



Office of the Director of  
**Telecommunications  
Regulation**

**BRIEFING NOTE**

**Future Regulation of Electronic  
Communications Networks and Services**

**Access and Interconnection  
Directive 2002/19/EC**

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**Oifig an Stiúirthóra Rialála Teileachumarsáide**

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## 1. Background

### • The New Regulatory Framework

A New Regulatory Framework 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. These five directives cover various areas: namely Framework; Access; Universal Service; Authorisation and Data Protection (“the New Regulatory Framework”). The first four, together with a Decision on Spectrum Management, were published in the Official Journal on 24<sup>th</sup> April 2002<sup>1</sup>. The provisions of the New Regulatory Framework are to be applied from 25<sup>th</sup> July 2003.

Therefore Ireland, together with all member states, has 12 months from now to complete transposition which includes enactment of necessary legislation and the establishment of appropriate administrative procedures.

The enactment of legislation is primarily a matter for the Department of Communications, Marine, and Natural Resources. However to facilitate speedy implementation and to take account of the practical issues involved in moving from one regulatory regime to another, the ODTR has initiated a series of papers to start shaping the detailed implementation of the New Regulatory Framework and to raise awareness amongst interested parties. The most recent in this series was Document 02/51 ‘Future Regulation of Electronic Communications Networks and Services’ which set out the response to a recent consultation on the Authorisations Directive. This paper also published an indicative timetable for future papers on the New Regulatory Framework, the publication of which is intended to provide greater certainty as the implementation date approaches.

This paper focuses on the provisions of the Access Directive (the text of which is set out in the accompanying document to this paper) which replaces the current arrangements regulating interconnection and access. In particular it replaces the current regulatory regime created by the Interconnection Directive (97/33/EC) (“the 1997 Directive”), certain provisions of the Voice Telephony and Universal Service Directive (98/10/EC) (“the 1998 Directive”), certain elements of the Leased Line Directive (92/44/EEC) (“the 1992 Directive”), and the Advanced Television Standards Directive (95/47/EC) (“the 1995 Directive”). The Local

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<sup>1</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive);

Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive);

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive);

Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)

Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision);

All published in the Official Journal: L 108 Volume 45, 24 April 2002 and are available at [http://www.europa.eu.int/eur-lex/en/oj/2002/l\\_10820020424en.html](http://www.europa.eu.int/eur-lex/en/oj/2002/l_10820020424en.html)

Loop Unbundling Regulation (2887/2000) (“the 2000 Regulation”) remains in place with its provisions referenced in the Access Directive.

In this paper, major issues and key differences between the current and the New Regulatory Frameworks are highlighted.

The Director of Telecommunications Regulation (“the Director”) invites comments from interested parties on this briefing paper. The procedure for so doing is set out at Section 5 of this briefing note.

*This document provides information about the New Regulatory Framework on the regulation of electronic communications networks. This information should not be considered to represent legal or commercial advice and readers should seek appropriate professional advice appropriate to their own circumstance. In particular readers should consult the official texts of the Directives as published in the Official Journal and not rely only upon the necessarily abbreviated interpretation of certain features contained in this document. No liability is accepted for any decision taken on foot of information included in this document.*

*This document is without prejudice to the legal position or the rights and duties of the Director to regulate the market generally. Any views expressed are not binding and are without prejudice to the final form and content of any decisions the Director may issue*

## 2. **Key features of the New Regulatory Framework**

The overall context of the New Regulatory Framework is set out in the Framework Directive, which describes and establishes a broad framework under which regulation of all electronic communications will occur. This Directive sets out specific policy objectives for the regulation of electronic communications networks and services. It also defines overall principles which flow through all the Directives.

The Authorisation Directive describes the general mechanisms through which services and networks may be provided, including the conditions which may be applied to operators. The Access Directive describes how networks and services may be accessed and how interconnection between public network and service providers will be regulated. The Universal Service Directive considers how universal service will be protected and regulated and also addresses consumer rights. The Spectrum Decision concerns spectrum management issues. The Directive on Data Protection was recently adopted (but has yet to be published in the Official Journal) and also impacts on the communications sector.

