



REGULATORY SCORECARD

Report on the relative effectiveness

of the regulatory frameworks for electronic communications in

**Austria, Belgium, Czech Republic, Denmark, France, Germany, Greece, Hungary,
Ireland, Italy, The Netherlands, Poland, Portugal, Spain, Sweden and
the United Kingdom**

1st December 2005
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SPC Network

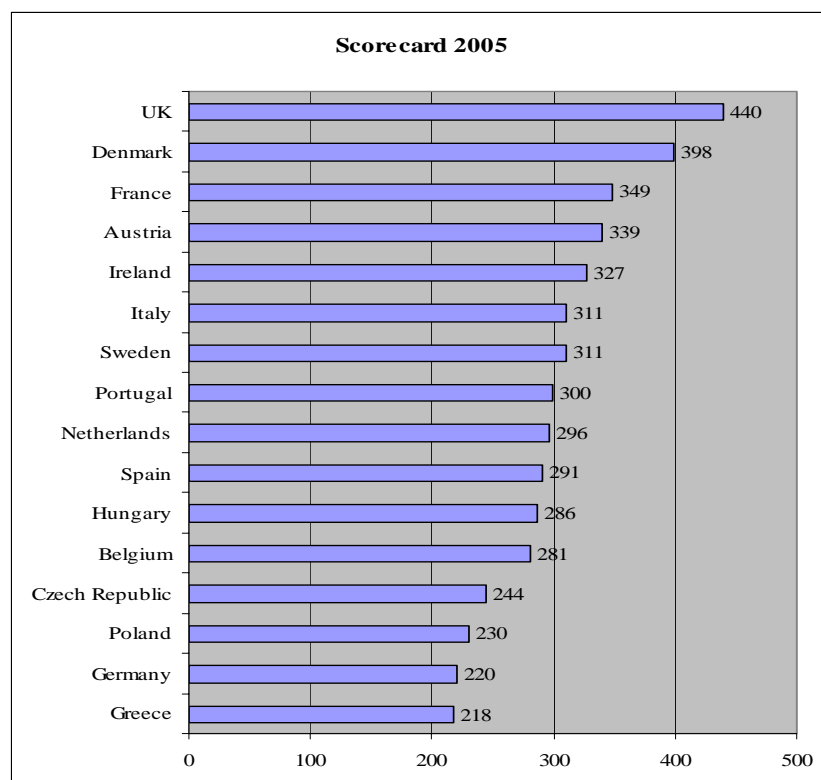
EXECUTIVE SUMMARY

1. This is the third Regulatory Scorecard, and the first to be released since various Member States have had the opportunity to implement the New Regulatory Framework ("NRF") that entered into force in July 2003. Within the scope of the NRF, the Framework Directive places various obligations on National Regulatory Authorities ("NRAs"). In particular, Article 8 requires NRAs to promote competition amongst electronic communications networks, services and associated facilities by, *inter alia*, ensuring against distortions or restrictions of competition and by encouraging efficient investment in infrastructure and promoting innovation. In view of the state of regulations in force on 31 August 2005, the Scorecard Report seeks to determine how effectively each of the surveyed sixteen countries promotes investment and competition, by measuring the powers and performance of NRAs and the regulatory regimes overall.

2. The countries covered in the report are: Austria, Belgium, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Poland, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. For each country surveyed, the authors of the Report have requested ECTA members to respond to detailed questions designed to assess the effectiveness of the regulatory framework. On the basis of these responses (*see Annexes*), a comparative analysis was subsequently developed.

3. The issues covered in the questionnaire fall under four main categories: general NRA powers, effectiveness of the dispute settlement body, general market access conditions, and availability of key access products. The criteria were selected following a review of a range of inputs, including the various Directives under the NRF, the World Trade Organisation (WTO) reference paper on telecommunications, the OECD, as well as inputs from carriers, economic experts, and third parties.

4. The overall results of the Scorecard are shown in Figure 1.



5. All countries have specific strengths and weaknesses, which can be summarised as follows:

- *Implementation of new regulatory framework.* Only a limited number of Member States performed well in relation to implementation (*i.e.*, the UK, Austria, Ireland, Portugal and Hungary). Countries that are particularly lagging in implementation are Belgium, the Czech Republic, Italy, the Netherlands, Poland and Spain.
- *Functioning of the NRA.* Most Member State regulators appear to be both structurally independent from the incumbent and the Government and to operate in a relatively transparent manner. However, political interference in the regulatory environment remains a concern in some countries, such as Germany. In addition, State ownership in the incumbent (*e.g.*, in Belgium, Germany, Greece, France and Portugal) constitutes an inherent source of potential conflicting interests.
- *Use of sanctions.* The effectiveness of regulation could be strengthened if the fines available to NRAs had a more powerful deterrent effect on incumbents. The lack of sufficient deterrent effect in relation to potential sanctions appears to be particularly problematic in Hungary, Ireland, and Italy.
- *Appeals process.* A recurring concern pertains to the appeals process, which often undermines NRA interventions because of legal uncertainty, suspension of NRA decisions, and delays. Market players have raised this issue in various countries, including Germany, Ireland, Italy, the Netherlands, Spain, Sweden and Greece.
- *Access regulation in general.* It appears that only a limited number of countries (*i.e.*, the UK and Ireland) have established an effective cost accounting separation regime constituting an essential tool for verifying compliance with other regulatory requirements (such as cost orientation and non-discrimination in particular). Furthermore, ensuring non-discriminatory access conditions across the value chain appears to remain an issue present in most surveyed Member States. Some Member States (such as France in particular), however, have taken measures to improve their ability to conduct *ex ante* price squeeze tests.
- *Fixed narrowband services.* Interconnection tariffs of incumbents have significantly fallen since liberalisation, although some differences remain between countries with very low interconnection tariffs (such as the UK, Denmark and Ireland) and countries with high interconnection tariffs (such as the new Member States or Greece). In addition, in order to increase competition in traditional voice services, Member States should seek to implement wholesale line rental, which is still absent in eleven of the sixteen Member States surveyed in this Report.
- *Mobile services.* The Report confirms that in Belgium, Hungary, Ireland, Italy and Spain, the mobile markets remain highly concentrated. Retail prices also tend to be higher, which further suggests that these markets are not competitive.
- *Wholesale access for business services.* Wholesale access services are necessary to provide services to business customers, but only a very limited number of Member States (*i.e.*, Austria, France, Portugal, and the UK) have an effective wholesale ethernet offer that enables competitors to improve on service currently provided over PPC. Most other NRAs in the EU do not appear to have devoted sufficient attention to such form of wholesale access.

- *Broadband services.* The overall assessment is positive for such services. A rather significant number of Member States (in particular, Belgium, Denmark, France, and the UK) have conducted an active broadband policy by mandating both LLU and bitstream access conditions, which has enabled OLOs to develop their activities in accordance with their ladder of investments. There are, however, a limited number of countries that have failed in this respect, such as the Czech Republic, Germany, Greece, and Poland.

6. The Report also measures the relationship between the effectiveness of the regulatory environment in each of the Member States surveyed and the level of telecommunications investment in that country, based on OECD data. The economic analysis conducted in this regard shows that effective regulation continues to have a strong and positive impact on the level of investment in telecommunications networks and services. The inclusion of additional countries with a lower national incomes somewhat complicates the picture, as compared with the 2004 Scorecard. The economic analysis finds that these countries are investing relatively more than the set of countries examined in 2004.

7. Nevertheless, on the basis of this Report, two clear conclusions can be drawn. First, amongst the higher income countries, there continues to be a strong positive relationship between effective regulation, as measured by the Scorecard, and all measures of investment. Second, when including the lower income countries, there remains a significant regulatory effect. However, investment is also negatively correlated with national income per capita, as the lower income countries invest to catch up. This correlation between regulatory effectiveness and investment levels, on the basis of the OECD figures, is shown in Figure 2.

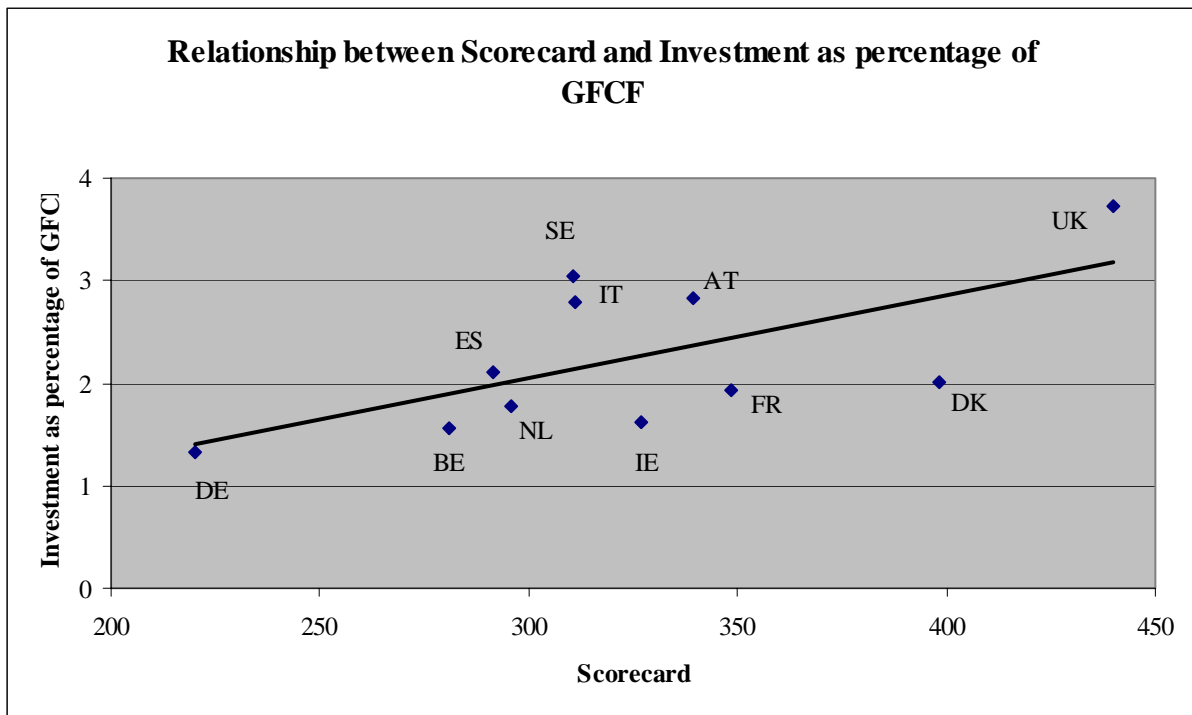


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I. Introduction

8. The purpose of this report is to assess whether the regulatory framework on electronic communications networks and services in selected European countries is effectively applied and enforced towards securing certain fundamental objectives. In particular, the report examines whether the regulatory regime in place on 31 August 2005¹: (i) facilitates the establishment of public telecommunications networks and the provision of public telecommunications services, (ii) encourages investment in telecommunications infrastructure, and (iii) ensures a level playing field for all players to stimulate investment, innovation, and sustainable competitive development. Proper application of this regime should also enhance employment and international competitiveness in these countries and the EU as a whole.

9. This is the third Regulatory Scorecard. In November 2002, Jones Day and Beaufort International published the first Regulatory Scorecard Report, which constituted an initial attempt to conduct a highly detailed comparative analysis of the telecommunications framework in certain EU Member States. In its second report published in April 2004, both the scope and methodology were reviewed in light of both the experience gained from the first study and the valuable feedback received from regulators and industry as a whole. Furthermore, the first report was published at the advent of the entry into force of the new EC regulatory framework. The second report was published shortly after the entry into force of the new regulatory framework, but before it was implemented by most Member States; thus, it sought to foresee likely changes in the regulatory environment, whilst taking into account the rules as they were applied under the old regulatory framework. This report gives more weight to the manner in which NRAs have or should have implemented and applied the new regulatory framework. However, this report is limited to an assessment of the regulatory framework in force in each country on 31 August 2005. As the purpose of this report is to assess the practical experience of new entrants in each of the countries surveyed, this report also takes into account, to the extent that it is relevant, those rules adopted by Member States under the old regulatory framework but still currently in force pursuant to the transitory regime provided under the new regulatory framework².

10. This report covers leading economies in the EU, including the main EU 15 economies and certain new accession countries. The countries surveyed are: Austria, Belgium, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, The Netherlands,

¹ The report is based on the situation as it existed on 31 August 2005. However, in particular instances, certain subsequent developments have been mentioned as well to the extent they are perceived as an indication of the evolution trend followed by the regulatory framework.

² This includes, in particular: (i) 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), OJ L108/33, 24.4.2002; (ii) 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), OJ L108/7, 24.4.2002; (iii) 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), OJ L108/21, 24.4.2002; (iv) 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), OJ L108/51, 24.4.2002; (v) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, OJ L201/37, 31.07.2002, (vi) Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services, OJ L249/21, 17.09.2002.

Poland, Portugal, Spain, Sweden and the United Kingdom. We recognise that this is a wide-ranging report, which will require revision as individual regimes evolve. We would therefore welcome comments from third party operators, NRAs and others, which will allow us to enhance and update it.

11. We are particularly grateful for the information provided by NRAs and various telecommunications operators. We have also included some comparative statistical and pricing data based on the Commission's 10th Implementation Report and other sources. Whilst we have tried to use the most current information available, some information dates from 2004. However, we do not consider that this affects its value in terms of measuring the relative performance of Member States.

12. The assessment is based on selected key criteria, including: the independence and powers entrusted to the regulator and the dispute settlement body, as well as the manner in which they exercise their powers; the effectiveness of access regulations and the availability of access products. While there may be other relevant criteria, which may be covered in future reports, the present criteria provide strong insights into what is necessary to achieve the EU's objectives for electronic communications markets. For each of these targeted areas, we have determined objective parameters, which are used to evaluate national legislation and authorities. The preceding versions of the report gave particular focus to measures, or the absence thereof, adopted by NRAs and Member States in their legislative capacity. Now it appears that with the formal adoption of the legislative framework implementing the new regulatory framework in most countries, the NRAs' remit for a flexible implementation of Community obligations has expanded. This means that the distinguishing factor between countries lies increasingly in the manner in which NRAs have conducted their assessment and exercised their powers under the new regulatory framework or how they have failed to do so.

13. This report first explains the various areas subject to the assessment, the reasons why they were chosen, and their content (Section II). It then describes the methodology used for the assessment (Section III) and applies this methodology in each country reviewed (Section IV). Section IV also presents general conclusions on the in-country assessments and the scoring attributed to the various countries. The scores for each country are based on the replies and comments from local specialists, national regulators, and other parties. These are contained in the attached annexes.

14. Section V analyses the relationship between the relative regulatory effectiveness scores and the investment intensity in telecommunications in each of these countries. This Scorecard Report continues to show a strong and positive relationship between these two elements, which highlights the importance of efficient regulation in telecommunications markets. Failure to do so clearly impacts competitive forces and negatively affects investments in telecommunications.³ The authors have maintained the same previous general structure, to allow for comparisons between this third report and preceding ones in order to monitor the improvement of the quality and effectiveness of regulation.

³

See *inter alia* Communications Outlook Reports, <http://www.oecd.org/>.

15. The following table graphically summarises the outcome of the Scorecard Report for each of the sections⁴.

	Weights	AT	BE	CZ	DK	FR	DE	HE	HU	IE	IT	NL	PL	PO	ES	SE	UK
Regulator General Functions	169	117	75	110	126	119	60	82	126	118	113	96	118	118	101	125	147
Regulator Dispute Settlement	75	45	60	45	65	63	46	45	46	35	43	50	40	55	48	35	50
General Market Access Conditions	125	78	60	41	84	61	65	43	48	89	70	74	40	54	68	71	116
Key Access Products	149	100	87	48	124	106	50	49	66	85	86	77	33	73	76	80	127
TOTAL	518	339	281	244	398	349	220	218	286	327	311	296	230	300	291	311	440

II. Areas of assessment

16. The chosen areas of assessment reflect the main principles set out in the 1996 WTO Reference Paper on Telecommunications⁵, to which the EC is a signatory and which underpins the regulatory regimes in place in the EC, the US, and the majority of developed countries. In this regard, the first two areas of assessment in this survey pertain to the regulator and the dispute settlement body, their *modus operandi* and effectiveness (in terms of speed of process, fairness and enforcement power). The third area deals with the manner in which access rules and regulations are applied. The fourth relates to the application of regulations and the degree of competition in key markets. While the second report contained a fifth and final criterion on the timely and effective implementation of the new regulatory framework, this has now been integrated into the four substantive areas indicated above. Today, the effectiveness of regulation is generally associated with the degree to which Member States and regulators have implemented and applied the new regulatory framework.

A. Effectiveness of the regulator in relation to the exercise of its general powers

17. As a result of the new regulatory framework, the size and scope of NRA responsibilities have increased. In the past, their activities consisted essentially of granting authorisations (*e.g.*, number authorisations) and enforcing access requests or reviewing standard interconnection offers. Today, NRA responsibilities include the requirement to undertake a robust market analyses following procedures and principles in accordance with the EC Commission's guidelines, and NRAs are under increased public accountability in their decision-making process (prompting the need for *e.g.*, public consultation process). These functions can differ greatly from the role of the dispute settlement body. Therefore, as in the

⁴ It should be noted, however, that the proportionate division of the pie charts does not reflect the respective weightings given to the assessed criteria.

⁵ For a copy of the reference paper, see www.wto.org. Principles include the prevention of anti-competitive practices in the telecommunications sector by providing that interconnection with a major supplier be ensured at any feasible point of the network, on non-discriminatory terms, on an unbundled basis, and on cost based tariffs. It also mandates an effective dispute settlement procedure overseen by an independent regulator.

WTO Reference Paper cited above, these two functions are treated separately. The effectiveness of the regulator is, essentially, a function of its: (i) speed of process, (ii) transparency of activities, (iii) powers and effectiveness of sanctions, (iv) scale of resources; (v) effectiveness of the appeal procedure; (vi) degree of independence; and (vii) speed and accuracy of the market analysis procedure.

B. Effectiveness of the dispute settlement body

18. Evaluation of the efficiency of the dispute settlement body can be assessed on the basis of criteria similar to those used to assess its general powers, including its: (i) speed in exercising its powers, (ii) respect for due process rules, (iii) effectiveness of sanctions and (iv) effectiveness of appeal procedure.

C. General market access conditions

19. New entrants/competitive carriers do not have direct physical connections to all or even the majority of end-users, and in many cases duplication of existing access networks is not economically feasible in the medium term. Therefore, in order to ensure that competitors can provide services and offer choice and variety to end-users, it is necessary for regulators to have comprehensive policies to mandate the provision of access where operators have SMP (dominance) in the market. In addition, the ability for new entrant operators to provide electronic communication services and roll-out alternative networks also depends on their ability to benefit from rights of way enabling them to build or share physical infrastructure and to have access to suitable numbering ranges. The application of such access rules can best be assessed by considering the following components, which correspond to the typical access remedies provided for in the new regulatory framework: (i) access obligations, (ii) non discrimination and margin squeeze, (iii) price control, (iv) cost accounting separation, (v) rights of way, and (vi) numbering.

D. Application of regulation and effectiveness of competition by area

20. Given the importance of access issues, this section will further examine the application and implementation of access regulation and the effectiveness of competition in various electronic communications services. This is measured through assessing the availability of wholesale products, which are widely recognised as playing an important role in ensuring competitive markets, and also through the measurement of market outcomes such as market shares, take-up of products, and end-user prices. An additional focus of this section is to assess the effectiveness of implementing the 'ladder of investment'⁶, as described by ERG. For example, new entrants may enter a market relying on third party infrastructure to develop a client base and then migrate those customers onto their own network once certain economies of scale have been developed. The availability of a range of key products from monopoly providers on reasonable terms, and the ability to migrate from one product to another is crucial to stimulating investment in competing infrastructures.

