



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.7.2007
COM(2007) 401 final

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

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

Consolidating the internal market for electronic communications

{SEC(2007) 962}

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

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

Consolidating the internal market for electronic communications

(Text with EEA relevance)

TABLE OF CONTENTS

1.	Introduction	3
2.	Overview of the Article 7 procedure.....	3
3.	Internal market for e-communications	4
4.	Experience from the notifications	5
4.1.	Market definition and market analysis	5
4.2.	Remedies	6
4.2.1.	Fixed access markets.....	6
4.2.2.	Asymmetries in fixed and mobile termination.....	7
4.2.3.	Broadband markets.....	8
5.	Trends in the competitive situation in markets analysed	9
5.1.	Retail calls and leased lines markets.....	9
5.2.	Transit markets and trunk segment of leased lines	10
5.3.	Mobile access and call origination.....	10
5.4.	Broadcasting transmission markets.....	11
6.	Horizontal issues	11
6.1.	Streamlining of procedures	11
6.2.	Belated adoption of final measures and implementation of remedies	12
6.3.	Application of Article 5 of the Framework Directive.....	13
7.	Conclusions	13

1. INTRODUCTION

The realisation of an open and competitive internal market for electronic communications within a single European Information Space still remains a challenge for Europe. While the regulatory framework has led to significant benefits for citizens and enterprises alike through reduction of prices, increased choices and the creation of a level-playing field across the EU, there are still obstacles to the full exploitation of the potential of the internal market.¹

This Communication gives an insight into the experience gained from the market review process and highlights some major trends and issues. It complements the i2010 Annual report² and the 12th Implementation Report³. Further, it contributes to the review of the regulatory framework that the Commission will propose to the Council and the European Parliament in the second half of 2007. It demonstrates that the consultation mechanism under Article 7 of the Framework Directive⁴ has contributed significantly to the coherent implementation of the regulatory framework, in particular with regard to market definition and market analysis. At the same time, it illustrates that in certain areas, such as the imposition of remedies, there is still scope for rendering regulation more effective and for increasing the consistency of remedies across the EU in order to work towards an internal market for electronic communications.

2. OVERVIEW OF THE ARTICLE 7 PROCEDURE

The key objectives of the regulatory framework that entered into force in 2003 are the promotion of competition, investment and innovation within the internal market for electronic communications in the interest of consumers and competitiveness. The consultation mechanism built in the framework plays a vital role in achieving these goals. Regulatory decisions are adopted by the national regulatory authorities (NRAs) but the review mechanism at EU level safeguards internal market objectives. This role of the Commission under Article 7 of the Framework Directive is decisive in helping to (i) ensure **consistent regulation** across the EU; (ii) to **limit regulation** to markets which will not become competitive without regulatory intervention; and (iii) to bring more **transparency** in the regulatory process.

Pursuant to Article 7 of the Framework Directive draft regulatory measures of NRAs concerning the market review process are to be notified to the Commission and the NRAs of other Member States. The Commission may request an NRA to withdraw a draft regulatory measure if it is found not to be compatible with Community law, in

¹ A single market for citizens, COM(2007) 60 final of 21.2.2007

² i2010 - Annual Information Society Report 2007, COM(2007) 146 final of 30.3.2007.

³ European Electronic Communications Regulation and Markets 2006 (12th Report), COM(2007) 155 of 29.3.2007.

⁴ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (the "Framework Directive"), OJ L 108, 24.4.2002, p. 33.

particular as concerns market definition and/or SMP analysis. Such a request for withdrawal has been issued by the Commission in five cases. In addition, NRAs have decided to take back their notifications in 28 cases. The Commission and the other NRAs may also make comments on the imposition of remedies that shall be taken utmost account of by the notifying NRA. Thus far, more than 600 draft regulatory measures were notified to the Commission, which means that the first round of market reviews for the 18 markets referred to in the Commission Recommendation 2003/311/EC⁵ is almost complete.

A more detailed overview of the procedure can be found in Annex I to this Communication.

3. INTERNAL MARKET FOR E-COMMUNICATIONS

Whilst many operators are present in several countries⁶, most markets in the electronic communications sector are national. Operators which strive to offer similar services across Europe, in particular for multinational corporate clients, and to simplify the sales and marketing process, depend on reasonably similar wholesale inputs across Member States⁷. The notifications received so far show that the remedies imposed are not always as effective as they could be and that regulation is not always consistent across the EU, even in cases where market circumstances are similar. Market players wishing to operate in several Member States sometimes face a variety of regulatory environments. In order to enable the European electronic communications industry to exploit the full potential of the internal market, further steps should be taken to ensure effective regulation in all Member States and to remove unfounded divergences in regulation across Member States. Without consistent ex ante regulation, operators, in particular those who are present in several Member States, face difficulties in introducing their offerings on a European basis.