A major feature of the New Regulatory Framework is the extension of the scope of regulation to all electronic communications networks and services. This provides for a harmonised approach to all electronic communications networks and services and gives effect to a common set of rules covering developments regarding convergence. In addition, the broadening of the scope will mean that the framework will extend certain obligations and rights to operators who previously operated without such regulation. The New Regulatory Framework explicitly excludes all content regulation.

The New Regulatory Framework makes fundamental changes to the way operators with Significant Market Power (“SMP”) are designated. The current Level 1 analysis of 25% market share will be replaced by a concept of dominance. The markets designated in the current regulations will be replaced by a requirement to define new markets which will better reflect the competitive and technological dynamism evident in electronic communications services and network markets. As part of the new framework, the Commission is currently engaged in a public consultation on its recommendation for relevant product and service markets to be subject to market analysis by National Regulatory Authorities (“NRAs”).

### 3. The Access Directive

The Access Directive (“the 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 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 Directive<sup>2</sup>. It sets the regulatory framework for the relationships between suppliers and services that should result in sustainable competition, interoperability and user benefits. Withdrawal of regulatory obligations in a competitive market is provided for.

There are two major aspects to the Directive:-

- (i) Details of 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.

It also outlines the responsibilities of NRAs in respect of these functions.

Most of the concepts and types of obligations are not new. In the main, the Directive consolidates existing arrangements<sup>3</sup> in the current Access (1998), Interconnection (1997), Leased Line (1992) Directives as well as the LLU Regulation (2000). Most importantly it extends them to all electronic communications networks. It also provides continuity with the Advanced Television Standards Directive (1995).

There are a number of headline changes. These include a definition of ‘access’ which extends obligations across electronic communications networks, extends obligations to include *inter alia* virtual network services and infrastructure, and which explicitly references conditional access systems for television. Secondly, once an operator has been found to have SMP as a result of a market analysis conducted in a specific market, the NRA may decide which obligations it should impose, a change from mandatory imposition of specified obligations in the current framework.

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<sup>2</sup> Article 6 should be read in conjunction with the USO Directive

<sup>3</sup> Obligations placed under Articles 4,6,7,8,11,12,14 of 97/33/EC; Article 16 of 98/10/EC; Articles 7 and 8 of 92/44/EEC; Regulation 2887/2000

## 4. Major Issues and Key Differences

### • Scope, Aim and Definition (Articles 1 and 2)

These articles consolidate the provisions of the 1992, 1995, 1997, and 1998 Directives, and also extend the scope of regulation in the New Regulatory Framework.

Article 1 **Scope and Aim** states that this Directive *'harmonises the way in which Member States regulate access to, and interconnection of, electronic communications networks and associated facilities'*. It also states that this Directive applies only to wholesale access and interconnection, not for services to end users.<sup>4</sup>

**Definitions** are provided in Article 2. Comparing and contrasting the definitions from previous directives, several distinctions are apparent.

For the first time a definition for Access is included. This is *'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. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including buildings, ducts and masts; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.'*

The definition of access provides for an extension of regulation to cover the regulation of all electronic communications networks. Previously this was limited to telecommunications networks; however now the same regulatory framework applies to, for example, television as to telecommunications networks. To this end, a definition for Wide Screen Television is included. Access to conditional access systems for digital television is explicit.

Examples of other areas which now fall under regulation include physical infrastructure; software systems; and virtual network services. This represents a significant explicit broadening of current powers.

The definition for Interconnection is also updated to reflect the move to regulation of electronic communications rather telecommunications, and also refers to undertakings instead of organisations. Its status as a form of access is clarified. The definition now reads *"Interconnection means the physical and logical linking of networks used by the same or a different undertaking in order 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."*

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<sup>4</sup> Issues relating to access by end users are provided for in the USO Directive

*Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators”.*

It should also be noted that an Operator is defined as *‘an undertaking providing or authorised to provide a public communications network or associated facility..*

A definition is provided for the Local Loop which is defined as *‘the physical 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’*. This is an extension of the current definition provided in the 2000 Regulation as the local loop is not limited to twisted metallic pair circuits but covers any connection.

