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**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 (3rd report)**

**Further steps towards the consolidation of the internal market for electronic  
communications**

**{SEC(2010)659}**

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## 1. INTRODUCTION

The regulatory framework for electronic communications which entered into force in 2003 introduced the 'Article 7 procedure' — an EU consultation mechanism which aims at ensuring a consistent regulatory approach within the EU. The recently revised telecoms rules<sup>1</sup> confirmed the central role of the Article 7 procedure in promoting a competitive single market for electronic communications services. They give the Commission additional responsibilities for imposing and implementing remedies. This is intended to give market players greater legal certainty when they invest in telecoms across borders.

Since 2003, telecoms markets have become more competitive and services and products increasingly accessible across Europe. This is partly the result of action by national regulatory authorities (NRAs), for example imposing access and pricing obligations on operators with significant market power (SMP), and partly because the Commission's supervision of NRAs' draft regulatory measures has ensured a consistent approach to regulation across the EU. Regulation has undoubtedly become more focused on persistent bottlenecks, and regulatory procedures have become more streamlined and effective.

However, problems remain. The single market for telecoms is far from being a reality and further efforts need to be made. Not all Member States are advancing at the same pace with their market reviews. Not all NRAs follow the appropriate regulatory approaches, especially when it comes to remedies for tackling competition problems. The resulting complex picture of competitive conditions that differ from one Member State to another thus continues to hamper the further development of the internal market. While incumbent operators generally still have SMP, particularly in upstream fixed telephony and broadband access markets, Next Generation Access (NGA) networks are being rolled out across Europe. Their deployment requires substantial investment, but the demand for services that need high-speed broadband connections remains uncertain. To foster investment and innovation, it is therefore necessary to provide regulatory certainty for investors while maintaining effective competition.

This Communication presents the major trends and issues encountered since the Commission's 2007 Communication on the market review process<sup>2</sup>, up to the end of 2009. It shows how and to what extent the Commission's oversight role under Article 7 of the Framework Directive<sup>3</sup> has been instrumental in working towards a single European telecoms market. Finally, it identifies several key areas in which the Commission may be required to provide further guidance to Europe's telecoms regulators to ensure a level of consistency and predictability that will give market players the confidence to further invest in the EU market.

## 2. PROGRESS ON MARKET ANALYSES

NRAs have made uneven progress with their market analyses under Article 7 of the Framework Directive. Some have started their third round reviews, while others are still in the first round<sup>4</sup>. The Commission has reviewed more than 1000 notifications from NRAs and

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<sup>1</sup> The revised EU telecoms rules, adopted on 25.11.2009, to be transposed by 25.05.2011. (See OJ L 337, 18.12.2009, p. 37.).

<sup>2</sup> COM(2007)401 dd. 11.07.2007.

<sup>3</sup> Directive 2002/21/EC, OJ L 108, 24.4.2002.

<sup>4</sup> An overview can be found in Annexes II, III and IV of the Staff Working Document (SWD).

issued comments on about 60 % of them. In about 4 % of cases, NRAs withdrew their notified draft measure after receiving reasoned advice from the Commission. In less than 1 % of all cases the Commission objected to the intended regulation<sup>5</sup>. The Commission has always responded to NRAs' draft measures in order to provide guidance and ensure a consistent yet appropriately nuanced regulatory approach across Europe. Experience shows that, on balance, NRAs take due account of this guidance.<sup>6</sup>

### 3. MORE STREAMLINED AND FOCUSED REGULATION

Ongoing technological developments and the enforcement of telecoms regulation in the Member States have, over the years, lowered market entry barriers and enabled alternative operators to increasingly constrain the market power of SMP operators. To re-focus regulatory efforts and resources on key competition bottlenecks, it was necessary to re-evaluate the 2003 Recommendation on relevant markets<sup>7</sup> and to further streamline the Article 7 procedure.