The services covered by this section include: (i) narrow band voice services, (ii) mobile services, (iii) access services relevant to business customers, and (iv) broadband services. When developing this section, the authors have taken into account comments received from a

⁶ ERG, "Common position on the approach to appropriate remedies in the new regulatory framework", ERG (03) 30 rev 1.

number of persons or authorities, including NRAs. Therefore, the questions pertaining to access products have been expanded so as to attain an improved granularity in the assessment of the various access products as they are available in the various Member States surveyed.

III. Methodology

21. This section explains the methodology used for assessing each of the areas described in Section II. Each of the four sections is scored as follows:

Regulator General Functions	169
Dispute Settlement Body	75
General Market Access Conditions	125
Application of Regulation and Conditions of competition in key access products	149

22. The weight given to each of these main sections is a reflection of their respective importance in delivering the objectives set out in paragraph 10 above. A key focus of the New Regulatory Framework is to encourage pro-active intervention by regulators through market reviews. Thus, the 'general functions' of the regulator, as combined with the application of regulatory obligations in key access products, are particularly important in measuring the effectiveness of the regulatory framework. This is why these two functions have been given greater weight than the dispute settlement body function and the general market access conditions. Because the latter provides the prerequisite framework for the definition of effective access products, it has also been given some weight (beyond that given to the regulator as dispute settlement body), as it has implications on the NRA's ability to devise effective remedies to competition problems.

A. Regulator - General functions

23. The respective weight given to each criterion under this section is as follows: speed of process (5%), transparency and consultation (15%), powers and sanctions (10%), scale of resources (10%), effectiveness of appeal procedure (20%), independence (15%), and market analysis procedure and imposition of remedies (25%).

1. Speed of process

24. One way of assessing efficiency of regulators' internal processes is to evaluate the speed at which the regulator delivers necessary authorisations, such as the average timeframe for obtaining reservation of numbers. Other good indications of a regulator's efficiency are the average timeframe for reviewing and approving standard interconnection offers ("RIOs"), as well as the average time for a new entrant to negotiate a standard interconnection or access agreement, when such new entrant is not yet interconnected with the incumbent.

Criteria	Weight	Comments
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Average timeframe for obtaining reservation of numbers	0 to 5	Maximum score for timeframe of 10 days or less; Intermediate score for timeframe between 10 and 20 days; Minimum scores for of 20 days or more.
Average timeframe for reviewing standard interconnection offers, assessed over the past three years	0 to 5	Maximum score for timeframe of n0-50 working days; Intermediate score for timeframe of 51-100 working days; Minimum scores for timeframe of more than 100 working days.
Average timeframe for negotiation of new standard interconnection agreement for an operator not yet interconnected	0 to 5	Maximum score for timeframe of 0-20 working days; Intermediate score for timeframe of 20-120 working days; Minimum score for timeframe of 120 working days or more.

2. Transparency

25. The transparency of a regulatory regime is contingent on the regulator's obligation or practice in relation to: (i) making public consultations prior to deciding on issues of general interest, (ii) the timeframe allowed to the parties to usefully comment on the documents open for consultation, (iii) the ability for stakeholders to also discuss, in an open, transparent and non-discriminatory forum, the issues open for consultation early in the decision-making process, (iv) being required to effectively explain the details underlying its decisions, (v) publishing decisions upon their adoption, (vi) consulting on and disclosing its action plan on a regular basis, and (vii) having the costs of operation presented in a transparent fashion and made available through audited accounts.

Criteria	Weight	Comments
Recourse to public consultation	0 to 5	Maximum score if general obligation to use public consultation; Intermediate score if occasional recourse to public consultations on <i>ad hoc</i> basis; Minimum score if no practice of recourse to public consultations and no legal requirement for same.
Timeframe allowed to the parties to comment on documents open for consultation	0 to 5	Maximum score if deadline for comments between 3 and 6 weeks, including possibility for the NRA of reducing or increasing timeframe as the case may be. Minimum score if less or more than this time window.
Opportunity for stakeholders to provide early input on a non-discriminatory basis	0 to 5	Maximum score if such opportunity exists in practice; Intermediate score if occasional recourse; Minimum score if no practice of recourse to informal consultations or if possibility of ex parte contacts on a non-transparent and discriminatory basis.
Explanation of details underlying decisions and effectiveness of appeal in event of failure to provide detailed explanation	0 to 5	Scoring dependent on the scope of the obligation to issue reasoned decisions and the quality of the arguments developed and disclosed.
General obligation to publish all decisions	0 to 5	Maximum score if obligation exists as a matter of general administrative law or legislative

		requirement; Intermediate score if self-imposed obligation which is generally complied with; Minimum score if no such obligation exists.
Obligation to consult and disclose on an action plan	0 to 5	Maximum score if obligation exists; Intermediate score if self-imposed obligation which is generally complied with; Minimum score if no such action plan exists.
Obligation to present costs of operation in a transparent manner	0 to 5	Maximum score if obligation exists; Intermediate score if self-imposed obligation which is generally complied with; Minimum score if no such obligation exists or if costs are not disclosed in a transparent manner in practice.

3. Powers and sanctions

26. The effectiveness of a regulator is also a function of the following: the powers entrusted to it, the consistency of such powers with the new regulatory framework, and its ability to impose fines.

Criteria	Weight	Comments
Powers of regulator defined by law	0 to 5	Maximum score if powers are clearly described; Minimum score if not clearly described.
Consistency of powers attributed to NRAs under NRF	0 to 5	Maximum score if NRA powers are consistent with framework; Intermediate score if not materially inconsistent; Minimum score if NRF not fully implemented or if materially inconsistent as evidenced by Commission infringement proceedings.
Ability to impose fines	0 to 5	Maximum score if possibility of imposing sanctions with deterrent effects; Minimum score if no possibility of imposing sanctions.

4. Scale of resources

27. The efficiency of the regulator is also a function of its ability to draw on sufficient and adequate resources. Reference must be made, in this respect, to the number of employees used for general regulatory issues, the number of highly specialised staff members in view of the specific regulatory functions of NRAs, including in relation to the implementation of the new regulatory framework (*e.g.*, competition economists, competition lawyers and engineers having a particular expertise in their fields⁷), the fairness and transparency of selection procedures, the NRAs' ability to define compensation in accordance with market needs and their ability to draw on outside resources, including the ability to attract persons from the private sector as prospective employees. Consideration is also given to relative workloads and any delays due to lack of resources.

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Other than engineers affected to numbering or spectrum management functions.

Criteria	Weight	Comments
Total number of employees used for general regulatory issues (excluding frequency and numbering management), including employees with competition law and economic background	0 or 2	Maximum scores if more than 30 ⁸ such specialised employees; Minimum scores if less than 30 such employees.
Existence of fair and transparent procedures for selecting employees	0 to 2	Maximum score if use of transparent external selection procedure; Minimum score if procedure is not transparent or excludes applicants outside the public sector.
Salaries and benefits able to attract and retain key staff – in particular, pay and benefits commensurate with external market	0 to 2	Maximum score if able to attract and retain key staff; Minimum score if unable to do so.
Access to outside expertise	0 to 2	Maximum score if access and sufficient resources for outside expertise; Intermediate score if some restrictions on use of outside expertise; Minimum score if no access or resources.

5. *Effectiveness of appeal procedure*

28. The possibility of appealing decisions of the regulator and the way in which such appeals are implemented in practice can significantly impact the effectiveness of a regulatory regime. Experience shows that in certain jurisdictions, incumbents tend to appeal most, if not all, NRA decisions. The suspensive effect of such appeals, or the possibility of suspending the decisions of the regulator by means of a Court injunction, has proven to present a potential hurdle for new entrants seeking to ensure that incumbents effectively comply with the decisions of the regulator. To the extent that this information was not available in detail, the answers are based on the authors' general estimates and perception of the incumbent's tendency to generally challenge NRA decisions. In addition, the timeframe for obtaining a decision on appeal and the likelihood that decisions are overturned is critical.

Criteria	Weight	Comments
Automatic suspensive effect of appeal	0 or 5	Maximum score if no automatic suspensive effect; Minimum score if automatic suspension.
Standard for suspension and application in practice	0 to 5	Maximum score if strict standard; Minimum score if lax standard.
General tendency of operator to appeal	0 to 10	Scores have been given on a scale of 0 to 2, depending on the percentage of decisions being appealed or the general tendency by the incumbent to systematically challenge all NRA decisions.
Timeframe for an appeal procedure	0 to 10	Scores have been given on a scale of 0 to 2, depending on the timeframe for an appeal.
Proportion of court judgements reached since September 2002 resulting in annulments	0 to 5	Scores have been given on a scale of 0 to 2, depending on the percentage of judgements resulting in annulments.

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6. Independence

29. The independence of the regulator can be assessed, *inter alia*, on the basis of: the potential and actual extent of political intervention, the duration of office of NRA management, grounds for removal, and eligibility requirements for appointments. The clarity of objectives given to the NRA may also have some influence on the NRA's independence and its relative effectiveness (particularly in relation to long-term action plans provided for by law or self-imposed by the NRA itself).

30. Political influence is the most direct means of influencing the regulator. The mere possibility of political intervention may put the regulator under pressure. Such pressure is likely to increase when the government wholly or partially owns or controls the incumbent operator. Indeed, it cannot be overlooked that in most EU countries, the telecommunications environment is still characterised by existing or former government-owned dominant enterprises. In many of these countries, liberalisation has only been in place for approximately 6-7 years. Nonetheless, it is undeniably difficult to objectively quantify the influence on NRAs created by factors such as government ownership of the incumbent telecommunications operator. The following weighting is therefore applied.

Criteria	Weight	Comments
Absence of intervention from political authority other than through removal	0 to 10	Maximum score if no likelihood of interference; Minimum score if likelihood of interference or evidence of same.
Duration of office of NRA management	0 to 2	A duration of 5 years is taken as a reference: Maximum score if duration exceeds or is equal to 5 years; Reduced score for shorter term.
Grounds for removal of NRA management	0 to 2	Maximum score if for fraud or serious fault or equivalent; Minimum score if for general interest reasons.
Eligibility requirements for NRA management	0 to 2	Maximum score if conditions maximising quality, specialisation and independence ⁹ ; Minimum score if no conditions foreseen.
Objectives given to and/or published by NRA in terms of long term action	0 to 5	Maximum score if clear objectives are given and published by NRA; Minimum score if conflicting or no objectives given and published by NRA.
State ownership/control	0 to 15	Maximum score if private ownership; Intermediate score if State ownership without control ¹⁰ ; Minimum score if State ownership and control. ¹¹

7. Market analysis procedure and imposition of remedies

31. The market analysis process has become one of the important tasks entrusted to NRAs. This process includes a comparison of total number of markets assessed to date, and the

⁹ This criteria also takes into account whether qualitative regulations are appointed in practice.

¹⁰ "Control" is defined in accordance with Article 3 of the Council Regulation (EC) N° 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

¹¹ *i.e.*, a controlling interest held by the State.

instances where remedies were imposed in the event of a finding of significant market power. The average time scale within which NRAs conduct their processes is also relevant.

Criteria	Weight	Comments
Consultation with the competition authority	0 to 5	Maximum score if formal consultation of national competition authority and meaningful feedback received from it; Minimum score if this is not the case.
Number of markets reviewed	0 to 5	Scores have been given depending on the number of markets reviewed.
In instances where SMP was found, have remedies been applied in all cases.	0 to 5	Maximum score if remedies applied in all instances where dominance was found; Minimum score if no market reviewed or if no remedies imposed in spite of finding of dominance
Average time frame for conducting analysis	0 to 10	Scoring on a scale depending on average timeframe, with shorter timeframes scoring higher

B. Dispute settlement body

32. The respective weight given to each criterion in this section is as follows: speed of process (40%), due process (10%), effectiveness of sanctions (20%), and effectiveness of appeal procedures (30%). NRAs differ greatly in their ability to impose effective sanctions to ensure the enforcement of their decisions. The ability to mandate and enforce its decisions, as well as the use of sanctions, is ultimately the key criterion for measuring the effectiveness of the regulator acting in the capacity of dispute settlement body.

1. *Speed of process*

33. The main criterion for assessing the speed of process is the average timeframe for obtaining a decision. The possibility to impose interim measures is also pertinent to minimise the market impact of anti-competitive behaviour. This criteria also captures the level of recourse to the dispute settlement body. In theory, the absence of applications to this body is not indicative of the relative inefficiency of the dispute settlement body (as the market would be self-regulating). However, in practice, there tend to be many instances where disputes between operators are not resolved. Thus, this report negatively assesses those instances where little use is made of the regulator in its capacity as dispute settlement body.

Criteria	Weight	Comments
Average timeframe for obtaining a decision	0 to 10	Four months or less: top score; Intermediate score if timeframe ranges between four and six months; More than six months: minimum score.
Possibility to impose effective interim measures	0 or 2.5	Maximum score if possible; Minimum score if not possible.
Imposition of interim measures in practice	0 or 2.5	Maximum score if interim measures have been ordered in practice since September 2002; Minimum score in the absence of such interim measures.

2. Due process

34. The main criteria for assessing due process and procedures are the extent to which parties are given the right to be heard and the possibility to appeal decisions.

Criteria	Weight	Comments
Right to respond / access to documents	0 to 5	Maximum score if general obligation to communicate documents to other parties; Minimum score if no general obligation to communicate documents to other parties.
Right to appeal decisions	0 to 5	Maximum score if decisions can be appealed; Minimum score if no right to appeal.

3. Effectiveness of sanctions and scale of resources

35. The main criteria for assessing effectiveness under this heading are: the ability of NRAs to impose appropriate sanctions (*e.g.*, fines or periodic penalty payments) and to enforce their own decisions.

Criteria	Weight	Comments
Effectiveness of sanction powers	0 or 10	Maximum score if right to impose fines or periodic penalty payments or to suspend particular conduct, and the effective use of these powers; Intermediate score if sanctions considered to be weak; Minimum score if no right to impose fines or periodic penalty payments, or no effective use of these powers.
Power to enforce decisions	0 or 5	Maximum score if power to enforce decisions; Intermediate score if formal power enforcement required by another body; Minimum score if no power to enforce decisions.

4. Effectiveness of appeal procedure

36. The effectiveness of the dispute settlement procedure also depends on the effectiveness of the appeal process. This is essentially assessed on the basis of the same type of criteria as those applied in relation to the NRA. For the reasons indicated above, the report provides a negative assessment where no use is made of the dispute settlement body.

Criteria	Weight	Comments
Automatic suspensive effect of appeal	0 to 5	Maximum score if automatic suspensive effect; Minimum score if no automatic suspension.
Standard for suspension and application in practice	0 to 5	Maximum score if strict standard; Minimum score if lax standard.
Percentage of decisions appealed since September 2002	0 to 10	Scores have been given on a scale of 0 to 5, depending on the percentage of decisions being appealed or the general tendency of the incumbent to systematically appeal all decisions.
Timeframe for an appeal procedure	0 to 10	Scores have been given on a scale of 0 to 5, depending on the timeframe for an appeal. 0 is also applied where no use was ever made of the dispute settlement body.
Proportion of court judgements	0 to 5	Scores have been given on a scale of 0 to 5,

reached since September 2002 resulting in annulments		depending on the percentage of judgements resulting in annulments.
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C. General Market Access Conditions

37. The various criteria in this category are weighted equally for the most important ones, with lower scores given to rights of way and numbering: access obligations (20), non discrimination and price squeeze (20), price control (20), cost accounting separation (20), rights of way (10), and numbering (10).

1. Access obligations

38. Now that fixed PSTN interconnection regimes are well-established in most Member States, the focus for regulation has been to ensure that other forms of access are provided where necessary to address market power, and to provide customer choice across the range of voice and data services. The differentiating factors lie within the extent to which regulators have established a clear framework to assist in the swift negotiation and provision of access, including in areas where access has not previously been provided, and to ensure that the access provided is fit for the sought-after purpose, *e.g.* through appropriate SLAs.

39. The methodology for evaluating access obligations is the following:

Criteria	Weight	Comments
Clear access policy disclosed by NRA	0 to 5	Maximum score if such access policy disclosed and updated; Minimum score if absence of such access policy.
Obligation to publish standard offer imposed in instances where access has been mandated	0 to 5	Maximum score if generalised practice of standard offers; Minimum score in all other instances.
Availability of standard procedure for negotiating access requests for access not already provided for	0 to 5	Maximum score if existence of such procedure; Minimum score if absence of such procedure.
Availability and update of SLAs for regulated products	0 to 2.5	Maximum score if general availability and update of SLAs; Intermediate score if availability for some access products or inconsistent updates in view of market evolution; Minimum score if absence of SLAs.
Inclusion in SLAs of provisions for financial penalties for failure to meet contractual conditions	0 to 2.5	Maximum score if inclusion of such provisions and if financial penalties constitute a sufficient deterrent; Minimum score if absence of such financial penalties or if penalties of insufficient amount

2. Non discrimination and price squeeze

40. The non-discrimination obligation is one of the most important access remedies, since it determines whether or not competitors are able to compete on a level playing field with dominant operators. Furthermore, its effect can be far-reaching, insofar as a non discrimination obligation imposed in relation to one market (*e.g.*, at the wholesale level) can also be interpreted as carrying obligations in relation to other markets (*e.g.*, at the retail level). It is therefore important to assess the instances where non discrimination is actually used as a remedy, the application of the non discrimination obligation across the value chain, and the effectiveness of non discrimination requirements in avoiding price squeeze practices and other non-price discriminatory practices such as time-squeeze or quality-squeeze.

41. In countries that are late in implementing the new regulatory framework, credit has been given in instances where the non discrimination obligations provided for under the old framework continued to apply under the new framework pursuant to the transitory regime. However, the report has taken into account the old non discrimination obligations only to the extent that there is evidence that NRAs have actually enforced such former obligations. To the extent that the new regulatory framework also allows for more flexibility in the actual definition of the scope of the non discrimination obligations, the possible lesser efficiency of the non discrimination obligation provided for under the old regulatory framework has also been taken into account as a discounting factor.

42. Assessment of the non discrimination obligation is undertaken on the basis of the following criteria:

Criteria	Weight	Comments
Regular imposition of non discrimination obligations	0 to 5	Maximum score if non discrimination obligation commonly imposed as a remedy; Minimum score if no such obligation ever imposed or applied by the NRA since July 2003 under the transitory regime.
Application of the non discrimination obligation across the value chain	0 to 5	Maximum score if non discrimination obligation commonly applied across the value chain (even if this is as a result of the application for the old regulatory framework); Minimum score if no application of such obligation across the value chain.
Rules against price squeeze	0 to 2.5	Maximum score if existence of such rules; Minimum score if absence of such rules.
Availability and application of price squeeze test	0 to 2.5	Maximum score if availability of such test; Minimum score if absence of such test.
Ability to apply non discrimination obligations on non-price related terms	0 to 5	Maximum score if such obligation exists and effectively applied; Intermediate score if obligation exists, but not effectively applied; Minimum score if no such obligation.

3. Price control

43. Price control mechanisms are also an important regulatory tool. They constitute, under the new framework, the continuation of the cost orientation obligation, which was largely used under the old framework and relied upon to ensure that access product costs are reasonable and to prevent anti-competitive pricing practices. Assessment of the effectiveness of price control remedies requires an evaluation of the number of instances where price control obligations have been imposed and the use of appropriate price control mechanisms. This includes an analysis of whether NRAs base their assessment on benchmarking or engage in more refined assessments based on the analysis of costs.

44. It is also important to take into account the effectiveness and transparency of any costing methodologies used. In particular, it is generally recognised that the forward looking long run incremental costs ("LRIC") methodology is most appropriate for encouraging rapid development of an open and competitive market, whilst providing appropriate investment

incentives¹². However, where other cost calculation methodologies are used and justified on the basis of particular competitive conditions (as may, for example, be the case for local loop unbundling), this report also takes into account these other methodologies.

45. Third parties should be informed of the parameters used for assessing cost models. These include, for instance: the number of subscribers, the weighted average cost of capital ("WACC"), and the key for cost allocation between the network's various parts.

46. Finally, it is important that NRA's EC compliance process should not divert the NRA from its obligations to pursue the national public interest and therefore to define regulatory objectives that are specific to the particular environment of each country.

