

Position Paper Telekom Austria
on the
Review of the
EU Regulatory Framework for Electronic
Communications and Services
(Including Recommendation
on Relevant Markets)

2006

EXECUTIVE SUMMARY

Reward innovative and risky investments

- Regulatory authorities' obligation to **take into account the initial investment** by the facility owner and the risks involved in making the investment should be extended: Telekom Austria suggests assessing the proportionality of the chosen remedy as an integral part of the notification process and supervising the application of the principle of proportionality.

Acknowledge national particularities & the principle of subsidiarity

- Despite the goal of harmonisation, market assessment should acknowledge **national particularities** and different national competitive situations (e.g. platform competition in the broadband markets, especially regarding CaTV); the NRF should continue to be flexible enough to reflect national and even regional particularities of markets
- A Commission veto power on the details of a national decision regarding regulatory remedies is difficult to reconcile with the **principle of subsidiarity** and thus questioned by Telekom Austria.

Strengthen evidence based and goal oriented market assessment

- As market assessments have to be conducted with **high diligence**, any relaxation of notification requirements at the expense of quality or reliability is not supported.
- Meeting the **principle of proportionality**: Since remedies are intrusive market instruments, they need to be justified in each case and must prove to be tailor-made.
- Furthermore we request identifying **deregulation possibilities on a regular basis**.
- The rigorous application and profound proof of the "**three-criteria-test**" must be also guaranteed on the national level.
- Consequently we see a clear potential for further **reductions on the 'list of relevant markets'**: (i) All retail markets including access markets should be deleted from the list as many of them have already been found competitive in market analyses across Europe or show a clear tendency to be effectively competitive. Competitive pressure results from alternative offers (VoIP, mobile service solutions). (ii) Some of the wholesale markets are also already competitive and should therefore be deleted from the list as well: e.g. transit services, access and origination in mobile networks and trunk segments of leased lines.
- **No regulation of emerging markets**: The US example clearly shows how a regulatory regime is able to recognize growing competition and foster investment and innovation, by decreasing the obligations for legacy networks and refraining from imposing obligations on new broadband networks.
- **No obligation/remedy on non-regulated markets**: The proposal of regulating non-SMP markets leads to an additional burden contradicting the goal of deregulation. As on all effectively competitive markets the controlling instruments of general competition law would suffice (see the last concept of related markets in Draft Guidelines Art. 82).

Security & Network Integrity

- Telekom Austria opposes any obligation to implement liability clauses as proposed (specific security measures) in private interconnection or end-user contracts. Telekom Austria believes that it would suffice in this respect to maintain the EU Commission's current regulatory framework.
- Telekom Austria prefers a comprehensive discussion of the Universal Service Directive instead of focusing only on selective points. We also would like to point to the fact that integrity requirements for IP networks have not yet been discussed sufficiently enough to set down requirements at this stage.

New approach to spectrum management

- In order to preserve the value of spectrum and ensure its efficient use, clear regulatory conditions that minimize the risk of harmful interference are a prerequisite.
- The current proposals by the Commission are vague and lack concrete implementation details, especially how to balance harmonisation and flexibility of spectrum use or how to avoid harmful interference and loss of quality of services. In any case changes in the frequency administration concept have to be carefully examined.
- In liberalising the use of frequencies it should particularly be ensured that interference free utilization of frequency bands already exclusively allocated is still possible without restrictions.

1. INTRODUCTORY REMARKS

Telekom Austria welcomes the initiative of the European Commission to review the existing Regulatory Framework (NRF) with a view to making necessary legal and regulatory procedural improvements. In our view, some of the concerns that were expressed in the first Position Paper¹ of Telekom Austria remain under the spotlight. We believe the current Commission's proposals still need a thorough (re)consideration in light of the 1999 goals and maxims (proportionality, tailor-made remedies, a steady transition to the regime of general competition law and eventually the withdrawal of ex-ante regulations).

Thus, in the following, Telekom Austria would like to comment on the main issues of the Commission's proposals² and also refers to its position paper of January 31, 2006.

In addition, we would like to critically note that the studies that formed the basis for the European Commission's conclusion as outlined in the Commission's *Communication*, the *Working Document*, the *Impact Assessment* and the *Recommendation*, were not published simultaneously with these core documents. Telekom Austria regrets the undue delay.

