconnection Directive 97/33).

In case of the absence of agreement between undertakings on interconnection arrangements regulatory obligations should be restricted to an operator having SMP.

The NRA should intervene and settle the disagreement if one of the parties involved in a commercial negotiation asks for it. NRA should have the authority but also the obligation to impose such measures. Otherwise the result could be a fragmented European market, rather than a harmonised one.

(Amendment 18)
Article 5(2)a (new)

2a. Member States shall ensure that, where a specific market is deemed to be effectively competitive as a result of analysis carried out in accordance with Article 14 of Directive [on a common regulatory framework for electronic communications and services], national regulatory authorities shall withdraw any ex ante obligations imposed upon operators in respect of that market.

Justification:

National regulatory authorities should have the express responsibility for withdrawing ex ante obligations as markets are recognised to be sufficiently competitive, thus ensuring transition towards the ex post regime foreseen by the Commission.

(Amendment 19)
Article 6(1)

1. Member States shall ensure that, in relation to conditional access to digital television services broadcast to viewers in the Community, irrespective of the means of transmission, the conditions laid down in Part I of the Annex apply.

1. Member States shall ensure that, in relation to conditional access ***and associated facilities related*** to digital television and ***radio services (including services which are related to or connected with digital television)*** broadcast to viewers in the Community, irrespective of the means of transmission, the conditions laid down in Part I of the Annex apply.

Justification:

The obligation to provide conditional access on fair, reasonable and non-discriminatory terms should include APIs, EPGs and other associated facilities. Technological developments should be monitored so as to protect against the emergence of further bottlenecks.

(Amendment 20)
Article 6(1)a (new)

1a. The provisions of paragraph 1 shall also apply to interactive services which are an integral part of TV services delivered to viewers.

Justification:

To ensure access by the users to the widest range of digital services, including interactive services which are a part of television services, this obligation must also include other gateways related to access, such as the API and EPG, rather than leaving this to a later review. Basic services associated with digital television are digital text and interactive services linked educational programming.

(Amendment 21)
Article 6(2)

2. Conditions relating to access to other associated facilities referred to in Part II of the Annex may be adopted in accordance with the procedure referred to in Article 14(2).

2. As required by market and technological developments, action will be taken by the Commission to extend the contents of Annex I, in consultation with the Communication Committee acting in accordance with the procedure referred to in Article 14(2), **in particular to take account of other associated facilities such as those listed in part II of the Annex and new and emerging associated facilities.**

Justification:

To ensure access by the users to the widest range of digital services, including interactive services which are a part of television services, this obligation must also include other gateways related to access, such as the API and EPG, rather than leaving this to a later review. Basic services associated with digital television are digital text and interactive services linked educational programming.

The amendment is to clarify that the main purpose of the procedure in this Article is to allow the Commission in co-operation with the Communications Committee to address problems of future bottlenecks related to digital TV. It is not possible or desirable to enumerate all the facilities that in the future can represent such bottlenecks.

The other aim is to stress that the central principles of the present digital TV directive, as listed in Part I of Annex I, should remain in place

(Amendment 22)
Article 6(3)

3. In the light of market and technological developments, the Annex **may** be amended in accordance with **the procedure referred to in Article 14(2).**

3. As required by market and technological developments, the Annex **shall** be amended, **in particular to take account of new and emerging associated facilities,** in accordance with **the consultation and transparency mechanism of Article 6(2) of Directive on [a common regulatory framework for electronic communication networks and services].**

Justification:

The obligation to provide conditional access on fair, reasonable and non-discriminatory terms

should include APIs, EPGs and other associated facilities. Technological developments should be monitored so as to protect against the emergence of further bottlenecks.

Article 6(3) and Annex 1, part II give the possibility to extend obligations to new gateways (EPG's and API's) via committee procedures, a substantial delegation of power to the Commission and away from the Council and Parliament. This delegation would circumvent the democratic process. As a minimum any extension of regulatory obligations set out in Annex I should be in accordance with the consultation and transparency mechanism under Article 6 of the general framework Directive.

(Amendment 23)
Article 6a (new)

Article 6a
Unbundled access to the local loop

1. Member States shall ensure that, in relation with unbundled access to the local loops and related facilities, notified operators as defined in paragraph 2(a) comply with the principle of non-discrimination, when using the fixed public telephone network in order to provide high speed access and transmission services to third parties in the same manner as they provide for their own services or to their associated companies, in accordance with Community provisions.

2. For the purposes of this Article the following definitions apply:

- (a) 'notified operator' means operators of fixed public telephone networks that have been designated by their national regulatory authority as having significant market power in the provision of fixed public telephone networks and services under Directive 2001/.../EC [on a common regulatory framework for electronic communications networks and services];***
- (b) 'beneficiary' means a third party entitled to provide communications services under national legislation, and which is eligible for unbundled access to a local loop;***
- (c) 'local loop' means the physical twisted metallic pair circuit connecting the network***

termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network;

(d) 'local sub-loop' means a partial local loop connecting the network termination point at the subscriber's premises to a concentration point or a specified intermediate access point in the fixed public telephone network;

(e) 'unbundled access to the local loop' means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the local loop;

(f) 'full unbundled access to the local loop' means the provision to a beneficiary of access to the local loop or local sub-loop of the notified operator authorising the use of the full frequency spectrum of the twisted metallic pair;

(g) 'shared access to the local loop' means the provision to a beneficiary of access to the local loop or local sub-loop of the notified operator, authorising the use of the non-voice band frequency spectrum of the twisted metallic pair; the local loop continues to be used by the notified operator to provide the telephone service to the public;

(h) 'collocation' means the provision of physical space and technical facilities necessary to reasonably accommodate and connect the relevant equipment of a beneficiary, as mentioned in Section B of Annex Ia;

(i) 'related facilities' means the facilities associated with the provision of unbundled access to the local loop, notably collocation, cable connections and relevant information technology systems, access to which is necessary for a beneficiary to provide services on a competitive and fair basis.

3. Member States shall ensure that notified operators publish and keep updated a reference offer for unbundled access to their local loops and related facilities, which shall include at least the items listed

in Annex Ia. The offer shall be sufficiently unbundled so that the beneficiary does not have to pay for network elements or facilities which are not necessary for the supply of its services, and shall contain a description of the components of the offer, associated terms and conditions, including charges.

4. Member States shall ensure that notified operators meet reasonable requests from beneficiaries for unbundled access to their local loops and related facilities, under transparent, fair and non-discriminatory conditions. Requests shall only be refused on the basis of objective criteria, relating to technical feasibility or the need to maintain network integrity. Where access is refused, the aggrieved party may submit the case to the dispute resolution procedure referred to in Article 17 of [Framework Directive]. NRAs shall ensure that notified operators provide beneficiaries with facilities equivalent to those provided for their own services or to their associated companies, and with the same conditions and time-scales.

5. Pending the market analysis referred to in Article 7(3), Member States shall ensure that notified operators charge prices for unbundled access to the local loop and related facilities set on the basis of cost-orientation.