A lack of regulatory certainty could have detrimental effects on the development of the electronic communications sector in the EU⁸. During the public consultation on

⁵ Commission Recommendation 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services ("Recommendation on relevant markets"), OJ L 114, 8.5.2003, p. 45.

⁶ In the fixed telephony and broadband markets, many operators are active in various Member States and even across the EU. Also in mobile markets, several undertakings operate in various Member States, with one operator being active in more than half of the EU25. In the satellite broadcasting markets, operators already offer cross-border services. See the study entitled "Preparing the Next Steps in Regulation of Electronic Communications - A contribution to the review of the electronic communications regulatory framework" of July 2006 (the "Hogan & Hartson and Analysys Study").

⁷ See the Hogan & Hartson and Analysys Study.

⁸ The electronic communications sector accounts for around 44,5% of the whole ICT sector which is valued at 649 billion in 2006 according to the Commission's 12th Implementation Report.

the review of the EU regulatory framework⁹ it was suggested that the Commission could play a stronger role in the coherent application of remedies.¹⁰

4. EXPERIENCE FROM THE NOTIFICATIONS

The regulatory framework for electronic communications networks and services is based on regulation of markets, not regulation of technologies. These markets are defined and analysed in accordance with competition law principles. Where a given market is susceptible to ex ante regulation and an NRA finds one or more undertakings to have significant market power or “SMP” (equivalent to “dominance” under competition law) on that market, it must impose appropriate regulation. Conversely, regulation must not be imposed, or existing regulation must be withdrawn on markets where no undertaking is found to have SMP.

This chapter presents developments in market definition and analysis and highlights certain inefficiencies and divergences in the application of remedies that continue to exist and risk undermining the internal market. It is complemented by the Commission staff working document annexed to this Communication which provides a detailed overview.

4.1. Market definition and market analysis

The first Communication on market reviews¹¹ underlined that the involvement of the Commission allowed to achieve a high degree of consistency regarding market definition and market analysis. The experience from the notifications received thereafter shows that this continues to be the case.

Under the regulatory framework for electronic communications, markets have to be defined according to competition law, taking utmost account of the principle of technology neutrality. Since the first Communication on market reviews, the Article 7 procedure in combination with the Recommendation on relevant markets ensured that NRAs define markets in a consistent way, including those that comprise new technologies such as high bandwidth broadband services based on VDSL technology. The Commission found that a mere upgrade of an existing service delivered via a new technology does not in itself constitute a new market.¹² The Commission also

⁹ See, in particular, the Communication on the Review of the EU Regulatory framework for electronic communications, COM(2006) 334 final of 28.6.2006.

¹⁰ See the study by London Economics, in association with PricewaterhouseCoopers, entitled "An assessment of the regulatory framework for electronic communications: growth and investment in the EU e-Communications sector" of July 2006 (the "LE PWC Study").

¹¹ See the Communication on Market reviews under the EU Regulatory Framework, COM(2006) 28 final of 7.2.2006.

¹² The Commission sent a letter of formal notice to Germany because of amendments in the German Telecoms Act which would effectively exempt fast internet access networks (VDSL) from competition, see the press release IP/07/237 of 26.2.2007.

gave guidance on the inclusion of leased lines using alternative interfaces, such as Ethernet, in the wholesale leased lines markets¹³.

Regarding SMP, NRAs must assess, in line with EU competition law principles and taking the utmost account of the SMP guidelines¹⁴, whether an undertaking enjoys a dominant position on the relevant market. Very high market shares (above 50%) are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position, whereas market shares over 40 % would normally raise SMP concerns. According to the case law, the inclusion of captive sales in the relevant market may depend on whether the traffic generated by a subsidiary of an undertaking would be made available in the merchant market in case of an increase or decrease of market prices. Other factors relevant for the SMP analysis include market dynamics, control of infrastructure that cannot be duplicated easily, barriers to entry and potential competition.

4.2. Remedies

When an undertaking enjoys significant market power on a given market, the relevant NRA has to impose regulatory obligations which are appropriate to remedy the identified competition problem.

