

# **The Access Directive 2002/19/EC and the relevant acquis**

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# Content

- **Access Directive (AD)**
- **Regulation on unbundled access to local loop (Regulation)**
- **Commission recommendation 2000/417/EC of 25 May 2000 on unbundled access to the local loop: enabling the competitive provision of a full range of electronic communications services including broadband multimedia and high-speed Internet**
- **Commission recommendation 2005/57/EC of 21 January, 2005 on the provision of leased lines in the European Union. Part 1- Major supply conditions for wholesale leased lines**
- **Commission recommendation 2005/268/EC of 29 March 2005 on the provision of leased lines in the European Union. Part 2- Pricing aspects of wholesale leased line part circuits**
- **Commission recommendation (C(2005) 3480 final) and explanatory memorandum of September 19, 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications**
- **Commission recommendation (2002/175/EC of 28 February 2002 amending Recommendation 98/195/EC, as last amended by Recommendation 2000/263/EC, on interconnection in a liberalised telecommunications market (Part 1 – Interconnection pricing)**
- **Commission recommendation of 8 April 1998 on interconnection in a liberalised telecommunications market (Part 2 – Accounting separation and cost accounting)**



# Access Directive 2002/19/EC

- **Directive on access to, and interconnection of, electronic communications networks and associated facilities**
- **Principles**
  - Access to networks as a driver of liberalisation
  - Access related obligations as a remedy of potential abuse
  - Service based competition



# Definitions

## ■ **Access (I)**

- the making available of facilities and/or services
- to another undertaking, under defined conditions
- on either an exclusive or non-exclusive basis
- for the purpose of providing electronic communications services

(Article 2.a AD)

# Definitions

## ■ Access (II)

Access covers

- access to network elements and associated facilities (access to the local loop + facilities / services necessary to provide services over the local loop)
- access to physical infrastructure including buildings, ducts and masts
- access to relevant software systems including operational support systems
- access to fixed and mobile networks, in particular for roaming, access to conditional access systems for digital television services

(Article 2.a AD)

# Definitions

## ■ **Interconnection**

- the physical and logical linking of public communications networks
- 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

(Article 2.b AD)



# Definitions

## ■ Operator

- Undertaking providing or authorised to provide a public communications network or an associated facility

(Article 2.c AD)

# Rights and obligations for undertakings

- Operators have a right and, when requested by other undertakings so authorised, an obligation to negotiate interconnection with each other
- Operators must offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the NRA under Articles 5, 6, 7 and 8 AD
- Undertakings that acquire information from another undertaking in the process of negotiating access or interconnection must use that information solely for the purpose for which it was supplied

(Article 4 AD)





# Powers and responsibilities of NRAs

- **NRAs must**

- encourage and, where appropriate ensure, adequate access and interconnection and interoperability of services
- exercise their responsibility in a way that promotes efficiency, sustainable competition, and gives the maximum benefit to end-users

- **NRAs may in particular**

- impose obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks

Such measures are taken in respect of Articles 6 and 7 FD

- **NRAs must**

- be empowered to intervene at their own initiative or at the request of the parties involved, in order to secure the policy objectives of Article 8 FD in accordance with the national consultation process, the transparency procedure and the dispute resolution procedure

(Articles 5 and 8.3 AD)

# Review of formal obligations for access and interconnection

- **Member States must maintain all obligations on undertakings providing public communications networks and/or services concerning access and interconnection that were in force prior to the date of entry into force of AD**

(Article 7 AD and Article 27 FD)



# Imposition, amendment or withdrawal of obligations

- NRAs must be empowered to impose the obligations set out in Articles 9 to 13 AD
- Where an operator is designated as having SMP on a specific market as a result of a market analysis NRAs must impose the obligations in AD as appropriate
- NRAs must not impose obligations identified in Articles 9 to 13 AD on operators that have not been designated as having SMP (without prejudice to Articles 5(1), 5(2) and 6 AD)
- Obligations imposed by the NRAs must be based on the nature of the problem identified, proportionate and justified

(Article 8 AD)

# Supplementary provisions

- **NRAs may impose obligations other than those set out in AD (for example, wholesale line rental)**
- **The circumstances must be exceptional**
- **NRAs must submit a request to the Commission**
- **The Commission must take a decision authorising or preventing the NRA from taking the measures**