2. INNOVATION AND INVESTMENT

*"(...) countries that have applied the EU regulatory framework in an effective and pro-competitive manner have attracted most investment"*³.

Increased incentives for investment are the key to more growth and employment in Europe. This is particularly true for the strategically important area of information and communications technology. The fact is also acknowledged by the European Commission, which in theory lists policy measures *"to strengthen incentives for investment through competition to provide infrastructure"* and *"the promotion of innovation"* among the *"most important aims to be achieved in the 2006 Review"*⁴. Unfortunately, current economic figures do not reflect this ambition. According to a recent report commissioned by the UK's Department for Trade and Industry, Europe has been substantially under-investing in telecommunications infrastructure in comparison with other regions⁵.

¹ Position Paper Telekom Austria on the Forthcoming Review of the EU Regulatory Framework for Electronic Communications and Services (Including Review of the Recommendation on Relevant Markets) January 31, 2006

² Communication from the European Commission and its related documents on the proposal for a Review of the EU Regulatory Framework and of the Recommendation on Relevant Product and Service markets

³ Communication from the European Commission; COM (2006) 334; Brussels, 29 June 2006

⁴ MEMO/06/257, Brussels, 29 June 2006: The Review 2006 of the EU's regulatory framework for electronic communications: Frequently Asked Questions

⁵ INTELLECT'S REPORT: NAVIGATING THE NEW ECONOMY

As experts have been warning, there is a danger that Europe will continue to fall behind⁶:

- ⇒ *"Although some progress has been made on innovating Europe's economy, the reform process has been slow and there are increasing concerns that the ambitious targets will not be reached. The failure to deliver on the Lisbon Agenda to date has created a major economic and social challenge"*⁷.
- ⇒ *"After 50 years of catching up with the US, European productivity growth has slowed and is now falling behind."*⁸
- ⇒ *"Although European exporters have by far the largest share in world trade and have been gaining market shares, Europe is, indeed, underperforming in terms of "technological" competitiveness, as shown by most conventional indicators of technological performance, and also by the evidence from the 2005 Survey."*⁹
- ⇒ *"The EU-15 countries have been continuously under-investing in telecommunications infrastructure for more than a decade."*¹⁰

According to McKinsey *"There is a clear investment gap between the EU and the US and Asia. In a capital intensive sector like telecommunications, this may create a longer term competitive challenge for Europe."*¹¹ Nevertheless and contrary to those findings, the authors of the Staff Working Document conclude *"the level of investment in the sector in Europe over recent years has been at least as high, if not higher, than in other regions"*.

On the other hand, the European Commission (EC) is well aware of the shortcomings of economic growth in the EU, which is still well below the annual GDP growth of 2.7% in the US in 2000-2005.¹² However, the EC believes that *"the principles and flexible tools in the regulatory framework, when applied in a full and effective manner, offer the most appropriate means of encouraging investment and innovation leading to growth"*¹³.

⁶ *"The Lisbon Strategy for Europe to become the world's most competitive and dynamic knowledge-based economy by 2010, with improved employment levels and social cohesion, will not be achieved unless Europe's productivity performance improves. Achieving the Lisbon Agenda: the Contribution of ICT. Indepen and Ovum January 2005*

⁷ INTELLECT'S REPORT: NAVIGATING THE NEW ECONOMY

⁸ Indepen Consultants Ltd. see also 9

⁹ *"Can Europe Compete? The International and Technological Competitiveness of Europe,"* Beatrice Weder di Mauro. See also:

http://www.weforum.org/pdf/Global_Competitiveness_Reports/Reports/GCR_05_06/Executive_Summary

¹⁰ McKinsey: *"Entry into the exit. The final showing for European regulation?"* Luis Enriquez, Andreas Marschner, Jürgen Meffert, January 27, 2006

¹¹ McKinsey study *"Entry into the exit; The final showing for European regulation?"* 27. January 2006; p. 28

¹² ICT FOR GROWTH AND JOBS, IP/06/654; BRUSSELS, 19 MAY 2006
Commissions first annual progress report on i2010

¹³ Commission Staff working document 28 June 2006 SEC (2006) 816

In line with the CEPS-Task Force, - an independent expert forum¹⁴ - Telekom Austria therefore questions this notion and the reported evidence and recurring statements in the review documents that the NRF is delivering the expected results. We would like to highlight the conclusion of the final Report of the CEPS Task Force¹⁵ according to which it is too early to state that the NRF has contributed significantly to growth and employment in most member states. We also fear that the current Commission's Communication gives no impetus to the capital market.

