



Competition Directive 2002/77/EC

C-1: Antitrust: Telecoms
22/05/2014

Competition



Background

- Directive 90/388/EEC gradually established full competition in the telecommunications market.
- It required Member States to abolish special and exclusive rights for the provision of telecommunications services.
- The Competition Directive replaced Directive 90/388/EC and its amendments in the light of developments of the telecoms markets in Europe since 1990.



Legal Basis: Art. 86 (3) of the Treaty (now Art. 106 (3) of the TFEU)

- Article 106 TFEU entrusts the Commission with the task of ensuring that, in the case of public undertakings and undertakings enjoying special or exclusive rights, Member States comply with their obligations under EU law.
- Pursuant to Article 106(3), the Commission can specify and clarify the obligations arising from that Article.



Main obligations under the Competition Directive

- Art. 2: Exclusive and special rights for electronic communication networks and services
- Art. 3: Vertically integrated public undertakings
- Art. 4: Rights of use of frequencies
- Art. 5: Directory Services
- Art. 6: Universal Service Obligations
- Art. 7: Satellites
- Art. 8: Cable television networks

Exclusive and special rights for electronic communication networks and services

- Member States ("MS") must remove exclusive and special rights for the provision of all electronic communications networks, not just those for the provision of electronic communications services.
- MS should ensure that undertakings are entitled to provide ECS.
- MS may not restrict the provision of ECS over ECN. This requirement is without prejudice to the provisions of the telecoms regulatory framework.



Exclusive and special rights for electronic communication networks and services

- MS should no longer make the provision of ECS and the establishment and provision of ECNs subject to a licensing regime but to a general authorisation regime (cf. Art. 3 of Authorisation Directive 2002/20/EC).
- An aggrieved party should have the right to challenge a decision preventing him from providing ECS or ECNs before an independent body and, ultimately, before a court or a tribunal.

Vertically integrated public undertakings

- Member States should take all measures necessary to prevent any discrimination between vertically integrated public undertakings which provide ECN and which enjoy a dominant position in the relevant market and their competitors.
- Cf. Art. 14 of Framework Directive 2002/21/EC in conjunction with Art. 8(4), Art. 10 Access Directive 2002/19/EC.

Right of use of frequencies

- MS should not grant exclusive or special rights of use of radio frequencies.
- Rights of use of those frequencies should be assigned according to objective, non-discriminatory and transparent procedures (cf. Art. 9(1) Framework Directive, Art. 7(3) Authorisation Directive).

Universal service obligations

- Any national scheme pursuant to the Universal Service Directive 2002/22/EC, serving to share the net cost of the provision of universal service obligations shall be based on objective, transparent and non-discriminatory criteria and shall be consistent with the principles of proportionality and of least market distortion. (cf. Art. 13(3) of Universal Service directive 2002/22/EC).

Satellites

- Where rights and obligations arising from international conventions setting up international satellite organisations are not compatible with the competition rules of the TFEU, MS should take all appropriate steps to eliminate such incompatibilities.
- Obligation on MS to remove any restrictions which could still be in force because of those international conventions.



Cable television networks

- Dominant providers of ECNs and publicly available telephone services must operate their public ECN and cable television network as separate legal entities, where such undertaking
 - is controlled by the MS or benefits from special rights; and
 - operates a cable television network which has been established under special or exclusive right in the same geographic area.



Thank you for your attention!