

One year with the Electronic Communications Regulatory Framework: a report on progress in implementing the new competition law based rules

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More than one year has passed since the deadline for implementation of the New Regulatory Framework for Electronic Communications. Member States are still in the process of completing the market analyses, significant market power determinations and remedy decisions required. However, a good deal of experience has already been gained with the notification procedure between national regulatory authorities ('NRAs') and the European Commission governed by Article 7 of the Framework Directive¹ (hereafter 'notification procedure'), one of the cornerstones in the functioning of the New Regulatory Framework.

To recall, Article 7 of the Framework Directive requires NRAs to notify the Commission of draft measures that (i) define relevant markets; (ii) designate certain operators and service providers as having significant market power ('SMP') on these markets; and (iii) impose regulatory requirements (remedies) on these SMP operators, where such remedies could affect trade between Member States. The Commission can veto market definitions that differ from those that have been pre-defined in its Recommendation on Relevant Markets² as well as decisions designating SMP undertakings. The Commission has no veto right in regard to measures imposing remedies. However, access and interconnection remedies imposed by NRAs on SMP operators that are not listed in the Access Directive are subject to Commission authorisation (Access Directive, Article 8(2)).³

At the time of writing, only the UK regulator (Ofcom) and the Finnish regulator (FICORA) have managed to notify measures for all relevant markets defined in the Commission's Recommendation, with the exception of the wholesale national market for international roaming (the subject of an ongoing Commission investigation) and—in the case of Ofcom—the market for broadcasting transmission services. The NRAs of Austria, Greece, Ireland, Portugal and Sweden have also notified measures under the notification procedure.⁴

The majority of notified measures concern the designation of SMP operators. A number of further notifications relate to horizontal measures on access and interconnection that are not limited to SMP operators. The Commission has provided comments on most of the notified measures and, so far, has vetoed only one NRA notification. Two 'serious doubts' letters have also been issued by the Commission, which means that further vetoes could follow.⁵ In a case concerning remedies notified by the Finnish NRA, the Commission disagreed with the remedies imposed but did not have the powers to veto them. The Commission consequently opened an infringement procedure before the court under Article 226 EC Treaty. In addition to the case law developing as a result of the notification procedure, the basic EU legislation has been complemented by guidance documents produced by the European Regulators Group ('ERG'), in particular the ERG's Common Position on Remedies.⁶

Relevant market analysis

The Recommendation on Relevant Markets identified 18 markets susceptible of requiring ex ante regulation on the basis of (i) the pres-

ence of high and non-transitory barriers to entry, (ii) a market structure that does not tend towards effective competition within the relevant time horizon and (iii) the inability of competition law alone to adequately address the market failures at issue. For those 18 markets, there is a presumption that ex ante regulation is warranted if there is an operator with SMP. The Commission has postponed review of the Recommendation until the end of 2005 (originally scheduled by the end of June 2004).⁷ This is sensible, since most NRAs are still in the midst of their initial market reviews and some have not yet begun, because implementation of the New Regulatory Framework is delayed. Based on the comments of former Commissioner Liikanen, it is expected that wholesale mobile access and call origination may not be included in a reviewed recommendation.⁸

Relevant markets identified by NRAs

While NRAs should at least undertake an analysis of the markets identified in the Recommendation on Relevant Markets, they can also identify different markets that may require ex ante regulation in accordance with national circumstances (subject to the Commission's veto powers). In this regard, some NRAs are identifying more narrow or specific markets than those defined by the Commission. This additional level of granularity in market definition has sometimes led to the rollback of regulation. Ofcom, for example, has segmented retail fixed telephony markets according to the type of access line (analogue, ISDN2 and ISDN30), the type of network for which a call is destined (eg, fixed to mobile calls) and the existence of an SMP operator at the wholesale level (eg, for international calls).⁹ On the basis of these narrower market definitions, the markets for international calls for business customers, for example, were viewed by Ofcom as no longer requiring regulation.