A key insight of the 2007 Communication on the market review process was that the Article 7 procedure had been particularly successful in ensuring a consistent interpretation of *where* regulation is appropriate, but less successful in identifying *which* regulation is needed. Since then, however, several NRAs have found that, within certain telecoms markets, effective competition came to some geographical areas sooner than others. The question as to *where* regulation is appropriate was thus raised again.

Regulatory remedies still vary across Europe, even where the underlying market problems are very similar. This is a serious impediment to achieving a true single market. In particular, NRAs continue to apply divergent price-setting methodologies when regulating key access products that enable alternative operators to compete against the dominant undertakings which own most of the access infrastructure. The Commission has urged NRAs to use appropriate cost-accounting methods and to consult the actual level of regulated access prices across the EU.<sup>8</sup>

#### 3.1. Commission guidance under the Article 7 procedure — cross-cutting issues

##### 3.1.1. Geographical differentiation

Regulation of wholesale inputs for broadband services has allowed competitors to invest in their own infrastructure (LLU<sup>9</sup>), and this has led to more competition, particularly in densely populated areas. Some NRAs have considered regionally differentiated competitive conditions when defining the geographical market, and have adjusted their regulation to take account of those differences between sub-national markets. Other NRAs have considered such differences when imposing remedies. To ensure a consistent approach to identifying *genuine* differences in competitive conditions, the Commission has advised NRAs to define separate

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<sup>5</sup> In nearly 3 % of the cases the Commission opened an additional assessment period (Phase II).

<sup>6</sup> An overview of the Article 7 procedure can be found in Annex I.

<sup>7</sup> Commission Recommendation 2003/311/EC, OJ L 114, 8.5.2003.

<sup>8</sup> LT/2009/0990, SI/2009/1010, SE/2009/1018, DK/2009/1023.

<sup>9</sup> Local loop unbundling.

geographical markets only when the competitive conditions in different geographical areas, and the boundaries between these areas, are stable over time.<sup>10</sup>

### 3.1.2. *Functional separation and commitments*

Discussions on different forms of business separation of incumbent operators have been increasing in a number of Member States<sup>11</sup>. Under the current EU telecoms rules, NRAs can, in exceptional circumstances, impose remedies other than traditional access-related obligations, if authorised by the Commission. One such remedy is functional separation, which requires a dominant network operator to separate organisationally its network and its service provider businesses. The Commission has been stressing that commitments offered by SMP operators and accepted by NRAs, insofar as they aim at enforcing, modifying or replacing existing regulatory obligations, must be considered as directly related and/or ancillary to those existing regulatory obligations. As such, they must be subject to national and EU consultations before adoption, to ensure the transparency of the process and an adequate involvement of all stakeholders. NRAs must also ensure that separation commitments do not negatively affect investment by the incumbent and new entrants, and that alternative operators have at least the same access possibilities under a commitment-driven approach as under a purely regulatory approach.

## 3.2. **Commission initiatives under Article 19 of the Framework Directive**

### 3.2.1. *Procedural Recommendation*

In 2008 the Commission adopted a revised Procedural Recommendation<sup>12</sup> to reduce the administrative burden of the regulatory process. To increase legal certainty for NRAs and market players and to ensure a timely implementation of regulatory measures, the revised Recommendation invites NRAs to notify simultaneously the market analysis and the (withdrawal of) remedies. To streamline procedures for NRAs and the Commission, it allows NRAs to use a 'short form' to notify four types of measures<sup>13</sup>. In principle the Commission will not comment on such notifications.

Since then, the Commission has received mostly short notification forms for markets that are no longer listed in the Recommendation on relevant markets and where the NRA considered that the market no longer warrants *ex ante* regulation.<sup>14</sup> In one of these cases the Commission nonetheless urged the regulator to mandate an appropriate period of notice before actually withdrawing the existing obligations.<sup>15</sup> Only a few cases related solely to changes in the technical details of a remedy.<sup>16</sup>

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<sup>10</sup> UK/2007/0733, PT/2008/0851, ES/2008/0805, FI/2009/0900.

