

SUMMARY OF THE NEW ACCESS DIRECTIVE

(compiled by Mats Jonsson, VP Legal, PacketFront, September 4, 2002)

A new Framework Directive for the regulation of electronic communications networks, services and associated facilities has been adopted by the European Commission. Five new directives replace the current regulatory regime. Among other things, the new regulatory framework makes fundamental changes to the way operators with Significant Market Power (“SMP”) are designated.

One of the new directives; the Access Directive, establishes, within the harmonised context of the Framework Directive, arrangements for regulating access to electronic communications network and services, and interconnection between networks. The Access Directive is applicable on all electronic communications networks.

There are two major aspects of the Access Directive:-

- (i) Details on the rights and obligations for undertakings seeking access or interconnection
- (ii) The process for SMP designation and SMP obligations, starting from market analysis to determine the level of competition, which is the trigger for consideration of SMP.

The Access Directive deals with wholesale relationships between providers of networks and services and associated facilities. Access by end users is specifically excluded from the scope of the Access Directive. The Access Directive sets the regulatory framework for the relationships between suppliers and services that should result in sustainable competition, interoperability and user benefits.

It shall be noted that there are articles especially regulating the SMP’s:

- obligation of transparency regarding i a accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices;
- non-discrimination (equivalent conditions in equivalent circumstances), in practical terms this means that a vertically integrated SMP operator supplies products in such a way that competing operators are placed in an equivalent position to the retail arm of the SMP operator;
- obligation of accounting separation which is also of a discretionary nature, since the national regulatory authorities (“NRAs”) may impose obligations for accounting separation and in particular a NRA may require a vertically integrated company to make transparent its wholesale prices and its internal transfer prices inter alia to ensure compliance where there is a requirements for non discrimination under another article or where necessary, to prevent unfair cross subsidy; and
- obligations of access to, and use of specific network facilities, consolidates all existing obligations which can be imposed under the current regime (access, interconnection and provision of a minimum set of leased lines) and adds some obligations flowing from the new definition of ‘access’. This allows for obligations covering a wider scope of services such as virtual network services and roaming.

The provisions of the directives are to be applied from 25th July 2003.

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