In other cases, NRAs are adopting market definitions that are broader than those in the Recommendation. In the area of broadband services, NRAs have generally agreed with the distinction in the Recommendation between wholesale unbundled access (market 11) and wholesale broadband access (market 12) in view of the lack of substitutability between these two types of access services at the wholesale level.¹⁰ However, according to Ofcom, FICORA and PTS (the Swedish regulator), the market for wholesale broadband access includes both bitstream access and cable-based broadband services. The Commission has criticised the lack of evidence for the proposition that cable operators constrain bitstream services provided by fixed line operators, given the absence of actual supply of broadband access via cable networks in these countries. The Commission notes that potential constraints are mainly relevant for the SMP assessment rather than market definition.¹¹ In the case of PTS, the Commission even invited the NRA to remove cable TV networks from the relevant market in view of the high barriers to entry identified by PTS.

Most recently, an overly broad market definition has led to a serious doubts letter from the Commission.¹² In a notification by the

Austrian NRA (TKK), the Commission expressed serious doubts concerning the inclusion of direct interconnection in the transit market (market 10). This would have reduced the market share of Telekom Austria on the transit market from 90 per cent to less than 45 per cent, creating the predicate for TKK's conclusion that the market was effectively competitive with no SMP operator present. The Commission questioned this approach, taking the view that direct interconnection (ie, interconnection between two operators without use of intermediate transit operators) probably cannot be considered as a demand-side substitute for transit services in view of the high level of investment and advance planning required for the implementation of direct interconnection.

The SMS termination market is an example of a market that the Commission did not include in its Recommendation. However, some NRAs are examining whether it may require ex ante regulation. Thus on the basis of a consumer organisation complaint concerning SMS tariffs in France,¹³ the French NRA (ART) decided to conduct a market consultation on the wholesale SMS termination market. Other regulators have also indicated that they may investigate the SMS market in light of competitive concerns.¹⁴

Relationship to Commission market definition in competition law cases

NRA market definition in the context of the New Regulatory Framework does not prejudice the definition of narrower (or broader) markets in specific cases under competition law. International roaming constitutes an example. The Commission provisionally concluded in its Statement of Objections sent to two UK mobile operators (Vodafone and O2) that—for the period of the investigation from 1997/1998 to September 2003—roaming on each individual operator's network constituted a separate market.¹⁵ This is a significantly narrower market than the corresponding market identified in the Recommendation and in fact is similar to the market for wholesale call termination on mobile networks (market 16 in the Recommendation). Whether or not this market definition is ultimately maintained in a final decision, it is clear that in competition law enforcement, the Commission does not feel constrained by the market definitions contained in the Recommendation on Relevant Markets or, a fortiori, NRA market definition. In competition cases, such as alleged Article 81 or 82 infringements, the Commission will conduct a retrospective market analysis on the basis of the specific facts and circumstances at issue. The NRA's analysis is forward-looking and not limited to a particular set of circumstances that arise in a given case.

SMP determination

Under the New Regulatory Framework, NRAs must assess whether any of the entities active on a properly defined market are in a position of economic strength affording them the power to behave to an appreciable extent independently of competitors and ultimately consumers.¹⁶ This is the classic test for dominance, taken over as the New Regulatory Framework definition of significant market power. The absence of SMP players means that regulation can be scaled back. A finding of SMP automatically entails the imposition of one or more ex ante regulatory remedies, since the enforcement of competition law alone will not change the structure of the market.¹⁷

For the purpose of determining SMP on the relevant market, NRAs must apply the SMP Guidelines issued by the Commission.¹⁸ In addition, the ERG has published a 'Working Paper on the SMP Concept for the New Regulatory Framework' which explains in more operational terms the criteria NRAs should examine to determine whether an operator has SMP.¹⁹ Certain NRAs have also adopted their own guiding principles for performing the market analyses mandated by the New Regulatory Framework.²⁰

SMP assessments in fixed and mobile markets

Under the New Regulatory Framework, incumbent fixed operators are generally viewed as holding significant market power on fixed and broadband markets. On certain narrowly defined fixed communications market segments, however, Ofcom has decided to scale back regulation. It considers segments such as the retail market for international calling services for business customers as well as certain segments of the leased lines market to be competitive.²¹

The SMP test under the New Regulatory Framework has led to more significant changes in the assessment of the competitiveness of mobile markets. Regulatory obligations on mobile access and origination have been scaled back in some countries because none of the operators on these markets were found to meet the SMP test (eg, in the UK and in Austria). This has been cited by the Commission as an example of successful deregulation under the New Regulatory Framework. In Finland, however, the NRA concluded that TeliaSonera has SMP on the mobile access and origination market.²² The Commission sent a serious doubts letter in response. The Commission recognised that TeliaSonera holds more than a 50 per cent market share, as compared to 29 per cent and 10.5 per cent for the two other mobile operators with national coverage. However, the Commission noted that service providers on the Finnish market are able to negotiate access agreements with the mobile operators in the absence of regulatory obligations and have succeeded in gaining significant market share in the past 18 months. The Commission also questioned the non-discrimination requirement FICORA proposed to impose on TeliaSonera, pointing out that price competition could be reduced rather than promoted by such a remedy. The case demonstrates that high market shares alone will not necessarily suffice to demonstrate SMP.

