



- Commission Directive 2002/77
- Guidelines on the implementation of the structural funds

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Liberalisation Directive



gradual liberalisation between 1988 and 2002

- 1st stage: 1988-1996
 - gradual liberalisation of services other than public voice telephony, e.g. GSM mobile telephony via Article 86 Directives (Directive 90/388/EEC and its amendments)
- 2nd stage: 1998-2000: **Full liberalisation**
 - Full liberalisation Directive : 1 January 1998
 - Provisions on licensing, rights of way, rebalancing of tariffs, publication reference interconnection offer etc
- 3rd stage : 2002: **Consolidated Competition Directive** (annexes I and II : repeal + maintain obligations)

Competition Directive



- 6 articles with substantive provisions
- Basic obligations which can be deduced from the EC Treaty (combination of Article 86 with Article 82 or 49)
- Several provisions are further detailed in the Authorisation and Universal Service Directives

Article 2 – *Market entry*



- Not only removing legal monopolies but also obligation to ensure that any undertaking is entitled to provide electronic communications services or to establish, extend or provide electronic communications networks;
- Granting + conditions of general authorisation shall be based on objective, non-discriminatory, proportionate and transparent criteria
- no restrictions may be imposed or maintained on the provision of electronic communications services over electronic communications networks (taxation should not be a disincentive)
- Reasons must be given for any decision preventing an undertaking from providing electronic communications services or networks
- possibility to challenge such refusal before a body that is independent of the parties involved and ultimately before a court or a tribunal

Article 3 *Public undertakings*



- Governments have a special responsibility as regards public undertakings
- Public undertakings may not become an instrument to discriminate
- Governments must therefore ensure that vertically integrated public undertakings which provide electronic communications networks and which are in a dominant position do not discriminate in favour of their own activities

Article 4 - *frequencies*



- Access to radio frequencies for the provision of electronic communications services may not be reserved to certain undertakings – e.g. ‘digital dividend’ should be re-assigned, amount licensing fee does not justify delaying new market entry where frequencies are available, no restrictions allowed to protect competition between different technologies;
- assignment of radio frequencies for ECS must be based on objective, transparent, non-discriminatory and proportionate criteria;
- specific criteria and procedures can be used to grant frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law.

Article 5 *Directory services*



- No exclusive or special rights with regard to the establishment and provision of directory services on their territory, including both the publication of directories and directory enquiry services
- directory enquiry services : ending “de facto” monopoly, for example by introducing new non-discriminatory numbering

Article 6 *Universal service*



- Any national scheme serving to share the net cost of the provision of universal service obligations shall be based on objective, transparent and non-discriminatory criteria and shall be consistent with the principle of proportionality and of least market distortion;
- where universal service obligations are imposed in whole or in part on public undertakings, this shall be taken into consideration in calculating any contribution to the net cost of universal service obligations (private investor's criterion does not necessarily play)
- Commission to review schemes communicated by Member States

Article 7 *Satellites*



- regulatory prohibition or restriction on the offer of space segment capacity to any authorised satellite earth station network operator is illegal;
- Governments must authorise within their territory any space-segment supplier to verify that the satellite earth station network for use in connection with the space segment of the supplier in question is in conformity with the published conditions for access to such person's space segment capacity;
- the competition rules have precedence over international conventions setting up international satellite organisations. Where such conventions are not compatible with of the EC Treaty, governments shall take all appropriate steps to eliminate incompatibilities.

Article 8 *CaTV networks*



- Commission is reviewing the application of this Article
- Minimum transparency requirement in order to deal with likely conflict of interest = legal separation between operation of cable television networks and other public electronic communications networks
- Regarding undertakings:
 - (a) controlled by that Member State or benefit(ted) from special rights; and
 - (b) is dominant in a substantial part of the common market in the provision of public electronic communications networks and publicly available telephone services; and
 - (c) operates a cable television network which has been established under special or exclusive right in the same geographic area.

Rationale State aid Control



- **Maintain a level playing field for all companies in a liberalised sector**
- **Avoid subsidy race in the single market**
- **Preserve benefits of competition: incentives to achieve efficiency and innovation**

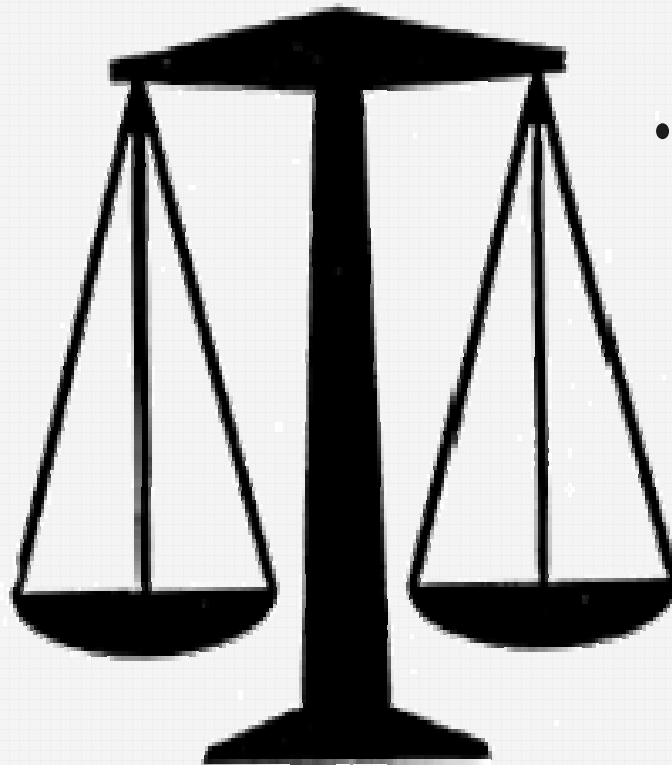
**Liberalisation
since 1998**

finding the right balance



Promoting Broadband

- Lisbon strategy
- i2010 / eEurope action plan
- Digital divide report
- Structural funds



Safeguarding Competition

- EC Treaty Art. 87:
 - prohibition of state-aid
 - certain aid is or may be considered compatible

Basic principles ...



- **Technology Neutrality**
 - should not a priori favour any technology: neutral tender, cost-benefit analysis
- **Open Access**
 - access at non-discriminatory conditions to all telecom operators and ISPs
- **Proportionality**
 - minimum aid necessary to fulfil objective: open call for tender, no superior instrument
- **No strengthening of dominant position**
 - Tender specifications and technical requirements should not favour dominant operators
- **Respect for existing private investment**
 - allow fair return on investment, crowding-out of private investments should be avoided

Useful information



- ☐ Article Competition Policy Newsletter
- ☐ State aid decisions
 - ☐ http://europa.eu.int/comm/secretaria_general/sgb/state_aids
 - ☐ http://europa.eu.int/comm/competition/index_en.html
- ☐ Contact us if you are looking for further documents
 - ☐ alexander.riedl@ec.europa.eu