Criteria	Weight	Comments
Is there a clear policy on price control for access products	0 to 5	Maximum if there is a clear policy on the application of price control for access services in a general policy paper; Intermediate score if price control is determined in the context of each individual market analysis and substantiated by a clear policy; Minimum score if there is no clear policy in terms of price control.
When cost orientation is applied, which methodology is used (<i>e.g.</i> , historic or current FAC or LRC)? Is the methodology clearly specified?	0 to 5	Maximum score if use of LRIC with justification or other methodologies where competition conditions justify; Minimum score for use of any other methodology if not properly justified.
Effective disclosure of parameters used for assessing cost accounting (<i>e.g.</i> , number of subscribers, key for cost allocation between network components, WACC)	0 to 5	Maximum score if assumptions communicated allow third parties to understand cost model; Intermediate score if limited disclosure of parameters; Minimum score if third parties unable to use information communicated for purpose of assessing compliance with applicable regulations.

4. Accounting Separation

47. Accounting separation is another important form of remedy, as it enables the NRA to closely monitor compliance with other remedies. It is aimed at ensuring that SMP operators do not use internal revenue transfers in a manner that can affect competitors' ability to compete. To assess the effectiveness of such remedies, it is necessary to determine the instances in which it is used, whether the methodology used is clearly specified and subject to consultation, whether the accounts drawn in accordance with cost accounting separation are published and show transfer charging arrangements between relevant services or markets.

48. Member States that have failed to implement the new regulatory framework are likely to be penalised, as the application of their old cost accounting obligations is unlikely to be viewed as satisfactory for the purpose of this report. Most national legislation contains some sort of cost accounting separation obligation. However, in many countries, such legislation is unclear and in a few cases is non-existent. Alternatively, the mechanisms used are not transparent, preventing third parties from taking effective action to secure the regulatory commitments made by the SMP operator or from identifying anti-competitive activities.

¹²

See Commission Recommendation 98/322/EC of 8 April 1998 on interconnection in a liberalised telecommunications market OJ L141/6, 13.05.98.

Generally, the majority of Member States have done very little to actually enforce cost accounting obligations under the old regulatory framework.¹³

49. The criteria used for the purpose of our assessment are as follows:

Criteria	Weight	Comments
Regular imposition of cost accounting obligations	0 to 5	Maximum score if cost accounting obligations commonly imposed as a remedy; Intermediate score if some reliance on cost accounting obligations; Minimum score if no such obligation ever imposed.
Clear methodology applied for cost accounting obligations	0 to 5	Maximum score if clear methodology for cost accounting separation; Minimum score in the absence of such clear methodology.
Public availability of accounts drawn in accordance with cost accounting obligations	0 to 5	Maximum score if availability of such accounts; Minimum score if absence of availability of such accounts.
Do separate accounts show transfer charging arrangements	0 to 5	Maximum score if showing of such transfer pricing arrangements; Minimum score if the accounts do not show such transfer pricing.

5. Rights of way

50. The roll out of new network requires the ability for new entrant operators to benefit from entitlements to rights of way (in particular, to free rights of way over public land) at reasonable and non-discriminatory conditions. This reduces costs for the roll-out of this network and therefore constitutes an important enabler to promote infrastructure competition.

Criteria	Weight	Comments
Operators' right to rights of way on public land	0 to 5	Maximum score if entitlement to rights of way; Minimum score if no such entitlement.
Ability to exercise these rights in a reasonable time scale and at reasonable cost	0 to 5	Maximum score for countries with short and timeframes and costs, Minimum score for countries with lengthy timeframes or costs
Existence of clear rules stipulating the procedure and costs	0 to 5	Maximum score if rules are clearly outlined; Minimum score if rules are not clearly outlined.

6. Numbering

51. Numbering raises not only issues of number availability, but also of number portability, as the ability to keep a number while changing provider of communications services has proved to be a *sine qua non* condition for competition in the market place. We also consider the availability of number ranges for VoIP to be a key market enabler for these services.

Criteria	Weight	Comments
Availability of number portability	0 to 5	Maximum score if number portability applied to

¹³

See the Andersen Business Consulting Study prepared for DG InfoSoc, "Study on the implementation of cost accounting methodologies and accounting separation by telecommunications operators with significant market power" (July 2002).

for geographic or all types of fixed numbers		geographic and non geographic numbers; Intermediate score if available to geographic numbers; Minimum score if no effective number portability scheme in place.
Availability of mobile number portability	0 to 5	Maximum score if number portability is available; Minimum score if no effective number portability scheme in place.
Average timeframe and cost for porting a fixed number	0 to 5	Scores given on the basis of a comparison of timeframe and costs for porting of fixed numbers (with 50/50 weight attributed to time and price).
Average timeframe and cost for porting a mobile number	0 to 5	Scores given on the basis of a comparison of timeframe and costs for porting of mobile numbers (with 50/50 weight attributed to time and price).
Proportion of fixed numbers ported in 2004	0 to 5	Scores given on the basis of a comparison of percentage of ported numbers.
Proportion of mobile numbers ported in 2004	0 to 5	Scores given on the basis of a comparison of percentage of ported numbers.
Availability of geographic and special VoIP number ranges	0 to 5	Maximum score for availability of geographic and special 'roaming' numbers for VoIP; Intermediate score for restricted availability of numbers for VoIP; Minimum score for lack of geographic numbers and no developed policy on VoIP numbering.

D. Key Access Products

52. The respective weight given to criteria for key access products is: narrow band voice (25%), mobile (25%), business services (25%) and broadband (25%).

1. Fixed narrow band services

53. Among the access services, NRAs are probably most familiar with narrow band access services. These services consist essentially of call origination and call termination. The most relevant criteria to assess the effectiveness of the regulation of these service is to compare the level of tariffs, the ability for new entrants to reflect their higher costs in their own tariffs, the respective market shares of the operators and the availability of certain services such as carrier selection services or wholesale line rental. For the purpose of the tariff comparison, this report uses the same methodology as that used by the Commission in its 10th Implementation Report, *i.e.*, it assumes an average call duration of 3 minutes.

Criteria	Weight	Comments
Comparison of level of interconnection tariffs for local call termination	0 to 2	Scores applied on the basis of the level of tariffs (on a scale of 0 to 2, with 2 being awarded to the lowest and 0 to the highest tariffs).
Comparison of level of interconnection tariffs for single tandem call termination	0 to 2	Scores applied on the basis of the level of tariffs (on a scale of 0 to 2, with 2 being awarded to the lowest and 0 to the highest tariffs).
Comparison of level of interconnection tariffs for double tandem call termination	0 to 2	Scores applied on the basis of the level of tariffs (on a scale of 0 to 2, with 2 being awarded to the lowest and 0 to the highest tariffs).
Ability for new entrants to apply higher charges	0 to 5	Maximum score for the application of differentiated tariffs unlimited in time, based on cost analysis of new entrant;

		Intermediate score for delayed reciprocity; Minimum score for reciprocal tariffs.
Is carrier selection and preselection implemented?	0 to 5	Maximum score if availability of carrier selection or preselection; Minimum score if no such availability.
Market share of alternative operators in the fixed voice market	0 to 5	Scoring is a function of actual market share of new entrants (residential and business combined).
Comparison of level of interconnection tariffs for local call origination	0 to 2	Scores applied on the basis of the level of tariffs (on a scale of 0 to 2, with 2 being awarded to the lowest and 0 to the highest tariffs). Intermediate scores have been given depending on the level of the tariff in comparison with the lowest and highest tariffs.
Comparison of level of interconnection tariffs for single tandem call origination	0 to 2	Scores applied on the basis of the level of tariffs (on a scale of 0 to 2, with 2 being awarded to the lowest and 0 to the highest tariffs).
Comparison of level of interconnection tariffs for double tandem call origination	0 to 2	Scores applied on the basis of the level of tariffs (on a scale of 0 to 2, with 2 being awarded to the lowest and 0 to the highest tariffs).
Availability of wholesale line rental ("WLR") and proportion of incumbent fixed lines which are wholesaled through WLR	0 to 10	Scores given on the basis of the availability of WLR and comparison of percentages of lines which are wholesaled through WLR.

2. Mobile services

54. The traditionally high cost of calling mobile networks in a calling party pays environment has generally been perceived as detrimental to consumers and distorts competition and investment. The most significant weight has been attributed to this criterion. However, in addition to the issue of mobile termination, the overall level of prices at the retail level for mobile services and the existence of MVNOs provide a good indicator of the effectiveness of competition in the mobile sector as a whole. Finally, it is also critical to encompass the possible restrictions to competition that can arise from a mobile operator's ability to provide integrated fixed to mobile services in the context of VPN offers and to determine to what extent regulations are in place to limit the possibility of discriminatory treatment.

Criteria	Weight	Comments
Comparison of peak-rate fixed to mobile termination charges applied by largest mobile operator	0 to 5	Scores applied on the basis of the level of the tariffs (on a scale of 0 to 5, with 5 being awarded to the lowest and 0 to the highest tariffs..
What remedies, if any, have been imposed on fixed to mobile call termination?	0 to 5	Maximum score if existence of specific remedy addressing cost-orientation and non-discrimination Intermediate score if addresses cost-orientation only. ¹⁴ Minimum score if absence of specific remedies.
How has cost-orientation been imposed?	0 to 5	Maximum score if cost orientation obligation assessed on the basis of actual cost model with no glide path. Intermediate score if cost based analysis following a gliding path. Minimum score if no actual cost orientation or if cost orientation carried out on the basis of

¹⁴

This assessment does not factor in the effect of excessively high mobile termination rates, covered by the preceding question.

		benchmarking.
Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its "internal" onnet rates?"	0 to 5	Maximum score if non-discrimination applied internally as well as externally. Minimum score if non-discrimination is external only or non-existent.
What is the combined market share of the two largest operators	0 to 5	The smaller the combined market share, the higher the scoring.
Comparison of the price of a basket of average user mobile retail services	0 to 5	The lower the price, the higher the scoring.
Is the market characterised by the presence of one or more MVNO?	0 to 5	Maximum score if significant presence of MVNOs in the market and/or regulation mandating MVNOs. Minimum score if absence of MVNOs and no MVNO regulation.

3. Business services

55. The access services essential to the business segment essentially consist of leased lines or ppcs and successor products. Our assessment takes into account whether ppcs are made available in compliance with regulatory terms. It is also important to ensure that such access services are subject to strict service level agreements and that there is a clear path enabling operators to migrate from leased line solutions to ppcs. In view of recent technical developments, it is also important to assess whether wholesale Ethernet offers are available.

Criteria	Weight	Comments
Availability of ppcs	0 to 2	Maximum score if availability of ppcs; Minimum score if no such service.
Are ppcs subject to cost orientation	0 to 2	Maximum score if cost-orientation applied; Minimum if no cost-orientation.
Comparison of tariffs for ppcs for 2 Mbits.	0 to 2	The lower the tariffs, the higher the scoring.
Is provision of ppcs subject to a non discrimination remedy	0 to 2	Maximum score if such a non discrimination obligation was imposed; Minimum score if absence of such obligation or if remedy is not effective.
Is ppcs subject to a SLA	0 to 2	Maximum score if existence of an SLA; Minimum score if absence of an SLA.
Are there restrictions on the migration services from leased lines to ppcs?	0 to 2	Maximum score if no such restriction; Minimum score if there are any restrictions.
Availability of wholesale Ethernet Service	0 to 10	Maximum score if availability of such service; Intermediate score if under consideration by regulator; Minimum score if absence of such service.

4. Broadband services

56. The economics of access networks mean that the last mile to the customer is typically not competitive and that regulation is needed to ensure that consumers have a choice of broadband supplier. Broadband access generally requires both ULL and bitstream, as bitstream has proved to be complementary to ULL both to ensure choice in a wide

geographic area and to provide a step for operators on the ‘ladder of investment’. This assessment is confirmed in the ERG’s analysis of the broadband market.

57. Our assessment is not limited to a review of the financial conditions applicable to ULL and bitstream. It also integrates non price-issues: for example, the presence or absence of SLAs. It is also useful to assess the commercial success of such access products by comparing the total number of unbundled lines with the total number of DSL connections. The effectiveness of regulation will also depend on whether the incumbent is subject to specific remedies such non discrimination obligations and price squeeze.

58. The key criteria are the following:

Criteria	Weight	Comments
Availability of full ULL and shared access	0 to 5	Maximum score if availability of ULL and shared access; Minimum score if unavailability of any of these services.
Comparison LLU tariffs for full ULL	0 to 5	The lower the tariffs, the higher the scores.
Comparison LLU tariffs for shared access	0 to 5	The lower the tariffs, the higher the scores.
Are associated facilities (such as co-location) also subject to regulation	0 to 5	Maximum score if associated facilities are subject to regulation; Minimum score if they are not.
Number of unbundled lines as a percentage of total DSL lines	0 to 5	Score proportionate to number of unbundled lines.
Are wholesale offers subject to a SLA	0 to 5	Maximum score if existence of an SLA; Intermediate score if SLA for ULL, but not for bit stream or <i>vice versa</i> ; Minimum score in the absence of an SLA.
Connectivity options available for ADSL wholesale on the basis of ERG classification	0 to 5	Maximum score if ERG option 2 and 3; Intermediate scores for lower options; Minimum score if bit stream is not available at all.
Percentage of DSL lines provided by the SMP operator's downstream operating retail arm	0 to 5	Maximum score if below 50%; Intermediate score if between 50 and 80%; Minimum score if higher than 80%.
Availability of SLAs for wholesale broadband products	0 to 5	Maximum score if there is an SLA and it is considered satisfactory; Intermediate if there is an SLA but it is not considered fully satisfactory; Minimum score if there is no SLA.
Restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops.	0 to 5	Maximum score if there is no such restriction; Intermediate if there is no legal restriction but migration still remains complicated in practice; Minimum score if there are restrictions.
Power to apply price squeeze test and review discriminatory access to wholesale services and the way in which the regulator has effectively applied this power	0 to 5	Maximum score if availability and effectiveness of margin squeeze test and of power to review discriminatory access; Minimum score if none of the above.

IV. In-country analysis

1. Speed of process																		
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
1	Average timeframe for obtaining reservation of numbers	5	5	2.5	0	5	2.5	5	0	2.5	2.5	2.5	5	2.5	2.5	5	5	2.5
2	Average timeframe for reviewing standard interconnection offers, assessed over the past three years	5	5	0	0	0	2.5	0	0	0	5	2.5	0	0	2.5	0	0	0
3	Average timeframe for negotiation of new interconnection services by new entrants	5	5	0	2.5	2.5	2.5	2.5	0	2.5	0	2.5	2.5	0	2.5	2.5	0	0
	TOTAL COUNTRY	15	15	2.5	2.5	7.5	7.5	7.5	0	5	7.5	7.5	7.5	2.5	7.5	7.5	5	2.5

	2. Transparency																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
4	Recourse to public consultation	5	5	5	5	2.5	2.5	2.5	2.5	2.5	5	5	2.5	5	5	2.5	5	5
5	Timeframe allowed to the parties to usefully comment on documents open for consultation	5	5	2.5	2.5	5	5	2.5	5	5	5	5	2.5	5	5	2.5	5	0
6	Hosting of an open, transparent and non-discriminatory forum throughout decision making process	5	5	5	2.5	5	5	0	5	2.5	5	5	2.5	5	0	5	5	5
7	Explanation of details underlying decisions and effectiveness of appeal in event of failure to provide detailed explanation	5	5	2.5	5	5	2.5	5	2.5	5	5	5	5	5	5	5	5	5
8	General obligation to publish all decisions	5	5	2.5	5	2.5	5	0	5	5	5	5	5	5	5	2.5	5	5
9	Obligation to disclose and consult on an action plan	5	0	2.5	2.5	0	2.5	0	2.5	5	5	2.5	5	5	2.5	0	2.5	5
10	Obligation to present costs of operation in a transparent manner	5	0	0	5	5	0	2.5	5	5	5	5	5	5	2.5	5	5	5
	TOTAL COUNTRY	35	25	20	27.5	25	22.5	12.5	27.5	30	35	32.5	27.5	35	25	22.5	32.5	30

3. Powers and Sanctions																		
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
11	Powers of regulator defined by law	5	5	2.5	2.5	5	5	0	5	5	5	5	2.5	5	5	2.5	5	5
12	Consistency of powers attributed to NRAs under NRF	5	2.5	2.5	5	5	5	0	0	5	5	5	2.5	2.5	5	5	2.5	5
13	Ability to impose fines	5	0	5	2.5	5	2.5	2.5	5	0	0	2.5	5	2.5	5	5	5	5
	TOTAL COUNTRY	15	7.5	10	10	15	12.5	2.5	10	10	10	12.5	10	10	15	12.5	12.5	15
4. Scale of resources																		
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
14	Total number of employees used for general regulatory issues	2	2	1	2	2	2	2	2	2	2	2	2	0	2	1	2	2
15	Existence of procedure for selecting employees	2	2	2	0	2	2	2	2	0	2	2	2	2	2	2	2	2
16	Salaries and benefits able to attract and retain key staff -in particular, pay and benefits commensurate with external market	2	2	1	0	1	2	0	2	0	2	2	0	0	2	1	2	2
17	Access to outside expertise	2	2	2	2	2	2	2	2	2	2	1	2	2	2	2	2	2
	TOTAL COUNTRY	8	8	6	4	7	8	6	8	4	8	7	6	4	8	6	8	8

	5. Effectiveness of appeal procedure																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
18	Automatic suspensive effect of appeal	5	5	5	5	5	5	0	5	0	0	5	5	5	5	5	5	5
19	Standard for suspension and application in practice	5	5	5	5	5	5	0	5	0	0	5	5	5	2.5	5	2.5	5
20	Likelihood of appeal	10	0	5	0	5	10	0	0	10	2.5	5	0	10	10	0	2.5	10
21	Timeframe for an appeal procedure	10	5	5	10	10	5	0	0	10	10	0	0	5	0	0	10	10
22	Proportion of court judgements reached since September 2002 resulting in annulments	5	2.5	0	5	2.5	0	2.5	0	5	0	5	2.5	5	5	5	2.5	2.5
	TOTAL COUNTRY	35	17.5	20	25	27.5	25	2.5	10	25	12.5	20	12.5	30	22.5	15	22.5	32.5
	6. Independence																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
23	Absence of intervention from political authority other than through removal	10	5	5	10	10	7.5	2.5	0	7.5	7.5	7.5	10	5	5	10	10	10
24	Duration of office of NRA management	2	2	2	2	2	2	2	2	2	1	2	2	2	2	2	0	0
25	Grounds for removal of NRA management	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
26	Eligibility requirements for NRA management	2	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
27	Objectives given to and/or published by NRA in terms of long term action	5	5	0	5	5	5	5	5	5	5	3.75	0	5	5	5	5	5
28	Lack of State ownership/control	15	11.25	0	15	15	3.75	3.75	3.75	11.25	15	11.25	11.25	15	3.75	11.25	7.5	15
	TOTAL COUNTRY	36	26.25	11	36	36	22.25	17.25	14.75	29.75	32.5	28.5	27.25	31	19.75	32.25	26.5	34

	7. Market Analysis Procedure and Imposition of Remedies																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
29	Number of markets reviewed	5	5	0	0	2.5	1.25	1.25	1.25	5	5	0	0	0	5	0	2.5	5
30	Instances where remedies were imposed	5	5	0	0	0	5	0	0	5	2.5	0	0	0	5	0	5	5
31	Consultation with competition authority	5	2.5	5	5	5	5	5	0	2.5	5	5	5	5	5	5	5	5
32	Average timeframe for conducting analysis	10	5	0	0	0	10	5	10	10	0	0	0	0	5	0	5	10
	TOTAL COUNTRY	25	17.5	5	5	7.5	21.25	11.25	11.25	22.5	12.5	5	5	5	20	5	17.5	25