In mobile termination, application of the New Regulatory Framework has intensified regulation. All NRAs that have so far notified measures with regard to this market take the position that each mobile operator (even the smallest operator) holds a monopoly on the market for call termination.²³ Of course an SMP finding in this context is virtually automatic, given definition of the relevant market as the market for the termination of calls on each individual mobile operator's own network. Even the mobile virtual network operator (MVNO) Djice in Sweden was designated as an SMP operator on its termination market on the basis that it controls the termination of calls to its subscribers.

First veto decision: the requirement of a 'greenfield' approach for SMP assessment

The Commission has so far vetoed only one SMP determination. FICORA notified a decision that TeliaSonera did not have SMP on the markets for international telephone services provided at a fixed location (both residential and business). FICORA found that despite the high market shares of TeliaSonera on the relevant markets (55 per cent and 50 per cent, respectively), it did not have SMP due to the presence and easy customer availability of several alternative service providers as well as low barriers to entry.

In addition to questioning whether there was sufficient factual support for FICORA's position, the Commission highlighted a fundamental conceptual flaw. FICORA relied on market analysis of a superficially competitive retail market that is, however, regulated at the wholesale level (eg, obligations to allow carrier (pre-)selection, to interconnect, and to provide access). The Commission pointed out that FICORA should have recognised in its analysis that competition on this retail market exists on the basis of a regulated wholesale market. Without taking this fact into account, there would be a risk that FICORA would subsequently rollback wholesale regulation, in view of existing retail competition. Thus, in assessing competition on relevant retail markets, NRAs must take account of the impact

of obligations imposed at the wholesale level (the 'greenfield' approach²⁴). By comparison, Ofcom has followed a greenfield approach to analysis of retail markets as part of its determination of whether SMP operators are present on related wholesale markets.

Remedies

The remedies ultimately imposed on SMP operators constitute the operational output of the New Regulatory Framework and have a direct impact on the marketplace. In this regard, work over the last year has given more concrete shape to what operators can expect. We discuss in turn (i) the adoption of the ERG Common Position on Remedies, (ii) the emergence of 'new style' remedies as compared to remedies under the old regulatory framework, and (iii) the Commission's reactions to the remedies notified to date.

ERG Common Position on Remedies

In April, the European Regulators Group agreed a 131-page Common Position on the approach to remedies in the New Regulatory Framework. It can be viewed as the third and last component of a new 'predictable' communications regulatory regime, complementing the Commission's Recommendation on Relevant Markets and its SMP Guidelines.²⁵ The Common Position is intended to play an especially important role in maintaining a consistent approach to the imposition of remedies by NRAs. This is useful, as the Commission generally has no veto power over remedies (with the exception of wholesale remedies that are inconsistent with those in the Access Directive), giving NRAs more discretion in this area.

The document adopted by the ERG is comprehensive and detailed. The ERG recognises that NRAs will often have to base their ex ante remedies on expected behaviour of SMP undertakings, based on their economic incentives. The Common Position provides a guide to the incentives SMP undertakings have to engage in anti-competitive behaviour, and to the appropriate remedies to apply in a given situation. Where an NRA has determined that SMP exists, it is implicit that the competition rules will not suffice to address the competition problems at issue. The presumption is that a regulatory remedy will increase consumer welfare and so should be imposed.