6. The national regulatory authority shall ensure that charging for unbundled access to the local loop fosters fair and sustainable competition.

7. The national regulatory authority shall have the power to:

(a) impose changes on the reference offer for unbundled access to the local loop and related facilities, including prices, where such changes are justified; and

(b) require notified operators to supply information relevant for the implementation of this Directive;

(c) where justified, intervene on its own initiative in order to ensure non-

discrimination, fair competition, economic efficiency and maximum benefit for users. 8. In the light of market and technological developments, Annex II be amended in accordance with the procedure referred to in Article 14(2).

Justification:

This allows for provisional inclusion of the requirements of the LLU Regulation EC 2887/2000 of 18.12.2000 from the entry into force of the new framework (which repeals the Regulation) until the market analysis proves they are no longer needed.

(Amendment 24)
Article 7(1)

1. Member States shall maintain all obligations on undertakings providing publicly available electronic communications networks concerning access and interconnection that were in force prior to the date of entry into force of this Directive under Articles 4, 6, 7, 8, 11, 12, and 14 of Directive 97/33/EC, Article 16 of Directive 98/10/EC, Articles 7 and 8 of Directive 92/44/EC, and **Article 3 of Regulation [on unbundled access to the local loop]**, until such time as these obligations have been reviewed and a determination made in accordance with paragraph 3.

1. Member States shall maintain all obligations on undertakings providing publicly available electronic communications networks concerning access and interconnection that were in force prior to the date of entry into force of this Directive under Articles 4, 6, 7, 8, 11, 12, and 14 of Directive 97/33/EC, Article 16 of Directive 98/10/EC, Articles 7 and 8 of Directive 92/44/EC, and **all obligations on unbundled access to the local loop as set out in Article 6a**, until such time as these obligations have been reviewed and a determination made in accordance with paragraph 3.

Justification:

This allows for provisional inclusion of the requirements of the LLU Regulation from the entry into force of the new framework (which repeals the Regulation) until the market analysis proves they are no longer needed.

(Amendment 25)

Article 7(3)

3. Member States shall ensure that, immediately following the entry into force of this Directive, and **periodically** thereafter, national regulatory authorities undertake a market analysis, in accordance with the procedure laid down in Article 14 of Directive [on a common regulatory framework for electronic communications networks and services] to determine whether to maintain, amend or withdraw these obligations. An appropriate period of notice shall be given to parties affected by such amendment or withdrawal of obligations.

3. Member States shall ensure that, immediately following the entry into force of this Directive, **as provided for in Article 19**, and **annually** thereafter, national regulatory authorities undertake a market analysis, in accordance with the procedure laid down in Article 14 of Directive [on a common regulatory framework for electronic communications networks and services] to determine whether to maintain, amend or withdraw these obligations. **The first such market analysis shall be conducted within three months before the transposition date specified in Article 18.** An appropriate period of notice shall be given to parties affected by such amendment or withdrawal of obligations.

Justification:

It is essential to ensure that the NRAs' powers to impose, amend or withdraw obligations deriving from the new system take effect as of the transposition date. Given the amount of time and effort which the NRAs will need to put into implementing the market analysis procedure provided for under the new system, that procedure should be initiated as soon as possible so as to prevent any overlapping between the two systems.

The market analysis should therefore take place prior to the directive's implementation, so as to ensure that the existing regulatory obligations lapse when the new legal framework comes into force.

The mechanism should take effect from the date of entry into force provided for in Article 19, and at all events no later than three months before the transposition date provided for in Article 18.

(Amendment 26)
Article 8(1)

1. Where an operator is deemed to have significant market power on a specific market as a result of a market analysis carried out in accordance with Article 14 of Directive [on a common regulatory framework for electronic communications networks and services], national regulatory authorities **shall** impose one or more of the obligations set out in Articles 9 to 13 of this Directive as appropriate, in order to avoid distortions of competition. The specific obligation(s) imposed shall be based on the nature of problem identified.

1. Where an operator is deemed to have significant market power on a specific market as a result of a market analysis carried out in accordance with Article 14 of Directive [on a common regulatory framework for electronic communications networks and services], **and where the competitive situation on that market so warrants**, national regulatory authorities **may** impose **on such operator** one or more of the obligations set out in Articles 9 to 13 of this Directive as appropriate, in order to avoid distortions of competition. The specific obligation(s) imposed shall be based on the nature of problem identified, **and shall be proportionate to the aim pursued, with due regard for the principle of minimum regulation.**

National regulatory authorities shall not impose obligations under this Article where they are satisfied that there is effective competition. To this end, market analyses should be carried out regularly. Except as provided in paragraph 2, the obligations set out in Articles 9 to 13 of this Directive shall only be imposed on undertakings notified to have significant market power.

Justification:

It is essential that the general rule outlining that access obligations should not be imposed on operators not having significant market power is accounted for.

In accordance with the principle of light regulation, procedures should be introduced with a view to scaling down intervention by the regulatory authorities as the market becomes more competitive and to being able to react to a rapidly-changing marketplace.

The proposed amendment expresses the EU principle of proportionality which should be followed by national regulatory authorities when they determine what ex ante obligations should be imposed on an SMP operator in a defined uncompetitive market. Without explicit reference to this principle there is a clear risk that national regulatory authorities may impose overly

burdensome ex ante obligations and thereby stifle investment in network infrastructure. The amendment also makes clear that ex ante obligations could only be imposed on operators, which are deemed to have significant market power.

(Amendment 27)
Article 8(2), first subparagraph

2. National regulatory authorities may, without prejudice to the provisions of Article 6, impose on operators, including operators other than those with significant market power, the obligations set out in Article 9 to 13 in relation to interconnection, in order to comply with international commitments.

2. National regulatory authorities may, without prejudice to the provisions of Article 6, impose on operators, including operators other than those with significant market power, the obligations set out in Article 9 to 13 in relation to interconnection, in order to comply with international commitments ***or to facilitate or improve communication across network boundaries:***

(a) where necessary to ensure adequate interoperability of services and end-to-end connectivity in accordance with Article 5(1); or

(b) in circumstances in which failure to introduce the obligation in question would have a detrimental effect on the availability of public service content to consumers which would not be addressed through the development of effective competition.

Justification:

It is important to establish that there are two limited circumstances in which it might be appropriate for national regulatory authorities to impose obligations on operators not having significant market power, in particular when unbridled competition will not produce a satisfactory solution.

It is in the interest of consumers that national regulatory authorities should retain the power to impose obligations in relation to access and interconnection in order to ensure network connectivity.

(Amendment 28)
Article 8(2), second subparagraph

Exceptionally, with the prior agreement of the Commission, national regulatory authorities may impose on operators ***with significant market power obligations for access or interconnection that go beyond those set out in Articles 9 to 13 of this Directive, provided that all such obligations are justified in the light of the objectives laid down in Article 1 of this Directive and in Article 7 of Directive [on a common regulatory framework for electronic communications networks and services, and are proportionate to the aim pursued.***

Exceptionally, with the prior agreement of the Commission, national regulatory authorities may, ***without prejudice to the provisions of Article 6***, impose on operators, ***including operators other than those with significant market power, the obligations set out in Article 9 to 13 in relation to interconnection, in order to comply with international commitments.***

Such obligations shall be imposed inter alia on the basis of available quantitative data relating to the market impact identified.