<sup>11</sup> UK, SE, SL, IT, PL, PT.

<sup>12</sup> Commission Recommendation 2008/850/EC, OJ L 301, 12.11.2008.

<sup>13</sup> Namely, decisions (i) to de-regulate markets no longer listed in Recommendation 2003/311/EC; (ii) not to regulate markets included in the Recommendation but which remain effectively competitive; (iii) amendments to technical details of a previously imposed remedy; and (iv) the extension of existing measures to another market player in a similar situation.

<sup>14</sup> e.g. ES/2008/0817, PL/2008/0831, CZ/2008/0840, NL/2008/0849, CZ/2008/0857, CZ/2009/0872, SI/2009/0893, SK/2009/0954, SE/2009/0968, PL/2009/0971, FI/2009/0985, IT/2009/0998, IT/2009/0999, SK//2009/1008, DK/2009/1024.

<sup>15</sup> IT/2009/0999.

<sup>16</sup> e.g. IT/2008/0842, BE/2009/0882, UK/2009/0901, IE/2009/0928, PT/2009/0956, RO/2009/1003, PT/2009/1011, PT/2009/1012, FR/2009/1028.

### 3.2.2. Termination Rates Recommendation

Termination rates are on a downward trend, yet there are still large gaps between mobile termination rates<sup>17</sup> and between fixed and mobile termination rates. The Commission's assessment of notifications regarding these markets revealed that these discrepancies are often due to differing regulatory approaches in terms of price control types, costing methodologies, the treatment of asymmetries and the implementation of glide paths. In its comment letters, the Commission therefore consistently invited NRAs to work towards the application of a coherent cost-accounting method, to apply a forward-looking long-run incremental cost model to bring termination rates down to a level reflecting the cost of an efficient operator, and to establish without delay glide paths to symmetric termination rates, so as to continue encouraging operators to become efficient as quickly as possible.

To consolidate these principles, the Commission adopted a Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU<sup>18</sup>, giving general guidance on this issue. This Recommendation sets out clear costing principles to be applied by NRAs when calculating termination rates. It states that termination rates should be set at the level of efficient costs as from 31 December 2012 at the latest, although less well-resourced NRAs may apply alternative methodologies aiming at the recommended objective until 1 July 2014.

## 4. REGULATORY DEVELOPMENTS

### 4.1. Fixed retail access and wholesale call origination

#### 4.1.1. Market definition

The Recommendation on relevant markets no longer distinguishes between residential and non-residential customers in the retail fixed access market since, in most Member States, contractual terms do not differ significantly between the two types of access. Nevertheless, the Commission has accepted the need to maintain this distinction in some countries<sup>19</sup> in view of particular national market circumstances. When it comes to including broadband access services in the retail access market, the Commission has pointed out<sup>20</sup> that NRAs must demonstrate that unbundled broadband and narrowband access products are substitutes, especially in terms of their function and their pricing structure. The Commission has expressed its doubts on the inclusion of wholesale access services in the wholesale call origination market, as access services complement rather than substitute call origination services.<sup>21</sup>

#### 4.1.2. Remedies

In both of the above markets, incumbents still have around 90% market share in almost all Member States. The Commission was concerned with the effectiveness of both retail and

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<sup>17</sup> BG/2009/866 and MTR Benchmark Snapshot, ERG (09) 23\_final\_090604.

<sup>18</sup> Commission Recommendation 2009/396/EC, OJ L 124.

<sup>19</sup> AT, BG, FR, IT, NL, UK.

<sup>20</sup> IT/2009/0890, DE/2009/0897, BG/2009/0911, SE/2009/0965, RO/2009/1001.

<sup>21</sup> DK/2005/0141, NL/2008/0822.

wholesale regulation<sup>22</sup> and stressed that NRAs should analyse the effects of existing wholesale remedies when assessing the need for retail regulation. Carrier (pre-)selection and wholesale line rental (WLR) are imposed in most Member States either in the access or in the call origination market. WLR allows alternative operators to climb the investment ladder towards full unbundling and to bundle their offers in the retail markets. Where WLR was not imposed or properly implemented<sup>23</sup>, the Commission invited the NRAs<sup>24</sup> to reconsider this obligation.