	B. Dispute settlement body																	
	1. Speed of process																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
33	Average timeframe for obtaining a decision	10	5	10	0	10	10	10	0	10	10	0	5	0	5	5	5	10
34	Possibility to impose effective interim measures	2.5	2.5	2.5	2.5	2.5	2.5	2.5	1.25	2.5	0	2.5	2.5	0	2.5	2.5	0	0
35	Imposition of interim measures in practice	2.5	0	0	2.5	0	0	1.25	1.25	1.25	0	0	0	0	2.5	2.5	0	0
	TOTAL COUNTRY	15	7.5	12.5	5	12.5	12.5	14	2.5	14	10	2.5	7.5	0	10	10	5	10
	2. Due process																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
36	Right to respond/access to documents	5	5	5	5	5	5	5	5	2.5	5	5	5	5	5	5	5	5
37	Availability of appeal procedures	5	5	2.5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
	TOTAL COUNTRY	10	10	7.5	10	10	10	10	10	7.5	10	10	10	10	10	10	10	10
	3. Effectiveness of sanctions																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
38	Effectiveness of sanction powers	10	10	5	5	10	5	5	10	5	0	5	10	5	10	10	0	0
39	Power to enforce decisions	5	0	5	0	5	5	5	5	0	0	5	5	5	5	2.5	5	0
	TOTAL COUNTRY	15	10	10	5	15	10	10	15	5	0	10	15	10	15	12.5	5	0

4. Effectiveness of appeal procedures																		
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
40	Automatic suspensive effect of appeal	5	5	5	5	5	5	5	5	5	0	5	5	5	5	5	5	5
41	Standard for suspension and application in practice	5	5	5	5	5	5	5	5	5	0	5	0	5	5	5	2.5	5
42	Percentage of decisions appealed since September 2002	10	0	10	0	5	5	0	0	5	0	5	0	0	10	0	0	10
43	Timeframe for an appeal procedure	10	5	5	10	10	10	0	5	0	10	0	10	5	0	0	5	10
44	Proportion of court judgements resulting in annulments	5	2.5	5	5	2.5	5	2.5	2.5	5	5	5	2.5	5	0	5	2.5	0
	TOTAL COUNTRY	35	17.5	30	25	27.5	30	12.5	17.5	20	15	20	17.5	20	20	15	15	30

	C. General Market Access Conditions																	
	1. Access Obligations																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
45	Clear access policy disclosed by NRA	5	0	0	0	5	2.5	0	0	0	2.5	2.5	5	2.5	2.5	0	2.5	5
46	Obligation to publish standard offer imposed in instances where access has been mandated	5	5	5	0	5	5	5	5	2.5	5	5	5	5	5	5	5	5
47	Availability of standard procedure for negotiating access requests	5	5	0	0	5	0	0	0	0	5	2.5	0	0	2.5	0	0	5
48	Availability and update of SLAs for regulated products	2.5	2.5	2.5	2.5	2.5	1.25	0	0	2.5	1.25	2.5	2.5	0	1.25	1.25	2.5	2.5
49	Inclusion of financial penalties in SLA	2.5	2.5	2.5	2.5	2.5	1.25	0	0	2.5	1.25	2.5	2.5	0	2.5	2.5	1.25	2.5
	TOTAL COUNTRY	20	15	10	5	20	10	5	5	7.5	15	15	15	7.5	13.75	8.75	11.25	20

	2. Non discrimination and Price Squeeze																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
50	Regular imposition of non-discrimination obligations	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
51	Application of the non-discrimination obligation across the value chain	5	5	2.5	0	5	2.5	0	0	2.5	0	5	5	0	5	2.5	5	5
52	Rules against price squeeze	2.5	0	0	0	1.25	1.25	1.25	1.25	0	1.25	1.25	1.25	2.5	2.5	1.25	0	1.25
53	Availability of price squeeze tests	2.5	2.5	0	0	2.5	2.5	1.25	1.25	0	0	1.25	2.5	0	2.5	2.5	0	2.5
54	Ability to apply non-discrimination obligations on non price related terms	5	2.5	0	0	0	5	0	0	0	2.5	5	0	5	0	2.5	2.5	5
	TOTAL COUNTRY	20	15	7.5	5	13.75	16.5	7.5	7.5	7.5	8.75	17.5	13.75	12.5	15	13.75	12.5	18.75

	3. Price Control																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
55	Clear policy on price control mechanisms applied	5	5	2.5	0	0	2.5	2.5	0	5	2.5	2.5	5	0	0	0	0	5
56	Cost orientation methodology used	5	5	2.5	5	5	5	5	2.5	2.5	5	2.5	2.5	0	0	5	2.5	2.5
57	Effective disclosure of parameters used for assessing cost accounting	5	2.5	2.5	2.5	5	2.5	0	0	0	5	0	5	2.5	0	0	5	5
	TOTAL COUNTRY	15	12.5	7.5	7.5	10	10	7.5	2.5	7.5	12.5	5	12.5	2.5	0	5	7.5	12.5
	4. Cost Accounting Separation																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
58	Regular imposition of cost accounting obligations	5	5	0	5	0	2.5	0	2.5	5	5	5	0	0	5	5	5	5
59	Clear methodology applied for cost accounting obligations	5	0	0	2.5	0	0	0	0	0	2.5	2.5	0	0	0	0	0	5
60	Public availability of accounts drawn in accordance with cost accounting obligations	5	0	0	0	0	0	0	2.5	0	5	0	0	2.5	0	0	0	5
61	Do separate accounts show transfer charging arrangements?	5	0	0	0	0	0	0	0	0	5	0	0	0	0	0	0	5
	TOTAL COUNTRY	20	5	0	7.5	0	2.5	0	5	5	17.5	7.5	0	2.5	5	5	5	20

	5. Rights of Way and Facility Sharing																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
62	Operators' right to rights of way on public land	5	5	5	5	5	5	5	5	5	5	0	5	5	2.5	5	5	5
63	Ability to exercise these rights in a reasonable time scale	5	0	2.5	5	5	2.5	5	0	0	5	0	5	5	0	0	2.5	5
64	Existence of rules stipulating the procedure and costs	5	5	0	0	5	0	5	0	2.5	5	0	5	0	0	0	2.5	5
	TOTAL COUNTRY	15	10	7.5	10	15	7.5	15	5	7.5	15	0	15	10	2.5	5	10	15
	6. Numbering																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
65	Availability of number portability for geographic or all types of fixed numbers	5	5	5	3.75	5	5	5	5	5	5	5	5	0	5	5	5	5
66	Availability of mobile number portability	5	5	5	0	5	5	5	5	5	5	5	5	0	5	5	5	5
67	Average timeframe and cost for porting a fixed number	5	2.5	5	0	0	0	5	0	0	0	2.5	0	5	2.5	2.5	5	5
67	Average timeframe and cost for porting a mobile number	5	5	5	0	5	0	5	5	0	2.5	5	2.5	0	5	5	5	5
68	Proportion of fixed numbers ported in 2004	5	0	2.5	0	2.5	0	5	0	0	0	2.5	2.5	0	0	2.5	0	2.5
68	Proportion of mobile numbers ported in 2004	5	0	2.5	0	2.5	0	0	2.5	0	2.5	2.5	2.5	0	0	5	2.5	2.5
69	Availability of geographic and special VOIP number ranges	5	2.5	2.5	2.5	5	5	5	0	2.5	5	2.5	0	0	0	5	2.5	5
	TOTAL COUNTRY	35	20	27.5	6.25	25	15	30	17.5	12.5	20	25	17.5	5	17.5	30	25	30

D. Key Access Products																		
1. Narrow Band Voice																		
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
70	Comparison of level of interconnection tariffs for local call termination	2	0	1	0	2	1	1	0	0	1	2	1	1	1	1	0	2
70	Comparison of level of interconnection tariffs for single tandem call termination	2	0	1	0	2	0	1	0	0	1	1	1	0	1	0	1	2
70	Comparison of level of interconnection tariffs for double tandem call termination	2	0	2	1	2	2	1	0	2	2	1	2	1	1	0	2	2
71	Ability for new entrants to apply higher charges	5	5	5	0	5	2.5	2.5	5	2.5	5	5	5	0	2.5	0	0	2.5
72	Are carrier selection and pre-selection implemented	5	5	5	5	5	5	5	2.5	5	5	5	5	5	5	5	5	5
73	Market share in revenues of alternative operators in the fixed voice market	5	5	2.5	2.5	5	2.5	5	2.5	0	2.5	2.5	5	2.5	2.5	2.5	5	5
74	Comparison of level of interconnection tariffs for local call origination	2	1	1	0	2	2	2	1	0	2	2	2	1	1	1	1	2
74	Comparison of level of interconnection tariffs for single tandem call origination	2	1	1	2	2	1	1	1	0	1	1	2	1	1	1	1	2
74	Comparison of level of interconnection tariffs for double tandem call origination	2	0	1	2	2	0	1	0	2	1	1	2	1	1	0	2	2
75	Availability of wholesale line rental (WLR) and proportion of incumbent fixed lines which are wholesale through WLR	10	5	0	0	10	0	0	0	0	10	0	0	0	0	0	10	10
	TOTAL COUNTRY	37	22	19.5	12.5	37	16	19.5	12	11.5	30.5	20.5	25	12.5	16	10.5	27	34.5

	2. Mobile																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
76	Comparison of peak-rate fixed to mobile termination charges applied by largest mobile operator	5	5	5	5	2.5	2.5	2.5	2.5	5	2.5	5	2.5	0	0	2.5	5	5
77	Is fixed to mobile subject to regulation and if so, what remedy has been imposed?	5	5	5	5	2.5	5	0	0	5	5	5	2.5	0	5	5	5	5
78	How has cost orientation been imposed	5	2.5	2.5	5	0	2.5	0	0	5	2.5	2.5	0	0	2.5	5	2.5	2.5
79	Where non-discrimination is applied is the mobile operator required to demonstrate that it is not discriminating with regard to on-net tariffs	5	0	0	0	5	5	0	2.5	0	2.5	0	0	0	0	0	0	0
80	What is the combined market share of the two largest operators	5	2.5	0	2.5	5	0	2.5	0	0	0	0	2.5	2.5	0	0	0	5
81	Comparison of the price of the basket of an average user mobile rental service	5	2.5	0	5	5	0	0	2.5	0	0	0	2.5	2.5	5	0	2.5	0
82	Is the market characterised by the presence of one or more MVNO?	5	2.5	2.5	0	5	1.25	0	5	0	0	0	5	0	0	0	2.5	5
	TOTAL COUNTRY	35	20	15	22.5	25	16.25	5	12.5	15	12.5	12.5	15	5	12.5	12.5	17.5	22.5

	3. Business																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
83	Availability of ppcs	2	2	1	0	2	2	0	1	1	2	2	2	0	2	2	0	2
84	Are ppcs subject to cost orientation?	2	2	1	0	2	2	0	1	1	2	2	2	0	1	1	0	2
85	Comparison of tariffs for ppcs for 2 Mbits	2	2	2	0	2	2	0	2	1	2	2	2	0	2	2	2	2
86	Is provision of ppcs subject to a non-discrimination remedy?	2	0	1	0	2	1	0	0	0	2	1	0	0	0	1	0	2
87	Are ppcs subject to an SLA	2	0	2	0	2	2	0	1	2	2	2	1	0	2	2	1	2
88	Availability of a regulated migration services from leased lines to ppcs	2	2	0	0	2	2	0	2	2	2	1	2	0	0	2	0	2
89	Availability of the wholesale Ethernet Service	10	10	0	0	5	10	0	0	0	0	0	0	0	10	0	0	10
	TOTAL COUNTRY	22	18	7	0	17	21	0	7	7	12	10	9	0	17	10	3	22

	4. Broadband																	
Question Number	Criteria	Weight	Austria	Belgium	Czech Republic	Denmark	France	Germany	Greece	Hungary	Ireland	Italy	Netherlands	Poland	Portugal	Spain	Sweden	UK
90	Availability of full ULL and shared access	5	5	5	5	5	5	5	5	5	2.5	5	5	2.5	5	5	5	5
91	Comparison LLU tariffs for full ULL	5	5	5	0	5	5	5	5	0	2.5	5	5	5	5	5	2.5	5
91	Comparison LLU tariffs for shared access	5	5	5	5	5	5	5	5	0	5	5	5	5	5	5	5	5
92	Are associated facilities (such as co-location) also subject to regulation?	5	5	5	0	2.5	5	2.5	0	5	5	5	5	2.5	5	5	5	5
93	Number of unbundled lines as a percentage of total DSL lines	5	2.5	0	0	2.5	5	2.5	0	0	0	2.5	5	0	0	0	5	0
94	Availability of SLAs for LLU	5	5	5	2.5	5	5	2.5	0	5	5	5	2.5	0	2.5	5	2.5	5
95	Connectivity options for ADSL wholesale on ERG classification	5	2.5	5	0	5	5	2.5	2.5	5	2.5	5	0	0	2.5	5	5	5
96	Percentage of DSL lines provided by SMP operator's downstream operation	5	0	2.5	0	0	2.5	0	0	2.5	2.5	0	0	0	0	2.5	0	5
97	Do w/sale broadband products include an SLA	5	5	5	0	5	5	0	0	5	5	5	0	0	2.5	5	0	5
98	Restrictions on migration from a resale ADSL offer to bitstream to ULL	5	5	5	0	5	5	0	0	5	0	2.5	0	0	0	0	0	5
99	Power to apply price squeeze test and review discriminatory access to wholesale services and the way in which the regulator has effectively applied this power.	5	0	2.5	0	5	5	0	0	0	0	2.5	0	0	0	5	2.5	2.5
	TOTAL COUNTRY	55	40	45	12.5	45	52.5	25	17.5	32.5	30	42.5	27.5	15	27.5	42.5	32.5	47.5

V. The economic impact of effective regulation

59. Under the NRF, NRAs are required to promote efficient investment and innovation. This is best achieved by establishing a regulatory framework that encourages market entry by enabling entrants to have, *ex ante*, an expectation of a reasonable return on their investments. The Scorecard analysis has examined how well the various regulatory regimes have developed to meet this objective.

60. Many studies have discussed the importance of regulation for promoting innovation and investment, both generally, and specifically within the telecommunications sector.

61. Across the economy in general, the OECD (2003) found that maintenance of an anti-competitive regulatory environment and delays in implementing pro-market reforms are associated with relatively poor productivity performance. Within specific network industries, such as telecommunications, the OECD found that countries with limited public ownership in the sector and low barriers to entry have enjoyed greater success in improving productivity, as compared with countries in which regulation curbs competition and public enterprises are widespread.

62. Within the telecommunications markets, Bourreau and Dogan (2001) summarise regulation as affecting innovation in two ways. First, price regulations alter industry profits and, therefore, incentives to innovate. Secondly, both price and entry regulation change the terms of entry and, thus, decisions regarding new entry. Regulatory certainty also affects investment decisions. Investors will take account not only of regulation at the time of entry, but also of anticipated regulatory policy until the time that their investments become obsolete (de Bijl & Peitz 2003).

63. This section of the Report examines the relationship between regulation and telecom investment. The central hypothesis is that there remains a strong and positive relationship between investment and effective regulation, as measured by the Scorecard.

64. In 2004, the ECTA Scorecard Report found a clear positive relationship between investment and effective regulation on all measures of investment (ECTA, Jones Day, SPC Network 2004). This year's landscape is more complex due to two factors:

65. First, the 2004 Scorecard covered 10 Member States (all from the EU 15). In this Scorecard, six Member States were added: three new Member States (*i.e.*, Czech Republic, Hungary and Poland) and three from the EU 15 (*i.e.*, Denmark, Greece and Portugal). Five¹⁵ of the new countries included in the Report have a substantially lower gross domestic product (GDP) per capita than the other 11 countries. We have found that GDP per capita has a strong influence on investment measures.

66. Secondly, the investment data available from the OECD (2003) is not contemporary with the Report. In previous Scorecards (2002 and 2004), this has not affected the result, as the regulatory climate was relatively stable. However, with the

¹⁵ Czech Republic, Greece, Hungary, Poland and Portugal.

implementation of the NRF, since 2003 many countries have significantly improved their regulatory environment. Nevertheless, there remains a strong level of consistency in investment levels across the OECD over time: the same countries tended to be investing more in 2003 than in each of the previous years for which data are available. We therefore continue to believe that variations in investment levels in any one year are reasonable proxies for investment in other years. Whilst it is not ideal, investment in 2003 can therefore be used as a reasonable proxy for investment in 2005.

67. Within each year, investment levels across the ten countries in the regulatory scorecard vary significantly. Table 1 shows three different measures of investment.

Table 1: Measures of Investment in Electronic Communications 2003

Country	Investment as percentage of Gross Domestic Product (GDP) 2003	Investment per capita 2003 (USD)	Investment as percentage of Gross Fixed Capital Formation (GFCF) 2003
Austria	0.61%	191	2.83
Belgium	0.27%	78	1.57
Czech Republic	1.40%	124	5.27
Denmark	0.40%	158	2.01
France	0.25%	70	1.93
Germany	0.23%	68	1.32
Greece	0.73%	115	2.85
Hungary	0.76%	62	3.38
Ireland	0.38%	144	1.61
Italy	0.54%	135	2.8
Netherlands	0.36%	112	1.77
Poland	0.65%	36	3.54
Portugal	0.61%	85	2.68
Spain	0.54%	110	2.1
Sweden	0.48%	162	3.05
UK	0.61%	184	3.72

(Source: OECD 2005)

68. Our purpose here is examine whether there is any statistically valid relationship between these measures of investment and regulatory effectiveness as measured on the Scorecard. To test this, we have used three different, though related, statistical techniques: rank (or Spearman's) correlation, single regression, and multiple regression.

69. A rank correlation tests the relationship between two sets of ordinal data, *i.e.* the ranking of two sets of data. In this case, each country is ranked on the Scorecard and on each of the measures of investment. The results of this analysis are shown in Table 2. The result is shown as the "coefficient of correlation" (also known as R) and is measured on a scale of -1 to 1. The closer the number to each end of the scale, the stronger the relationship in either a negative or positive direction.

70. Across the whole group of countries, only investment per capita has a strong, positive rank correlation with the Scorecard result (column A). However, when conducting the same analysis for those countries with a GDP per capita greater than

USD 20,000¹⁶, there is a strong correlation for all three measures of investment (column B). These have been compared with the 2004 results (column C)¹⁷. The results for the high income countries in 2004 and 2005 are not significantly different. It may therefore be surmised that there are perhaps different drivers of investment in the relatively low income countries, as compared with the high income group.

Table 2: Correlation Coefficients for Rank Correlation

Rank Correlation Result between Scorecard and:	A	B	C
	All countries	High income	2004 Result
Investment as percentage of GDP	-0.02	0.63	0.63
Investment per capita (\$)	0.68	0.76	0.72
Investment as percentage of GFCF	0.17	0.71	0.69

71. In the second set of analysis, we have produced a number of simple regression models (correlations) using two-variable (bi-variate) regressions with each of the measures of investment and the Scorecard. Again, we find that the relationship is stronger amongst the 11 higher income countries than the group as a whole. However, as with the rank correlation, the coefficient is stronger and most significant for investment per capita amongst the whole group. A strong t-stat (>1.96) indicates a high level of statistical significance, *i.e.* >95%.

