

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0434/2001

28 November 2001

*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a European Parliament and Council directive on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (10418/1/2001 – C5-0416/2001 – 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)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

At the sitting of 1 March 2001 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive on access to, and interconnection of, electronic communication networks and associated facilities (Access Directive) (COM(2000) 384 - 2000/0186 (COD)).

At the sitting of 19 September 2001 the President of Parliament announced that the common position had been received and referred to the Committee on Industry, External Trade, Research and Energy (10418/1/2001 - C5-0416/2001).

The committee had appointed Renato Brunetta rapporteur at its meeting of 22 June 2000.

It considered the common position and draft recommendation for second reading at its meetings of 11 October 2001, 5, 21 and 27 November 2001.

At the last meeting it adopted the draft legislative resolution unanimously with 2 abstentions.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Nuala Ahern, vice-chairman; Renato Brunetta, rapporteur; Konstantinos Alyssandrakis, Guido Bodrato, Gérard Caudron, Carmen Cerdeira Morterero (for François Zimeray), Giles Bryan Chichester, Harlem Désir, Raina A. Mercedes Echerer (for Caroline Lucas), Christos Folias, Neena Gill (for Glyn Ford), Norbert Glante, María del Pilar Ayuso González (for Umberto Scapagnini), Michel Hansenne, Malcolm Harbour (for Christian Foldberg Røvsing), Roger Helmer, Hans Karlsson, Bernd Lange (for Mechthild Rothe), Werner Langen, Erika Mann, Marjo Matikainen-Kallström, Eryl Margaret McNally, Angelika Niebler, Reino Paasilinna, Yves Piétrasanta, Elly Plooij-van Gorsel, Samuli Pohjamo (for Colette Flesch), John Purvis, Godelieve Quisthoudt-Rowohl, Imelda Mary Read, Konrad K. Schwaiger, Esko Olavi Seppänen, Anna Terrón i Cusí (for Elena Valenciano Martínez-Orozco), Astrid Thors, Antonios Trakatellis (for Dominique Vlasto), Claude Turmes (for Nelly Maes), W.G. van Velzen, Adriaan Vermeer (for Willy C.E.H. De Clercq), Alejo Vidal-Quadras Roca, Anders Wijkman, Myrsini Zorba, Olga Zrihen Zaari.

The recommendation for second reading was tabled on 28 November 2001.

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

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (10418/1/2001 – C5-0416/2001 – 2000/0186(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (10418/1/2001 – C5-0416/2001),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2000) 384²),
 - having regard to the Commission's amended proposal (COM(2001) 369³),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Industry, External Trade, Research and Energy (A5-0434/2001),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 277, 1.10.2001, p.17, 72, 90.

² OJ C 365, 19.12.2000, p. 215.

³ OJ C not yet published.

Amendment 1
Recital 8 a (new)

(8 a) Interoperability is of benefit to end-users, in particular where there are high costs for consumers of switching between competing providers. Interoperability is an important aim of this Directive, and facilitating an appropriate level of interoperability is one of the objectives for national regulatory authorities as set out in Article 7(4) of Directive [framework]. Article 16 of Directive [framework] also provides for the Commission to publish a list of standards and/or specifications covering the provision of services, technical interfaces and/or network functions, as the basis for encouraging harmonisation in electronic communications. Member States are required to encourage the use of the published standards and/or specifications to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.

Justification

The scope of this amendment is to promote a good level of interoperability, in order to increase choices of the final customer

Amendment 2
Recital 9

(9) Competition rules alone may not be 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

(9) Competition rules alone may not be 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, either by a Member State for its national market or the Commission for the Community, in particular to determine whether there is justification for extending obligations to new gateways, such as electronic programme guides (EPGs) and application program interfaces (APIs), to the extent necessary to ensure accessibility for end-users to specified digital broadcasting services. Member States may specify the digital broadcasting services. Member States may specify the digital broadcasting services to which access by end-users must be ensured by any legislative, regulatory or administrative means that they deem necessary.

available. Technological and market developments make it necessary to review these obligations on a regular basis, either by a Member State for its national market or the Commission for the Community, in particular to determine whether there is justification for extending obligations to new gateways, such as electronic programme guides (EPGs) and application program interfaces (APIs), ***including on interactive platforms***, to the extent necessary to ensure accessibility for end-users to specified digital broadcasting services. Member States may specify the digital broadcasting services. Member States may specify the digital broadcasting services to which access by end-users must be ensured by any legislative, regulatory or administrative means that they deem necessary.

Justification

Clarification - the interactive platforms from part of the conditional access regime. Accessibility of interactive services from the TV will increase in importance to consumers over the lifetime of these directives and a clear policy position is important.

