



# The EU regulatory framework for electronic communications

## Access Directive (2002/19/EC)

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*European Commission*  
**DG CONNECT**

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## **Directive (2002/19/EC) on access and interconnection**

- Part of the 2002 regulatory package, amended in 2009
- Harmonises the way in which Member States regulate access to, and interconnection of, electronic communications networks and associated facilities.



- Establishes rights and obligations for operators and seeking interconnection and/or access to their networks or associated facilities.

## 'access'

- making available of facilities and/or services to another undertaking:
  - **network elements and associated facilities (e.g. local loop)**
  - **physical infrastructure including buildings, ducts and masts**
  - **software and information systems or databases**
  - **fixed and mobile networks (e.g. roaming)**

# 'interconnection'

- linking of public communications networks 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.
- specific type of access that is implemented between public network operators.



## General provisions

- No restrictions which would prevent undertakings from negotiating between themselves agreements on access and/or interconnection
- Operators of public communications networks have a right and, when requested by other authorised operator, an obligation to negotiate interconnection with each other



# Powers and responsibilities of the NRAs

Access and interconnection can be imposed:

- to undertakings regardless their market power in limited circumstances (following the notification procedure in accordance with the Framework Directive)

or

- to operators with significant market power on a wide scale (following a market analysis in accordance with the Framework Directive)



# Obligations on undertakings without SMP (symmetrical)

NRAs shall encourage and where appropriate ensure adequate access and interconnection, and the interoperability of services in a way that promotes efficiency, sustainable competition, efficient investment and innovation, and gives the maximum benefit to end-users.

In particular:

- obligations on undertakings that control access to end-users, necessary to ensure end-to-end connectivity
- obligations on undertakings that control access to end users to make their services interoperable.
- obligations to provide access to the other facilities to ensure accessibility for end-users to digital radio and television broadcasting





# Another example of infrastructure sharing as a symmetrical obligation: Article 12 FWD

- NRAs are empowered to impose the sharing of passive network elements such as buildings, entry to buildings, masts, antennae, towers, ducts, conduits etc, for town planning or environmental reasons.
- A new amendment enables the sharing of wiring inside buildings, on the grounds that the duplication of such infrastructure would be economically inefficient or physically impracticable.
- NRAs also empowered to require all undertakings to provide a detailed inventory of the nature, availability and geographical location of the facilities.



## Remaining bottlenecks in the EU

- January 2014: EU incumbents had a 42% market share in retail fixed broadband access and 54% in DSL lines



# Obligations on undertakings with SMP (asymmetrical)

- NRA must submit their draft measures to the Commission as part of the Article 7 procedure, which requires:
  - to conduct a market analysis
  - to designate the SMP operator(s)
  - to demonstrate that the proposed measures are based on the nature of the competition problem identified, proportionate and justified
- Improve regulatory convergence across the EU and consolidate the internal market.



# Obligations on undertakings with SMP (asymmetrical)

- NRA empowered to impose facility sharing to operators with significant market power (SMP) in markets with physical bottlenecks.
- Its imposition may give rise to the obligation by the SMP operator(s) to publish a reference offer for wholesale networking infrastructure access, including information concerning the locations of physical access sites
- Facility sharing measures, such as access to ducts, can be submitted to cost-orientation

# Obligations on undertakings with SMP (asymmetrical)

May include :

- transparency
- accounting separation
- non-discrimination
- mandatory provision of specific facilities
- mandatory access to specific facilities
- price control, including cost accounting and cost orientation



# Functional Separation: Article 13a

- NRAs empowered to impose vertically integrated operators to place activities for the wholesale provision of access products in an independently operating business entity
- That entity to deliver fully equivalent access products to all market players
- A 'last resort' remedy, to be imposed only after NRA conclude that all standard obligations have failed to achieve effective competition
- Its implementation is subject to a Commission Decision based on Article 8(3) AccDir, taking into account the opinion of BEREC



# Functional Separation: Article 13a

Required criteria include:

- No prospect of infrastructure-based competition
- Analysis of expected impact on investment, competition, consumers, regulatory authority + other criteria

Once authorised, NRA to conduct a new market analysis to maintain, amend or withdraw existing obligations



## Voluntary separation: Article 13b

- Obligation for an SMP operator to inform in advance its NRA of any intended transaction involving the transfer of its local access network division to a separate entity in order to provide fully equivalent access products
- The NRA to assess the effect of the intended transaction on existing regulatory obligations and to maintain, amend or withdraw them





# EU regulatory framework

[http://ec.europa.eu/information\\_society/policy/ecommm/eu-rules/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecommm/eu-rules/index_en.htm)

Thank you for your attention !