The definition of Wide Screen Television Service is more precise than the previous definition and now is defined as *‘a television service that consists wholly or partly of programmes produced and edited to be displayed in a full height wide-screen format. The 16:9 format is the reference format for wide-screen television services’*.

#### • **General Provisions (Articles 3, 4 and 5)**

The **general framework for access and interconnection** is described in Article 3. Whilst broadly similar to the previous regime, the emphasis is strengthened and Member States are required to remove restrictions which may prevent undertakings from negotiating access and interconnection agreements. Member States cannot allow restrictions which impose different or non-related terms, conditions and obligations to access and interconnection services as applied to different operators. This is slightly different from the current arrangements as discrimination is explicitly prohibited and it is clarified that discriminatory provisions must be removed.

Article 4 sets out **rights and obligations for undertakings**. This is similar to current arrangements, but is now extended to cover electronic communications rather than telecommunications networks. It is also clarified that the right and obligation to interconnect covers all network operators whereas previously only certain classes of operators (generally operators providing switched and unswitched bearer services as set out in Annex II of the 1997 Directive) were entitled. The Article states *‘operators of public communications networks shall have a right, and when requested by other undertakings so authorised, an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7, and 8.’*

Furthermore, wide screen television is explicitly referenced. *‘Public electronic communications networks established for the distribution of digital television services shall be capable of distributing wide screen television services and programmes’*. This is broader than current arrangements as it covers not only



fully digital transmission network but all digital transmission networks. This Article also provides for maintenance of wide screen format by operators who redistribute wide screen services and programmes which is a new provision.

This Article also requires that *'undertakings which acquire information from another undertaking before, during, or after the process of negotiating access or interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. The received information shall not be passed on to any other party, in particular other departments, subsidiaries or partners, for whom such information could provide a competitive advantage'*. This is more specific on confidentiality as it defines the purpose of the allowed use and requires operators to establish internal separation.

**Powers and responsibilities of the national regulatory authorities** with regard to access and interconnection are set out in Article 5. With the exception of the extension to cover electronic communications networks and discretion on the range of SMP obligations that may be imposed, there is little major change. NRAs shall *'acting in pursuit of the objectives set out in Article 8 of the Framework Directive encourage and where appropriate ensure, in accordance with the provisions of this Directive, adequate access and interconnection, and interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition and gives the maximum benefit to end users'*.

The range and emphasis of policy objectives differ from the previous regime. Article 8 of the Framework Directive is attached as an Annex to this document for ease of reference.

NRAs shall be able to impose *'(a) to the extent that it is necessary to ensure end to end connectivity, obligations on undertakings that control access to end users, including in justified cases the obligation to interconnect their networks where this is not already the case (b) to the extent that is necessary to ensure accessibility for end users to digital radio and television broadcasting services specified by the Member State, obligations on operators to provide access to the other facilities referred to in Annex I, Part II on fair, reasonable and non discriminatory terms.'* These obligations are without prejudice to those contained in Article 8 which the NRA may impose on undertakings with SMP, and shall be objective, transparent, proportionate and non-discriminatory.

The powers of the NRA to lay down technical or operational conditions for access are similar to current arrangements. NRAs retain the right to intervene on access or interconnection matters and to intervene on its own initiative where justified, or in the absence of agreements between undertakings, at the request of either of the parties involved. This must be to secure the policy objectives set out above which are contained in Article 8 of the Framework Directive. Certain elements differ slightly; under the current regime, the NRA must first set a time-limit for parties to achieve an agreement and then can take steps to impose interconnect obligations. The power of the NRA under the New Regulatory Framework need not be subject to a time limit.

With regard to part (b) of the Article, the powers of the NRA to impose access obligations on operators of digital radio and television broadcasting services specified by the Member State, is new.

- **Obligations on operators and Market Review Procedures (Articles 6 - 13)**

Article 6 – **Conditional access systems and other facilities** sets out the powers available to both Member States and NRAs with regard to the provision of Conditional Access (CA) and associated services. Read in conjunction with Annex 1 of this Directive and Article 31 of the USO Directive, both undertakings and end-users fall within the scope of this article.