According to the Review Documents, investment in new and innovative infrastructure that is urgently needed such as fibre optics networks shall not be freed from regulation even for a limited time¹⁶. Simultaneously, it is admitted in the *Staff Working Document*, that "*Regulators do not know the true ex ante project risk*"¹⁷. Further alarming examples in the review documents are listed as follows:

- ⇒ According to the review documents the procedural burden should be reduced, but at the same time an additional bureaucratic factor¹⁸ should be introduced in the assessment procedure: a new veto-mechanism on remedies designed by and executed from one and the same institution, the European Commission¹⁹.
- ⇒ The automatic link between determining dominance and imposing remedies remains in place. We thus are still concerned that contrary to the announcements²⁰ of the European Commission, competition law principle is applied selectively. Only some of these principles are implemented, whereas others are ignored.
- ⇒ Remedies are a key element in determining market conditions but there is no obligation for a detailed assessment of the proportionality of the chosen remedy so far.
- ⇒ Last but not least, the list of relevant markets is slightly downsized but on the other hand the scope of market intervention is extended by the proposal to intervene on related markets.

¹⁴ The Task Force brought together 54 participants and 28 invited guests and speakers, including representatives of European Telecom operators, telecom manufacturers, industry associations, consultancy firms, law firms, distinguished scholars in the field and representatives from national regulators, the European Commission and the European Parliament.

¹⁵ Report of a CEPS Task Force: "*Last call for Lisbon? Suggestions for the Future Regulation of E-Communications in Europe*", June 2006.

¹⁶ In its *Communication*, the European Commission asserts: "(...) *there is little to show that regulatory 'holidays' generate new investment, absent other factors like competition*"

¹⁷ *Staff Working Document*, p.10

¹⁸ See *Analysys*: A Commission power to veto the proposed remedies would be likely to cause further delays in the procedure (...); p. 157

¹⁹ Even the final report for the European Commission concludes in this respect, that "*a discretionary Commission veto against discretionary Member State measures, drawing its justification from vague policy objectives would be an unprecedented, and perhaps even legally questionable, EU measure*". In: *Analysys*, p. 158

²⁰ In its *Staff Working Document* the European Commission points to the fact that one of the aims of the Article 7 consultation mechanism is "*to promote consistent regulation across the EU on the basis of competition law principles*"

3. MARKET DEFINITION/MARKET ANALYSIS

Telekom Austria appreciates the reduction of the retail markets as a signal that in principle the European Commission is willing to respond to market trends. However, we believe that the Commission's Recommendation is still too short-sighted. In particular it ultimately implies the perpetuation of the intense regulation of existing fixed line networks and thus impedes further necessary technical developments.

Telekom Austria still misses further convincing signals that the Commission intends to refrain from the old practice of intervening primarily with regard to services and network components of the fixed network and its established market representatives. This phenomenon is notably experienced in the broadband market, as the exclusion of cable networks from the broadband wholesale market demonstrates.²¹ The Commission continues to ignore the competitive constraints of cable operators in some countries²² and does not – contrary to the principle of technological neutrality – take into account competitive pressures on fixed operators by the increased establishment of alternative infrastructure²³.

Intense competition in various markets, such as mobile communications or broadband, and the development of alternative network structures that already exist or will soon take place (e.g. fibre optics, cable networks, mobile networks such as WIFI, WiMax, UMTS, etc.) characterise the current market situation. The further withdrawal of regulatory intervention would be the logical conclusion and a prerequisite for fully exploiting the potential of triple and quadruple play offers for consumer benefits. Consequently, a drastic reduction of the EC's list of markets would demonstrate how a reviewed framework provides for the progressive removal of regulation. Telekom Austria thus emphasizes its summary of requirements for future market assessments and the notification process:

Reward innovative and risky investments

⇒ The obligation for regulatory authorities²⁴ to take into account the initial investment by the facility owner and the risks involved in making the investment should be extended: Telekom Austria suggests assessing the proportionality of the chosen remedy as an integral part of the notification process and supervising the application of the principle of proportionality by an institution independent from the European Commission.²⁵