Table 3: Bi-variate Regression Results

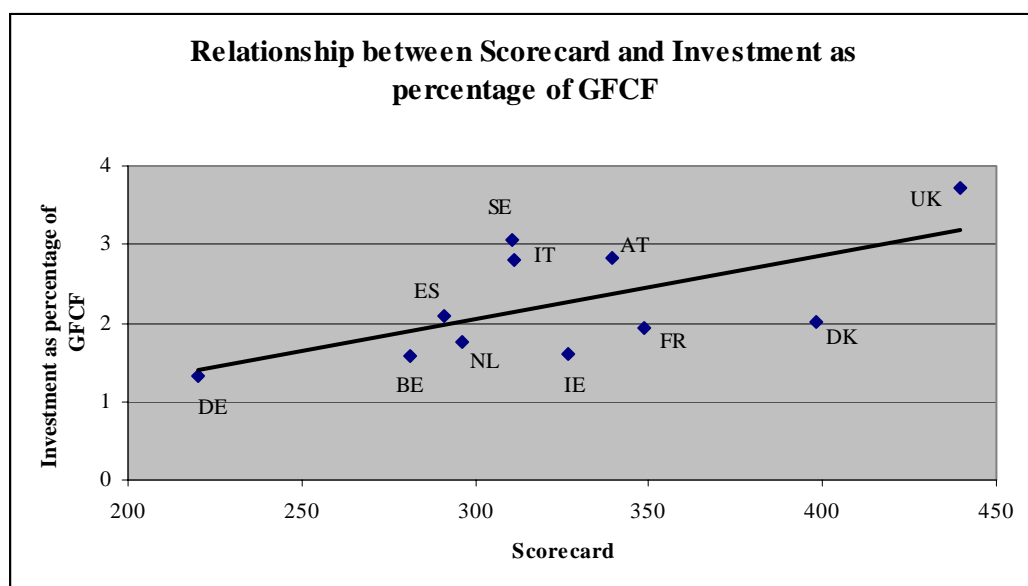
Regression Results with Scorecard as explanatory variable and the following as dependent variable	All countries		High Income	
	Coefficient	t-stat	Coefficient	t-stat
Investment as percentage of GDP	0.26	-0.99	0.49	1.67
Investment per capita (\$)	0.63	3.05	0.66	2.64
Investment as percentage of GFCF	0.07	-0.26	0.63	2.45

The two significant (to 95%) correlations for the higher income group are between the Scorecard and investment per capita and between Scorecard investment as a percentage of GFCF. The relationship with GFCF is shown graphically in Figure 1. As effectiveness of regulation appears not to be the only factor influencing investment in the lower income group of countries, these countries are not shown in this bi-variate graph.

¹⁶ Source: OECD 2005

¹⁷ The results are not perfectly comparable, as there is an additional country in this group: Austria.

Figure 1: Relationship between Scorecard and GFCF: High Income Group



72. At this stage, therefore, it may be deduced that investment is strongly correlated with efficient regulation and that it is also affected by GDP per capita, with lower income countries attracting more investment per capita than higher income states. This makes intuitive sense, as these countries may well be investing more to “catch up” with higher income Members States. If so, it would make good economic sense, as there is a well-known and positive connection between economic development and telecommunications usage. The new member states and Greece may also be benefiting from increased investment in the run-up and aftermath to telecoms liberalisation - a process which happened earlier (1998) in the other countries examined.

73. To test this hypothesis, that investment levels are driven by income as well as regulatory effectiveness, we developed a multi-variate regression model using both the Scorecard and GDP per capita as the independent variables and the various measures of investment as dependent variables. The results of these models are shown in Table 4. We find that the strongest relationship¹⁸ lies between the Scorecard and investment as a percentage of GFCF, allowing for GDP per capita. Indeed, this is the only model reflecting a statistically significant relationship for both independent variables.

Table 4: Multi-variate Regression Results

Multiple Regression Result between Scorecard and Inflation and:	Coefficient of Determination	t-stat Scorecard	t-stat GDP per capita
Investment as percentage of GDP	0.48	0.90	-3.21
Investment per capita (\$)	0.47	1.71	1.30
Investment as percentage of GFCF	0.52	1.98	-3.76

¹⁸ The result here is shown as “coefficient of determination”, or R^2 .

The Coefficient of Determination (R^2) is an indication of the percentage of the variation in investment that can be explained by the other variables in the model: Scorecard result and GDP per capita. Thus, these models explain 52% of the variation in investment as a percentage of GFCF.

74. The relationship between investment and GDP per capita was, as our hypothesis suggests, found to be negative, *i.e.* the higher the level of GDP per capita, the lower the level of investment. Taking the strongest of these models (Investment as a percentage of GFCF as the dependent variable), the following equation may serve to describe the relationship between investment, regulation, and GDP per capita.

$$I = 0.008S - 8.5i + 2.3$$

(1.98) (-3.76)

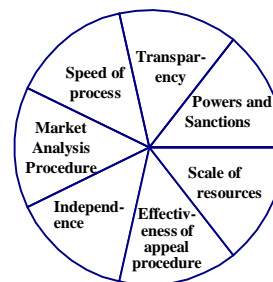
Where I = Investment, S = Scorecard and i = GDP per capita. t-stats are in parentheses below the coefficients

75. The analysis conducted here supports the empirical and theoretical work cited in the early part of this section. There is a strong and positive relationship between effective regulation and a range of different measures of investment using different statistical models. The relationship is strongest between countries in the same income group, *i.e.* with a GDP per capita of over \$20,000 per annum. However, allowing for this variation, we also find a strong relationship with lower income countries attracting a proportionately higher level of investment as a percentage of GFCF, as they catch up with the higher income group.

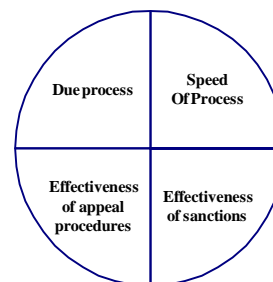
76. We can conclude that for countries wishing to continue to attract a high level of investment in telecommunications, it remains necessary to have strong, pro-competitive regulation to ensure that new entrants are able to compete effectively with SMP operators.

Report on the effectiveness of national regulatory frameworks and investment impact 2005

	(1) Regulator: General	(2) Regulator: Dispute Settlement	(3) Access Regulation	(4) Access Products
Austria				
Belgium				
Czech Republic				
Denmark				
France				
Germany				
Greece				
Hungary				
Ireland				
Italy				
Netherlands				
Poland				
Portugal				
Spain				
Sweden				
UK				



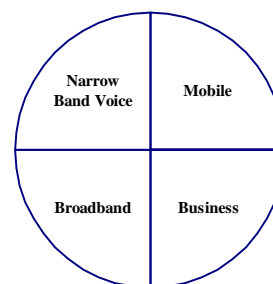
(1)
Regulator:
General



(2)
Regulator:
Dispute
Settlement

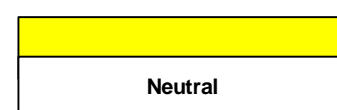


(3)
Access
Regulation



(4)
Access
Products

Colours:



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OECD (2005) Communications Outlook

CORRIGENDUM

A number of mathematical errors were inadvertently included in the original version of the Scorecard which resulted in all countries receiving a score up to 14 points below their correct total. In this version these errors have been corrected and the relationship models amended accordingly. The corrected scores make no material difference to the overall results of either the Scorecard or the models of the relationship between regulation and investment.

A further error was found in the regression of Scorecard against Investment as a Percentage of Gross Fixed Capital Formation. Correcting this regression has changed the result, though it remains a statistically significant relationship to the 95% confidence level.

We very much regret the inclusion of these errors in the original report.

ANNEX II - BELGIUM

Preliminary remark:

The answers to the following questionnaire must take into account the fact that the five European directives to the “Package 2003” were recently implemented into Belgian law (on 13 June 2005, entering into force on 30 June 2005). The decrees for implementing this law must still be drafted/adopted or published in the Belgian State Gazette. For these reasons, we took into consideration the situation under the old and the new law related to Electronic Communications (hereafter “the new Telecom Law”).

A. REGULATOR - GENERAL FUNCTIONS

A.1. Speed of process

1. What is the average (median) timeframe for obtaining reservation of numbers?

Authorization to use numbers must be granted within 3 weeks of reception of the completed request (Article 11 §4 of the new Telecom Law). In practice, reservation of numbers takes between 2 and 4 weeks.

2. What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?

The average timeframe for reviewing reference interconnection offers is between 22 and 24 weeks.

- BRIO (Belgacom Reference Interconnection Offer) 2004 was submitted on 7 July 2003 and approved by BIPT on 23 December 2003;
- BRIO 2005 was submitted on 6 July (qualitative aspect) and 20 August 2004 (quantitative aspect) and approved by BIPT on 14 December 2004 (for the qualitative aspects) and 31 December 2004 (for the quantitative aspects).

The main concern of new entrants is that a final version of the BRIO (available on the Belgacom website) is only released by end-January of each year, which is too late for budgetary planning.

3. In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?

BIPT is free to fix the timeframe it deems appropriate to complete negotiations on an interconnection agreement. Under the new Telecom Law, a Royal Decree must be drafted to determine the minimum requirements that must be included in interconnection agreements. In practice, depending on the operators involved, negotiations can take between 3 months and 1 year.

A.2. Transparency and consultation

4. Is your NRA required to hold public consultations prior to deciding on issues of general interest?

The Law provides that the BIPT may organise a public consultation when a draft decision is likely to have a major impact on a relevant market or on trade between EU Member States as regards specific issues listed in the Law (Articles 140 and 141 of the new Telecom Law). In general, the BIPT will hold a public consultation only where there is a risk of the overall telecommunications

market being affected. In its last "Management Plan" of 31 July 2003, the BIPT also mentioned that: "...it became mandatory for the BIPT to systematically consult the interested parties in a neutral and objective way. The BIPT will provide all parties with non-confidential information needed for their contributions...." - "...there will be a publication on the BIPT's website each time a consultation will be of general interest. The timeframe will be reasonable." In addition, the Law on the BIPT also provides for the obligation for BIPT to hear all "interested parties", this is applied quite extensively by the BIPT.

5. *What timescale is usually given for formal consultation?*

The public consultation may not exceed 2 months (Article 140 §1 of the new Telecom Law). In practice, formal consultation may take from 9 working days to 1 month after its publication on the BIPT website.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

Yes. The Platform of Alternative Operators, comprising both fix and mobile operators, submitted to the BIPT the results of certain analysis carried out in collaboration with external consultants. These concerned several consultations on the determination of the operators' contribution (excluding Belgacom) to the USO funds, the elaboration of a WACC methodology, and the elaboration of BRUO/BROBA cost models. The BIPT also organises on a regular basis Spectrum Management Meetings in the context of LLU and BRUO-BROBA Coordination Meetings.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Yes. Since it is an administrative authority, the NRA is required to motivate its decisions. In practice, the motivation in BIPT decisions can be rather limited. Also, BIPT has no obligation to motivate its refusal to intervene, which has proven problematic as it limits the ability of operators to challenge regulatory inactivity. An appeal against a decision of the BIPT's Council may be brought before the Court of Appeal of Brussels, which is competent for all telecom related matters. The Highest Administrative Court (*Conseil d'Etat*) is competent for a limited number of specific issues (e.g., employment issues).

8. *Is your NRA required to publish all its decisions upon their adoption?*

The BIPT is required to publish its decisions on its website (Article 22, 8° of the Law of 17 January 2003 on the BIPT, "Law on the BIPT"). A Royal Decree establishing detailed rules (including rules on the publication of decisions and opinions of the BIPT Council, as well as the timeframe for such publications) has been drafted but remains to be adopted. In practice, the Council of the BIPT is publishing some of its decisions on its website. Decisions affecting only some operators are only communicated to the interested parties.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

Yes. The Institute shall publish a management plan every six months (Article 34 al. 2 of the Law on the BIPT). This management plan is available on the BIPT's website, but is not subject to prior consultation.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

The accounts are verified by the *Cour des Comptes /Rekenhof* but are not published in detail. The Annual Report 2004 only contains a short paragraph concerning the BIPT's finances. This paragraph does not contain any details.

A.3. Powers and sanctions

11. Are the powers of your NRA clearly defined by law?

Yes. The BIPT's powers to intervene in matters, including market analysis, price squeeze, universal services and interconnection/access negotiations are defined. However, there have been issues in relation to the inadequacy of the BIPT's powers to intervene to ensure reasonable conditions of interconnection. In addition, the incumbent is also challenging the NRA's powers under the transitory regime.

12. Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.

In general, NRA powers are in line with the principles of the new regulatory framework. However, remedies that are not provided for the new Telecommunications Law can only be imposed by the Government. In addition, the powers of the regulators of the Communities which are competent for broadcasting matters are not necessarily in compliance with the EC Directives.

13. Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?

Yes. The Council may impose an administrative fine of a maximum of 5,000 EUR on individuals and fines ranging from 0,5% to 5% of the last annual turnover achieved on the relevant market (Articles 21 §1 and §2 of the Law on the BIPT). The fine may, however, not exceed EUR 12,5 million. The Law does not provide for the possibility to impose periodic penalty payments. In the event of serious or repeated breaches of the law, the BIPT Council may impose a partial or total suspension of the network exploitation, the supply of services, or the commercialisation or use of any relevant service or product. Finally, there are also certain issues in relation to matters under the competence of the Communities (the Flemish, French and German-speaking Communities are competent for media, culture, etc.). This has led to the annulment of the Law on the BIPT by the Arbitration Court and the adoption of (a draft) cooperation agreement between The Federal regulator and the Communities.

A.4. Scale of resources

14. What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff has private sector experience?

Approximately 30. This is considered insufficient.

The number of economists and competition law specialists is very limited. The BIPT recently initiated a hiring process in order to recruit additional staff. The results of this hiring process are not yet known.

15. Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?

BIPT personnel can either be civil servants or regular employees. Civil servants are selected on the basis of the general State recruiting exams organised by the "Selor" (Federal office in charge of recruiting civil servants) and an additional exam organised by the BIPT. Thus, the procedure for selecting the NRA's personnel is fair and open.

The BIPT can also hire contractual employees in replacement of civil servants under specific conditions on a temporary basis. However, very few contractual employees are hired on this basis because of the applicable legal restrictions.

16. *Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?*

Since a large majority of the NRA's staff are civil servants, the fixed pay-scale provided for by law applies to NRA personnel (Royal Decree of 11 July 2003 amending Royal Decree of 18 March 1993 fixing the financial status of the personnel of the BIPT). These levels of remuneration do not match private sector compensation levels. BIPT may also hire external persons on an *ad hoc* basis. These persons carry out their tasks within the NRA on a contractual basis (Art. 73 of the Law of 21 March 1991 and Royal Decree of 18 March 1993). It should be noted that the remuneration of the Members of the Council of the BIPT has been set a level that is significantly higher than the pay-scale applied to ordinary civil servants.

17. *Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?*

The Law grants the BIPT financial autonomy, allowing it work in collaboration with external consultants. In fact, several consulting companies are currently working for BIPT.

Since August 2005, the Institute has made two tenders for the implementation of certain SMP-obligations (*i.e.*, cost orientation and accounting separation, and provision of universal service) and in relation to certain anti-competitive pricing practices.

A.5. Effectiveness of appeal procedure

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

An appeal brought against a BIPT decision has no suspensory effect, except for those decisions imposing a fine (Article 2 §2 of the Law on Legal Remedies and Dispute Settlement Procedures). However, the Council of Ministers may, upon the proposal of the Minister of Telecommunications and on the basis of a motivated decree, suspend the execution of certain decisions taken by the BIPT (Article 15 §1 of the Law on the BIPT¹).

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

There is no case law yet interpreting the standard that must be met to obtain suspension of an NRA decision. However, if the Court of Appeal of Brussels were to follow the case law of the Highest Administrative Court (*Conseil d'Etat*), a suspension could only be obtained by establishing that implementation of the decision would cause serious and irreparable harm. The Highest Administrative Court interprets the notion of "serious and irreparable harm" in a very restrictive way.

20. *What percentage of decisions taken since September 2002 was appealed?*

Since June 2003 (when the BIPT Council was created), out of 48 BIPT Council decisions, approximately 22 decisions have been appealed before the Court (*i.e.*, corresponding to an average of 46% of decisions appealed).

In accordance with the management plan (2nd half of year 2005), 10 new cases have been introduced before the Court of Appeal of Brussels. 4 judgements have already been handed down, while 20 cases concerning the regulation of the electronic communication market are still pending before the Highest Administrative Court, and 22 cases are pending before the Court of Appeal of Brussels.

¹ Upon the approval of the Council of Ministers, the King establishes the list of decisions for which the BIPT is considered to have breached the law or which are contrary to general interest.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

The appeal procedure generally takes one to two years.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

So far, all judgements rendered have annulled or suspended BIPT decisions.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

Under the new regulatory framework, the BIPT has become an independent administrative authority. However, the following issues remain:

- The Law still enables the Council of Ministers to suspend, under certain conditions, a decision of the BIPT that is considered illegal or contrary to the public interest (Article 15 of the Law on the BIPT). Although the Royal Decree defining the specific areas in which a BIPT decision may be suspended by the Council of Ministers has not yet been adopted, the Government is planning to adopt such Decree in the coming months. This potential for political intervention is a significant cause of concern.
- The licences required under the current regulatory framework (*i.e.*, voice telephony, fixed network and mobile licences) are still granted by the Minister of Telecommunications. However, under the new regulatory framework, these licences will be granted by the BIPT.
- The grounds for removal of the BIPT's members still allow for a certain degree of political intervention.
- Remedies not provided for under the New Telecommunications Act can only be imposed by the Government.
- Local Communities (Flemish, French, and German-speaking communities) in charge of media and broadcasting must be consulted for matters that also pertain to their competence. This could also give rise to potential concerns.

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

The duration of the NRA management's office is 6 years (Article 17 §2 of the Law on the BIPT). The NRA's management may be re-appointed (Article 17 §2 al. 2, 3).

25. *What are the grounds for removal of your NRA's management?*

Members of the Council are dismissed upon the proposal of the Minister of Telecommunications, and approval by the Council of Ministers (Article 17 §5 of the Law on the BIPT). Also, the Law provides for an evaluation of the President and the members of the Council every two years, and a final evaluation at least six months before the end of the six-year term (Royal Decree of 11 May 2003 fixing the financial remuneration of the President and the members of the Council, the "Royal Decree of 11 May 2003", Article 14). According to the Law, the Government may remove the President or members of the Council in case of (i) non-compliance with their general obligations of competence, integrity or independence provided for under Article 17 §3 of the Law on the BIPT or (ii) a negative evaluation (Articles 20 and 21 of the Royal Decree).

26. *What are the eligibility requirements for your NRA's management?*

The Council is composed of a President and three members, with parity of Dutch and French-speaking members.

The members of the Council are appointed on the basis of their competence, integrity and independence (Article 17 §2, 3 of the Law on the BIPT). They are appointed by the King upon the proposal of the Minister of Telecommunications and after their approval by the Council of Ministers. Members of the Council may not have any interest in undertakings that are active in the telecommunications market and may not exercise any functions in such undertakings. The Law on the BIPT also provides for a "cooling off" period of two years after holding such position.

The President must have a professional experience of at least ten years in the telecommunications or postal sector (Article 4 of the Royal Decree of 11 May 2003). The other members of the Council must have a professional experience of at least five years in the postal or telecommunications sector or experience as an economic analyst of at least five years. Members of the Council also require experience in negotiating with European institutions.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

The Law does not provide for any long-term NRA objectives. However, the BIPT defines its activities/objectives for the next period of six months in its "Management Plan". The Management Plan is published every six months and is available on BIPT's website.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

The Belgian State currently holds a controlling 50% plus one share stake in Belgacom, which in turn holds a 75% share in Belgium's largest mobile operator (Proximus, Belgacom Mobile).

A.7. Market analysis procedure and imposition of remedies

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

None.

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Not applicable.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

The Institute is required by Law to submit its decisions to the Competition Council (Article 55 § 4 and 5 of the new Telecom Law). According to the Law, the Competition Council shall, within 30 calendar days, issue an opinion. If the Competition Council fails to provide an answer within the given timeframe, the BIPT's decision is deemed to be approved.

Concerning its management plan, the Institute has drafted a Royal Decree with a view to organizing its cooperation with the Competition Council and the Competition's service. This draft has been communicated to the Minister in December 2004. In the meantime, the Institute and the Competition Council have entered into a Protocol of Cooperation.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

Not applicable.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. *Speed of process*

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

Under the old regulatory framework, the average timeframe for obtaining a decision of the Interconnection Chamber was approximately 4 months. The Law on Legal Remedies and Dispute Settlement Procedures abolished the Interconnection Chamber and transferred competence to act as the dispute settlement body to the Competition Council. According to the Law, the Competition Council is required to take a decision within 4 months (Article 4 of the Law on Legal Remedies and Dispute Settlement Procedures). No dispute settlement procedure has been initiated before the Competition Council so far. Thus, it remains to be seen whether the Competition Council will comply with the timeframe set by the Law. It should be noted that the Law does not provide for any sanction where the Competition Council fails to comply with the set timeframe. Since the Competition Council is manifestly under-staffed, compliance with the 4 months timeframe could eventually become a serious matter of concern.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

The Law on Legal Remedies and Dispute Settlement Procedures does not explicitly provide for the competence of the Competition Council to grant interim measures. It is possible, however, that the Competition Council could order provisional measures under Section 6 of the Law of 5 August 1991 on the Protection of Economic Competition (“Law on the Protection of Economic Competition”).