Regarding the choice of remedies, the Commission observes less consistency across the EU than has been achieved in market definition and SMP analysis. Differences in remedies were not always justified by diverging market conditions or other notified specificities. In addition, not always the most efficient remedy was chosen. The following sections highlight the main areas of concern.

4.2.1. Retail fixed access markets

In the markets for retail "access" (i.e. connection to a fixed telephony network enabling calls and related services) certain NRAs did not impose cost accounting and accounting separation obligations or failed to set the appropriate details thereof.¹⁵ The absence of such obligations in the retail access markets make it difficult to impose effective price regulation for various related wholesale products (such as wholesale line rental and local loop unbundling) and to monitor compliance with non-discrimination obligations. It also makes the ex post enforcement of competition rules difficult, for example in cases of anticompetitive pricing.

¹³ Leased lines with alternative interfaces (including Ethernet) must be included in the markets for wholesale leased lines if an assessment according to the principles of competition law indicates that wholesale leased lines with alternative interfaces are substitutable for wholesale leased lines with traditional interfaces, in particular if their functionality and price levels are equivalent.

¹⁴ Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (the "SMP Guidelines"), OJ C 165 11.7.2002, p. 6.

¹⁵ The Commission pointed to the lack of cost orientation and the missing accounting separation in Germany and the missing information of the cost accounting methodology in Slovakia.

Furthermore the imposition and implementation of wholesale line rental obligations varies significantly across Member. The divergences are not always justified on the basis of diverging market conditions.¹⁶ Finally, the Commission points out that a lack of effective competition in the retail access markets must preferably be addressed through effective wholesale regulation (e.g. wholesale line rental or local loop unbundling). When assessing the need for retail regulation, in particular in a second round market analysis, NRAs should first analyse and try to enhance the impact of existing wholesale remedies¹⁷.

Remedies imposed in the retail access markets vary substantially across Member States. Such differences are not always justified by diverging market circumstances.

4.2.2. *Fixed and mobile termination markets*

In principle each operator enjoys a monopoly position for terminating calls on its network. Although the measures adopted so far have significantly brought down the level of termination rates throughout the European Union, regulation continues to be applied unevenly. In particular, the following issues remain of concern.

Although some form of cost orientation is foreseen in most Member States, a large spread in average mobile termination rates still exists across Member States. Divergences may be partly justified by differing costs, but are also caused by the different price setting methodologies that NRAs apply and the different timeframes foreseen for reducing mobile termination rates to the costs of an efficient operator. High termination rates thus continue to translate into high, albeit diminishing, prices for consumers in a number of Member States.

Additionally, a number of NRAs authorised high termination rates for smaller operators that have not benefited from economies of scale immediately after their market entry. This, however, may constitute a disincentive to gain market share at retail level, as the enlargement of the customer base would lead to lower regulated termination rates. Therefore termination rates should, as a principle, be symmetric, whereas asymmetry requires an adequate justification. The Commission recognizes that, in certain exceptional cases, asymmetry might be justified by objective cost differences which are beyond the control of the operators concerned, e.g. unalterable differences in key network elements. If asymmetries in termination rates are not based on objective cost differences, they must be phased out within a reasonable time frame.

¹⁶ For example, the Commission commented on wholesale line rental in Portugal, Spain, United Kingdom and asked Poland to specify its wholesale line rental obligation.

¹⁷ In particular, the Commission commented on the need to take into account wholesale remedies in the case of Hungary, France, Slovenia and Spain and the enforcement of these remedies in France.

In the fixed and mobile termination markets, the Commission emphasized the need to move, in principle, towards symmetric termination rates based on costs of an efficient operator and encouraged NRAs to lower rates accordingly, in particular for mobile termination. As the diverging approaches across Member States have a negative effect on the internal market, the Commission invited NRAs to work closely with the European Regulators Group (ERG) to arrive at a coherent EU-wide approach on cost calculation and on enhancing symmetry.

4.2.3. Wholesale broadband markets (*bitstream access and local loop unbundling*)

Efficient regulation of the markets for wholesale broadband access ("bitstream access") and for unbundled access is a key factor for the competitive development of retail broadband markets and for the development of triple play services provided over broadband infrastructure. Bitstream access enables new entrants to provide retail broadband access services to end users. It is therefore an important step for new entrants towards investment in a more comprehensive roll out of their own network, leading towards local loop unbundling. After a certain time, competitors tend to rely on a combination of both forms of access, investing in their own infrastructure up to the incumbent's local loop where economically possible, i.e. normally in more densely populated regions, whereas they depend on bitstream access in rural areas.