The Common Position examines any practice of an SMP undertaking that either may eliminate competitors (exclusionary behaviour) or exploit consumers (eg, excessive pricing). The Common Position distinguishes four general cases: vertical leveraging of SMP from a wholesale into a retail market; horizontal leveraging of SMP in one market into another (not vertically related) market, for example through bundling/tying practices; problems related to single market dominance (strengthening entry barriers or 'classic monopoly behaviour' such as excessive pricing or inefficient service provision); and specific problems that arise in call termination markets. The ERG recognises, however, that practices such as price discrimination and tying can have desirable welfare effects under certain circumstances. The Common Position sets out a useful taxonomy that relates the strategic variables controlled by the SMP undertaking (eg, information, time, pricing, quality, contractual terms, etc) to the standard competition problems in communications markets (refusal to deal, bundling/tying, price discrimination, predation, strategic product design, etc) and their possible exclusionary or exploitative effects (raising rivals' costs, margin squeeze, negative consumer welfare effects).

The Common Position is sensitive both to the difficulty of dealing with competition problems in innovation-driven markets (where disruptive technologies can upset established market positions) as well as the importance of addressing potential practices in emerging markets adopted by incumbents that risk foreclosing the market (eg, in broadband access). Remedies should be imposed at the wholesale level first, and only as a last resort at the retail level. The Common

Position recognises that where NRAs conclude in the market definition and analysis phases that replication of the incumbents infrastructure is feasible, they should shape remedies that create incentives for doing so over time, although they should not promote inefficient investment. Where infrastructure competition is unlikely, due to significant economies of scale or scope coupled with high entry barriers (markets tending toward natural monopolies, such as fixed access lines), NRAs should ensure sufficient access to wholesale inputs to maximise service competition in the interest of overall consumer welfare, including consumer choice. Last, remedies should be crafted to provide the regulated entity with incentives for compliance that outweigh the benefits of evasion.

New remedies

Many of the remedies notified to the Commission are expressly foreseen in the Access Directive or in the Universal Service Directive. However, some NRAs are also notifying remedies that are not contained in the New Regulatory Framework but are contemplated by the ERG Common Position on Remedies. Noteworthy examples of 'new style' remedies are some of the measures notified by Ofcom. In the market for asymmetric broadband origination, for example, Ofcom notified (i) a requirement imposed upon BT to provide migration services (to other Internet service providers) on reasonable terms and conditions, or (ii) a proposal to set a margin between the price of wholesale and intermediate broadband Internet access that facilitates competition in the provision of intermediate access services.²⁶ Across several markets where BT was found to hold SMP, Ofcom further imposed the publication of quality of service standards (in the form of 'Key Performance Indicators') to avoid discrimination in the provision of wholesale services to the retail arms of BT on the one hand and its (retail) competitors on the other.

Commission comments on remedies

Although it does not generally have veto powers over remedies, the Commission has published comments on some of the remedies notified by NRAs so far. For example, the Commission criticised FICORA's decision concerning remedies imposed on SMP operators in various markets. FICORA imposed a cost orientation obligation, but left the choice of the method of calculating cost orientation to each SMP operator.²⁷ While the Access Directive does not specify a particular method for the assessment of cost orientation, Article 13(2) states that NRAs "must ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximises consumer benefits." The ERG Common Position on Remedies also indicates that it is the role of the NRA to choose the most appropriate methodology in this regard and not the SMP operator.²⁸

The Commission has also criticised FICORA's decision to exempt several smaller operators found to have SMP on the fixed termination market from the obligations of cost-oriented pricing, use of cost-accounting procedures and accounting separation.²⁹ While the Commission did not contest that such remedies could be disproportionate in the particular circumstances of the Finnish markets at issue, it suggested that FICORA should at least envisage alternative remedies such as benchmarking the termination prices of these operators against those of larger operators that are under a cost orientation obligation.

This reasoning seems to have influenced the Swedish NRA (PTS). PTS exempted smaller (alternative) mobile operators (Hi3G/3 and Djui) found to have SMP on their mobile voice termination markets from the obligation to provide accounting separation and charge cost-orientated prices.³⁰ At the same time, however, it imposed an obligation on such alternative operators to charge "fair and reasonable prices". PTS noted that this meant that their termination rates

would have to be, over time, around the pricing level of those operators subject to the obligation of cost orientation. In this case, the Commission commented that PTS should monitor whether current assumptions concerning 'fair and reasonable' pricing will remain valid over the period of the market review.³¹