²¹ We referred to the so far unchallenged bureaucratic mainstream and to de Streeck, who criticizes "the law of the majority" that – according to de Streeck – "does not coincide with less regulation, or even to better focus regulation" and emphasizes the following risk: "Some NRA take the lead, others follow and the diverging minority is forced to align under a Commission veto". In: A New Regulatory Paradigm for Electronic Communications – ITS Regional Conference, Berlin, September 2004

²² E.g. in Austria (contrary to the findings of the national regulatory authority)

²³ See also Telekom Austria Position Paper, January 31, 2006

²⁴ As currently provided in Article 12(2) Access Directive

²⁵ See Position Paper Telekom Austria on the Forthcoming Review of the EU Regulatory Framework for Electronic Communications and Services (Including Review of the Recommendation on Relevant Markets) January 31, 2006; see also: The Report of a CEPS Task Force: "Last call for Lisbon?" *Suggestions for the Future Regulation of E-Communications in Europe*, June 2006.

- ⇒ In this respect, we also support a careful appraisal of the third of the “three criteria” in NRA’s decisions (see also => Rigorous Application and Proof of Three-Criteria-Test)

Further shortening of the ‘list of relevant markets’:

- ⇒ **All retail markets including access markets should be deleted** from the list as many of them have already been found competitive in market analyses across Europe or show a clear tendency to be effectively competitive. Competitive pressure results from alternative offers (VoIP, mobile service solutions). Moreover, wholesale regulation on preliminary markets – where SMP is found – is sufficient.
- ⇒ Some of the **wholesale markets** are currently already competitive and should therefore also be deleted from the list, e.g. **transit services, access and origination in mobile networks and trunk segments** of leased lines.

Rigorous application and proof of “three-criteria-test”:

- ⇒ The correct application of the three-criteria-test (and competition law principles to emerging markets) must now be **binding and incorporated in the Regulatory Framework itself** (Directives). The EC itself has now restated the necessity for regulators to carefully assess the criteria in the course of national market definition and analysis procedures.

No regulation of emerging markets:

- ⇒ **No remedies** should be applied to end-user services delivered **over new infrastructure/technologies** (traditional ex-ante access regulation, originally developed for the opening up of former fixed monopoly networks, would be ill-suited and would put investment at risk). The US example clearly shows how a regulatory regime is able to recognize growing competition and foster investment and innovation, by decreasing the obligations for legacy networks and refraining from imposing obligations on new broadband networks²⁶.

Acknowledge national particularities & the principle of subsidiarity

- ⇒ Market assessment should acknowledge **national particularities and different national developments/competitive situations** (e.g. cable markets; the NRF should continue to be flexible enough to reflect national and even regional particularities of markets)
- ⇒ A Commission veto power against the details of national remedies is difficult to reconcile with the principle of subsidiarity.²⁷

²⁶ Compare: The Wallstreet Journal Europe, 30 August 2006: “As soon as the U.S. sharing mandate was tossed out, investors warmed to the idea of building rival networks. (...) Two years after the network-sharing rules collapsed, cable operators offer phone service to at least 55% of U.S. households.”

²⁷ See also “Preparing the next steps in regulation of electronic communications. A contribution to the review of the electronic communications regulatory framework”. Final Report for the European Commission. Analysys, July 2006

Meet the principle of proportionality

⇒ See = > Reward innovative and risky investments

No obligation/remedy on non-regulated markets

⇒ Telekom Austria rejects the imposition of remedies on non regulated markets as discussed in the *Draft Commission Recommendation*²⁸. The proposal leads to an additional burden contradicting the goal of deregulation. Imposing remedies (e.g. accounting separation) on markets for which no SMP status was determined, would imply a broadening of regulation. Should effective competition exist, the controlling instruments of general competition law would suffice (see the last concept of related markets in Draft Guidelines Art. 82)

Strengthen evidence based market analysis

- ⇒ Market assessments have to be conducted with high diligence. We therefore refuse any relaxation of notification requirements at the expense of quality or reliability.
- ⇒ Since remedies are intrusive market instruments, they need to be justified in each case and must prove to be tailor made.
- ⇒ Furthermore we request identifying deregulation possibilities on a regular basis.