Sometimes the belated¹⁸ application of remedies in the wholesale broadband access markets impaired the effectiveness of regulation. In several cases, the points in the network at which bitstream access had to be granted were either not specified or insufficient to enable the development of competition¹⁹. Price regulation was not always effective²⁰ and based on different price setting methods across the EU. Ineffective price regulation in some Member States distorts the internal market and gives rise to distortions of competition, mainly through margin squeezes. Not all Member States obliged the incumbent to make available "naked DSL" which enables alternative operators to provide broadband to end customers without the obligation to rent a telephone line from the incumbent²¹.

Due to the high costs of the duplication of the "last mile" of PSTN networks, the former monopolists still enjoy a very strong position in the market for wholesale unbundled access. Therefore the market was found to be non-competitive by all NRAs that have notified this market thus far.

¹⁸ For example, the German NRA notified final remedies more than one year after the notification of the market analysis.

¹⁹ This was the case in Luxemburg, the Czech Republic and Poland.

²⁰ In particular Czech Republic, Germany and Finland.

²¹ The Commission commented on that matter following notifications from Germany and Luxemburg.

In some Member States, parts of the local loop are currently upgraded with fibre optic infrastructure between the main distribution frames and the street cabinets. The Commission points out that this should not undermine the competitors' ability to gain access to an SMP operators' network at an appropriate level in order to be able to continue to compete efficiently. In view of these developments the markets for bitstream access and local loop unbundling should in the future not be analysed in isolation so as to ensure a coherent approach.

5. TRENDS IN THE COMPETITIVE SITUATION IN MARKETS ANALYSED

One of the main objectives of the Article 7 mechanism is to limit regulation to those markets which, due to inter alia their structural characteristics, offer no perspective of becoming effectively competitive without regulatory intervention. This chapter deals with certain markets where developments of competition have been observed. These developments will be taken into account in the review of the Recommendation on relevant markets. The development of all markets mentioned in the Recommendation on relevant markets is described in detail in Annex III to this Communication.

5.1. Retail calls and leased lines markets

Across the EU, the retail calls markets show a noticeable trend towards competition. In several Member States, the markets for international calls in particular have been found competitive already in the first round of market analyses.²² Even in those markets which have not been found competitive so far, competitive conditions are improving, i.e. prices are falling and new entrants are gaining market share. Increased competitive pressure from neighbouring markets, such as mobile, constrains the incumbent's behaviour. Wholesale regulation (carrier-selection and carrier-pre-selection, sometimes in combination with wholesale line rental) reduces barriers to entry. Additionally, the spread of broadband internet connections in combination with the emergence of Voice over Broadband (VoB) is expected further to enhance competition in the calls markets in the coming years.

Appropriate regulation at wholesale level should make retail regulation redundant once alternative operators have entered the market and are competing with the incumbent to deliver better services and lower prices to consumers. NRAs should therefore focus on enforcing effective wholesale regulation. They are invited to monitor the effects of wholesale regulation carefully and, if necessary, to adjust the remedies in the wholesale markets accordingly, with a view to ensuring competition at retail level. NRAs are also invited to cooperate closely with national competition authorities to ensure that competition in the retail calls markets is not distorted through anticompetitive behaviour.

²² This was (partly) the case in Austria, Belgium, Czech Republic, Denmark, Finland, Germany, the Netherlands, Sweden and the UK.

Technological developments as well as the consistent and efficient enforcement of appropriate wholesale regulation has enhanced competition in the retail calls and leased lines markets.

5.2. Markets for wholesale transit and trunk segments of leased lines

Nine NRAs found the wholesale market for trunk segments of leased lines to be effectively competitive.²³ In some Member States, the core network infrastructure of the incumbent operators has been duplicated and alternative operators started offering trunk leased lines to third parties in competition with the incumbent. Networks of alternative operators may not always cover the entire territory of a Member State, but in many Member States there is potential to expand coverage. This may affect the countervailing buying power of alternative operators vis-à-vis incumbents.

Four NRAs found the transit markets to be competitive. Nevertheless, even in some of the non-competitive transit markets, tendencies towards competition emerged as the market share of SMP operators, while still significant, eroded because alternative operators duplicated infrastructure not only for self-supply, but also in order to offer transit services to third parties. The core network infrastructure has been duplicated and leased lines, which serve as input to provide transit services are generally available.