Justification:

Allowing NRAs to impose obligations that go beyond those set out in this Directive would not contribute to the creation of a pan-European level playing field. This situation must be limited to exceptional cases as much as possible. Therefore both the change of text-order and the deletion in this amendment are useful.

It would be consistent with the principles underpinning the proposed Directive to amend Article 8 to explicitly state that Member States can only impose access obligations on undertakings with SMP. This will greatly increase legal certainty.

The proper market structure should be taken into account when the need for regulatory obligations is assessed. Quantitative data must be really available.

(Amendment 29)
Article 8(2)a (new)

2a. Obligations imposed in accordance with this article shall be based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 7 of Directive [on a common regulatory framework for electronic communications networks and services]. Such obligations shall only be imposed following consultation in accordance with Article 6 of that Directive.

Justification:

It is necessary to insert a new Article 8(2)a to ensure consistency and coherence of the text.

(Amendment 30)
Article 8(3)

3. In relation to the first subparagraph of paragraph 2, national regulatory authorities shall notify decisions to impose, modify or withdraw obligations on market players to the Commission, in accordance with the procedures in Article 6(2), (3) and (4) of Directive on [a common regulatory framework for electronic communications networks and services].

3. In relation to the first subparagraph of paragraph 2, national regulatory authorities shall notify ***draft*** decisions to impose, modify or withdraw obligations on market players to the Commission, in accordance with the procedures in Article 6(2), (3) and (4) of Directive on [a common regulatory framework for electronic communications networks and services]. ***The Commission shall assess the impact of new obligations, taking due account of the pan-European market.***

Justification:

The first addition will contribute to the transparency of the market situation.

The development of the telecommunications market means that due consideration must be given to pan-European markets, with regard to the policy objectives as formulated in the Framework directive.

(Amendment 31)
Article 8(3)a (new)

3a. Member States shall give operators with interconnection and access arrangements with the market player adequate notice to locate alternative service providers before an obligation is withdrawn.

Justification:

The aim of this change is to ensure an appropriate transition period to enable affected parties to make alternative arrangements, should obligations on SMP operators be removed.

(Amendment 32)
Article 8(3)b (new)

3b. National regulatory authorities shall consider the decision's impact on all the undertakings present on the market, with a view to ensuring that it will not deter investment and destabilise new operators, thereby making it difficult to preserve a stable competitive environment.

Justification:

The proper market structure should be taken into account when the need for regulatory obligations is assessed.

(Amendment 33)
Article 8a (new)

Article 8a

Obligation of essential requirements

A national regulatory authority may, where necessary to prevent harmful interference or to ensure that the integrity and security of public communications networks are maintained, attach technical or operational conditions to the provision or use by other undertakings of access and/or interconnection services mandated under Article 8. Such conditions may include implementation of specific technical standards or specifications or codes of conduct agreed by market players. The national regulatory authority shall ensure that any such conditions are proportionate and non-discriminatory in nature and are based on objective criteria identified in advance.

Justification:

Given that more intrusive access and interconnection obligations might encourage operators using these services to tamper with the transmission of other services, it is necessary to give national regulatory authorities a mandate pertaining to attaching conditions to the provision and/or use of a service and to comply with obligations ensuring the integrity and security of networks.

(Amendment 34)
Article 9(1)

1. National regulatory authorities may, in accordance with the provisions of Article 8, impose obligations for transparency in relation to interconnection and/or network access, requiring operators to make publicly available specified information, such as

1. National regulatory authorities may, in accordance with the provisions of Article 8, impose obligations for transparency in relation to interconnection and/or network access, requiring operators to make publicly available specified information, such as

technical specifications, network characteristics, terms and conditions for supply and use, and prices.

technical specifications, network characteristics (***including specific information on possible changes that might be made to the networks***), terms and conditions for supply and use, and prices ***provided that the information is not confidential.***

NRAs shall justify the obligations imposed, taking due account of the specific level of competitiveness of the relevant interconnection/access market.

Justification:

This amendment is necessary in order to ensure that regulatory intervention complies with the proportionality principle and recalls the need for safeguarding commercial confidentiality as established in EP amendments to the Framework Directive.

(Amendment 35)
Article 9(3)

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

3. National regulatory authorities may specify the precise information to be made available, the level of detail required and the manner of publication, ***with due regard for the principle of proportionality and in accordance with national law, in accordance with Community law, relating to commercial confidentiality.***

Justification:

While NRAs must clearly have regard to commercial confidentiality, it is important to ensure in the interests of transparency that the test of whether a piece of information is confidential is an objective test (established in law) and not a subjective opinion expressed by an operator.

(Amendment 36)
Article 10(1)

1. A national regulatory authority *may*, in accordance with the provisions of Article 8, impose obligations *of* non-discrimination, in relation to interconnection and/or network access.

1. A national regulatory authority *shall*, in accordance with the provisions of Article 8 *of this Directive*, impose obligations *for* non-discrimination, in relation to interconnection and/or network access.

Justification:

The non-discrimination principle should be imposed by the NRA rather than being just optional. So the deletion of the words: “be able to” is proposed. In a competitive market, the non-discrimination principle should be obvious because any operator should have the possibility to give to other operators to use the services or the frequencies that are still available.

The NRAs should oblige all operators to respect the non-discrimination principle because it is the only way to create a real competitive market. Indeed, several operators could slow down the establishing of real competition in the telecommunication market by delivering to new operators worse services than they provide for their own services, or those of their subsidiaries or partners.

(Amendment 37)
Article 11(2)

2. To facilitate the verification of compliance with obligations of transparency, national regulatory authorities shall have the power to require that accounting records, including data on revenues received from third parties, are provided on request.

2. To facilitate the verification of compliance with obligations of transparency, national regulatory authorities shall have the power to require that accounting *and cost accounting* records, including data on revenues received from third parties, are provided on request. *National regulatory authorities must have the power to determine the accounting format in which these data are to be kept and to require auditing of these data in accordance with the standard laid down by the national regulatory authority itself.*

National regulatory authorities may publish such information as would contribute to an open and competitive market, while

National regulatory authorities may publish such information as would contribute to an open and competitive market, while

respecting national and Community rules on commercial confidentiality.

respecting national and Community rules on commercial confidentiality.

They may also apply the measures set out in this article to operators which do not have significant market power but which are controlled directly or indirectly by undertakings which are dominant or hold special or exclusive rights in other sectors.

Justification:

Accounting separation obligations should also cover operators whose networks are financed by services of general interest, so as to ensure that their accounts are transparent.

