



eCommunications: Fast and Effective Remedies for Competitive Markets in the EU

The current EU Telecom Rules gives the Commission oversight on national regulatory measures. The so-called 'Article 7' procedure requires national regulators to tell the Commission about their market assessments and proposed remedies.

This procedure aims at ensuring regulatory measures are applied consistently in all Member States to eliminate remaining obstacles to the internal market.

The Commission may in certain cases require a regulator to withdraw a proposed measure if it considers the assessment of the market boundaries or of "significant market power" (SMP) are not in line with competition law principles (known as the "Commission veto").

So far, this has happened only in seven out of 658 cases. In 29 cases, the regulators decided to take back their notifications. The Commission and national regulators have worked closely together on this since 2003.

How does the Article 7 procedure work in practice?

The 'Article 7' procedure has three main goals:

- (1) to promote consistent regulation across the EU on the basis of the principles of competition law;
- (2) to limit regulation to markets where there is a persistent market failure;

- (3) to provide a transparent regulatory procedure.

The procedure requires national regulators to undertake market reviews, and to notify their results to the Commission and other national regulators. They should also send notifications of what they propose to do to correct the identified market failures, which may range from excessive pricing to refusal of providing access to the network.

The Commission may:

- require a regulator to withdraw a proposed regulatory measure if it considers that either the market definition or the finding of significant market power is incompatible with Community law or could create a barrier to the internal market.
- comment on the proposed measures.

Regulators are expected to take utmost account of the Commission's comments.

After four years, it is clear that the Commission's role has largely contributed to the consolidation the internal market.

However, the harmonisation of regulatory remedies remains a challenge under the current Rules and the Commission's power only to comment on proposed remedies is not in itself sufficient to safeguard the internal market.

Measures designed by different countries to tackle similar market failures have diverged throughout the EU. The present rules do not provide the Commission with adequate legal tools to ensure EU-wide consistency.

Remedies play a key role in shaping competitive market conditions, and in protecting the interests of citizens.

As of July 2007, the Commission had commented on 413 of 658 notifications received under the Article 7 procedure. Most of these comments related to the remedies proposed.

Although the Article 7 procedure has been instrumental for promoting competition, investment and innovation in the internal market, inconsistent remedies still remain.

Differences in remedies are not always justified by diverging market conditions or other notified specificities in Member States. In addition, the most efficient remedy has not always been chosen.

Diverging regulatory measures in the Member States impact negatively on the internal market and hinder the creation of pan-European players.

Greater consistency in the application of remedies in Member States would greatly improve consistency in the market conditions throughout the EU, which would in turn facilitate investment and innovation.

Some examples

The Commission commented on wholesale line rental in Portugal, Spain and UK where the imposition and implementation of this remedy varied significantly, and the divergences were not always justified on the basis of diverging market conditions.

In another example, the Commission considered that the level of asymmetry of fixed termination rates in Italy was high and emphasized the need to move, in principle, towards symmetric termination rates based on the costs of an efficient operator.

In Finland, Germany and Czech Republic, the Commission had to point out that, in several wholesale markets, price regulation was based on different price setting methods and was not always effective.

Conclusion

These examples demonstrate some of the shortcomings of measures proposed by national regulators. They show that the remedies either solved only part of the identified competition problem, or were inadequate or likely to produce effective results too slowly.

Based on the lessons learnt since 2003, the Commission provides guidance as to best practice in making remedies appropriate and consistent.

However, to speed up the consolidation of the internal market, the Commission is proposing that its "veto" powers be extended to include proposed remedies. This would enable it to contribute more effectively to creating a harmonised European regulatory landscape whilst taking account of national circumstances.

Following the review of the current Rules, the Commission suggests streamlining the Article 7 procedure.

As well as reducing the number of markets for regulation, there should be a simplified notification procedure for competitive markets, and for measures that do not differ substantially from those imposed previously. This would reduce the administrative burden and allow attention to be more focused on the real issues requiring attention.

Consistent remedies are vital to shape competitive conditions, to protect the interests of citizens and to consolidate the internal market for eCommunications!

Further Information

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