It is reasonable to expect that the duplication of backbone infrastructure in transit and trunk segments will continue in the future although alternative operators in a number of Member States may still depend on the incumbent's lines for some less busy routes.

5.3. Wholesale mobile access and call origination

In the first round of market analyses, five NRAs found the wholesale market for mobile access and call origination services not to be effectively competitive and hence proposed regulation.²⁴ In other Member States the market was found to be competitive. In a number of Member States, mobile access and call origination is being provided on a commercial basis. Once service providers have entered the market, either through regulated or commercially agreed access arrangements with a mobile network operator, the host operator may have an economic interest to continue the supply relationship.²⁵

²³ This was the case in Austria, Belgium, the Czech Republic, Finland, Hungary, Latvia, the Netherlands, Sweden and Slovenia.

²⁴ In Cyprus and Slovenia, a single operator was found to have SMP. In Ireland, Spain and Malta collective dominance was found to exist. In Ireland, the final measure has been withdrawn by the Irish regulator following national court procedures.

²⁵ In case the host operator would cease supplies, the service provider may switch to another wholesale supplier. Alternatively, if the service provider exits the retail market, the host operator may not be able to capture a sufficient part of the service provider's retail customers to outbalance its lost wholesale income.

While the market for wholesale mobile access and call origination services has been found effectively competitive in most Member States it remains to be assessed whether the development of competition e.g. through the existence of MVNO agreements, is already sufficient in the wholesale access and call origination market.

5.4. Wholesale broadcasting transmission markets

All NRAs, with the exception of Cyprus, have so far regulated at least a part of the wholesale market for broadcasting transmission services. Regulation varies substantially across Member States and so do the underlying market conditions. In most Member States, terrestrial platforms are predominant, whereas in other Member States cable is the main platform. The timing of digital switchover varies across the EU and national legislation conferring "must carry" status on certain broadcasters also diverges substantially.

The broadcasting transmission market is characterised by technological progress. The spread of digital terrestrial television will enable consumers to receive a larger number of programmes. Development of internet TV and digital terrestrial TV might prospectively lower the switching costs between infrastructures. The increased number of transmission infrastructures should reduce the dependency of broadcasters on one particular transmission platform further and increase their countervailing buyer power.

6. HORIZONTAL ISSUES

In its first Communication on Market Reviews under the EU Regulatory Framework, the Commission encouraged NRAs in particular to obtain the views of market players and NCAs **prior to the European consultation** and noted that a **separate notification of different stages of the market review unnecessarily prolongs the regulatory process**. In addition to these concerns, which remain of relevance and were re-enforced during the last year, the Commission highlights the following horizontal issues.

6.1. Streamlining of procedures

In order to ensure efficient decision making within the rigid timescales provided for under Article 7 of the Framework Directive, the Commission has adopted a Procedural Recommendation²⁶. Although this Recommendation contains clear but flexible procedures for the cooperation between the Commission and NRAs, experience shows that additional implementing measures could be useful to increase legal certainty, to minimise the administrative burden for NRAs, operators and the Commission and to simplify the process further.

The Commission will lay down proposals for streamlining the procedures in a revised procedural Recommendation, later this year.

²⁶ Commission Recommendation of 2003/561/EC EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of the Framework Directive ("the Procedural Recommendation"), OJ L 190, 30.7.2003, p. 13.

6.2. Belated adoption of final measures and implementation of remedies

As electronic communications markets often evolve quickly, regulatory intervention can tackle market failures efficiently only if regulatory measures are implemented in an expedient manner.

In certain Member States, NRAs adopted final measures with significant delays after the completion of the market review process. These delays should be avoided in order to guarantee a timely reaction to market failures identified through the market review process.

Additionally, delays continue to occur in certain Member States because remedies are notified separately from the underlying market definition and analysis. As a consequence, market failures are not tackled in a timely fashion, which reduces the effectiveness of regulation and thus creates risks for the competitiveness of the sector.

NRAs are urged to conduct and notify all stages of a market review at the same time (market definition, market analysis and the intended regulatory obligations).

Finally, in some cases a significant period has elapsed without re-notification of a draft measure that had to be withdrawn. The draft measure in question should be amended and submitted to national consultation as soon as possible after the Commission requires the NRA to withdraw the measure so as to ensure that competition problems are addressed as quickly as possible.