(Amendment 38)
Article 12(1)

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations on operators to grant access to, and use of, specific facilities and/or associated services, *inter alia* in situations where the national regulatory authority considers that denial of access would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations on operators to grant access to, and use of, specific facilities and associated services, *inter alia* in situations where the national regulatory authority considers that denial of access ***or unreasonable terms and conditions having a similar effect*** would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest, ***or where there are bottlenecks in the market.***

Operators may be required *inter alia*:

- (a) to give third parties access to specified network elements and/or facilities;
- (b) not to withdraw access to facilities already granted;
- (c) to provide resale of specified services;
- (d) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services;

Operators may be required *inter alia*:

- (a) to give third parties access to specified network elements and/or facilities;
- (b) not to withdraw access to facilities already granted;
- (c) to provide resale of specified services;
- (d) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services;

(e) to provide collocation or other forms of facility sharing, including duct, building or mast sharing;

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

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

(h) to interconnect networks or network facilities;

National regulatory authorities may attach to those obligations conditions covering fairness, reasonableness, timeliness, transparency and/or non-discrimination.

(e) to provide collocation or other forms of facility sharing, including duct, building or mast sharing;

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

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

(h) to interconnect networks or network facilities;

National regulatory authorities may attach to those obligations conditions covering fairness, reasonableness, timeliness, transparency, **price control** and/or non-discrimination **in accordance with Articles 9-11 and 13 of this Directive**.

Justification:

Unreasonable terms for access may hinder the emergence of a sustainable competitive market, and should therefore be mentioned in this text.

It is imperative that price control is included as one of the conditions to be afforded due consideration by national regulatory authorities in their role of watchdog.

(Amendment 39)
Article 12(1)a (new)

1a. The Commission and the NRAs will impose the obligation on operators to make the retail prices of international roaming both transparent and cost-based.

Operators will be required to inform or display the price per minute of an international roaming call on the screen of the handset in real time.

Justification:

Research by DG Competition, National Regulatory Authorities and National Competition Authorities concludes that charges for international roaming are too high. Operators have shown that they are incapable of:

- 1. clearly indicating the structure of the prices;*
- 2. forming the prices on a cost basis.*

Therefore this regulation is necessary. As soon as operators have solved these problems, this intervention will not be needed any more.

(Amendment 40)
Article 12(1)b (new)

1b. As long as the prices for call termination are not cost-based, the Commission will also impose on mobile operators the obligation to make the prices of call termination cost-based.

The Commission shall investigate by which other means, including carrier preselection and the stimulation of Mobile Virtual Network Operators (MVNOs), will have an impact on the prices of call termination.

Justification:

Research by DG Competition, National Regulatory Authorities and National Competition Authorities concludes that charges for call termination are too high. Operators have shown that they are incapable of:

- 1. clearly indicating the structure of the prices;*
- 2. forming the prices on a cost basis.*

Therefore this regulation is necessary. As soon as operators have solved these problems, this intervention will not be needed any more.

(Amendment 41)
Article 12(2)

2. When **imposing** the obligations referred to in paragraph 1, **national regulatory authorities** shall take account in particular of:

(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development;

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

(c) the initial investment by the facility owner, bearing in mind the risks involved in making the investment;

(d) the need to safeguard competition in the long term;

(e) where appropriate, any relevant intellectual property rights.

2. When **national regulatory authorities are considering whether to impose** the obligations referred to in paragraph 1, **and in particular when assessing whether such obligations would be proportionate to the objectives set out in Article 7 of the Directive [on a common regulatory for electronic communications and networks]**, they shall take account in particular of **the following factors. In this connection they shall give the operators concerned the opportunity to express their views. Factors as referred to in this paragraph are:**

(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, **taking into account the nature and type of interconnection and access involved;**

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

(c) the initial investment by the facility owner, bearing in mind the risks involved in making the investment;

(d) the need to safeguard competition in the long term;

(e) where appropriate, any relevant intellectual property rights. **National regulatory authorities shall consult with interested parties before deciding on access obligations.**

National regulatory authorities shall give interested parties an opportunity to state their views on the factors listed in Article 12(1). When publishing a decision, national regulatory authorities must state how the view of interested parties have been heard and taken into account.

Justification:

National regulatory authorities should take the above-mentioned issues into consideration before the imposition of obligations in accordance with the objectives set out in Article 7 of the Framework Directive.

It should also be made clear that national regulatory authorities have an obligation to give interested parties an opportunity to express their views on the factors listed in Article 12(1), and subsequently explain to what extent their opinions were taken into account in the decision-making process. This will serve to ensure that national regulatory authorities give serious consideration to the factors listed in Article 12(2).

(Amendment 42)
Article 13(1)

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose 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 network access, in situations where a market analysis indicates ***that a potential lack of effective competition*** means that the operator concerned ***might be*** capable of sustaining prices at an excessively high level, or ***applying a price squeeze***, to the detriment of end users. National regulatory authorities shall take into account the investment made by the operator and the risks involved.

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose 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 network access, in situations where a market analysis ***an existing and durable market failure which*** means that the operator concerned ***is*** capable of sustaining prices at an excessively high level, or ***cutting prices in a persistent manner which prevents competition***, to the detriment of end users. ***The price control arrangements shall make proper allowance for the application of harmonised and certified cost accounting methods. Prices shall be based on the costs of efficient provision of services.*** National regulatory authorities shall take into account the investment made by the operator and the risks involved.

They may intervene only when price distortions covering a non-temporary period have been identified. The length of that period shall depend on the type of market involved.

Justification:

It should be possible for anti-competitive practices to be judged by national regulatory authorities in the context of dynamic market development.

Article 13 would enable NRAs to impose price controls in respect of the provision of specific types of interconnection services by operators having SMP on a given market, following a market analysis carried out pursuant to Article 14 of the framework directive. It must be specified that such action can be justifiable only where potentially anti-competitive behaviour might be sustained over a non-temporary period, the length of which will depend on the specific characteristics of the market involved.

Price controls should only be imposed as a last resort, where effective market analysis has shown that there is an existing and enduring market failure with no prospect of competition in the long term. To empower NRAs to impose price controls where there is only a “potential” lack of competition is not in the spirit of the proposals to move towards an ex post regime relying on competition law; nor does it create certainty or encourage investment in infrastructure and innovation.

(Amendment 43)
Article 13(1)

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose 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 network access, in situations where a market analysis indicates that a potential lack of effective competition means that the operator concerned might be capable of sustaining prices at an excessively high level, or applying a price squeeze, to the detriment of end users.

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose 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 network access, in situations where a market analysis indicates that a potential lack of effective competition means that the operator concerned might be capable of sustaining prices at an excessively high level **for a non-transient period**, or applying a price squeeze, to the detriment of end users. **The imposition of price controls by the NRA shall not negatively affect competition in the long term nor discourage investments in alternative infrastructures. The price control arrangements shall make proper allowance for the application of certified cost accounting methods.**

National regulatory authorities shall take into account the investment made by the operator and the risks involved.