Currently CA systems are regulated under the 1995 Directive. There are also certain provisions set out in Directive 98/84/EC ‘on the legal protection of services based on, or consisting of, conditional access’. Whilst these do not regulate CA, they provide the means to deal with the piracy of CA or piracy of any of its subsystems.

Article 4 of the 1995 Directive covers the rights of third parties to fair, reasonable and non-discriminatory access to conditional access systems, requires the keeping of separate accounts regarding the provision of CA services. This Directive will be repealed under the Framework Directive.

Provisions under the New Regulatory Framework are similar. This Directive states that ‘*Member States shall ensure that, in relation to conditional access to digital television and radio services broadcast to viewers and listeners in the Community, irrespective of the means of transmission, the conditions laid down in Annex I, Part I apply.*’ The NRA may maintain, amend or withdraw the conditions after undertaking a market analysis. The amendment or withdrawal of the conditions in Annex 1 is dependent upon whether the accessibility for end-users to radio and TV broadcasts and broadcasting channels and services specified in accordance with the Universal Service Directive are adversely affected; and also whether the prospects for effective competition in the markets for: (i) retail digital television and radio broadcasting services, and (ii) conditional access systems and other associated facilities, are adversely affected by such amendment or withdrawal.

However the current regime places an obligation on broadcasters to publish a list of tariffs for the viewer which takes into account whether or not associated equipment is provided. This is removed under the new Regulatory Framework

The Directive also allows for the revision of regulatory powers in the light of market and technological developments. This is a new provision.

The Directive also states that ‘*Conditions applied in accordance with this Article are without prejudice to the ability of Member States to impose obligations in relation to the presentational aspect of electronic programme guides and similar listing and navigation facilities.*’ Currently these responsibilities fall under the auspices of the Broadcasting Commission of Ireland under the Broadcasting Act 2001.

Article 7 sets out the arrangements for **review of former obligations for access and interconnection** placed on organisations which are designated with SMP under the current regime. These obligations are those placed under Article 4 (Rights and obligations for interconnection), 6 (non discrimination and transparency), 7 (principles for interconnection charges and cost accounting systems), 8 (accounting separation and financial reporting), 11 (collocation and facility sharing), 12 (numbering) and 14 (publication of and access to information) of the 1997 Directive; Article 16 (special network access) of the 1998 Directive; and Articles 7 (Provision of a minimum set of leased lines in accordance with harmonised technical conditions) and 8 (Control by the NRA) of the 1992 Directive. These obligations must be maintained until the market analysis, using the new SMP procedures, is completed.

A separate market analysis should be completed for each relevant market recommended by the Commission, for example, the fixed network and services market, the mobile termination market etc. These analyses should be completed as soon as possible after the entry into force of the Directive and periodically thereafter. The results of the market analysis determine SMP operators for each market.

Where an operator is designated as having SMP on a specific market as a result of a market analysis, Article 8 **Imposition, amendment or withdrawal of obligations** states that the NRA shall impose the obligations set out in Articles 9 to 13<sup>5</sup>, as appropriate. Obligations to be imposed shall be based on the nature of the problem identified, proportionate and justified in light of the objectives in Article 8 of the Framework Directive. New tests for SMP are based on analysis of relevant markets and the competition law concept of dominance (see the Framework Directive for further information).

This represents a major change from the current regulatory framework, whereby once an operator is designated as SMP, all regulatory obligations automatically apply. In the new framework, appropriate obligations should only apply. Imposition of obligation is now discretionary rather than compulsory. For example, a SMP operator may have an obligation to grant a specific form of access under Article 12 but the obligations in respect of transparency may vary. In exceptional circumstances, following consultation with the European Commission, other obligations for access and interconnection may be imposed on operators with SMP, and additional markets may be defined.

Therefore Articles 9-13 represent, in effect, a menu of obligations which the NRA may impose on SMP operators. The obligations which may be imposed are now discussed in further detail.