Some NRAs have imposed generic measures and have left the details of remedies for commercial negotiations between market players, e.g. by imposing a general cost orientation obligation without specifying price ceilings or detailed cost accounting obligations. If negotiations between market players failed, the NRA would intervene in a dispute settlement in order to impose specific prices on the basis of the cost orientation obligation. While in principle the undertakings should themselves negotiate in good faith their access and interconnection agreements²⁷, the competitive problems identified in the context of the regulatory procedures should be tackled as soon and as effectively as possible. The implicit threat of further regulatory intervention, either in the context of a dispute settlement or ex officio, if commercial negotiations fail to remedy the competition problem identified, seems insufficient as it might not provide transparency and legal certainty for market players and could cause unnecessary delays.

Remedies should be defined in a sufficiently clear and detailed fashion in the final measures and should be suitable to tackle the identified competitive failures efficiently.

²⁷ See Recitals 5 and 6 and Article 4 of the Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (the "Access Directive"), OJ L 108, 24.4.2002, p.7.

6.3. Application of Article 5 of the Access Directive

Member States have used Article 5(1) of the Access Directive in several cases²⁸. It allows Member States to impose regulatory measures on non-SMP operators to the extent it is necessary to ensure end-to-end connectivity. The Commission has pointed out that Article 5 must not be used to circumvent the market analysis process and should be used only in cases where end-to-end connectivity needs to be guaranteed.

NRAs should use their powers under Article 5 of the Access Directive only in clearly defined circumstances in order to avoid overregulation and insecurity in the markets.

7. CONCLUSIONS

Almost all NRAs have finalised the first round of market reviews of the 18 markets included in the Recommendation, with the exception of the NRAs in Bulgaria and Romania that joined the EU only on 1 January 2007. The EU consultation mechanism established under Article 7 of the Framework Directive has been instrumental for **the promotion of competition, investment and innovation as well as for the consolidation of the internal market for electronic communications**. It has ensured a consistent approach, in particular regarding market definition and SMP analysis across Europe, brought sound economic analysis to the market review process and resulted in increased transparency. Overall, this form of cooperation between the Commission and NRAs led to better regulation based on competition principles and contributed to the development of a common European regulatory culture. The Commission's comments on the proposed remedies gave guidance towards a consistent regulatory approach across Europe, whilst taking into account specific national circumstances. The Commission focussed on ensuring that remedies are appropriate, i.e. based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in the Framework Directive.

However further steps need to be taken to enhance the effectiveness of regulation and to achieve greater consistency in the selection and application of remedies.

Although the regulatory approaches for market definition and market power analysis have converged to a large extent, **remedies are not always appropriate to resolve the identified competition problems and sometimes differ markedly amongst Member States in spite of similar market situations**.

²⁸

In the case NL/2003/17, the Dutch Ministry for economic affairs notified a decree that contained a general obligation to ensure end-to-end connectivity for all publicly available telephone services in the Netherlands. In case UK/2003/19, the British NRA notified an obligation for the only provider of access control services for digital TV (Sky Subscriber Services Limited) to provide access to these services on fair, reasonable and non-discriminatory terms. The Polish NRA imposed a non-discrimination and transparency obligation on the incumbent, in particular in order to prevent it from interfering with the quality of IP transmission between its customers and other electronic communications operators (see case PL/2006/0382). In case UK/2006/0454, the British NRA proposed to impose an access related obligation on BT, according to which BT is required to purchase wholesale narrowband call termination services from any operator of a public electronic communications network.

The Commission will strive to further streamline procedures and to **minimise the administrative burden for market players and NRAs, in line with the Commission's strategy for better regulation**²⁹. It will make corresponding proposals in the context of the review of the regulatory framework. In addition, **the Commission invites Member States to contribute to the streamlining of the market review process at the national level**. In particular, NRAs should avoid (i) delays between the notification of draft measures and the adoption of final measures, and (ii) notifying market analysis and intended remedies in different steps.

The Commission is currently reviewing the regulatory framework for e-communications and its proposal will be put forward to the Council and the Parliament in the second half of 2007. The revised regulatory framework however is not expected to enter into force before 2009-2010. In the short term the Commission is reviewing the Recommendation on relevant markets and the Article 7 procedural Recommendation and the new versions of the texts will be adopted in the second half of 2007.

²⁹ See in particular the Commission Communication, Better Regulation for Growth and Jobs in the European Union, COM(2005) 97 final of 16.3.2005.