4. CONSOLIDATING THE INTERNAL MARKET

Numbering

In Austria the obligations of Article 28 were already implemented in KEM-V according to which mandatory access of the telephone freephone (0800) and shared cost (0810) numbers from abroad is granted. In this area Telekom Austria also activated other telephone numbers in the shared cost area 0820. Premium rate services should continue to be outside of these regulations.

In Telekom Austria's view, the ignorance of technical constraints in the context of availability of non-geographic numbers with regard to NGN is risky. In the transition phase diverse systems will operate in parallel. At this stage it is quite possible that there will be more technical constraints than there are today. The demand for availability when technical problems arise, particularly in the course of introducing new technologies, can force costs for NGN to rise, so that this demand could have a negative impact on the telecommunications market in Europe.

Must Carry

From Telekom Austria's point of view it should be assured that the population will be provided with programs from public broadcasting (with its task to educate the population). Refusing to grant access to these programs would have a competition-

²⁸ Draft Commission Recommendation, p. 15

distorting impact on any initiatives in the area of new IP-TV technology, which cannot be in the interest of the users. To allow for a certain balance with regard to avoiding over-regulation, Telekom Austria would suggest undertaking a review of these "must-carry" regulations as early as in a few years (according to how IP-TV develops), in order to assess the degree to which media pluralism is ensured and if regulatory measures are unnecessary.

5. STRENGTHENING CONSUMER PROTECTION AND USERS RIGHTS

Tariff Transparency

In Austria in our opinion the obligations for tariff transparency have been well implemented with the KEM-V. Here the requirements concerning end-customer information are implemented by mandatory tariff announcements or an easily comprehensible tariff code in the number. By separating the services in "freephone", "shared cost", "premium rate" services and "pink" premium rate services each with their own number range, the customer has enough information about the expected service which is offered under the number called. In Telekom Austria's view the NRA's current authority suffices. Before an attempt is made to change the authority the current legal framework of the NRA's should be fully exploited.

Caller Location Information

Today, in Austria, the obligation to make caller location available to emergency services already exists²⁹. The provision of proper location information to emergency authorities is quite satisfactory for subscriber lines in a PSTN/ISDN environment using a fixed network termination point. Using the CLI as a trusted parameter within the PSTN/ISDN environment, the emergency authority itself is able to determine the respective location information.

The conversion of caller location information from "pull" to "push" mode may be desirable, but here Telekom Austria sees a danger in that for traditional networks (PSTN), compared to the new NGN, enormous costs can be anticipated for implementing the "push" mode. Accordingly, the "push"³⁰ mode should only be mandatory for new networks that correspond to NGN. This will allow the requirement of the "push" mode to be taken into consideration with the initial design of the network.

Providing access to emergency services is in the public interest. This includes all emergency calls irrespective of the technology used to initiate the call. The technical implementation of these obligations should not be borne solely by network operators. We therefore suggest splitting the obligations between the stakeholders.

²⁹ See KEM-V §5

³⁰ As discussed in the E-112 debate in the COCOM

Finally we want to remind the Commission that the international standardisation of this matter is still an ongoing process. At present it therefore seems premature to impose any obligations without stable results of the international bodies involved (e.g. ECRIT, NENA, ETSI, EMTTEL).

Number Portability:

Referring to number portability issues please note that only the identifier (the E.164 number as the "public user ID") is portable and by no means the service itself - or associated services. A network-based user directory information service should not be portable at all. To distinguish services/service information for all potential services of any delivering network would be an exercise in futility. Telekom Austria thus questions the requirements for number portability. We would like to stress that within an IP-based, NGN environment, some of these technical requirements are outdated and an "according update of the provisions" should be enforced only in this context.

6. SECURITY

"The market has so far failed to address security problems to the satisfaction of users"³¹

In the context of ICT security Telekom Austria would like to refer to the European Commission's own Communication on a strategy for a secure Information Society (COM 2006(251)). Any strategy to tackle security challenges should commit itself to a holistic approach, which recognises the respective roles of various stakeholders (operators, manufacturers, regulators, end-users, etc.) and the need for policy initiatives based on an open and inclusive multi-stakeholder dialogue to support co- and self-regulation.

Telekom Austria is the only Internet operator up until now in Austria that at this point in time has achieved and demonstrated a high level of security and integrity measures for its customers and business partners in the area of ICT. Particularly due to the certification of its security manual SHB V2.2 in accordance with security norm ISO 27001 (formerly: BS 7799/ISO 17799) the Telekom Austria service portfolio in the areas of network security, client security, application security, mobile computing, etc. exceeds the existing requirements of the relevant directives³². For this reason, Telekom Austria believes that it would suffice completely to maintain the EU Commission's current regulatory framework.