Amendment 3 Recital 9 a (new)

(9a) Interoperability of digital interactive TV services and terminal equipment, at the level of the consumer, shall be guaranteed in order to ensure the free flow of information and media pluralism. Therefore, consumers shall be able to receive, regardless of the transmission mode, all digital interactive television services broadcast on new digital interactive TV platforms according to a common standard which has been standardized by a recognized European standardization body. This would allow portability of interactive content between new delivery mechanisms, and full functionality of this content on digital interactive TV receivers. Existing digital interactive television platforms should strive to adopt a single open interoperable API which has been standardized by a

recognized European standardization body as soon as economically possible. Migration from existing APIs to the new common API should be encouraged and organised by e.g. Memoranda of Understanding between all relevant market players. Each time an existing platform upgrades its existing APIs, this should be done with the aim of enhancing overall interoperability.

Justification

The technical innovation and development of digital interactive services should be accessible for the consumers in the entire internal market. An interoperability between different systems would ensure the free flow of contents across Europe without setting a specific standard, which could be premature at the current stage.

Amendment 4 Recital 12

(12) The review should be carried out using an economic market analysis based on competition law methodology. The aim is to reduce ex-ante sector specific rules progressively as competition in the market develops. However the procedure also takes account of the possibility of new bottlenecks arising as a result of technological development, which may require ex-ante regulation, for example in the area of broadband access networks. It may well be the case that competition develops at different speeds in different market segments and in different Member States, and national regulatory authorities should be able to relax regulatory obligations in those markets where competition is delivering the desired results. In order to ensure that market players in similar circumstances are treated in similar ways in different Member States, the Commission should be able to ensure harmonised application of the provisions of this Directive. National regulatory authorities and national authorities entrusted with the implementation of competition law should,

(12) The review should be carried out using an economic market analysis based on competition law methodology. ***The review should include the Commission and the national regulatory authorities to investigate the price mechanism for international roaming costs, ensuring that obligations are imposed on operators to make the retail prices of international roaming transparent and based on principles of effective competition.*** The aim is to reduce ex-ante sector specific rules progressively as competition in the market develops. However the procedure also takes account of ***transitional problems in the market such as the ones related to international roaming as well as*** of the possibility of new bottlenecks arising as a result of technological development, which may require ex-ante regulation, for example in the area of broadband access networks. It may well be the case that competition develops at different speeds in different market segments and in different Member States, and national regulatory authorities should be able to relax regulatory

where appropriate, co-ordinate their actions to ensure that the most appropriate remedy is applied. The Community and its Member States have entered into commitments on interconnection of telecommunications networks in the context of the World Trade Organisation agreement on basic telecommunications that need to be respected.

obligations in those markets where competition is delivering the desired results. In order to ensure that market players in similar circumstances are treated in similar ways in different Member States, the Commission should be able to ensure harmonised application of the provisions of this Directive. National regulatory authorities and national authorities entrusted with the implementation of competition law should, where appropriate, co-ordinate their actions to ensure that the most appropriate remedy is applied. The Community and its Member States have entered into commitments on interconnection of telecommunications networks in the context of the World Trade Organisation agreement on basic telecommunications that need to be respected.

Justification

The pricing for international roaming should be competition driven. It is vital that the consumer is aware of costs for international roaming. Operators to date have been reluctant to self-regulate on this therefore commission intervention is essential to protect the consumer. The international roaming cost should be monitored, this amendment is linked to new recital 27 a and new point 4 in the annex 1 of the framework directive.

Amendment 5 Recital 14 a (new)

(14a) In order to ensure that the pan-European electronic communications markets are effective and efficient, the Commission should monitor and publish information on charges which contribute to determine prices to end users.

Justification

Disparities in cost factors which contribute to determining the price to the end-user can distort competition and result in discrimination against some operators. They should therefore be monitored.

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
Recital 23 a (new)

(23a) The development of the electronic communications market, with its associated infrastructure, could have adverse effects on the environment and the landscape. Therefore, MS should monitor this process and, if necessary, take action to minimise any such effects by means of appropriate agreements and other arrangements with the relevant 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 8

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

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

Justification

Clarification - the interactive platforms form part of the conditional access regime. Accessibility of interactive services from the TV will increase in importance to consumers over the lifetime of these directives and a clear policy position is important.

Amendment 9

Article 2(e)(a) (new)

(e)(a) '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.

Amendment 10

Article 2, points (eb), (ec), (ed), (ee)(new)-

(eb) "digital interactive television platform" means a content delivery system or network for the distribution of digital interactive television services

(ec) "API" (Application Programming Interface) means the software interface between external applications, made available by broadcasters/service providers, and the resources in the terminal equipment.

(ed) "digital interactive television service" means a digital TV service that includes one or more software components, presented to a terminal as external applications.

(ee) "terminal equipment" means set-top-boxes and integrated digital TV sets for the reception of digital interactive TV services.