In its comment letters, the Commission mainly addressed the proposed price control and cost accounting remedies.<sup>25</sup> It invited NRAs to impose or maintain price control obligations where wholesale regulation had not yet proved sufficient to ensure competition at retail level<sup>26</sup> or where there was a risk of overpricing by the SMP operator<sup>27</sup>. In several cases, comments concerned the lack of detail in the notifications<sup>28</sup>, as this fails to ensure adequate transparency and legal certainty for market players. In addition, the Commission commented on the differentiation of the transparency obligation within the same relevant market<sup>29</sup> as well as on the non-imposition of accounting separation<sup>30</sup>. In one case, the Commission reminded the NRA that commitments offered by the incumbent, replacing or supplementing existing remedies or introducing new ones, must be notified under the EU consultation procedure.<sup>31</sup>

## 4.2. Fixed and mobile termination

### 4.2.1. Market definition

NRAs continue to define each individual fixed and mobile network operator as a distinct relevant market for call termination and have also consistently found SMP. In mobile telephony, some NRAs have identified relevant call termination markets for mobile virtual network operators (MVNOs) where such operators can determine their commercial terms and conditions for termination independently of their host networks<sup>32</sup>.

### 4.2.2. Remedies

Both in its comment letters and its Termination Rates Recommendation, the Commission has urged NRAs to set termination rates at the cost of an efficient operator<sup>33</sup>, thus implying a symmetric level<sup>34</sup>. In particular, the Commission pointed to the use of a forward-looking

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<sup>22</sup> CZ/2006/0356, EE/2007/0637-638, DE/2006/0402, SK/2007/0676, SK/2007/0696 and AT/2007/0579-580, NL/2008/0821, BG/2009/0911, LV/2009/0960, MT/2009/0979, LV/2009/0994.

<sup>23</sup> e.g. DK, EE, DE, HU, LV, SK, AT, CZ.

<sup>24</sup> EE/2007/0637-638, HU/2007/0662-663, SK/2007/0740, LV/2009/0960, LV/2009/0994, RO/2009/1001-1002, DE/2009/1006.

<sup>25</sup> e.g. ES/2008/0815, LU/2006/0526-527, BE/2007/0640, DE/2006/0402, IE/2007/0632, AT/2006/0543, CZ/2006/0351, SK/2007/0740, UK/2009/0898, DE/2009/1006.

<sup>26</sup> EE/2007/0637-638, SK/2007/0696.

<sup>27</sup> ES/2008/0815, CZ/2008/0755.

<sup>28</sup> LV/2007/0565-566, GI/2007/0710-711, EE/2007/0637-638, IE/2007/0632, PL/2006/0380, GI/2007/0716, LV/2009/0994.

<sup>29</sup> ES/2008/0815.

<sup>30</sup> DE/2006/0402, LV/2007/0565-566, SK/2007/0696, LV/2009/0994.

<sup>31</sup> IT/2009/0890.

<sup>32</sup> ES/2007/0706, DE/2008/0813, DK/2009/1014.

<sup>33</sup> FR/2007/0669, FI/2008/0778, IT/2008/0779, PL/2008/0794, DK/2009/1014, GI/2009/0976-0977.

<sup>34</sup> ES/2007/0598, PT/2007/0707, DK/2008/0785, GI/2009/0976, PL/2009/0996.



LRIC<sup>35</sup> model<sup>36</sup> and underlined that glide paths towards an efficient rate should be set without delay<sup>37</sup> and notified under the Article 7 procedure<sup>38</sup>. In seeking to define relevant costs, the Commission continued to highlight the importance of LRIC models using the current costs of an efficient operator employing efficient technology<sup>39</sup>. Furthermore, the Commission underlined that relevant costs considered for wholesale call termination charging purposes are typically the additional costs involved in providing the service<sup>40</sup>. NRAs are increasingly committing themselves to apply the costing approach set out in the Commission's Termination Rates Recommendation<sup>41</sup>.