Infringement procedure as an alternative to veto powers

In the absence of veto powers under the notification procedure, the Commission has announced that it intends to bring an infringement procedure under Article 226 of the EC Treaty against Finland in regard to certain remedies notified by FICORA.³² The Finnish Communication Market Act (CMA) effectively limits the powers of FICORA as regards regulation of mobile termination. Thus, FICORA excluded traffic originating from the fixed network from the remedies it imposed on mobile operators in the market for mobile termination (including obligations in regard to interconnection, transparency, cost orientation, non-discrimination, cost accounting and accounting separation). The Commission considers that this exclusion of fixed-originated traffic is contrary to the objectives of the New Regulatory Framework, since (i) fixed telephony subscribers are excluded from the benefit of the remedies imposed on mobile call termination, (ii) the measures discriminate between fixed and mobile network operators and (iii) the measures fail to remove an obstacle to the provision of fixed-to-mobile services in Finland.³³ The case shows that the Commission is determined to enforce the requirements that the New Regulatory Framework imposes on NRA decision-making even if it does not have the authority to review those decisions itself. The Commission also reminded FICORA that under EU law, national regulators have a duty to disapply national legislation that contravenes a Community rule.³⁴

Conclusions

The Commission's approach to implementation of the notification procedure under the New Regulatory Framework appears to be working well so far in practice. There is an obvious delay in completing the reviews required, in large measure due to the complexity and broad scope of the tasks assigned to the Commission, NRAs and market players. The New Framework has allowed NRAs to roll back regulation in some markets (eg, mobile access and origination) and to impose more tailored remedies in others (eg, benchmarking of mobile termination prices rather than cost orientation for small operators). As the ERG's Common Position on Remedies indicates (and as foreshadowed in the Commission's *Deutsche Telekom* and *Wanadoo* decisions), the most difficult issue is how to regulate access markets (such as fixed local access) that are unlikely to become competitive in the medium term. Although it runs counter to the goal of more harmonised regulatory outcomes, the discretion NRAs have in fashioning remedies under the New Framework could promote healthy competition among regulators to craft the most appropriate ex ante solutions.

Notes

- 1 Directive 2002/21/EC, OJ L 108/33 [2002].
- 2 Commission Recommendation of 11 February 2003, OJ L 114/45 [2003] ('Recommendation on Relevant Markets').
- 3 For a general overview of the working of the notification procedure under Article 7 of the Framework Directive, see Christian Duvernoy and Axel Desmedt, 'The New Communications Regulatory Framework: A Central Oversight Role for the European Commission', *The European Antitrust Review* 2004, 60-63 and Reinald Krüger and Luca Di Mauro, 'The Article 7 consultation mechanism: managing the consolidation of the internal market for electronic communications', *Competition Policy Newsletter*, No. 3 (2003), 33-36.

Establishing antitrust enforcement precedents: the *Deutsche Telekom* and *Wanadoo* decisions

As NRAs began grappling with implementation of the New Regulatory Framework, the Commission took its first formal Article 82 prohibition decisions in regard to telecommunications services. They are likely to steel the resolve of NRAs in dealing with issues such as below-cost pricing and cross-subsidisation by SMP (ie, dominant) operators. In May 2003 the Commission fined Deutsche Telekom €2.6 million for abusing its dominant position by charging unfair prices for access to the local loop (Commission Decision 2003/707, Deutsche Telekom AG, OJ No. L 263/9, 14 October 2003). The Commission found that DT maintained a charging structure for local access (the fixed telephone line connecting the end-user to the network) that imposed a margin squeeze on competitors, resulting in the wholesale price for unbundled local loops available to competitors exceeding the retail charges DT applied for monthly line rentals. The Commission settled a second margin squeeze case against DT in March 2004, concerning the market for broadband access (Commission Press Release IP/04/281, 1 March 2004).

*In July 2003 the Commission fined Wanadoo Interactive, the France Télécom subsidiary, €10.35 million for below-cost pricing of its ADSL Internet access services. The Commission determined that Wanadoo was pricing these services below variable cost until August 2001 and subsequently equivalent to variable cost but below total cost, as part of a company plan to capture significant market share in the newly emerging market for high-speed Internet access (Commission Press Release IP/03/1025, 16 July 2004). See, generally, Klotz and Fehrenbach, 'Two Commission decisions on price abuse in the telecommunications sector', *Commission Competition Policy Newsletter*, 2003/3.*