Article 9 **Obligation of transparency** differs slightly from current arrangements in that it provides extra powers for the NRA requiring operators to *'make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices'*. Previously operators had only to answer requests from organisations considering

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<sup>5</sup> Article 9: Transparency; Article 10: Non-discrimination; Article 11: Accounting Separation; Article 12: Access to and use of specific network facilities; Article 13: Price control and cost accounting

interconnection. With reference to the 1998 Directive, details of agreements for special network access previously had to be made available only on request. The NRA may now specify the information to be made available whereas this was defined in the 1997 and 1998 Directives.

Additionally, the NRA may require an operator with obligations of non discrimination under Article 10 to *'publish a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested, giving a description of the relevant offerings, broken down into components according to market needs, and the associated terms and conditions including prices'*. Under the New Regulatory Framework, the NRA has discretion whether or not to require publication of a Reference Offer; however the content of a Reference Offer must be sufficiently unbundled.

Once the reference offer has been published, the NRA shall be able to impose changes to reference offers to give effect to the obligations imposed under the Directive.

NRAs may also *'specify the precise information to be made available, the level of detail required and the manner of publication'*. Under the New Regulatory Framework, the NRA has a broader power to define the elements which must be published than in much of the current regime. (The exception is where an operator has an obligation to provide access to the twisted metallic pair under Article 12, it is specified that the reference offer must contain at least the elements set out in Annex II to the Directive. These elements are identical to those set out in the 2000 Regulation, so there is no difference between the current and the New Regulatory Framework in this regard.)

Article 5 of the Framework Directive gives further detail on provision of information to the NRA whereby the undertakings shall supply information promptly on request and to the level of detail and timescales required by the NRA. (This obligation applies to all operators, not just SMP designated operators.)

Where an operator has an **obligation of non-discrimination** under Article 10, *'the operator applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent circumstances to other undertakings providing equivalent services, and provides services and information to others under the same conditions and of the same quality it provides for its own services, or for those of its subsidiaries and partners'*. 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. This is similar to the current framework, the exception being the discretionary nature of the obligation. Additionally the word 'equivalent' is used rather than 'similar' in the current arrangements.

Article 11 provides for an **obligation of accounting separation** which is again of a discretionary nature. The NRA 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 Article 10 or, where necessary, to prevent unfair cross subsidy*'. This is broadly similar to existing arrangements however the New Regulatory Framework explicitly states the provision.

NRAs also *'may specify the format and accounting methodology to be used'*. Again the New Regulatory Framework makes this explicit. Article 13 of the Framework Directive provides some guidance on the format of separated accounts so as to identify all elements of cost and revenue.

To verify compliance with obligations of transparency and non-discrimination, NRAs *'shall have the power to require that accounting records, including data on revenues received from third parties, are provided on request'*. Again the New Regulatory Framework makes this explicit.

NRAs *'may also publish such information as would contribute to an open and competitive market whilst respecting national and Community rules on commercial confidentiality'*. Current obligations on independent audit of all public telecommunications networks will be covered under Article 13 of the Framework Directive.

Article 12 **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.

Additionally, the access obligations may be extended to all SMP operators; rather than limited to fixed SMP operators as was the case in the 1998 Directive. The New Regulatory Framework empowers the NRA to impose a minimum set of leased lines on SMP operators only; this is not specified in the 1992 Directive.

A NRA may impose on SMP operators *'obligations to meet reasonable requests for access to, and use of, specific network elements and associated facilities, inter alia in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable market at the retail level, or would not be in the end user's interest'*.

In this Article it is clarified that there are additional considerations which the NRA should consider to gauge the proportionality of an obligation. The Article gives guidance to NRAs, when considering whether or not to impose such obligations and measuring proportionality, should consider

- '(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved;*
- (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.’*

Obligations imposed under this article may require operators to provide *inter alia*

- ‘a) to give third parties access to specified network elements and/or facilities, 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 that are indispensable for the interoperability of services or virtual network services;*
- (f) to provide co-location or other forms of facility sharing, including duct, building or mast sharing<sup>6</sup>;*
- (g) to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;*
- (h) to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;*
- (i) to interconnect networks or network facilities.’*

In the same way as the current regime, NRAs may attach to these obligations conditions covering fairness, reasonableness and timeliness.