Justification

The technical innovation and development of digital interactive services should be accessible for the consumers in the entire internal market. An interoperability between different systems would ensure the free flow of contents across Europe without setting a specific standard, which could be premature at the current stage.

Amendment 11

Article 4.2a (new)

2a. 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 12
Article 5.2a (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

Ex-ante regulatory interventions should be the ultimate remedy for enduring market failure. NRAs should not only impose obligations but also lift them where a specific market is found to be effectively competitive, in line with the principles of the new framework.

Amendment 13
Article 5(4)

4. With regard to access and interconnection, Member States shall ensure that the national regulatory authority is empowered to intervene **at its own initiative where justified or**, in the absence of agreement

4. With regard to access and interconnection, Member States shall ensure that the national regulatory authority is empowered to intervene, in the absence of agreement between undertakings, at the request of

between undertakings, at the request of either of the parties involved, in order to secure the policy objectives of Article 7 of Directive 2001/ /EC (Framework Directive), in accordance with the provisions of this Directive and the procedures referred to in Articles 6, 18 and 19 of Directive 2001/ /EC (Framework Directive)

either of the parties involved ***if 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 operators is imposing unreasonable terms on the undertaking requesting access or interconnection*** in order to secure the policy objectives of Article 7 of Directive 2001/ /EC (Framework Directive), in accordance with the provisions of this Directive and the procedures referred to in Articles 6, 18 and 19 of Directive 2001/ /EC (Framework Directive)

Justification

In case of the absence of agreement between undertakings on interconnection arrangements regulatory obligations should be restricted to an operator having SMP. NRA should have the authority to impose such measures. Otherwise the result could be a fragmented European market, rather than a harmonised one.

The granting of powers to NRAs to intervene on their own initiative in matters of interconnection and interoperability, sound a bit inappropriate . It should be fully endorse an active role for NRAs in resolving disputes which are referred to them by market participants, but it is not clear why NRAs should be able to impose arrangements upon participants when no party has requested intervention.

Amendment 14 Article 6(1a) (new)

1a. The provision of paragraph 1 shall also apply to interactive services delivered to viewers including access to application programme interfaces (APIs) and electronic programme guides (EPGs)

Justification

APIs and EPGs are gateways as much as conditional access (CA) systems which are already regulated to ensure fair, reasonable and non-discriminatory access. As APIs and EPGs are to a similar extent as CA systems controlled by vertically integrated market actors who provide services through them and have a strong incentive to deny non-discriminatory access to third parties or in other ways limit consumer choice, it necessary to also regulate these at the EU

level. Regulating CA systems at the EU level but leaving APIs and EPGs to be regulated by the national regulatory authorities would be inconsistent and is likely to prolong fragmentation and uncertainty across the internal market.

Amendment 15
Article 6 paragraph 1b (new)

1b. Member States shall ensure that in relation to digital interactive television services, the conditions laid down in Annex I, Part Ia apply in order to ensure interoperability.

Justification

The technical innovation and development of digital interactive services should be accessible for the consumers in the entire internal market. An interoperability between different systems would ensure the free flow of contents across Europe without setting a specific standard, which could be premature at the current stage.

Amendment 16
Article 7(1)

1. Member States shall maintain all obligations on undertakings providing public communications networks and/or services 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, and 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 public communications networks and/or services 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, and Articles 7 and 8 of Directive 92/44/EC and Article 3 of Regulation 2887/2000, until such time as these obligations have been reviewed and a determination made in accordance with paragraph 3. ***Such a determination shall be made no later than 12 months after the adoption of the Decision referred to in Article (14a) of Directive on (a common regulatory framework for electronic communications networks and services).***

Justification

Determinations should be made by NRAs in a timely manner, after due analysis, and procedural delay should not be allowed to sustain unwarranted regulation

Amendment 17 Article 8(2a) (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

Proportionality is one of the principles underpinning the new regulatory framework. It is particularly important to ensure that only durable market failures are dealt with by ex-ante interventions and that these interventions are proportionate.

Amendment 18 Article 8.3, first indent

– the provisions of **Articles 5(1), 5(2) and 6**; – the provisions of **Article 6**;

Justification

The references to Articles 5(1) and (2) give NRAs broad powers to impose obligations on operators without SMP in order to ensure adequate access and interconnection and interoperability of services and also to lay down technical or operational conditions where necessary to ensure normal operation of the network. This provision goes far beyond the exception provided in the Commission text where obligations may only be imposed on SMP operators without SMP in order to comply with international commitments. Under the new regulatory package NRAs have already been given extremely broad powers to regulate

operators with market power, subject to market analysis demonstrating that the relevant market is not effectively competitive. This provision, on the other hand, gives NRAs carte blanche to impose access and interconnection obligations on any operator without conducting any market analysis. It is clearly inconsistent with a proposed regulatory regime which is meant to facilitate the move towards a reliance on competition law: for it cannot be consistent with competition law policy to impose ex ante obligations on operators without market power where the state of competition in the market is not even an issue.