National regulatory authorities shall take into account the investment made by the operator and the risks involved. ***They may intervene only when price distortions covering a non-transient period have been identified. The length of that period shall depend on the type of market involved and the investments made by the undertaking. The cost orientation obligation should be designed in such a way that it does not discourage long-term competition and the development of alternative facilities.***

Justification:

Before imposing price controls on the provision of interconnection and/or network access NRAs must take into account the effect on competition in the market as well as investments in alternative infrastructures. This amendment improves consistency with recital 13.

Moreover, the market analysis should consider the potential competitiveness of the specific interconnection or access services, in order to refrain from enforcing this obligation whenever there is a potential for achieving competition. Otherwise, the cost orientation obligation would send the wrong signals to the market, preventing competition from developing in a balanced way, and would consequently harm investments and innovation.

(Amendment 44)
Article 13(3)

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. National regulatory authorities may require an operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

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 determining the cost of efficient provision of services, national regulatory authorities may adopt cost accounting independent of the cost accounting of the enterprise.*** National regulatory authorities may require an operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

Justification:

The amendment makes it clear that national regulatory authorities do not have to adhere to the cost accounting of the operator concerned.

(Amendment 45)
Article 15(1) and (2)

1. Member States shall ensure that the specific obligations imposed on undertakings under this Directive are published and that the specific product/service and geographical markets are identified. They shall ensure that up-to-date information is made publicly available in a manner that guarantees all interested parties easy access to that information.

2. Member States shall send to the Commission a copy of all such information published. The Commission shall make this information available in a readily accessible form, and shall distribute the information to the Communications Committee **and the High Level Communications Group** as appropriate.

1. Member States shall ensure that the specific obligations imposed on undertakings under this Directive are published and that the specific product/service and geographical markets are identified. They shall ensure that up-to-date information, ***provided that the information is not confidential, and particularly does not comprise business secrets***, is made publicly available in a manner that guarantees all interested parties easy access to that information.

2. Member States shall send to the Commission a copy of all such information published. The Commission shall make this information available in a readily accessible form, and shall distribute the information to the Communications Committee as appropriate.

Justification:

The Commission proposal does not specifically mention safeguarding of business secrets, but in view of their enormous importance to businesses this should be treated uniformly in all Member States.

The establishment of a 'High Level Communications Group' is contrary to Decision 1999/468/EC.

(Amendment 46)
Annex, Part I, points (a) and (b)

(a) conditional access systems operated on the market in the Community shall have the necessary technical capability for cost-effective transcontrol allowing the possibility for full control by network operators at local or regional level of the services using such conditional access systems;

(b) **all** operators of conditional access services, irrespective of the means of transmission, who produce and market access services to digital television services shall:

- offer to all broadcasters, on a fair, reasonable and non-discriminatory basis compatible with Community competition law, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers authorised by means of decoders administered by the service operators, **and comply with Community competition law,**
- keep separate financial accounts regarding their activity as conditional access providers.

(a) conditional access systems operated **by SMP operators** on the market in the Community shall have the necessary technical capability for cost-effective transcontrol allowing the possibility for full control by network operators at local or regional level of the services using such conditional access systems;

(b) **SMP** operators of conditional access services, irrespective of the means of transmission, who produce and market access services to digital television services shall:

- offer to all broadcasters, on a fair, reasonable and non-discriminatory basis compatible with Community competition law, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers authorised by means of decoders administered by the service operators,
- keep separate financial accounts regarding their activity as conditional access providers.

Justification:

Regulatory obligations, including conditional access measures, should be tied to an operator's market position as purported in the rest of the proposed Directive. Articles 7-12 provide adequate rules under which obligations to grant service providers access to networks and facilities.

(Amendment 47)
Annex, Part II

- *Access to application program interfaces (APIs);*

- Access to *electronic programme guides* (EPGs).

- Access to *navigation systems* (e.g. EPGs)

- *Return paths*

- *Decoder storage capacities*

Justification:

Self-evident.

(Amendment 48)
Annex a (new)

MINIMUM LIST OF ITEMS TO BE INCLUDED IN A REFERENCE OFFER FOR UNBUNDLED ACCESS TO THE LOCAL LOOP TO BE PUBLISHED BY NOTIFIED OPERATORS

A. Conditions for unbundled access to the local loop

1. Network elements to which access is offered covering in particular the following elements:

(a) access to local loops;

(b) access to non-voice band frequency spectrum of a local loop, in the case of shared access to the local loop;

2. Information concerning the locations of physical access sites (1), availability of local loops in specific parts of the access network;

3. Technical conditions related to access and use of local loops, including the

technical characteristics of the twisted metallic pair in the local loop;

4. Ordering and provisioning procedures, usage restrictions.

B. Collocation services

1. Information on the notified operator's relevant sites (1);

2. Collocation options at the sites indicated under point 1 (including physical collocation and, as appropriate, distant collocation and virtual collocation);

3. Equipment characteristics: restrictions, if any, on equipment that can be collocated;

4. Security issues: measures put in place by notified operators to ensure the security of their locations;

5. Access conditions for staff of competitive operators;

6. Safety standards;

7. Rules for the allocation of space where collocation space is limited;

8. Conditions for beneficiaries to inspect the locations at which physical collocation is available, or sites where collocation has been refused on grounds of lack of capacity.

C. Information systems

Conditions for access to notified operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing.

D. Supply conditions

1. Lead time for responding to requests for supply of services and facilities; service level agreements, fault resolution, procedures to return to a normal level of service and quality of service parameters;

2. Standard contract terms, including, where appropriate, compensation provided for failure to meet lead times;

3. Prices or pricing formulae for each feature, function and facility listed above.

Justification:

This annex is identical to the one in the LLU Regulation.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on access to, and interconnection of, electronic communication networks and associated facilities (COM(2000) 384 – C5-0433/2000 – 2000/0186(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 384¹),
 - having regard to Articles 251(2) and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0433/2000),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, External Trade, Research and Energy and the opinion of the Committee on Culture, Youth, Education, the Media and Sport (A5-0061/2001),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 365 of 19.12.2000, p. 215.

EXPLANATORY STATEMENT

1. In a short space of time, the European telecommunications industry has, thanks to the innovative action taken by the Commission, the European Parliament and national regulatory authorities, moved over from a **system based on national monopolies** (in most of the Member States) to one **based on general liberalisation**. Market forces and new technologies have pushed this regulatory process forward, generating results in terms of new players coming onto the market which have in some cases exceeded expectations.

2. The proposed revision of the current European regulatory framework governing the telecommunications industry, which takes the form of a number of proposals for directives currently before the European Parliament, consists in laying down general regulatory objectives from which are derived the regulatory principles governing the new reference framework, with the aim of gradually moving the telecommunications market, which up to only two years ago had been based on a monopoly system, **from a market liberalisation stage** to a stage at which **competition is genuine and sustainable**.

The relationship between regulatory processes and market development should be governed by an approach which is:

- geared to the future state of markets in which conditions will be much more competitive and diversified, with the rapid spread of innovative services;
- focused on the implementation of competition law, to replace the *ex-ante* rules applied on a case-by-case basis.

