

Consolidating the EU single market for electronic communications

Article 7



The EU Telecom Rules, which entered into force on 23 July 2003, empowers the European Commission to comment upon, and in some cases to even require national regulatory authorities to withdraw a proposed measure. These powers enable the Commission to ensure a level playing field in eCommunications throughout Europe and to consolidate the EU single market, to the ultimate benefit of the end customer.

The so-called “Article 7 procedures” require national regulatory authorities (NRAs) to notify the European Commission, and the other national regulators, of the regulatory measures they propose, prior to adoption.

The aim is to achieve greater **legal certainty** by ensuring that rules are applied consistently in all EU Member States, limiting regulation to where it is really necessary. It also makes the process more transparent.

How does it work in practice?

Under the Article 7 procedures, when a national regulator notifies the Commission of its proposed measures, the Commission has one month to assess them (“phase one” procedure). The majority of cases are dealt with during this period resulting in a letter from the Commission to the relevant

regulator. This letter may include comments on how to improve the proposed measures.

For example, the Commission recommended a national regulator to reduce the period within which prices for a specific service must decrease to a cost-oriented level. In another case, the Commission advised a national regulator not to delay specifying a required cost model and the level of charges.

Where the Commission considers that the proposed measures would create a barrier to the single market or if it has serious doubts over their compatibility with Community law, it can conduct a more detailed investigation lasting a further two months (“phase two” procedure). Following this in-depth investigation the Commission may require the national regulator to withdraw the draft measures (“veto” decision).

One example relates to a case where a national regulator proposed regulating broadband access services in the traditional fixed telephony access market. By doing so, it would have unjustifiably deviated from European practice which would have created a market barrier.

By assessing national measures prior to their adoption, the Commission can ensure that the Rules are applied consistently.

Veto Decisions and withdrawals from the NRAs

The Commission has to date only adopted a decision requiring NRAs to withdraw their proposed measures in seven out of 658 cases (end of June 2007). Such 'veto' decisions ensure that no measures that would be incompatible with Community law are taken nationally. The Commission vetoed draft measures where it disagreed with the market definition adopted by the national regulator or where it did not share the NRA's findings regarding the existence of significant market power (SMP). SMP is a concept describing a dominant operator with enough market power to behave independently of competitors and consumers. National regulators have decided to take back their notifications in 29 cases.

Enhanced transparency

Although the Article 7 procedures formally involve the Commission and the national regulators only, the procedures ensure transparency for all interested parties. Non-confidential versions of all notifications, and the national regulators' measures, are published on the Commission's website within a few days of receipt. The Commission also publishes non-confidential versions of comments and decisions.

Information Society and Media DG – Competition DG

The Information Society and Media DG and the Competition DG are jointly responsible for the Article 7 procedures. They work hand-in-hand, pooling their sector-specific regulatory and competition law expertise.

The national regulatory authorities

Before submitting a notification, national regulators may meet informally with the Commission. These pre-notification meetings allow the Commission and national regulators to discuss issues of possible concern at an early stage. The Commission also uses these occasions to advise national regulators about the information required.

Once a notification has been received, the Commission may request further information from the national regulator. National regulators have the right to withdraw a notification at any time during the procedure.

Basis for market analyses

The starting point for the national regulator's market analysis is the Commission's Recommendation on "relevant markets" and the Guidelines on market analysis and assessment of "significant market power". Where, based on its market analysis, a national regulator finds that a given market is not effectively competitive it must impose appropriate regulatory remedies.

Appropriate regulatory measures

Regulatory measures may be imposed only on those markets that are characterised by persistent market failure due to the presence of one or more dominant operators.

Further Information

Commission website on Article 7:

http://ec.europa.eu/information_society/policy/ecom/article_7/

Europe's Information Society e-communications implementation & enforcement website

http://ec.europa.eu/information_society/policy/ecom/implementation_enforcement/

Overview of infringement proceedings

http://ec.europa.eu/information_society/ecom/implementation_enforcement/index_en.htm

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Obligations imposed on such operators should be based on the nature of the problem identified, proportionate and justified.

The Rules provides national regulators with a 'tool kit' of obligations, designed to help tackle market failures, such as excessive pricing, denial of access and discriminatory treatment. For example, in almost all Member States, the traditional fixed telephony operator owns the infrastructure for providing broadband services. The national regulators have therefore imposed network access and price control obligations on these operators so that alternative market players can compete and provide their own broadband services to users.

Conclusion

The Article 7 procedures have so far been successful in paving the way towards a single market for electronic communications by ensuring consistent regulatory application throughout the EU.

Consistency has mainly been ensured in relation to **where** regulation is appropriate (the relevant markets and the market position of players operating in them), but to a lesser extent, **which** regulation (type of remedy) is appropriate. Differences in remedies are not always justified by diverging market conditions or other notified specificities. In addition, the most efficient remedy has not always been chosen.

In this area, there is still scope for more effective regulation and for increasing the consistency of remedies across the EU so as to work towards a truly internal market.

So far, more than 650 draft regulatory measures were notified to the Commission, which means that national regulators have almost completed the first round of market reviews. As a result, some markets have become competitive in several EU Member States, allowing existing regulation to be rolled back. However, other markets still suffer from insufficient competition.

The developments reached so far will be taken into account in the review of the Commission's Recommendation on relevant markets and the review of the Telecom Rules.