Amendment 19

Article 8, paragraph 3, last subparagraph

In exceptional circumstances, when a national regulatory authority intends to impose on operators with significant market power obligations for access or interconnection **that go beyond** those set out in Article 9 to 13 in this Directive it shall submit this request to the Commission. The Commission, acting in accordance with Article 14(2) shall take a decision authorising or preventing the national regulatory authority from taking such measures.

In exceptional circumstances, when a national regulatory authority intends to impose on operators with significant market power **other** obligations for access or interconnection **than** those set out in Article 9 to 13 in this Directive it shall submit this request to the Commission. The Commission, acting in accordance with Article 14(2) shall take a decision authorising or preventing the national regulatory authority from taking such measures.

Justification

The proposed wording is intended to make it clear that no further obligations in addition to those set out in the directive may be imposed unless they have been authorised by the Commission. This should apply even if they do not 'go beyond' those set out in Articles 9 to 13.

Amendment 20

Article 8a (new)

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 21
Article 12(1a) (new)

1a. International roaming

The Commission and the NRAs will regularly assess whether the wholesale and retail prices of international roaming are based on the principles of effective competition.

Operators will be required to inform their clients in a transparent way about their international roaming tariffs, and will provide their clients in an interactive system a comparison of the international roaming prices of the different operators.

Justification

Basing the wholesale and retail prices for international roaming on the principles of effective competition makes the text more consistent with the procedures and principles of this directive, and with the framework-directive.

Amendment 22
Article 12(1b) (new)

1b. Call Termination

As long as the prices for call termination are not cost-based, the Commission will regularly assess whether the prices of call termination are based on the principles of effective competition.

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

Basing the prices of call termination (fixed to mobile) on the principles of effective competition makes the text more consistent with the procedures and principles of this directive, and with the framework-directive.

Amendment 23 Article 12, paragraph 2a (new)

2a. National regulatory authorities should give interested parties an opportunity to state their views on the factors listed in Article 12(1).

Justification

Transparency and accountability of NRAs is essential for the sound implementation of the new framework. National regulatory authorities must give interested parties an opportunity to state their views on the factors listed in Article 12(1).

Amendment 24 Article 13(1)

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that ***a lack***

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that ***an***

of effective competition means that the operator concerned ***might sustain*** prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. National regulatory authorities shall take into account the investment made by the operator and ***allow him a reasonable rate of return on adequate capital employed, taking into account*** the risks involved.

existing and durable market failure which means that the operator concerned ***is capable of sustaining*** prices at an excessively high level ***for a non-transient period***, or apply a ***lasting*** price squeeze, to the detriment of end-users. ***The imposition of price controls by the national regulatory authority shall not negatively affect competition in the long term nor discourage investments in alternative infrastructures.*** National regulatory authorities shall take into account the investment made by the operator and the risks involved.

Justification

The tightest possible criteria should be satisfied before an NRA is empowered to impose price controls under this Article.

Amendment 25 Annex I, Part Ia (new)

Part Ia – Conditions to ensure interoperability of digital interactive television platforms and of terminal equipment

1. In relation to digital interactive television platforms and of terminal equipment, Member States must ensure in accordance with Article 6 that the following conditions apply:

(a) providers of digital interactive TV services for distribution to the public in the Community on new digital interactive TV platforms, regardless of the transmission mode, shall use a single open, interoperable API which has been standardized by a recognized European standardisation body;

(b) all terminal equipment deployed for the reception of digital interactive television services on new interactive digital TV platforms comply with the open API in a fully functional form, in accordance with the minimum requirements of the standard

(c) proprietors of APIs shall make available on fair, reasonable and non-discriminatory terms, and against appropriate remuneration, all such information as is necessary to enable providers of digital interactive TV services to provide all these services supported by the API in a fully functional form.

2. A digital interactive television platform shall only be regarded as "new" where it is either newly launched or, when already existing, switched to a new API, after the entry into force of this directive.

3. Within one year after the date of implementation of this directive, the Commission shall examine the effects of this Part Ia of Annex I. If interoperability and freedom of choice for users have not been adequately achieved throughout the internal market, the Commission shall propose measures to ensure interoperability across all digital interactive TV platforms.

Justification

The reference in the Annex I results from the amendments made to article 2 and article 6 concerning the operability between digital interactive television, and is therefore self-explanatory..

Amendment 26

Annex I, Part II, letters (ba) and (bb) (new)

(ba) return paths

(bb) decoder storage capabilities

Justification

National regulatory authorities should also have the possibility of ensuring fair access, where necessary, to other digital gateways in addition to EPGs and APIs. These should include, in particular, return paths and decoder storage capabilities, as proposed by the European Parliament at first reading.