### 4.3. Wholesale broadband markets

#### 4.3.1. Market definition

The efficient roll-out of NGA networks is, as highlighted in the Digital Agenda<sup>42</sup>, a priority for the Commission. NGA deployment had a particularly strong impact on market definition—both in the market for wholesale fixed network infrastructure access, including shared or fully unbundled access (LLU), and in the market for wholesale broadband access (WBA). This was because NRAs had to decide on the inclusion of access products based on different types of infrastructure (FttN<sup>43</sup>, FttH<sup>44</sup> or VDSL).

The Commission has repeatedly held that, where similar services can be provided over both copper and fibre networks, both should be regarded as substitutes and part of the same relevant market. Accordingly, where NRAs decided to include fibre-based access products in the definition of the LLU and WBA markets<sup>45</sup>, the Commission endorsed this inclusion. Where NRAs excluded such products<sup>46</sup>, this was in general due to factors such as the lack of (an extensive) fibre access network deployment. In such cases, the Commission called on the NRAs to monitor market developments, taking into account the increasing availability of fibre networks and operators' rollout plans.<sup>47</sup>

A recurrent issue was the inclusion of cable in the WBA market, on the basis of direct<sup>48</sup> or indirect constraints<sup>49</sup>. The Commission acknowledged that, even in the absence of a relevant wholesale cable access offer, competition at the retail level from vertically integrated undertakings could exert an indirect constraint, but that this constraint should not usually alter

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<sup>35</sup> Long run incremental cost.

<sup>36</sup> BG/2009/0866, DK/2009/0914, CZ/2009/0959, SE/2009/1018.

<sup>37</sup> IE/2008/0746, CZ/2009/0959.

<sup>38</sup> DE/2008/0813.

<sup>39</sup> UK/2006/0498, EL/2008/0786, IT/2008/0802, PL/2009/0991.

<sup>40</sup> EL/2008/0786, IT/2008/0802, SE/2009/0941, DK/2009/1014.

<sup>41</sup> FR/2008/812, IT/2008/0802 (hereafter regulator committed to adopt a cost model in line with the Recommendation by 2010), BG/2009/0865, BG/2009/0866, RO/2009/0878, AT/2009/0910.

<sup>42</sup> On 19 May 2010, under the umbrella of the Europe 2020 strategy (COM (2010) 2020), the Commission adopted a Digital Agenda for Europe.

<sup>43</sup> Fibre to the Node/Cabinet.

<sup>44</sup> Fibre to the Home/Building.

<sup>45</sup> E.g. EE/2009/0942, FI/2008/0839, FR/2008/0780, IE/2009/0875, NL/2008/827, PT/2008/0850 (LLU market); BE/2007/0736 and BE/2009/0950, EE/2009/0943, FI/2009/0900, FR/2008/0781, NL/2008/0827, PT/2008/0851 (WBA market).

<sup>46</sup> E.g. CY/2009/0869, CZ/2009/0933 withdrawn by NRA, DK/2008/0860, EL/2009/0934, SK/2009/0929 withdrawn by NRA (LLU market); CY/2009/0870, CZ/2008/0797, EL/2009/0935 (WBA market).

<sup>47</sup> e.g. AT/2009/0970, CY/2009/0870, CZ/2008/0797, EL/2009/0935.

<sup>48</sup> MT/2008/0803.