Concerning the sources of faults listed by the European Commission for network and service security or negative impact on data integrity caused by spam, phishing, hacking etc. (not to mention the spread of child pornography, politically extreme ideas, etc.), we would like to stress that the majority of these come from countries outside the EU. This phenomenon limits the feasibility of additional obligations on

³¹ Commission Staff Working Document, p.28

³² such as the e-Privacy Directive (Art. 4 Operating Security) or Universal Service directive (Art. 20 Customer Contracts or Art. 23 Network Integrity)

European operators as proposed in the Staff Working Document. We thus question the efficiency of the plan to determine and implement security measures for domestic operators. Designers of systems using IP networks predominantly look to standards bodies such as ETSI, ITU, and the IETF for best practice in the design and optimisation of their networks.

In the following we would like to comment on detailed aspects of the complex matter:

Additional Competencies for NRA

According to the EU this comprises purely information rights, such as the right to impose new obligations on operators and if necessary, to use sanctions to enforce them. In Austria, however, wide areas of competencies that the EU Commission designated for the regulatory authorities have already been assigned to other institutions.³³ Through this expansion of competencies, legal uncertainty could arise.

Information Obligations Concerning Security Problems

Within the current framework (e-privacy directive) any provider of a publicly available electronic communications service must inform subscribers in case of a particular risk of a breach of the security of the network, thus this requirement already exists under the current legal framework. We strongly oppose this obligation due to the unnecessary involvement of another entity into the process of subscriber information.

Liability Clause for not taking appropriate security measures

Implementing security measures in order to grant reliable and secure services and networks is essential for every provider. Nevertheless, Telekom Austria opposes any obligation to implement liability clauses as proposed (specific security measures) in private interconnection or end-user contracts. The current legal framework should suffice to prevent or minimise the impact on customers in a technologically neutral manner.

Requirements for Network Integrity

Telekom Austria prefers a comprehensive discussion of the Universal Service Directive instead of focusing only on selective points. (In the current EC proposals only some parts of the Universal Service Directive are revised) We also would like to point to the fact that integrity requirements for IP networks have not yet been discussed sufficiently enough to set down requirements at this stage.

Layering

In terms of technology neutrality, one frequently dispenses with determining individual parameters. Within the course of network and service quality, however, there should be a rough separation between "trusted" and "non-trusted" information

³³ E.g.: Data Protection Commission; BMVIT, Telecommunications authorities; Federal Ministry for Consumer Protection, Association for Consumer Information or the Chamber of Labor

that is exchanged between the ISPs or network operators. Here, mandatory measures (complying with the respective specifications e.g. through ETSI) for "trusted" information could be imposed.

7. FREQUENCIES

Telekom Austria supports a radio spectrum regulatory framework that is stable enough to allow for developing a spectrum strategy and facilitate return on investment. Fixed services and mobile operators in Austria currently pay fees for operating these systems. Frequency utilization fees "guarantee" proper and secure transmission in the respective frequency bands. In liberalising the use of frequencies it should particularly be ensured that interference free utilization of frequency bands already exclusively allocated is still possible without restrictions. (Telekom Austria currently guarantees a transmission rate of 99.8% and even 99.99% for some customers. We could no longer uphold these quality data with a free frequency spectrum.) Telekom Austria therefore remains critical about an unconditional release of certain dedicated frequency bands. In principle we object to interference in existing contracts. In order to preserve the value of spectrum and ensure its efficient use, clear regulatory conditions that minimize the risk of harmful interference is a prerequisite.

In general, in the opinion of Telekom Austria the current proposals by the Commission are vague and lack concrete implementation details (e.g. such as a more exact description of the frequency management mix). Changes in the frequency administration concept, however, have to be carefully examined in any case.

How the Commission wants to cooperate with frequency administration bodies that already exist on the international level is still open. Thus Telekom Austria disapproves of a shift in competencies regarding frequency rights – without consideration of existing international coordination - from the national level to EU level.