3. This objective can be pursued by means of a body of ***ex-ante* rules** harmonised at European level, which are of a transitional and exceptional nature. In other words, *ex-ante* regulation must provide for its own disappearance once a sufficient degree of competition has been achieved. The rules themselves must be designed to achieve the minimum level of regulation required in any specific area.

4. This means that regulation of the industry will be progressively scaled down until the only rules applying are competition rules. It must be pointed out that unless an efficient competitive environment is achieved, sector-specific regulation will continue to play a role. The telecommunications industry will only be brought under a system based primarily on competition rules once it has been established that the industry is no longer a 'natural monopoly' and has become a 'normal' industry. It is therefore logical to expect that the new regulatory framework will not enter into force immediately, and will probably do so progressively.

DEFINITION OF 'ACCESS'

5. The definition of the term 'access' given in proposal for a directive COM(2000) 384 is extremely broad and the failure to define terms clearly could easily lead to disputes with the regulatory authorities. There is a particular risk of the rules and 'instruments' set out in the directive being applied indiscriminately to extremely different situations, such as access to:

- **'End-user' services** already made commercially available by an operator (e.g. voice telephony services and reverse-charge call services). In this instance, given that users (including service providers) have a right to use such services and that proposal for a directive COM(2000) 384 does not cover the provision of access to end-users (Article 2(a)), a clearer definition is required of the notion of access to end-user services by other undertakings under conditions not unlike those applying to end-users.
- **Network facilities** or specific facilities and/or associated services. It is by no means clear whether the obligation to provide access to such facilities may be justified by national regulatory authorities (NRAs) on the basis of a generic and subjective assessment of the sustainability of competition or the more specific concept of 'essential facility' (i.e. the resources cannot be immediately duplicated).
- **Networks. Roaming** should not be seen as a form of access, given that, by way of an example, it has different connotations according to whether what is involved is enabling a user with a subscription to a foreign operator's network to use a mobile service in a given country (and vice-versa), or enabling operators entering the market to use the facilities of existing operators in a given country until such time as they have installed their own networks. National roaming was designed as an asymmetric, temporary and exceptional measure aimed at making it easier for new operators to come onto the market, whereas access to mobile networks is intended to solve long-term market problems of bottlenecks in markets. Furthermore, treating access and roaming in the same way would inevitably lead to roaming services being provided on a cost-oriented pricing basis.

6. It must be stressed that light regulation and flexibility must not mean that 'anything goes'; they must simply be a means of overcoming the problems of the current approach involving a wide range of *ex-ante* regulatory obligations which have failed to keep pace with the times and with technological change. It must also be said, however, that the above-mentioned ambiguities in the definitions set out in the directive on access and interconnection give rise to some doubts about the ability of individual authorities to handle this necessary changeover.

7. The management of access and interconnection rights requires a balance to be found between the rights of an infrastructure owner to exploit its infrastructure for its own benefit, and the rights of other service providers to access essential facilities¹. That balance must ensure that it remains in the operator's interest to invest. Furthermore, if the European market is to be efficient, one cannot allow it to be affected by disparities in taxation. Such disparities can distort competition and discriminate against certain operators, which is why they should be monitored and assessed by the Commission, which should then ask the Member States to introduce a harmonised system. The Court of Justice's judgment in the Bronner case² is instructive in this connection, in that it points to the need for a system of genuine **competition** to be based, in the medium-to-long term, on competing **facilities**. The decision to separate the regulation of **telecommunications infrastructure and services** from the regulation of the content carried cannot but be endorsed. These are areas which require different approaches, and the system of rules would have been more complex and confusing had they been combined.

¹ Recital 13 of COM(2000) 384.

² Judgment of the court (Sixth Chamber) of 26 November 1998.

RELEVANT MARKETS AND OPERATORS HAVING SIGNIFICANT MARKET POWER

8. The assessment of the degree of competitiveness of a market is a task of particular importance, given that it is the precondition for reducing the role played by regulation so as to enable its place to be taken by competition law alone, or, conversely, for subjecting operators that have been notified as having **significant market power (SMP)** to regulatory obligations.

9. It is essential for the competitiveness assessment to take into account the **definition of relevant markets** analysed at all levels of the value chain, given the particular importance of markets for intermediate products. It is also particularly important to determine the relevant markets to which the market analysis should be applied. The current proposals for directives give pride of place to **intermediate products** (products offered to individuals competing on the markets for end-user services), with particular reference to access and interconnection, in respect of which the provisions laid down in the general reference framework are clearer and more appropriate.

10. The proposal for a directive on a common regulatory framework for electronic communications marks the changeover from an 'administrative' concept of SMP (25% threshold) to one based on competition law.

11. The new definition of SMP is based on Court of Justice judgments and constitutes a form of 'reduced' domination, since one of the features of dominance is to 'hamper competition', which is an *ex post* restrictive legal concept.

12. The proposal for a directive applies the 'new' SMP concept ('reduced' dominance), which, since it is shorn of the 'negative' feature of hampering competition, leaves the field open to *ex-ante* measures.

13. Given the above, it is essential for the broad powers delegated to the authorities in connection with the determination of SMP to be matched by a Commission decision on admissible relevant markets. Under the provisions being proposed, the focus is thus placed on the Guidelines that the Commission is to publish, to which the regulatory authorities should refer when deciding whether an undertaking operating on one of the relevant markets appearing on the list (Decision) should be notified or not.

NRA_s AND THE NOTIFICATION PROCEDURE

14. NRA_s may impose **obligations** of transparency, non-discrimination, accounting separation, access to and use of specific network facilities, and price control and cost accounting obligations (including the cost orientation obligation) on operators notified as having significant market power. The proposal also lays down arrangements for applying or revising the obligations deriving from the implementation of the current system and those deriving from the new regulatory framework.

15. The first remark to be made regards the arrangements for imposing obligations on operators notified as having significant market power. **Notification does not automatically entail any**

obligations: it is up to the NRAs to specify the obligations to be imposed on each operator that has been notified. Although this regulatory framework could generate some disparities between the various Member States and between the various relevant markets inside a given Member State, the harmonisation and control mechanisms available to the Commission are quite capable of minimising such problems.

16. Article 8 of the directive provides that *ex-ante* obligations shall be imposed on operators having SMP in a specific market following a market analysis, without it being explicitly stated that, here again, the analysis must show that the relevant market is not effectively competitive. The presence of an operator with significant market power does not, of itself, mean that the relevant market is not effectively competitive. Furthermore, the fact that an operator has significant market power does not always mean that it is misusing that power. Therefore, when considering whether an operator does or does not have significant market power, national regulatory authorities should at the same time consider whether it is actually using that power before imposing obligations provided for in the directive.

17. It would be appropriate for the obligations laid down in Articles 9-13 of the directive to apply not just to operators having SMP but also to other 'dominant' undertakings in specific markets, over and above international commitments, given that fair competition must be ensured irrespective of the 'nature' of the undertakings present on the market. This is particularly important given the prospects for a significant development of the market for innovative services, in which the availability of large proprietary network infrastructures is not essential.