<sup>49</sup> More details can be found in Chapter 5.1 of Annex III in the SWD.

the market definition and should, instead, be taken into account in the context of the SMP assessment.<sup>50</sup> In one case, given present national circumstances, the Commission accepted the inclusion of mobile broadband connections in the residential retail broadband market as a direct substitute for xDSL and cable broadband access products. This allowed the deregulation of the wholesale broadband access market as regards the supply of broadband connections to residential customers.<sup>51</sup>

#### 4.3.2. Remedies

The LLU market was found to be non-competitive and is regulated in all Member States that have notified it. The WBA market was found to be non-competitive in almost all Member States with the exception of Malta<sup>52</sup>. In the UK and Portugal, the market was geographically segmented and parts of the national territory were found to be effectively competitive.

As with the proper delineation of markets, the most important developments with regard to remedies are linked to the deployment of NGAs. In the LLU market, some NRAs put in place obligations to ensure access to the sub-loop, ancillary services (co-location) and appropriate backhaul in the FttN scenario<sup>53</sup>. As regards access to FttH, some NRAs mandated unbundled access to fibre loops<sup>54</sup> at cost-oriented prices, including a risk premium<sup>55</sup>. Two NRAs proposed to mandate access to in-house wiring on all operators rolling out fibre lines into the homes of consumers, regardless of whether these operators have SMP. This is known as 'symmetric' regulation.<sup>56</sup> Another significant development is the proposal to oblige the incumbent to grant access to civil works infrastructure<sup>57</sup>. Some Member States also explicitly addressed the issue of transparency<sup>58</sup> and of migration from copper to fibre networks<sup>59</sup>. Where this was not the case<sup>60</sup>, the Commission invited the NRAs to develop remedies spelling out the details of the migration process, since business cases for alternative operators are substantially affected by this migration and by the dismantling of exchanges. In any event, the variety of approaches followed by NRAs underlines the need for further guidance by the Commission.

In the WBA market, some NRAs imposed limited or no remedies on certain networks or functionalities, considering the obligations imposed in the LLU market.<sup>61</sup> Here the Commission emphasised the need to monitor the market to ascertain whether remedies imposed in the LLU market are sufficient to produce effective competition at retail level and, if not, to impose the appropriate remedies in the WBA market.

An examination of the methodologies applied for defining cost orientation has shown that the NRAs' approaches differ unnecessarily. What is needed here is a more coherent approach, to regulatory accounting for key inputs across Europe.

#### 4.4. Leased lines

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<sup>50</sup> e.g. UK/2007/0733, DK/2008/0862.

<sup>51</sup> AT/2009/0970.

<sup>52</sup> MT/2008/0803.

<sup>53</sup> e.g. DE/2007/0646, BE/2008/0801, SI/2009/0957.

<sup>54</sup> NL/2008/0826, SI/2009/0957.

<sup>55</sup> NL/2009/0868, SI/2009/0957.

<sup>56</sup> ES/2008/0820, FR/2009/993.

<sup>57</sup> e.g. FR/2008/0780, EE/2009/0942, ES/2008/0804, PT/2008/0851, IT/2009/0891.

<sup>58</sup> e.g. FR, ES, EL.

<sup>59</sup> e.g. BE, ES, NL, DK, EE.

<sup>60</sup> e.g. FI/2008/0839, IT/2009/0988.

<sup>61</sup> e.g. NL/2008/0827.

#### 4.4.1. Market definition

Functioning leased line markets are important for competition and NGA deployment. The precise delineation between the trunk and terminating segments of leased lines is highly dependent on the topology of each national network. Some NRAs segmented wholesale terminating segments of leased lines according to bandwidth<sup>62</sup>. Other NRAs instead identified significant geographical variations in competitive conditions and proposed to define separate geographical markets<sup>63</sup>. One NRA<sup>64</sup> segmented terminating segments of leased lines according to their intended use and proposed to deregulate leased lines connecting with base stations of mobile network operators. The Commission accepted that it was technologically neutral to include in the market definition wholesale leased lines with alternative interfaces, such as Ethernet-based products that are functionally equivalent to traditional interfaces in terms of their capacity and connectivity to leased lines.<sup>65</sup>