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

Not applicable. No procedure has been initiated before the Competition Council thus far.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes (Article 27 of the Law on the Protection of Economic Competition).

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Decisions of the Competition Council may be appealed before the Court of Appeal of Brussels (Section 9 of the Law on the Protection of Economic Competition). Whether this also applies to decisions adopted by the Competition Council acting as the dispute settlement body remains to be seen.

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

The Competition Council may impose fines and periodic penalty payments (Section 7 of the Law on the Protection of Economic Competition). These sanctions, however, only apply to competition law infringements or failure to cooperate in the course of investigations. The Competition Council does not have the power to impose fines when it acts as a dispute settlement body within the framework of the Law on Legal Remedies and Dispute Settlement.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

The BIPT is in charge of ensuring that the undertakings concerned comply with the decisions of the Competition Council when it acts as a dispute settlement body.

B.4. *Effectiveness of appeal procedure*

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No. The appeal does not have an automatic suspensory effect (Article 43 bis § 4 of the Law on the Protection of Economic Competition).

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice?*

Case law has not yet interpreted the standard for obtaining such suspension. If the Court of Appeal were to follow the case law of the Highest Administrative Court (*Conseil d'Etat*), suspension could only be obtained where establishing that implementation of the decision would cause serious and irreparable harm. The notion of “serious and irreparable harm” is interpreted very restrictively by the Highest Administrative Court.

42. *What percentage of decisions taken since September 2002 was appealed?*

No dispute settlement procedure has been initiated before the Competition Council yet. Under the former Law, the Interconnection Chamber issued four decisions, none of which was appealed before the Highest Administrative Court.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

Not applicable (no decision has been appealed yet).

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

Not applicable (no decision has been appealed yet).

C. GENERAL MARKET ACCESS CONDITIONS

C.1. *Access obligations (AD article 12)*

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

The NRA does not usually communicate a mission statement nor its policy objectives in relation to the regulation of access services.

46. *Where access has been mandated, does your NRA typically require (e.g., as part of a stated policy) dominant operators to publish a reference offer for access?*

The publication of a reference offer for unbundled access (full and partial unbundling) and bitstream access is required by law (EC Regulation and Royal Decree on ULL and bitstream access of 12 December 2000). Publication of a reference offer for interconnection was required under the old regulatory framework and may be imposed upon an SMP operator as a remedy under the new Telecom Law.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

Operators are free to request access services not explicitly provided for in the standard reference offer. There is, however, no standard procedure for such “additional” request. In general, regulatory intervention is required in order to obtain a new type of access (e.g., LLU experience).

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

The SLA for Half Links (PPC) is the same as the SLA for leased lines. Belgacom has launched both a basic SLA and an improved SLA for raw copper and bitstream access. Belgacom’s service level performances are, arguably, not monitored by the NRA in a proactive way. Arguably, Belgacom’s service level performances are not monitored by the NRA in a proactive way.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Yes.

C.2. Non discrimination and price squeeze (AD article 10)

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

The non-discrimination obligation is provided for under the current transitory regulatory framework. There is no experience yet under the new Telecom Law. Under its current administrative practice, BIPT has not enforced the non-discrimination obligations on SMP operators in a coherent manner.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

In theory, non-discrimination requirements apply across the value chain. However, in practice, these requirements do not always appear to be thoroughly applied.

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

No. This question is currently examined in the context of the market analyses. For markets 1 and, 2, for example, the BIPT proposes a notification obligation which would allow it to verify the absence of a price squeeze.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

Occasionally. In its draft decision of 29 August 2005 concerning the Belgacom offer ‘Happy Time’, the BIPT analyzed a number of principles with a view to applying a price squeeze test. It eventually referred the matter to the Competition Council, after consulting the market. In September 2005, the BIPT published a call for tender to select a consultant to develop a methodology to evaluate the tariffs of the SMP operators and identify possible price squeezes.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms eg requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

No.

C.3. Price control (AD article 13)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

No market analysis has been completed yet. In its practice, BIPT has already used various methods for regulating "cost-oriented tariffs".

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

The cost accounting method is presently based on fully distributed costs ("FDC"). Assets are valued on the basis of the current cost accounting method ("CCA").

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

The BIPT published a description of the top-down cost model for both interconnection and mobile interconnection charges. Information provided by the BIPT is limited and does not contain any detailed figures. In fact, these detailed figures are considered as confidential. In July 2005, the BIPT organised a consultation on the methodology of calculating the WACC in its cost models, which is expected to improve transparency for calculating the WACC.

C.4. Cost accounting separation (AD article 11)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

Thus far, BIPT has failed to effectively enforce this obligation. However, the BIPT is currently drafting a Royal Decree on accounting separation in relation to Article 60 §1 of the new Telecom Law, which empowers the BIPT to impose accounting separation obligations on all activities relating to access and for which an operator is considered to have SMP.

In its decision dated 6 April 2004, the BIPT's Council required the fixed and mobile incumbent operator (Belgacom NV) to publish on its internet website a public version of the accounting separation report for 2000 and 2001. Belgacom has appealed this decision before the Court of Appeal. To the knowledge of the operators, the Court has not yet pronounced a stay of execution. In the meantime, on 20 October 2004 and 12 May 2005, letters were sent by the Platform of Alternative Operators to request the Institute to use its powers against the incumbent operator for its failure to comply with its obligation to publish its accounting separation reports. In response to these requests, the BIPT has launched a consultation on the Accounting Separation for 2002 of the incumbent operator (Belgacom NV).

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

The BIPT has not yet published any guidelines or adopted a public statement concerning its adherence to these EU guidelines. Nevertheless, the BIPT has organised a consultation with regard to its draft decision on the accounting separation of Belgacom's 2002 financial results.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

No. However, BIPT has organized a consultation with regard to its draft decision on the accounting separation of Belgacom's 2002 results.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

The BIPT has never disclosed any transfer charges between wholesale and retail markets.

C.5. *Rights of way and facility-sharing (FD article 11)*

62. *Are operators entitled to rights of way on public land?*

Rights of way on public land are provided for under Articles 97 and 98 of the Law of 21 March 1991 on the Reform of Certain Public Economic Undertakings. Although licensed operators have free rights of way on public land, municipalities and regions increasingly claim financial compensation or impose additional conditions for use of public land. The Flemish Government has, for instance, issued a decree imposing fees on operators using the public domain. The legality of this decree is currently being challenged by both the Federal Government and several operators before the Highest Administrative Court.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

It is considered that the charges levied for the roll-out of certain networks are unreasonable and discriminatory. Mobile operators have also encountered significant regulatory hurdles for the roll-out of their networks since 1999, which has essentially benefited the incumbent operator.

64. *Are there clear rules in place stipulating the procedure and cost?*

No.

C.6. *Numbering*

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Yes. Number portability is available for fixed numbers (both geographic and non-geographic numbers).

66. *Is mobile number portability available?*

Yes. Mobile number portability has been available since 1 November 2002 (date of publication of Royal Decree of 29 September 2002).

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

For fixed numbers:

- Simple porting: four business days; 9.08 EUR.
- Complex porting: five business days; 89.70 EUR.

For mobile numbers, the BIPT had set charges at 3.86 EUR for simple porting and 23.41 EUR for complex porting. However, this BIPT decision was suspended by the Court of Appeal.

68. *What proportion of fixed and mobile numbers was ported in 2004?*

Fixed: approximately 200,000 fixed numbers (out of a total of 3,362,757 lines) (10th Implementation Report).

Mobile: approximately 400,000 mobile numbers (out of a total of 8.2 million subscribers) (10th Implementation Report).

69. *Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?*

In its Communication on VoIP services with nomadic use of 27 June 2005, the NRA decided that VoIP operators may use special geographical numbers for VoIP services with nomadic use and may apply for a deviation from the standard regulatory obligation if they comply with the following two obligations:

- they must flag the nomadic use linked to a geographic number in the emergency services database so that emergency centers are aware that the location of the caller may be different from its geographical number;
- they must inform the user formally and at least 3 times a year about the difference between a regular telephony service and a VoIP service with nomadic use. In particular, the user must be informed about the limited possibility to physically locate the caller for emergency services purposes.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. *What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?*

Interconnection services	Call setup <i>Eurocents</i>		Per minute <i>Eurocents</i>	
	Peak	Off-peak	Peak	Off-peak
Local	0.349	0.183	0.573	0.301
Intro access area	0.487	0.256	0.799	0.419
Extra access area	0.608	0.319	0.998	0.524
Belgium is split into 10 access areas. If the call terminates in the access area where the interconnection took place, the lowest price applies. Peak: Mon-Fri 08.00-19.00, excluding public holidays Valid from 1 Jan. 2005 until Dec. 2005.				

71. *Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?*

The BIPT approved higher termination charges for both Telenet and Versatel, as compared to the Belgacom termination charges. These charges were justified on the basis of an analysis of the costs of Telenet and Versatel.

72. *Is carrier selection and preselection implemented?*

Yes.

73. *What is the market share (revenue) of alternative operators in the fixed voice market?*

Their market share is estimated at 20 to 30%.

74. *What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?*

The same tariffs apply as for call termination services, but no call origination services are available at double tandem level.

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines is wholesaled through WLR?*

No. However in its consultation document regarding markets 1 and 2, the BIPT proposes to impose WLR.

D.2. Mobile

76. *What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?*

Mobile termination rates	Mobile termination rates	Comments
Peak time	Off-peak time	
<i>Eurocents per minute</i>	<i>Eurocents per minute</i>	

Proximus 10.87	Proximus 10.87	All charges with call set-up of five eurocents Peak <i>Proximus & Mobistar</i> Mon-Fri 08.00-1900
Mobistar 14.92	Mobistar 14.92	

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Yes. The termination rates of Belgacom Mobile and Mobistar must be cost oriented and non-discriminatory.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

The BIPT has imposed a glide path.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile off net rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' on-net rates?*

The non-discrimination obligation generally applies to SMP operators. However, this has not prevented Belgacom Mobile from offering on-net tariffs which are lower than its termination rates.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

The combined market share in terms of revenues amounts to approximately 88%.

81. *What is the price of a basket of average user mobile retail services?*

41.7 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

Several smaller MVNOs are operational on the BASE network, Belgium's third mobile operator. MVNO access is not subject to any specific regulation under the existing regulatory framework. In practice, the main problem encountered by new entrants pertains to the on-net tariffs applied by the incumbent.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Yes. However, the half-link (PPC) offer, which is part of the Belgacom reference interconnect offer, is very limited in scope (up to 34Mbit/s and up to 20 kms in distance). There is no equivalent wholesale offer for the Belgacom Ethernet retail services.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Yes. PPCs are required to be cost-oriented. However, their tariffs are currently determined on a retail minus basis. The BIPT has commenced analysing cost-orientation of the Belgacom leased lines and PPC offers. The BIPT announced that it will work on developing a specific cost-model for the Belgacom leased lines and PPCs. No date for completion of this process has been confirmed so far.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbits/s 2 km?*

2,107 EUR (connection charge).

267 EUR/month (rental charge) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

The BIPT compares prices of commercial leased lines and similar PPCs with a view to preventing price squeeze. Unfortunately, the NRA fails to proactively verify that discounts granted on retail commercial leased lines are not preventing operators from choosing PPCs instead.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes, the same SLA applies for PPC (half-links) as for retail leased lines.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

Yes. Although the BIPT has repeatedly tried to enable operators to migrate leased lines to regulated PPCs, a number of hurdles remain and operators are reluctant to migrate. These hurdles include, for instance, penalties under the commercial agreements entered into by operators.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

Wholesale Ethernet Service is not available. This has already been mentioned to the NRA as being in demand by the market.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access		Shared access	
Active loop:			
–	One-off: 56.01 EUR or 48 payments of 1.46 EUR/month	–	One-off: 56.01 EUR or 48 monthly payments of 1.46 EUR /month
–	Per month: 11.62 EUR	–	Per month: 1.64 EUR for an active loop with Belgacom voice services

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Co-location is a regulated offer.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

1% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes. There is also an improved SLA.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: available (14%).

Option 3: available (6%).

Option 4: not available.

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

79% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

No. Migration is possible at the regulated tariff.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

The price squeeze test has been initiated, but not yet completed.

ANNEX I - AUSTRIA

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

The actual allocation of numbers is done within five working days.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

The NRA¹ reviews the reference interconnection offers ("RIO") within two months after publication of the relevant RIO by the incumbent, Telekom Austria AG.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

The RIO is not individually negotiated, as the incumbent must offer non-discriminatory conditions to all operators with respect to interconnection and access. If one operator requests modified conditions, the request will lead to a review of the RIO. It takes only a short time period to have the (downloadable) RIO standard offer signed (two weeks). In the event that a new entrant requests changes in the RIO, the process will take much longer (two to six months), depending on the scope of the requested changes.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Yes. However, considerations brought up in the consultation procedure do not necessarily have an actual impact on the result.

5. *What timescale is usually given for formal consultation?*

Approximately 1 month.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

Yes, during the very early stages. However, from the perspective of Alternative Network Operators ("ANOs"), it is considered problematic that the ANOs still face a "black box" in respect of the important milestones towards the decision.

¹

The Austrian NRA consists mainly of two bodies: (i) The Telekom-Control-Kommission ("TKK"): A tribunal competent for decisions in all matters in which civil rights are concerned; (ii) The Rundfunk und Telekom Regulierungs-GmbH ("RTR"): The administrative body of TKK, competent for all other decisions. A third body, Kommunikationsbehörde Austria ("KommAustria") is competent for broadcasting matters, including broadcasting infrastructure. A fourth body, Fernmeldebüro, enforces obligations, decisions and fines under the relevant telecommunications laws.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

According to the law, the NRA is required to motivate its decisions, but only the parties to the complaint are entitled to appeal. In most cases, like market analyses and imposition of remedies, ANOs are not party to the complaint, as this is a procedure between the NRA and the incumbent.

8. *Is your NRA required to publish all its decisions upon their adoption?*

Yes.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

No.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

No. The ANOs and the incumbents have requested an audit for many years, as they are financing the NRA's operational costs.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

The powers of the NRA are defined in the law very broadly by means of a blanket clause (*Generalklausel*). Unfortunately, the NRA has not utilised the powers provided for in this blanket clause in the event of an actual abuse of market power of the incumbent (e.g., in the retention of / relation to carrier pre-selection and call-by-call customers).

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

The European Commission has initiated first steps in an infringement proceeding against Austria concerning several failures to properly implement the new regulatory framework. Specifically, the European Commission has alleged violations of Art. 3 (3) of the Framework Directive (impartiality of the NRA), Art. 16 (1) of the Framework Directive (consultation with competition authorities in the context of market definition), and Art. 8 (2) of the Framework Directive (special care towards handicapped users).

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

Enforcement of regulatory decisions is governed as follows: the NRA is entitled to impose obligations. Actual fines of up to EUR 58,000.00 are imposed by the *Fernmeldebüro*. The competition authority is also entitled to require payment of the profits corresponding to up to 10 per cent of the relevant yearly turnover, based on a complaint by the NRA, but this has never been applied thus far.

A.4. Scale of resources

14. *What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?*

NRA: approximately 56 employees for general regulatory issues, plus approximately 14 employees for general support (IT, PR, etc), which is shared with the broadcast unit of the RTR.

The NRA's national economics department: 9 employees, and the NRA's business administration department: 8 employees. No information is available on their experience in the private sector.

15. *Are the procedures for selecting the NRA's personnel fair and open (e.g., conducted through a transparent external selection procedure)?*

ANOs have no information on the selection procedure. Within the general limits of applicable law, the NRA may determine its own procedures at its discretion. It is generally considered that these procedures are fair and transparent.

16. *Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?*

Yes.

17. *Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?*

Yes. The NRA is entitled to hire consultants, although their own staff is deemed to be qualified as expert witnesses by law. NRA rarely makes use of the possibility to recourse to outside expertise.

A.5. Effectiveness of appeal procedure

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

No. The NRA decision is binding, unless the court of appeal states the contrary.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

Suspension must be applied for in an appeal procedure. In most cases, no suspension is granted.

20. *What percentage of decisions taken since September 2002 were appealed?*

From the perspective of an ANO, the overall percentage is difficult to estimate: most of the recent decisions concerned market analyses and the imposition of remedies, which are proceedings in which the ANOs do not participate. Almost all of the remaining NRA decisions (*i.e.*, other than market analyses and remedies) were appealed either by the incumbent, the ANO or both.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

Approximately one to three years.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

Approximately 55 per cent.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

Legally speaking, no political injunctions are possible. However, political representatives belong to the RTR supervisory board.

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

The RTR managing director is appointed for a term of five years. Re-appointment is possible. All other RTR personnel are employed on the basis of standard employment contracts.

TKK members are appointed for a term of five years, with re-appointment possible as well.

25. *What are the grounds for removal of your NRA's management?*

The dismissal of RTR's management is subject to the grounds provided in the relevant provisions of employment and company law.

As regards the TTK, removal can be based on grounds such as membership in a political administration, a close relationship to telecommunication operators, or repeated absence in meetings.

26. *What are the eligibility requirements for your NRA's management?*

No specific eligibility requirements are set forth for RTR's management.

The membership criteria for the TTK are as follows: one member must be a judge, one member must have the relevant technical knowledge, and the third member must have the relevant economical and legal knowledge.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

Yes. In principle, these objectives are identical to those set forth in the Framework Directive. However, some additional political requirements are mentioned as an objective, due to the special Austrian focus on some topics.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

The Government holds 30.2 per cent of all shares in Telekom Austria AG through its wholly-owned subsidiary Österreichische Industrieholding AG. Such share confers control insofar as any share above 25 per cent provides for certain minority veto rights. Governmental control is diminished insofar as the law allocates the management of the share capital to the Ministry of Finance and the NRA management to the Ministry of Transportation and Telecommunication.

A.7. Market analysis procedure and imposition of remedies

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

15 SMP analyses are complete. However, the following markets are still missing: transit services (Number 10), wholesale broadband access (Number 12) and wholesale international roaming (Number 17).

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Yes. Where SMP was found, at least one remedy was imposed.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

The NRA only asks the competition authority for its input by publishing its draft decision on the Internet and stating that the national competition authority is given the opportunity to provide a statement during the consultation process. The NRA adheres to the European Commission's Guidelines on the interpretation of SMP, and the competition authority applies the principles of competition law.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

12 to 18 months.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FD)

B.1. *Speed of process*

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

Six to nine months.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

Yes.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

No. To our knowledge, the dispute settlement body has not adopted any such measure since the enactment of the Telecommunications Act 2003.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Parties can file a complaint at the administrative court, but only the parties to the dispute are entitled to appeal.

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

Yes. Penalties in the event of a breach of contract can be and usually are imposed in the NRA's decision.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

No, the decision is deemed to be a civil contract between the dispute parties. Either party can address the civil court with respect to enforcement.

B.4. *Effectiveness of appeal procedure*

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice ?*

Suspension of the decision is rarely granted.

42. *What percentage of decisions taken since September 2002 were appealed?*

There is no statistical data. However, nearly all decisions are challenged by the incumbent or the ANOs.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

Approximately 1 to 3 years.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

Approximately 55%.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. Access obligations (AD article 12)

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

No. The NRA does not specify general policy issues; it only decides on a case-by-case basis.

46. *Where access has been mandated, does your NRA typically require (e.g., as part of a stated policy) dominant operators to publish a reference offer for access?*

Yes.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

Yes. The time required to obtain the requested access: two years with regard to wholesale line rental ("WLR"), and one year with regard to wholesale leased line ("WLL"). Please note that the time also depends on the imposed remedies: if the standard offer is imposed as a remedy and is linked to a time limit, then the incumbent complies with the limit and presents the offer to the NRA. The NRA will check the offer, which can cause further delay (e.g., in case of WLL).