COST ORIENTATION AND THE PRINCIPLE OF ACCOUNTING SEPARATION

18. The obligation of **cost orientation** is to be seen as the 'last resort' among the measures that may be imposed on operators notified as having significant market power, and brings together many of the specific obligations provided for in the directive.

It is quite obviously contrary to the free market principle and should therefore be used with extreme caution, in cases where no other remedy is possible. On a market in which one operator has been traditionally dominant – such as the fixed access market, which is restricted owing to the absence of price references - there is obviously an incentive for that operator to push up the prices charged to its downstream competitors, thus obviating application of the obligation of negotiation imposed under the new regulatory framework. Only in such cases, in the absence of explicit provision for cost orientation and publication in the reference tariff (where the obligation of transparency applies), the obligation to negotiate interconnection could be enforced only *ex-post*, by means of dispute settlement mechanisms.

19. Were the obligation of cost orientation to be imposed on the aforementioned notified operators with a view to securing prices which lead to a more effective allocation of resources on the access and interconnection market, the criterion most likely to maximise the chances of achieving that objective is that of **long-term incremental cost**, which is based on a series of hypotheses such as the use of leading-edge technologies, the most efficient procedures and optimal network topographies (were a network to be built from scratch on the basis of optimal criteria), all of which are implicit in the purchase of further network facilities.

20. Unfortunately, the use of that method calls for the formulation of a shared reference model, which would be difficult to do unless large sums were invested in technical and financial consultancy fees and lengthy discussions were held between the parties concerned. With a view to finding an easily applicable cost model, and given the fact that access and interconnection services are based on historical investment patterns, the **embedded direct costing** methodology, which takes exclusive account of historical costs directly linked to the service in question, could be used.

21. Such costs are easy to identify in the balance sheet of a notified operator and are the best means of assessing the actual costs incurred by that operator over time, to the exclusion of ancillary and shared costs not directly linked to the service in question.

FREQUENCY ALLOCATION

22. Although the issue of frequency allocation is specifically dealt with in the directive on the authorisation of networks and services, a reference also needs to be made to it in this directive, given that greater access and interconnection necessarily depends on the optimisation and transparency of commercial and non-commercial uses of radio frequencies, the allocation of which has an influence on competition and the pan-European market. There are too many disparities within Europe as regards frequency allocation, with many countries reserving too large a portion of the frequency band for military use. Allocation arrangements should therefore be optimised and made more transparent. One possible way of optimising the use of radio frequencies in Europe might be to introduce a frequency master plan.

REGULATORY AUTHORITIES

23. Although the establishment of a **European authority** is perhaps not feasible as things stand at the moment, a strengthening of the Commission's powers to centralise harmonisation activities and the coordination of the introduction of new procedures would be extremely useful, given that the powers delegated to the various NRAs could lead to the directive's principles being applied differently from country to country.

24. Such a situation would not be consistent with the expansion and globalisation policies being pursued by many European operators and undertakings, nor would it be sustainable. Furthermore, differentiated application of the directives' principles would have the effect of hampering completion of the single market.

25. The **High-Level Communications Group** composed of representatives of the NRAs which is provided for in the framework directive¹ is responsible for advising the Commission, but does not have a specific operational mandate. Upgrading the role of this group would avoid the type of institutional problems that the establishment of a European authority would cause.

26. Under the current wording of the proposals for directives, some of the duties assigned to the national regulatory authorities carry with them extremely extensive discretionary powers, which could result in major disparities between the various Member States: with the exception of the

¹ COM(2000) 393.

market competitiveness assessment, in respect of which the Commission is to publish Guidelines (which, furthermore, are soft law measures, which means that the national authorities will have a degree of discretion in their application), there will very probably be significant differences in the way in which each national regulatory authority interprets its own role.

ENVIRONMENTAL IMPACT OF THE DEVELOPMENT OF THE TELECOMS MARKET

27. Lastly, although this is not specifically the subject of this directive, it should be pointed out that, owing to the necessary increase in transmission infrastructure, the development of the telecoms market will have an impact on the environment, the landscape and residents' peace of mind (since it might lead to health fears). The process should therefore be continuously monitored with a view to minimising any adverse effects on the environment, the landscape and residents' peace of mind by means of appropriate agreements and other arrangements with governments and local authorities.

12 January 2001

OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT

for the Committee on Industry, External Trade, Research and Energy

on a proposal for a directive of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities (COM(2000) 384 – C5-0433/2000 – 2000/0186 (COD))

Draftsman: Marieke Sanders-Ten Holte

PROCEDURE

At its meeting of 10 October 2000 the Committee on Culture, Youth, Education, the Media and Sport appointed Marieke Sanders-Ten Holte draftsman.

It considered the draft opinion at its meetings of 7 November, 4 December 2000 and 8-9 January 2001.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Vasco Graça Moura, acting chairman; Ulpu Iivari, vice-chairman; Ole Andreasen, Pedro Aparicio Sánchez, Robert J.E. Evans (for Lissy Gröner), Geneviève Fraisse, Cristina Gutiérrez Cortines (for Mario Walter Mauro), Ruth Hieronymi, Karin Junker (for Martine Roure), Lucio Manisco, Jens Dyhr Okking, Doris Pack, Roy James Perry, Christa Prets, Dana Rosemary Scallon (for Teresa Zabell), Kathleen Van Brempt, Luckas Vander Taelen, Gianni Vattimo (for Valter Veltroni), Christine de Veyrac and Eurig Wyn.

SHORT JUSTIFICATION

The proposed directive establishes a regulatory framework designed to ensure effective competition in the area of access to and interconnection between electronic communications networks of all types. It provides for the application by national regulatory authorities of *ex ante* rules governing commercial relations between network operators and content providers, which are to be imposed where network operators are found to have significant market power. The proposed directive requires *ex ante* rules to be withdrawn once the desired objectives are met by the market.

In addition, a number of specific obligations provided for in the current regulatory framework will be carried forward into the new framework. These include the obligation placed on operators of conditional access systems to grant broadcasters access to digital networks on fair, reasonable

and non-discriminatory terms, as provided for in Directive 95/47/EC¹. The principle of a general right of access to digital networks for broadcasters acts as a guarantee of media pluralism. The rapporteur takes the view that this principle should be defended.

The transition from analogue to digital television, which is expected to have been completed in most European countries by around 2010, is part of the general shift to a digital, knowledge-based economy. Digital television will become one of the main entry-points to the 'digital super-highway' and will help to spread high-capacity networks to all parts of Europe, providing access to a wide range of services, including, for example, public service broadcasting and interactive educational programming.

In its discussion of the challenge of creating an 'information society for all', the European Council meeting in Lisbon of 23 and 24 March 2000 stressed the fact that 'content industries create added value by exploiting and networking European cultural diversity.' It is therefore important that content providers have fair access to digital networks in order to ensure that a full range of services and programming is available to the public.