#### 4.4.2. Remedies

All NRAs that notified the market for terminating segments of leased lines found that the fixed incumbent operator had SMP<sup>66</sup>. The Commission stressed that the scope of the proposed obligations should be limited to remedying the lack of competition in the market concerned.<sup>67</sup> Regulatory obligations should not be imposed for too long a period if competitive conditions are likely to improve in the short or medium term<sup>68</sup>. On price control obligations, the Commission recommended direct regulatory intervention rather than self-regulation by the incumbent operator<sup>69</sup>. With regard to the markets assessed as competitive, the Commission stressed that regulatory obligations should be withdrawn only after a transition period long enough to enable operators to eliminate remaining bottlenecks in their networks.<sup>70</sup>

### 4.5. Outlook

The revised EU telecoms rules will give the Commission additional responsibilities with regard to the imposition and implementation of remedies by NRAs. In ensuring that the EU regulatory framework is applied consistently, the Commission will work closely with the newly created Body of European Regulators in Electronic Communications (BEREC), in order to develop a single market for electronic communications services, to the benefit of consumers and businesses.

The Article 7 procedure has allowed the Commission to identify areas where *more focused regulation* is desirable, where *new forms of regulation* seem to be emerging and where *withdrawal of regulation* could be possible. In this context, the Article 7 procedure provides key insights for the Commission's regular review of the Recommendation on relevant markets. However, the Article 7 procedure has also shown that NRAs are still applying divergent approaches to similar competition problems. This impedes the development of a true single market. Examples include the imposition and implementation of WLR, the

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<sup>62</sup> LT/2006/0430, EL/2006/0422, UK/2008/0747, UK/2008/0787, NL/2008/0823, AT/2008/0836.

<sup>63</sup> UK/2008/0787, AT/2008/0836.

<sup>64</sup> IT/2009/1000.

<sup>65</sup> e.g. EE/2007/0643, DE/2007/0677.

<sup>66</sup> One NRA found no SMP on a more narrowly defined market for very high capacity terminating segments of leased lines, i.e. UK/2008/0787. Another NRA found SMP only on the low capacity leased lines market, i.e. LT/2006/0430.

<sup>67</sup> NL/2008/0823-0825.

<sup>68</sup> UK/2008/0859.

<sup>69</sup> EE/2007/0643.

<sup>70</sup> IT/2009/0999-1000.

treatment of fibre access products in wholesale broadband markets and the application of costing methodologies for calculating access or interconnection charges. The Article 7 procedure has also revealed that regulatory approaches are evolving on the basis of separation commitments by incumbents in markets where traditional obligations have been found insufficient to tackle persistent market failures. This shows that NRAs need further guidance on regulatory principles to avoid a patchwork of approaches across the EU, as this would hamper the further integration of markets across borders. The Commission is currently finalising its Recommendation on regulated access to Next Generation Access Networks (NGA), which builds on Commission guidance provided in the frame of national broadband market reviews. The Commission, together with BEREC, may need to provide further guidance to NRAs on the consistent implementation of separation commitments and remedies.

## **5. CONCLUSIONS**

By ensuring focused and consistent telecoms regulation in the EU, the Article 7 procedure remains key to promoting a single market for electronic communications services. The transparency built into the Article 7 consultation mechanism has already allowed it to provide very helpful guidance to NRAs. While notifying regulators generally took the utmost account of Commission comments, other NRAs have used them as guidance for their own regulatory strategies. This was particularly true when it came to defining product and geographical markets and assessing the competitive conditions in relevant markets. In addition, the revised Recommendation on relevant markets and the new Procedural Recommendation have streamlined the regulatory process and focused the efforts of NRAs and the Commission on those markets where bottlenecks persist. To achieve greater consistency in applying remedies, the Commission has adopted the Recommendation on the regulatory treatment of mobile and fixed termination rates in the EU and is currently finalising its Recommendation on regulated access to Next Generation Access Networks. Finally, the telecoms reform package gives the Commission and BEREC additional responsibilities pertaining to the imposition and implementation of remedies. This will further facilitate the development of a single market for electronic communications.