The final discretionary obligation of price control and cost accounting obligations is set out in Article 13, and empowers NRAs to impose cost orientation obligations on all SMP operators. A NRA may *‘impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. NRAs shall 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’*. Whilst broadly similar to current arrangements, the increasing influence of competition concepts is evident.

Additionally, the NRA shall ensure that any cost recovery mechanism or pricing methodology that is mandated *‘serves to promote efficiency and sustainable competition and maximise consumer benefits’*. This also allows for NRAs to take account of prices available in comparable competitive markets.

The burden of proof that charges are derived from costs including a reasonable

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<sup>6</sup> See also Article 12 of the Framework Directive

rate of return on investment lies with the operator concerned. NRAS may use *'for the purpose of calculating the cost of efficient provision of services...use cost accounting methods independent of those used by the undertaking'*. Additionally *'National regulatory authorities may require an operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted'*. This is similar to the existing procedures and applies to all operators who have this obligation imposed, following SMP designation.

The verification system set out whereby NRAs shall ensure a description of the cost accounting system is made publicly available (currently this is on request), showing at least the main categories under which costs are grouped and the rules used for the allocation of costs is similar to that in the current arrangements, as is the procedures for ensuring compliance with the cost accounting system. Verification of compliance no longer needs to be approved by the NRA.

- **Procedural Provisions (Articles 14-20)**

These are mainly procedural provisions dealing with liaison between the Member State, the NRA and the European Commission – for example Article 14 **Committee** replaces the ONP Committee with the Communications Committee.

Article 15 **Publication of, and access to Information** provides for a broader scope of information to be published as it also includes publication on ex-ante obligations.

Additionally under the New Regulatory Framework Article 16 **Notifications** the Member State must communicate the decisions about specific obligations while under the previous framework it is sufficient that the means of publication is communicated.

Articles 17 **Review Procedures**; 18 **Transposition**; 19; **Entry into Force** and 20 **Addresses** are procedural and broadly similar to arrangements in the current regime.

## 5. **Next steps**

In line with the aim of the Director to provide further information and certainty as to the New Regulatory Framework, a number of further papers in this series are planned. The next in this series, a paper covering issues raised in the Authorisation Directive, will be published in the near future.

Papers covering Market Analysis and Relevant Markets, Spectrum Rights of Use, and the USO Directive, are planned for later this year.

The Director also invites comments or views from interested parties on this briefing note. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential.

Comments can be made, until 5pm, on 16<sup>th</sup> August, to

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## Annex:

### • Access Directive

A copy of the Access Directive (Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities) can be downloaded from [www.odtr.ie](http://www.odtr.ie) and accompanies this document.

### • Article 8 of the Framework Directive

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services

#### Policy objectives and regulatory principles

1. Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, the national regulatory authorities take all reasonable measures which are aimed at achieving the objectives set out in paragraphs 2, 3 and 4. Such measures shall be proportionate to those objectives.

Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities take the utmost account of the desirability of making regulations technologically neutral.

National regulatory authorities may contribute within their competencies to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism.

2. The national regulatory authorities shall promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by inter alia:

- (a) ensuring that users, including disabled users, derive maximum benefit in terms of choice, price, and quality;
- (b) ensuring that there is no distortion or restriction of competition in the electronic communications sector;
- (c) encouraging efficient investment in infrastructure, and promoting innovation; and
- (d) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.

3. The national regulatory authorities shall contribute to the development of the internal market by inter alia:

- (a) removing remaining obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level;
- (b) encouraging the establishment and development of trans-European networks and the interoperability of pan-European services, and end-to-end connectivity;
- (c) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;
- (d) cooperating with each other and with the Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.

4. The national regulatory authorities shall promote the interests of the citizens of the European Union by inter alia:

- (a) ensuring all citizens have access to a universal service specified in Directive 2002/22/EC (Universal Service Directive);
- (b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;
- (c) contributing to ensuring a high level of protection of personal data and privacy;
- (d) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;
- (e) addressing the needs of specific social groups, in particular disabled users; and
- (f) ensuring that the integrity and security of public communications networks are maintained.