(Article 8 AD)

# Obligation of transparency

**NRAs may impose obligations for transparency in relation to IC/access, requiring operators to make public specified information such as**

- **accounting information,**
- **technical specifications,**
- **terms and conditions for supply and use**
- **prices**

(Article 9 AD)

# Obligation of non-discrimination (I)

**NRAs may impose obligations of non-Discrimination, ensuring that an operator**

- **Applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and**
- **Provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners**

(Article 10 AD)

# Obligation of non-discrimination (II)

Where an operator has obligations of non-discrimination, NRAs may require it to publish a reference offer, which must

- be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested
- give a description of the relevant offerings broken down into components according to market needs, and
- Provide the associated terms and conditions including **prices**. (Article 3(1) of the Regulation)

# Obligation of accounting separation

**NRAs may impose obligations for accounting separation**

**NRAs may in this connection**

- **require a vertically integrated company to make transparent its wholesale and internal transfer prices (to enforce non-discrimination or prevent unfair cross-subsidy)**
- **specify the format and accounting methodology to be used**
- **require that accounting records, including data on revenues received from third parties, are provided on request**
- **Publish such information as would contribute to an open and competitive market, while respecting national and Community rules**

(Article 11 AD)



# Obligations of access to, and use of, specific network facilities (I)

**NRAs may impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements, where**

- **they consider that denial of access or unreasonable terms and conditions would hinder the emergence of a sustainable competitive market at the retail level, or**
- **denial would not be in the end-user's interest**

(Article 12 AD)

# Obligations of access to, and use of, specific network facilities (II)

**Operators may be required *inter alia*:**

- (a) to give third parties access to specified network elements, including unbundled access to the local loop;**
- (b) to negotiate in good faith with undertakings requesting access;**
- (c) not to withdraw access to facilities already granted;**
- (d) to provide specified services on a wholesale basis for resale by third parties;**
- (e) to grant open access to technical interfaces, protocols or other key technologies;**
- (f) to provide co-location or other forms of facility sharing, including duct, building or mast sharing;**
- (g) to interconnect networks or networks facilities.**

(Article 12 AD)

# Obligations of access to, and use of, specific network facilities (III)

**In imposing access obligations, NRAs must take account of**

- (a) the technical and economic viability of using or installing competing facilities**
- (b) the feasibility of providing the access proposed, in relation to the capacity available**
- (c) the initial investment by the facility owner, bearing in mind the risks involved in making the investment**
- (d) the need to safeguard competition in the long term**
- (e) where appropriate, any relevant intellectual property rights**
- (f) the provision of pan-European services**

# Price control and cost accounting obligations (I)

**NRAs may impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems where**

- **the operator concerned might sustain prices at an excessively high level, or**
- **apply a price squeeze, to the detriment of end-users**

**NRAs must**

- **take into account the investment made by the operator and**
- **allow him a reasonable rate of return on adequate capital employed, taking into account the risks involved**

(Article 13 AD)

# **Price control and cost accounting obligations (II)**

**NRAs must ensure that a recovery mechanism or pricing methodology**

- **serves to promote efficiency and sustainable competition and**
- **maximises consumer benefits**

**NRAs may require an operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted**

# Price control and cost accounting obligations (III)

**Where a cost accounting system is mandated to support price controls**

- **NRAs may require that a description of the cost accounting system is made publicly available**
- **compliance with the cost accounting system must be verified by a qualified independent body**
- **a statement concerning compliance must be published annually**

# Content

- **Access Directive (AD)**
- **Regulation on unbundled access to local loop (Regulation)**



# Access to local infrastructure

- To reach the end customer, new entrants need access to the `local loop`
- **Definition:**  
Physical (twisted metallic pair) circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network (Article 2.e AD and Article 2.c of the Regulation)
- **Regulation:**
  - Access to the `copper pair' under transparent, fair and non-discriminatory conditions
  - Obligation on notified operators (SMP) to publish RUO containing at least the items identified in Annex of the Regulation/Annex II of AD
  - Cost oriented prices  
(Article 3 of the Regulation)



**Thank you for your attention!!**