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

Yes. SLAs are imposed in the NRA decision, and the effectiveness is reviewed whenever the decision is reviewed. Retail SLAs ensure only a rather poor quality, which causes the corresponding wholesale SLAs to be of poor quality as well.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Yes.

C.2. Non discrimination and price squeeze (Art 10 AD)

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Yes.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

Yes.

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

No.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

The NRA started to apply price squeeze tests in the approval procedure of end-user prices. The ANOs claimed, however, that the NRA's approach was incorrect, as the end user prices are

weighted as an average, which means that the actual prices offered on the market can be lower than this average.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms e.g. requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

Yes, but the NRA is only insufficiently making use of this.

C.3. Price control (Art 13 AD)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

Yes. The NRA applies a combination of cost-orientation and retail minus approach.

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

FLRAIC (Forward Looking Longrun Average Incremental Costs), based on an average between a bottom-up (based on NRA calculation) and a top-down (based on incumbent's calculation model).

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

General information is partially made available, but detailed information is only disclosed to the parties to the procedure. In the case of the mobile termination market, the expert opinion concerning each mobile network operator's costs was distributed to all parties to the procedure.

C.4. Cost accounting separation (Art 11 AD)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

The incumbent is subject to a cost accounting obligation for all of its wholesale services. No such obligation has been imposed on the ANOs.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

No. These details are treated confidentially between the NRA and the incumbent.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

No. These details are treated confidentially between the NRA and the incumbent.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

No. These details are treated confidentially between the NRA and the incumbent.

C.5. Rights of way and facility-sharing (Art 11 FD)

62. *Are operators entitled to rights of way on public land?*

Yes.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

No. The proceedings take a minimum of three months. There are also uncertainties as to the pricing because there are no guidelines for the compensation of landowners. The authority will

decide on a case-by-case basis, depending on the property value loss for private owners. Only public properties are free of charge.

64. *Are there clear rules in place stipulating the procedure and cost?*

Yes, but the procedure is difficult and takes too long.

C.6. Numbering

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Yes, for all numbers.

66. *Is mobile number portability available?*

Yes.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

Fixed: five working days; 21.79 EUR.

Mobile: three working days; 19.00 EUR (incl. VAT) for the customer, EUR 29.00 (excl. VAT) for the recipient operator.

68. *What proportion of fixed and mobile numbers were ported in 2004?*

Fixed: 1.3 per cent. Mobile: 0.18 per cent.

69. *Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?*

780 is a special number range for ENUM/VoIP-services; 720 is a number range for non geographic services.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. *What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?*

	Call setup	Tariff/minute peak	Tariff/minute off-peak
Local	0	0.82	0.48
Regional (single tandem)	0	1.28	0.71
National (double tandem)	0	2.25	0.87

71. *Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?*

Yes. New entrants are entitled to apply higher charges if they are able to prove higher costs. Furthermore, only the incumbent offers interconnection services at local tariffs. The ANOs always charge at least a regional (single tandem) tariff.

72. *Is carrier selection and preselection implemented?*

Yes.

73. *What is the market share (revenue) of alternative operators in the fixed voice market?*

The market share of the incumbent is 55 per cent on the fixed telephony service market, based on minutes. Information on the market share based on revenue is not available. On the access markets, the market share of the incumbent is 95 per cent.

74. What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?

	Call setup	Tariff/minute peak	Tariff/minute off-peak
Local	0	0.82	0.48
Regional (single tandem)	0	1.28	0.71
National (double tandem)	0	2.90	1.10

75. Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?

Yes, legally-speaking. However, no operator has accepted the WLR offer of the incumbent, because it is not economically viable.

The prices are set on the basis of retail minus as follows:

Monthly rate per line: EUR 12.70 (excl. VAT). Please note that the cheapest subscription fee offered by the incumbent is EUR 13.32 (excl. VAT).

Implementation fee for every ANO: EUR 750,000.00.

Transfer fee per customer: EUR 36.24.

D.2. Mobile

76. What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?

Peak time	Off-peak time	Comments
<i>Eurocents per minute</i>	<i>Eurocents per minute</i>	
Mobilkom 10.86	Mobilkom 10.86	No peak/off-peak differentiation A new cost-model sets a glide path for the pricing. Cost orientation is base on LRAIC. Price adaption will take place in 14 (T-Mobile, Mobilkom, ONE), 13 (telering), and 12 (H3G) steps until 31 Dec 2011.

77. Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.

Yes. Cost-orientation (LRAIC) and non-discrimination are applied.

78. Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?

A glide-path has been implemented starting 1 June 2005 and ending 31 December 2011. The current rates are Ct 10.86 (Mobilkom), Ct 13.18 (T-Mobile), Ct 13.80 (ONE), Ct 13.80 (tele.ring) and Ct 19.62 (Hutchison as new entrant). These will be decreased to a final rate, representing the "costs of an efficient operator". The glide-path (including the final rate) is subject to changes, pursuant to the next market analysis procedure.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

No.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

66 %.

81. *What is the price of a basket of average user mobile retail services?*

40.10 EUR (10th Implementation Report, figure 56).

82. *Is one or more mobile virtual network operator ("MVNO") operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

Yes. However, no market share is available. Only the MVNO interconnection is subject to regulation, not MVNO access as such.

D.3. Business services

83. *Are there any wholesale partial private line offers ("PPCs") in your country?*

Yes.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Yes.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbits/s 2 km?*

1,500 EUR (connection charge)

300 EUR/month (rental charge) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of PPCs and leased lines? e.g. KPIs*

No.

87. *Do the leased line wholesale and PPC products include a Service Level Agreement including delivery and restoration times and financial penalties for failure to meet targets?*

No.

88. *Are there any restrictions applicable to the migration from leased lines to PPCs?*

No.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

Yes.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access		Shared access	
Active loop:			
–	One-off: 54.50 EUR	–	One-off: 109 EUR
–	Per month:	–	Per month: 5.45 EUR

10.90 EUR	(same for PSTN and ISDN lines) The TKK decision Z4/01-11 of 18 June 2001 required Telekom Austria (TA) to amend its Reference Offer to include line sharing
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92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Yes. A complaint in respect of the terms and conditions for co-location is pending.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

14% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a SLA including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: available (20%).

Option 3: not available.

Option 4: not available.

96. *What per cent of DSL lines are provided by the SMP operator's downstream operating retail arm?*

80% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

No. Telecom Austria AG's offer is considered to be a combination of a resale ADSL and a bitstream offer.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

No. The NRA has not yet completed analysis of the broadband market.

ANNEX III - CZECH REPUBLIC

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

Pursuant to the Czech Telecommunications Act (“TA”), in force since 1 May 2005, the NRA must grant the authorisation to use numbers “without delay” (Section 30, Subsection 5). If the numbers concerned are those reserved for special purposes within the numbering plan, the NRA has a period of 3 weeks to grant authorisation, starting from the date of the submission of the complete application. The TA further states that the regulator may interrupt the authorisation procedure for a period of no longer than 8 months, if no numbers are available at the time of application (Section 30, Subsection 5 TA). In practice, however, it may take up to 8 weeks for the NRA to reach a decision on the allocation of numbers and it takes 5 to 6 weeks on average.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

The TA does not provide for any specific timeframe for the review of reference interconnection offers. In practice, such procedure takes approximately 10-12 months to complete.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

The TA does not provide any specific timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant. It is only where negotiations fail within 2 months of their starting date that the regulator may intervene by using the decision making power conferred by the TA (Article 80, Subsection 4). In practice, such process takes between 3 and 6 months. The administrative procedure is very complex. In fact, the applicant must submit a formal and very detailed application. The other party is entitled to reject any incomplete application, thus forcing the parties to re-commence the entire negotiation process.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Yes. The regulator is also required to hold a public consultation on (i) any draft measures of a general nature; (ii) any decisions having a significant impact on the relevant market; and (iii) any other actions to be taken by the regulator for which the TA requires such consultation process.

5. *What timescale is usually given for formal consultation?*

According to the Law, the consultation period shall last 1 month. However, where there is a risk of delay, the regulator may reduce this period (Section 130, Subsection 6 TA). The consultation period shall in any case not be reduced to less than 5 working days. In practice, it appears that the process of consultation is not always observed. Measures of general interest laying down the general conditions for authorisation (No. VO-R/1/07.2005-9) and measures defining the notification procedure (No. VO-S/2/07.2005-10) have not been published.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g. through workshops or meetings?*

Stakeholders have, in a limited number of cases, been allowed to hold meetings with the NRA and to submit formal written questions. Consultation with stakeholders, other than through formal written consultation, does not always seem to be conducted on a non-discriminatory basis.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Yes.

8. *Is your NRA required to publish all its decisions upon their adoption?*

Yes. The Law expressly provides for the obligation to publish the NRA's decisions (Section 125 and Section 126 TA). This obligation only applies to "general measures".

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

No. Although it is published annually, the NRA's action plan is not submitted to the public consultation process.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

Yes. The NRA is financed from the State budget and has its own budgetary chapter. Accounts are audited annually and annual reports are publicly available.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by Law?*

The TA lays down the powers of the NRA. Nevertheless, two key issues remain in this area. First, the respective competencies of the NRA and the Office for Protection of Competition are not clearly separated one from another. Second, a number of regulatory responsibilities remain with the Ministry of Informatics, e.g., the power to define the terms of tenders in which radio frequencies are to be allocated.

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

Yes. The NRA's powers are in line with the new regulatory framework. No infringement proceedings are pending in relation to the NRA's powers.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

Yes, the NRA may impose a fine of up to 10% of the turnover generated during the last calendar year. The fine may not, in any event, exceed 10,000,000 CZK (330,000 EUR) (Section 118 TA). The Law does not provide for periodic penalties.

A.4. Scale of resources

14. *What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition Lawyers? What proportion of staff has private sector experience?*

The NRA has a total of 476 employees.

15. *Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?*

Currently, no transparent external selection procedure is in place. In order to be appointed to the NRA, applicants must be Czech citizens.

16. *Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?*

No. The remuneration of NRA staff is based on the salary tables applicable to employees of the public administration. These levels are considered insufficient to attract suitable candidates from the private sector.

17. *Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?*

The NRA has a special budget for external consultants and has sometimes used such consultants in market reviews.

A.5. Effectiveness of appeal procedure

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

Appeals before the administrative courts do not have a suspensory effect. However, the judge may grant an injunction upon specific request.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

The administrative court may, upon specific request, suspend the binding effects of the NRA decision. This is, however, applied very restrictively.

20. *What percentage of decisions taken since September 2002 were appealed?*

About 80-90%.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

6 to 12 months.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

There is no public information available. However, it is estimated that only a limited number of decisions are annulled on appeal.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

Generally not. The TA provides that: *"The Minister of Science, Technology and Innovation shall not be in a position to give official orders to the National IT and Telecom Agency on the Agency's handling of authority functions in concrete cases; on handling and decision of individual cases; on the National IT and Telecom Agency's issue of administrative regulations in areas where the Agency is authorised to do so; or on other supervisory activities of the National IT and Telecom Agency for the purpose of ensuring compliance with this Act and administrative regulations issued in pursuance thereto"*. However, where network integrity and vital network communications in case of emergency are at stake, *"the Minister of Science, Technology and Innovation may give official orders to the National IT and Telecom Agency in concrete cases where supervision is carried out and decisions are made in accordance with rules laid down under section 86, and the Minister of Science, Technology and Innovation may also grant exemptions there from."*

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

Members of the Council are appointed and dismissed by the Government upon proposal of the Ministry of Informatics. The term of office of Council members is five years. One new member is appointed to the Council annually. The chairman of the Council is appointed for the time that remains until the end of his membership in the Council, but for no longer than 3 years (Section 107, Subsection 2 TA).

25. *What are the grounds for removal of your NRA's management?*

The Government may remove a member of the Council in the event of (i) gross breach, or repeated minor breach of duties, (ii) illness which prevents the member from conducting his tasks, or (iii) an absence of 6 months. Additionally, a Council member may be removed if he accepts a position that is deemed as incompatible with membership of the Council, or if a legally binding court decision finds that he lacks full legal capacity or finds him guilty of willfully committing a criminal offence.

26. *What are the eligibility requirements for your NRA's management?*

Members of the NRA management must be Czech citizens and enjoy full legal capacity. In addition, they are required to satisfy certain integrity requirements (*e.g.*, no conviction for willful crime conviction) and to meet all conditions for holding a position in the State Authorities¹. Finally, members of the NRA management must have at least 5 years experience in the areas of electronic communications, economics, or law (Section 107, Subsection 3 TA). The following positions are deemed to be incompatible with the duties of the NRA management: member of the Chamber of Deputies, Senator, judge, prosecuting attorney, any position in the public administration, member of territorial self-administration, and membership in a political party or political movement (Section 107, Subsection 4 TA).

27. *Are clear objectives assigned to the NRA for its long term actions set in the Law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

Yes. The NRA's objectives and main principles are laid down in Section 5 of the TA.

The joint objective of the Ministry of Informatics and the NRA is to support economic competition, within the scope of their respective competencies, in particular by means of: (a) ensuring that users, including disabled users, derive maximum benefits in terms of the choice of service, price and quality; (b) ensuring that competition in the area of electronic communications is not distorted or restricted; (c) supporting efficient investment in infrastructure and promoting innovation; and (d) providing effective management and reasonable use of radio frequencies and numbers (Section 5, Subsection 1 TA).

Additionally, the Law provides that both the Ministry and the NRA contribute to the development of the Internal Market of the EU, in particular by means of: (a) removing any obstacle to the provision of electronic communication networks, associated facilities and complementary services, and related electronic communication services among EU Member States; (b) supporting the establishment and development of trans-European networks, as well as the interoperability of pan-European services among EU Member States; (c) ensuring that undertakings that provide electronic communication networks or deliver electronic communication services do not suffer any discrimination; and (d) co-operating, in accordance with the principle of transparency, with both national regulators of other EU Member States and the European Commission in order to develop

¹ Act No. 451/1991, laying down certain additional requirements relating to the holding of positions in the State authorities of the Czech and Slovak Federative Republic, the Czech Republic and Slovak Republic, as subsequently amended.

consistent regulatory practices based on implementation of the relevant EU Directives (Section 5, Subsection 2 TA).

Finally, the NRA shall promote the end-user's interests, in particular by means of: (a) ensuring that all end-users have access to universal services; (b) ensuring a high level of consumer protection; (c) contributing to the setting of high standards regarding the protection of personal data and privacy; (d) ensuring that clearly formulated information is provided to end-users and that both tariffs and terms applicable to the use of publicly available electronic communication services are transparent; (e) meeting the needs of disabled end-users or persons with low income; and (f) supporting maintenance of both the integrity and security of public communication networks (Article 5, Subsection 3 TA).

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

Originally, the incumbent was established as a publicly owned undertaking. The company then became a joint stock company in January 1994. Until 6 April 2005, 51.1% of the company still remained the ownership of the Czech National Property Fund. In 2005, the Government approved the sale of its 51.1% shareholding in Cesky Telecom to Telefonica. The European Commission cleared the transaction on 10 June 2005.

A.7. Market analysis procedure and imposition of remedies

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

None. The new TA, which implements the EU framework Directives, only recently entered into force (1 May 2005). On 1 July 2005, the CTO published a measure of general application, which lists the 18 retail and wholesale electronic communication markets that will be assessed in the coming months (No. OOP/13/07.2005-2). The NRA started to collect data in relation to Markets 12, 15 and 16 in August 2005.

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Not applicable – see above. However, the NRA is legally required to consult the NCA for the purpose of its market analysis.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition Law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

Not applicable – see above.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

Not applicable – see above.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. Speed of process

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

9 to 12 months.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

The Law does not provide for the possibility for the dispute settlement body to adopt interim measures prior to the final settlement of the dispute. In practice, such measures are granted in exceptional cases.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

The dispute settlement body has adopted interim measures in a limited number of cases demonstrating exceptional circumstances. The key practical issue is that incumbents fail to respect valid contracts while disputes are pending and suspend the provision of services.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Yes.

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate?*

The NRA may impose a fine of up to 10% of the revenues generated for the last complete calendar year. The fine may not, in any case, exceed 10,000,000 CZK (Section 118 TA). Also, the chairman of the Council may impose disciplinary fines of up to 100,000 CZK during the dispute resolution procedure on a person that fails to appear at the duly notified oral proceedings or refuses to cooperate (Section 127, Subsection 2 TA). Since the NRA may only impose a fine of up to a maximum aggregate amount, this limits the NRA's ability to enforce its decisions.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

No.

B.4. *Effectiveness of appeal procedure*

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

Administrative appeals before the Chairman have a suspensive effect. Appeals before the administrative courts do not have a suspensive effect. However, the judge may grant an injunction upon specific request.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice?*

Before administrative courts, the appealing party may apply for a suspension (injunction) of the binding effects of the NRA's decision. In practice, however, interim relief is rarely granted.

42. *What percentage of decisions taken since September 2002 were appealed?*

80 to 90 %.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

6-12 months.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

There is no public information available. However, it is estimated that only a limited number of decisions are annulled on appeal.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. Access obligations (AD article 12)

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

There is no published data and/or communicated policy.

46. *Where access has been mandated, does your NRA typically require (e.g., as part of a stated policy) dominant operators to publish a reference offer for access?*

This is not part of the stated policy. However, the NRA may reach a decision on the basis of the market analysis procedure and impose on an SMP operator the obligation to publish a reference offer for access or interconnection and the associated contractual conditions and prices (Section 82, Subsection 2 TA).

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

No standard procedure is available. Thus, operators negotiate access products/services not explicitly provided for in the standard reference offers, following the standard commercial procedure.

Nevertheless, two key provisions of the TA relate to these commercial negotiations:

Intervention of the NRA during negotiations: The NRA may, both on its own initiative and on the initiative of any of the concerned parties, intervene in the negotiation process concerning an access contract or a network interconnection contract, where such intervention is justified and necessary to achieve the regulatory objectives. The regulator is competent to give its opinion regarding any disputed provision of the draft contract.

Dispute resolution competence: The regulator is further entitled, upon the proposal of any of the parties, to settle the dispute where negotiations fail and where a written access contract or network interconnection contract is not entered into within 2 months of the starting date of negotiations (Section 80, Subsection 4).

In the case of indirect access methods for the Switchless Reseller Model, for instance, negotiations with Cesky Telekom took 15 months and were followed by a dispute that had been pending before the regulator for 9 months. It should be noted that most commercial negotiations that took place over the last year failed because the NRA did not intervene effectively.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

Yes.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Yes.

C.2. Non discrimination and price squeeze (AD article 10)

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

The non-discrimination obligation has not been routinely imposed, since the Czech Republic has not yet commenced market analysis under the new regulatory framework. The non-discrimination obligation provided under the old ONP framework was implemented into national law.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

No.

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

No. There are no specific rules in place to guard against price squeeze. The TA merely provides that the regulator may require an SMP operator to publish – to the extent necessary – information about access to the electronic communication networks or the interconnection of such networks, including accounting information, contractual conditions, technical specifications, network characteristics and prices (Section 82, Subsection 1 TA). This provision, however, only indirectly and insufficiently addresses the specific issue of prize squeeze.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

No. A price squeeze test is currently not available.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms e.g. requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

The TA does not explicitly address this issue. A general provision contained in the TA could possibly be interpreted as granting the regulator such competence. According to this general provision, the NRA may require SMP operators to (i) apply equitable conditions when providing access or interconnection to other undertakings that offer services of equal value in equivalent circumstances, and (ii) provide such operators with services and information under the same conditions and applying the same quality level as for its own services, subsidiaries or partners. This general provision, however, remains untested in practice. Thus, it is not clear whether, based on this general provision, the NRA could enforce non-discrimination on non-price terms.

C.3. Price control (AD Article 13)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

No. There is no published policy, and the NRA appears to be reluctant to apply price controls.

56. *If cost-orientation is applied, which methodology is used (e.g., historic or current FAC or LRIC)? Is the methodology clearly specified?*

Price cap and cost orientation (LRIC) are used. There is no clear rationale given for the choice of methodology.