These decisions prove that DG Competition is willing to use the sanctions at its disposal to enforce competition law on regulatory markets (before the obligation to provide unbundled local loops to competitors was imposed, no separate market for wholesale access lines existed). Not surprisingly, both decisions have been appealed to the Court of First Instance. On the substance, by confirming and elaborating the margin squeeze test in Deutsche Telekom, the Commission has established an important but controversial precedent for competition on deregulated markets that nevertheless appear to display the characteristics of a natural monopoly, such as the provision of fixed local access. In Wanadoo, the Commission was particularly concerned with targeted pricing by the incumbent to capture a strategic market, re-emphasising that competition law imposes limits on pricing by a dominant firm that might constitute rational commercial behaviour. Both decisions accept possible short-term consumer price increases in return for potentially more vigorous and dynamic longer-term competitive market structures. While the Commission has given a strong signal through these decisions to National Regulatory Authorities that it will address perceived issues of market failure where it feels that the NRA has not done enough, the approach followed obviously raises issues of legal certainty for regulated operators.

- 4 All notifications and comments of the Commission can be found on the online 'register' of the Article 7 Task Force (hereafter 'Commission Register') at <http://forum.europa.eu.int/Public/irc/infso/ecctf/home>.
- 5 A 'serious doubts' letter opens the second phase in the notification procedure during which the adoption of a notified measure is subject to

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- a standstill period of two months. After the two-month period, the Commission must decide whether or not to veto the notified measure (Article 7(4) of the Framework Directive).
- 6 ERG Common Position on the approach to appropriate remedies in the new regulatory framework, 1 April 2004, ERG (03) 30rev1, ERG website.
 - 7 See Commission Press Release, IP/04845.
 - 8 See speech (SPEECH/04/232) of 10 May 2004 of Commissioner Erkki Liikanen.
 - 9 See Ofcom notifications on markets 1 to 6, at <http://forum.europa.eu.int/Public/irc/infso/ecctf/home>.
 - 10 See, eg, notifications of Ofcom and ComReg (the Irish NRA).
 - 11 See SG(2004) D/202513 and SG(2004) D/200485.
 - 12 See SG(2004) D/203603.
 - 13 See ART press release of 29 July 2004, available on the ART website www.art-telecom.fr (visited on 7 August 2004).
 - 14 See, eg, ComReg notification and PTS notification on voice call termination on individual mobile networks available on the Commission register's website.
 - 15 See Commission Press Release, IP/04/994.
 - 16 Article 14 of the Framework Directive.
 - 17 See SMP Guidelines, §§113 and 114.
 - 18 OJ C 165/6 [2002].
 - 19 ERG (03) 09rev2.
 - 20 See, eg, Ofcom's market review guidelines: criteria for the assessment of significant market power (http://www.oftel.gov.uk/publications/about_oftel/2002/smpg0802.htm).
 - 21 See Ofcom notifications available on the Commission Register's website.
 - 22 Similarly, Ireland's ComReg has launched consultations on the mobile access market provisionally concluding that both Vodafone and O2 are SMP operators with a collective dominant position on the Irish market.
 - 23 Notifications of NRAs in Finland, Greece, Ireland, Sweden and the UK were filed at the time of writing. Only Finland and Germany opposed the single network termination market at the time of publication of the draft Commission Recommendation on Relevant Markets.
 - 24 See Luca Di Mauro and Andras G Inotai, 'Market analysis under the New Regulatory Framework for electronic communications: context and principles behind the Commission's first veto decision', *Competition Policy Newsletter* (2004), 52-55.
 - 25 The Independent Regulators Group has also published a guidance paper for the imposition of remedies on the mobile call termination market. See 'Principles of Implementation and Best practices on the application of remedies in the mobile voice call termination market', 20 November 2003, available on the IRG website (<http://irgis.anacom.pt/site/en/>).
 - 26 See (SG2004) D/202211 and SG(2004) D/202512.
 - 27 See, eg, SG(2003) D/233788.
 - 28 Id, p 82-83.
 - 29 SG(2003) D/233786.
 - 30 SG(2004) D/202306 (Commission comments describing the measures notified by PTS).
 - 31 Id.
 - 32 G(2004) D/233787.
 - 33 Id.
 - 34 ECJ, Case C-198/01, judgment of 9 September 2003, *Consortio Industrie Fiammiferi (CIF) v Autorità Garante della Concorrenza e del Mercato* (not yet reported), §§ 48-49.

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