Clearly, a balance must be struck between the imperatives of cultural diversity and media pluralism and the need to safeguard incentives for investors in digital network infrastructures. The proposed directive does this by providing for access on fair and reasonable terms, which will allow a legitimate return to be made on investment.

If we support the principle of access as provided for in Directive 95/47/EC², which the Commission is proposing to carry over into the new framework, then we should also support the extension of the obligation to provide access so that it covers software such as application program interfaces (APIs) and electronic programme guides (EPGs).

APIs and EPGs constitute potential obstacles to access by broadcasters since it is possible to negotiate access to a network while being denied access to the API. In order for the obligation set out in Article 6 of the proposed directive to be meaningful it must therefore include APIs and other associated facilities.

The Commission and the European Parliament have in the past adopted similar views on the issue of APIs and associated facilities: in its report on the development of the digital television market in the European Union the Commission states that 'currently, although APIs are not specifically regulated by Directive 95/47/EC on digital television, the British regulatory authority Oftel regulates them under its conditional access rules using the criterion of 'fair, reasonable and non-discriminatory conditions'. It would be acceptable to extend these criteria to include APIs.'³ This analysis was endorsed by Parliament in a report drawn up by the Committee on Industry, External Trade, Research and Energy, which asked 'the Commission to ensure that, as it carries forward the existing regulatory scheme for conditional access, the latter is updated

¹ Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals, OJ L 281, 23.11.1995, p. 51, 'The TV Standards Directive'.

² Ibid.

³ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions - The development of the market for digital television in the European Union - Report in the context of Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals, COM/99/0540 final, p.33.

rapidly to include associated gateway technologies that can prevent interoperability and fair, reasonable and non-discriminatory access to consumers.¹

Under the Commission proposal the regulation of APIs, EPGs and other associated facilities would be dealt with in accordance with a regulatory committee procedure. The rapporteur takes the view that such a procedure would needlessly postpone the finding of a solution to the problem of APIs and associated facilities. Access to APIs, EPGs and other associated facilities should therefore be safeguarded by the directive itself. To accept anything less than this would be to run the risk of undermining the basic principle of access for broadcasters which the Commission proposes to carry over into the new regulatory framework.

AMENDMENTS

The Committee on Culture, Youth, Education, the Media and Sport calls on the Committee on Industry, External Trade, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission²

Amendments by Parliament

(Amendment 1) Recital 7

(7) Directive 95/47/EC provided an initial regulatory framework for the nascent digital television industry which should be maintained, including in particular the obligation to provide conditional access on fair, reasonable and non-discriminatory terms. Technological and market developments make it necessary to review these obligations on a regular basis, in particular to determine whether there is justification for extending obligations to new gateways, ***such as electronic programme guides (EPGs) and applications program interfaces (APIs) for the benefit of European citizens.***

(7) ***Competition rules alone are not sufficient to ensure cultural diversity and media pluralism in the area of digital television.*** Directive 95/47/EC provided an initial regulatory framework for the nascent digital television industry which should be maintained, including in particular the obligation to provide conditional access on fair, reasonable and non-discriminatory terms, ***in order to make sure that a wide variety of programming and services is available.*** Technological and market developments make it necessary to review these obligations on a regular basis, in particular to determine whether there is justification for extending obligations to new gateways (***rest deleted***).

Or. EN

¹ Report by Astrid Thors on Digital Television in the EU, A5-0143/2000, para. 9, Minutes of the sitting of 13 June 2000.

² OJ C 365, 19.12.00, p, 215

Justification:

It should be made clear why the principle of access on fair and reasonable terms needs to be maintained. The extension of the obligation to provide conditional access on fair, reasonable and non-discriminatory terms so as to include EPGs, APIs and other associated facilities should be provided for in the directive itself, rather than left to a regulatory committee procedure.

(Amendment 2)

Article 4(1)

All undertakings authorised to operate electronic communications networks for the provision of publicly available electronic communications services shall have a right and, when requested by other undertakings so authorised, an obligation to negotiate interconnection with each other for the purpose of providing the services in question, in order to ensure provision and interoperability of services throughout the Community.

All undertakings authorised to operate electronic communications networks for the provision of publicly available electronic communications services shall have a right and, when requested by other undertakings so authorised, an obligation to negotiate ***and offer access to and*** interconnection with each other for the purpose of providing the services in question, in order to ensure provision and interoperability of services throughout the Community. ***Those undertakings shall offer access and interconnection to the extent laid down by national regulatory authorities pursuant to Articles 5 to 8 of this Directive.***

Or. de

Justification:

Operators on which access and interconnection obligations have been imposed by national regulatory authorities should also be obliged to offer access and interconnection in addition to being required to negotiate them.

(Amendment 3)
Article 6

Conditional access systems and other associated facilities

1. Member States shall ensure that, in relation to conditional access to digital television services broadcast to viewers in the Community, irrespective of the means of transmission, the conditions laid down in Part I of the Annex apply.
2. *Conditions relating to access to other associated facilities referred to in Part II of the Annex may be adopted in accordance with the procedure referred to in Article 14(2).*
3. In the light of market and technological developments, the Annex *may* be amended in accordance with the procedure referred to in Article 14(2).

Conditional access systems and other associated facilities

1. Member States shall ensure that, in relation to conditional access ***and associated facilities, such as those referred to in Part II of the Annex, related*** to digital ***and interactive*** television services broadcast to viewers in the Community, irrespective of the means of transmission, the conditions laid down in Part I of the Annex apply.
2. ***Deleted***
3. In the light of market and technological developments, the Annex ***shall*** be amended, ***in particular to take account of new and emerging associated facilities***, in accordance with the procedure referred to in Article 14(2).

Or. EN

Justification:

The obligation to provide conditional access on fair, reasonable and non-discriminatory terms should include APIs, EPGs and other associated facilities. Technological developments should be monitored so as to protect against the emergence of further bottlenecks.

(Amendment 4)
Article 8(1)

Where an operator is deemed to have significant market power on a specific market as a result of a market analysis carried out in accordance with Article 14 of Directive [on a common regulatory framework for electronic communications networks and services], national regulatory authorities shall impose one or more of the obligations set out in Articles 9 to 13 of this Directive as appropriate, in order to avoid distortions of competition. The specific obligation(s) imposed shall be based on the nature of problem identified.

Where an operator is deemed to have significant market power on a specific market as a result of a market analysis carried out in accordance with Article 14 of Directive [on a common regulatory framework for electronic communications networks and services], national regulatory authorities shall impose one or more of the obligations set out in Articles 9 to 13 of this Directive as appropriate, in order to avoid distortions of competition **and realise the objectives laid down in Article 7 of Directive [on a common regulatory framework for electronic communications networks and services]**. The specific obligation(s) imposed shall be based on the nature of problem identified.

Or. de

Justification:

The obligations imposed by national regulatory authorities must not only prevent distortions of competition, but also serve to realise the objectives laid down in Article 7 of the framework Directive.