8. UNIVERSAL SERVICE and UNIVERSAL SERVICE DIRECTIVE

Telekom Austria appreciates the proposal to remove the provision of directories and directory inquiry services from the scope of universal services. This is a consistent step reflecting the increasing competitive market situation for the provision of these services.

Primarily based on widespread availability (coverage) and affordable access to mobile communication services, the demand for public payphones is declining dramatically.

Consequently, with a view to the radically changed demand in combination with the availability of cheap alternatives we would also suggest to assess whether removal of public pay phone services from the scope of universal service would be an option.

9. CONCLUSION

As described in the European Commission's *Communication* the benefits of ICT are evident. ICT contributes macro-economically to productivity growth and increased competitiveness of the European economy as a whole. ICT is a factor in growth and job creation. To anticipate and respond appropriately to this changing environment remains crucial for the success of the Lisbon Strategy. Unfortunately, in the present proposals for a review, signs "to serve the needs of the sector for the next decade" as announced by the European Commission cannot be recognized.

The promise that was made in the Review 1999, to transfer the price and access regulation to general competition law, has neither been implemented in the EC's *Communication* (and the related documents), nor is it envisaged, i.e. in terms of a concrete end-date for regulation to expire. A consistent reduction of the current price and network access regulation, such as demonstrated in the USA, is not taking place in Europe. Instead the *Review Documents* hold firmly to the prevailing regulation which ultimately implies the perpetuation in particular of the intense regulation of existing fixed line networks. This allows neither infrastructure investments to take place, nor does it provide dynamic impetus for future market development towards an innovative and dynamic economy driven by the convergence of technologies and service.

The situation appears all the more critical, because as outlined in the beginning of this document Europe has to overcome its long-standing investment weakness. There is a danger that the present contribution by the ICT industry amounting to one quarter of the growth in gross national product, or 40% of the productivity gain, can neither be maintained nor developed³⁴.

As the announcement of Telstra to abandon its planned fibre roll-out due to regulatory reasons has shown, the relevant authorities have a vital role in encouraging and protecting investments in the electronic communications industry (...) ³⁵. This responsibility has been acknowledged in the ERG/IRG Work Program 2006³⁶ but lacks any corresponding proposals in the current draft on a New Regulatory Framework.

Telekom Austria thus calls upon the European Commission to adjust its Review Documents as follows:

³⁴ Experts are already pointing out that the EU25 lag behind the US in productivity growth, as well as in investments in communications, IT and R&D. see Van Ark and O. Mahoney (2003)

³⁵ Major themes for 2006, ERG (05) 55 rev 2

³⁶ "ERG is conscious of the role that a stable and clear regulatory regime plays in creating the right conditions to encourage and safeguard investment in the electronic communications industry while promoting competition. These conditions are vital for EU end users and more widely for the competitiveness of the EU economy and to achieve the goals of the Lisbon Agenda" in: Major themes for 2006", ERG (05) 55 rev 2

- ⇒ **Allow for rate of return for risk of investment:** Allowing operators to invest in highly dynamic and risky markets, without the threat of all-encompassing regulation from the very beginning.
- ⇒ **Reduce the Scope of Sector-Specific Intervention:** Changes should make sure that the NRF achieves its ultimate stated goal – the transition from ex-ante regulation to ex-post competition policy. We also propose to present a deregulation agenda (with a concrete timeline for the phasing out of ex-ante regulation) and to identify deregulation possibilities on a regular basis.
- ⇒ **Customize** regulatory decisions/policy to **fit national circumstances and regional differences** and **acknowledge the principle of subsidiarity**
- ⇒ **Do not expand** obligations and competencies in the area of **security**. The existing legal framework will suffice.
- ⇒ **Do not release** frequency bands **in an unlimited manner**.
- ⇒ **Do not shift competencies from the national level to EU level** without consideration of existing international coordination.
- ⇒ **Provide consistency** amongst the EC's stated ambitions and its handling of various Commission services (especially Art.7 TF, DG Info, DG Comp, DG REGIO) and national regulatory institutions.

After more than a century of traditional telephone services, the sector is on the brink of a fundamental transformation. The aim is not only to ensure that consumers are properly informed and protected with regard to the services they are using, but also to serve the needs of the sector for the next decade. This eventually means minimising distortions in the market caused by regulation. The challenge for a revised Regulatory Framework remains to enable a legal environment where policy measures deliver effectively and respond to changing technology and market conditions in an unbiased manner.