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

No, except for fixed interconnection services.

C.4. Cost accounting separation (AD article 11)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

SMP operators are subject to cost accounting separation obligations in relation to all markets. However, non-SMP operators are also obliged to submit a cost accounting separation methodology, as well as the data based on this methodology. Hence, non-SMP operators must comply with this obligation even under the new Electronic Communications Act (effective since 1 May 2005). This is a costly and time-consuming exercise for non-SMP operators.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

The methodology for accounting separation is clearly specified; however, it is not subject to formal consultation.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

No.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

No.

C.5. Rights of way and facility-sharing (FD article 11)

62. *Are operators entitled to rights of way on public land?*

Yes. The Law provides for the right to use the property of others (Section 104 TA). This right is granted to any operator of a public communication network meeting certain conditions set out in the decision taken on the basis of a special legal regulation (Section 32, Subsection 1 clause a.) of Act No 50/1976 and in Section 104 of the TA). These operators have the right to establish and operate, on or in another owner's land, any telecommunication infrastructure (including lines, switches, masts, etc). The Law provides for a specific procedure applicable to the establishment and operation of such infrastructure (Subsection 3): the property owner must give his prior written consent concerning communication lines and equipment. The General Building Office is competent for settling any disputes in this respect.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

Yes.

64. *Are there clear rules in place stipulating the procedure and cost?*

No. While providing for a certain number of framework conditions, the Law (Section 105 TA) does not go into any details concerning the specific procedure and costs.

C.6. Numbering

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Fixed number portability is available for geographic numbers (the legal deadline was 1 January 2004). Concerning non-geographic numbers, number portability is available only for specific types of numbers. The legal basis for portability of fixed numbers is Section 34 TA and CTO Provision No. OOP/10/07.2005-3 of 1 July 2005 on number portability. Portability of fixed numbers is implemented via a centralized database (RNPDB).

66. *Is mobile number portability available?*

The regulator has recently adopted the legal basis for mobile number portability (CTO Provision No. OOP/10/07.2005-3 of 1 July 2005 on number portability). The deadline for implementing mobile number portability is 1 January 2006.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

The average timeframe is 15 working days. The cost for porting numbers for fixed is 2760 Kč (approx. 92 EUR) for single orders and 4790 Kč (approx. 160 EUR) for complex orders.

68. *What proportion of fixed and mobile numbers were ported in 2004?*

Although fixed number portability is available since 1 January 2004, it is mainly limited to geographic numbers and specific types of non-geographic numbers. Also, the relevant secondary legislation for implementation of number portability (CTO Provision No. OOP/10/07.2005-3) only entered into force on 1 July 2005. The percentage of ported number is therefore expected to be very limited.

Mobile number portability is currently not available at all and is planned for January 2006 (as outlined in the secondary legislation CTO No OOP/10/07.2005-3). A letter of formal notice from the European Commission was sent to the Czech authorities on 7 July 2005

69. *Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?*

Number ranges available to VoIP providers are 910 xxx xxx. The CTO published the results of a public consultation concerning VoIP on 26 November 2004. To be eligible for geographic numbers, a VoIP provider must offer services as PATS. A VoIP provider may use geographic numbers if it meets the conditions of the general license GL -28/S/2000 on VoIP.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. *What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?*

Interconnection services		Call setup		Per minute	
		Peak	Off-peak	Peak	Off-peak
Local	Eurocents	0.00	0.00	1,02	0,53
	CZK			0,31	0,16
Metropolitan (single transit)	Eurocents	0,00	0,00	1,25	0,63
	CZK			0,38	0,19
National (double transit)	Eurocents	0,00	0,00	1,49	0,73
	CZK			0,45	0,22
Peak: Mon-Fri 07.00 to 18.00					
Validity: valid until superseded by new RIO					

71. *Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?*

No.

72. *Is carrier selection and pre-selection implemented?*

Currently, Cesky Telekom is required to offer CCS/CPS, since it is a public fixed network operator with SMP (ONP framework). CTO is currently in the first stage of collecting data in relation to the market analysis.

The deadline for carrier pre-selection (CPS) to be available for international, national long-distance, local calls, and calls to mobile phones was 20 November 2002. However, there are still issues concerning the use of the Switchless Reseller Model.

Call origination charges are included in the incumbent's reference interconnection offer (Annex 1) and offered by alternative operators in practice.

73. *What is the market share (revenue) of alternative operators in the fixed voice market?*

Approximately 10-15%.

74. *What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?*

Local connection is not available. Interconnection tariffs for call origination at the single tandem switch level are 0,38 CZK (peak) and 0,19 CZK (off-peak). Interconnection tariffs for call origination at the double tandem switch level are 0,45 CZK (peak) and 0,22 CZK (off-peak). A surcharge of 0,06 CZK/minute is applied to CS/CPS.

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?*

Wholesale Line Rental is not implemented. The Czech Regulator is currently only in the very first stage of market analysis, and the new TA (implementing the EU Framework Directives) only recently entered into force. None of the markets concerned has been analysed thus far.

D.2. Mobile

76. *What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?*

Mobile termination rates		Mobile termination rates		Comments
Peak time		Off-peak time		
<i>National currency per min</i>	<i>Eurocents per min</i>	<i>National currency per min</i>	<i>Eurocents per min</i>	
The NRA set max. average peak/off peak termination rate at 3.11 CZK/min (11.30 Eurocents/min). Agreements between operators are confidential.				No peak/off-peak differentiation

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Yes. Both fixed to mobile termination and mobile to mobile termination are subject to regulation. On 25 March 2005, the CTO adopted a decision setting the maximum mobile termination rate for all public mobile communications operators at CZKs 3.11/min (10.35 eurocents/min). This price decision entered into force on 1 April 2005 and supersedes the previous CTO decision (No. 02/PROP/2004). Termination rates are the same for off-net mobile to mobile calls and fixed to mobile calls.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

Pursuant to the decision of the regulator of April 2004, Eurotel and T-Mobile Czech Republic are SMP operators and are thus required to offer cost-oriented rates. It should be noted that this decision does not include a glide path.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

No.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

Approximately 70%.

81. *What is the price of a basket of average user mobile retail services?*

20.2 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

No, such wholesale access is not regulated.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Since the Czech Republic only recently adopted the new TA and is in the first stage of market analysis, no proper PPC is available yet.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

No.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbits/s 2 km?*

570 EUR (connection charges).

1,701 EUR/month (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

No.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

No.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

Not applicable, given that ppcs are not available.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

No.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access		Shared access	
Active loop:			
–	One-off: CZK 4,616 (152.9 EUR)	–	One-off: CZK 4,705 (155.8 EUR)
–	Per month: CZK 403 (13.5 EUR)	–	Per month: CZK 158 (5.2 EUR)

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

No.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

0% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes, partially.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: not available.

Option 3: not available.

Option 4: not available.

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

100% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

No.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

Not applicable, since bitstream is not available.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

No. Margin squeeze tests are currently not in place.

ANNEX IV - DENMARK

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

According to the Law, decisions relating to the assignment of numbers shall be taken within 21 calendar days of receipt of the completed request. The Danish NRA (NITA) does not publish data concerning the actual timeframe. However, on an average, it can be assumed that the allocation of numbers takes approximately 2 weeks.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

NITA and the Competition Authority review the RIO, but do not have to approve it. According to the law, such a review can take up to one year. In practice, such review takes up to six months.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

Interconnection agreements are not negotiated. TDC has one set of agreements that applies by default. For pure standard agreements, negotiation is likely to take less than 1 month.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

The telecommunications regulation does not specifically provide for an obligation to hold public consultations prior to deciding on issues of general interests. However, the NITA has thus far held such consultation for all market reviews.

5. *What timescale is usually given for formal consultation?*

3-4 weeks.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

The NRA generally allows stakeholders to hold meetings with the NRA and to submit formal, written questions. The NRA generally acts openly and fairly.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Yes. Decisions by the NRA may be appealed.

8. *Is your NRA required to publish all its decisions upon their adoption?*

No, NITA is not required to publish all decisions. NITA does, however, publish all important decisions on its website.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

The NITA's action plan is not published annually. However, no consultation takes place on the action plan.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

NRA accounts are audited annually. Annual reports are published.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

Yes.

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

The NITA has the power to impose the remedies provided in Articles 9 to 13 of the Access Directive. The NRA's powers appear to be generally in line with the new regulatory framework. No infringement proceedings are pending.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

The NRA has the power to impose fines in order to ensure compliance with its decisions. There is no upper limit for fines (Section 111 of the Act on Competition).

A.4. Scale of resources

14. *What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff has private sector experience?*

The total number of employees at the NITA is approximately 250. This figure includes frequency and numbering management, as well as clerical staff. NITA does not have any statistics regarding the number of competition economists, competition lawyers or the proportion of staff with private sector experience available.

15. *Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?*

A list of selection criteria is published and thus available to anyone wishing to apply for a position at the NRA. Thus, the selection procedure for selecting NRA personnel is fair and open.

16. *Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?*

Remuneration of NRA personnel corresponds to that offered to staff in other governmental units. It is not clear whether the remuneration offered is on par with salaries paid to similarly qualified staff working in the private sector. The NRA's failure to find suitable candidates for 5 positions in 2004 (as reported in its annual report for 2004), could, however, suggest that the salary offered is too low to attract appropriate staff with private sector experience.

17. *Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?*

The NRA has a specific budget for external consultants and has used external consultants in market reviews on several occasions.

A.5. Effectiveness of appeal procedure

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

Appeal of an NRA decision does not automatically suspend its immediate enforceability. In fact, the party who seeks suspension of the NRA's decision must seek an injunction before a complaint body or at a lower instance court.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

The complaint body or the court will only suspend the NRA decision if there are compelling reasons, such as risk of irreversible financial losses. In practice, the procedure is organized under general administrative law.

20. *What percentage of decisions taken since September 2002 were appealed?*

A significant number of cases are appealed before the administrative appellate body. Only a very limited number of cases are subsequently appealed before the Courts. In 2003, eight decisions were appealed. One was overturned and the rest were upheld. In 2004, six decisions were appealed and one was overturned and the rest were upheld.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

6 months.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

One of the two decisions was overturned, and the other was withdrawn by the plaintiff.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, or imposes/enforces remedies?)*

The Minister of Science, Technology and Innovation is not entitled to give orders to the National IT and Telecom Agency in individual cases, for administrative regulations in areas which belong to the competence of the Agency, or for other Agency supervisory activities for the purpose of ensuring compliance with this Act and administrative regulations issued in pursuance thereof.

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

Some members of the management, i.e., the head of NITA, Director-General Jørgen Abild Andersen, have permanent positions as civil servants. Other members of the management are appointed on fixed terms (usually 4-6 years) with the possibility of reappointment.

25. *What are the grounds for removal of your NRA's management?*

Negligence in performing duties is a ground for removal of the NRA's management.

26. *What are the eligibility requirements for your NRA's management?*

NRA management and employees may not conduct business, or be employed by companies that are active in the telecommunications or postal sectors. There are no specific qualification requirements in order to be appointed. However, experience shows that only a limited group of ministerial employees are potential candidates.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

The NRA's objectives are laid down in its statutes and dealt with in more detail in a publicly available annual report. The EU regulatory framework and the Danish Act on Competition are directly transposed into the NRA's objectives.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

None.

A.7. Market analysis procedure and imposition of remedies

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

9 SMP analyses had the Article 7 consultation stage on 31 August 2005. Since, two markets have been formally finalized (Markets 12 and 8).

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

No. As stated above, none of the SMP analyses has been completed yet. Nevertheless, remedies will probably be imposed on all markets where SMP is found. These will most likely include all wholesale markets, except Market 15 and possibly Markets 17 and 18.

In the market analyses conducted since 31 August 2005, the two final market decisions (Market 8 and Market 12) on the wholesale level impose remedies on SMP operators. The draft decisions on Market 9, 11, 13 and 16 also provides for remedies being imposed on the SMP operators. However, NITA has not yet made their final decisions on these markets.

On the retail markets, however, SMP was found on Markets 1, 2, 3, 4 and 7, but in the draft decisions for Markets 1-4, no remedies have been imposed, as the remedies on the relevant associated wholesale markets together with CPS/CS are considered sufficient to solve the competition problems on Markets 1-4. On Market 7, three remedies have been imposed (cost orientated prices, non-discrimination and transparency).

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

Yes. The NITA tends to conduct its market analyses in consultation with the Danish Competition agency and to undertake rigorous market assessment in line with the Commission's guidelines.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

Statistical data is not available, since none of the SMP analyses has yet been completed. However, the process of collecting data was started in 2003 and all decisions are expected to be final in the first half of 2006.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. Speed of process

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

Approximately 4-8 months.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

Yes, the NRA can adopt interim measures prior to final settlement of a dispute.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

No, not in any case involving the incumbent.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Decisions may be appealed. However, the grounds for appeal are limited.

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

The NRA is empowered to impose fines in order to ensure compliance with its decisions. This power also comprises periodic penalty payments. The NRA has used this power on several occasions in the past.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

The NITA has the power to order compliance of its decisions and to impose periodic penalty payments. If the decisions still are not complied with and the fines is not paid, the NITA must enforce the decision before a court. So far, it has never been necessary to enforce a case before a court.

B.4. *Effectiveness of appeal procedure*

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No. The appeal has no suspensory effect. Suspension of the binding effects of a decision of the dispute settlement body must be requested by the interested party via an injunction.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice?*

The binding effects of an NRA decision can, under certain circumstances, be suspended upon a decision of the Chairman of the Telecommunications Complaints Board. In general, the party requesting the injunction must demonstrate a substantiated need for this (e.g. urgency, risk of irreversible damage).

42. *What percentage of decisions taken since September 2002 was appealed?*

A significant number of cases are appealed before the administrative appellate body. Only a very limited number of cases are subsequently appealed before the Courts.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

6 months.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

Estimated at over 30%.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. Access obligations (AD article 12)

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

Yes.

46. *Where access has been mandated, does your NRA typically require (e.g., as part of a stated policy) dominant operators to publish a reference offer for access?*

The proposed remedies include a requirement to publish a reference offer. NITA has also required the SMP operator to publish a reference offer on market 8 and market 12.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

Yes. The Act on Competition provides for a standard procedure concerning the negotiation of interconnection. Statistical data is not available concerning the required time to negotiate such access or the need for regulatory intervention.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

Yes.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Yes.

C.2. Non discrimination and price squeeze (AD article 10)

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Imposition of the remedy depends on the market problems identified and the assessment of proportionality.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

Yes. The non-discrimination obligation can apply between different wholesale products for instance where products are a combination of other interconnection products or where comparable services are sub-elements of different interconnection products. This does not apply for a comparison of conditions for wholesale and retail offers.

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

There is no specific rule on price squeeze, except for general provision enabling NITA to impose specific remedies in relation to such practices. However, publication of wholesale/retail tariffs is widespread.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

Yes. The Danish NRA recently applied the price squeeze test in response to allegations of discrimination in the DSL market. In the recent decision regarding the wholesale broadband market, (issued on 2 November 2005) NITA found a risk of price squeeze.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms e.g. requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

There is no specific provision; however, the NRA has general powers to enforce the non-discrimination obligation. TDC is also under the obligation to publish all interconnection agreements. The Telecommunications Complaint Board (the appeal body) has recently limited NITA's powers with regard to non-price terms. An amendment of the Telecommunications Act is currently being dealt with by the Folketing (the Danish national parliament) in order to address this issue.

C.3. Price control (AD article 13)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

There is no explicit policy stating the application on one particular method.

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

In general NITA uses LRAIC which is considered more transparent and promoting efficiency. For some accessory services, it has been decided to continue using the historic cost method, as an LRAIC-modelling is considered disproportionate.

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

Yes. The NITA has published detailed information on the LRAIC model. Historic cost information is considered confidential.

C.4. Cost accounting separation (AD article 11)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

The Law clearly provides for an accounting separation obligation. However, no final decision in respect of any of the markets that are possibly concerned by the cost accounting separation obligation has been taken yet.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

No. A report on regulatory accounting has been published for consultation in November 2005.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

No. However, a draft version of an accounting separation executive order has been issued in hearing and is expected to be in effect in 2006. This draft executive order requires that accounts should be publicly available.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

Not currently, but the executive order foresees that the transfer charges will be shown.

C.5. Rights of way and facility-sharing (FD article 11)

62. *Are operators entitled to rights of way on public land?*

Yes.

63. *In practice, is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

Yes.

64. *Are there clear rules in place stipulating the procedure and cost?*

Yes. The procedure is handled by municipalities.

C.6. Numbering

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Number portability is available for all types of numbers.

66. *Is mobile number portability available?*

Yes.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

The average timeframe is 2 weeks. The compensation granted to the donor operator amounts to 10 EUR for both fixed and mobile numbers.

68. *What proportion of fixed and mobile numbers was ported in 2004?*

In 2004, approximately 5% of fixed numbers and 9% of mobile numbers were ported.

69. *Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?*

The Danish national numbering plan is a non-geographic plan. Thus, in principle, all numbers are available. All subscriber numbers consist of eight digits and contain no information about the geographic location of the subscriber. The Law only provides for specific rules with respect to short numbers and numbers from 70- (split charge), 80- (free phone) and 90- (PRS) number ranges (Executive order No. 653 of 3 July 2003 on the Danish national numbering plan).

VoIP providers (just as any other provider of electronic communication networks or services) have the right to use numbers from the national numbering plan assigned by NITA.

NITA has also stated that reserving a specific number range for IP-telephony would contradict both the neutrality of technology and the principle of non-discrimination.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. *What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?*

Interconnection services		Call setup		Per minute	
		Peak	Off-peak	Peak	Off-peak
Local		0.290	0.290	0.370	0.196
	<i>DKr</i>	0.022	0.022	0.028	0.015
Within IC-area		0.448	0.448	0.574	0.303
	<i>DKr</i>	0.033	0.033	0.043	0.023
Between IC-areas		0.605	0.605	0.713	0.378
	<i>DKr</i>	0.045	0.045	0.053	0.028
Peak: Mon-Sat 8.00-19.30 except public holidays. Valid from 1 Jan. 2005 until 31 Dec. 2005.					

71. *Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?*

Yes. The tariffs of new entrants are not regulated.

72. *Is carrier selection and pre-selection implemented?*

Yes.

73. *What is the market share (revenue) of alternative operators in the fixed voice market?*

NITA has no information on market shares calculated as revenue. The market share in terms of national traffic during the first six months of 2005 amounted to 36.8 %.

74. *What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?*

Local: 2.16 DKR (call setup) + 3.23/1.71 DKR per minute day/evening + Sunday.
Single tandem 3.34 DKR (call setup) + 4.28/2.26 DKR per minute day/evening + Sunday.
Double tandem 4.51 DKR (call setup) + 5.32/2.82 DKR per minute day/evening + Sunday.

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines is wholesaled through WLR?*

WLR is available on the basis of the old regulatory regime. Approximately 18% of active incumbent fixed lines are leased through WLR. The retail-minus margin will be approved by NITA following adoption of the final decision on M8. WLR prices depend on the TDC retail-end customer copper access line (PSTN and ISDN). All relevant retail charges are reduced by 21%.

D.2. Mobile

76. *What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?*

Mobile termination rates		Mobile termination rates		Comments
Peak time		Off-peak time		
Eurocents per minute		Eurocents per minute		
TDC Mobile and Sonofone		TDC Mobile and Sonofone		Peak: Mon-Sat 08.00-19.30
DKr 1.08 <i>call set-up</i> 0.08	Eurocents 14.48 <i>call set-up</i> 1.07	DKr 0.54 <i>call set-up</i> 0.08	Eurocents 7.24 <i>call set-up</i> 1.07	Off-peak: Mon-Sat before 08.00 and after 19.30; all day Sun & public holidays.

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Currently, there is no price control for mobile termination services. The only obligation pertains to the obligation to comply with all reasonable requests for the conclusion or alteration of interconnection agreements in the mobile market, including agreements on expansion of the range of services and agreements on interconnection.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

Best practice prices will be applied via a glide-path over the next two years.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

Yes.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

Approximately 52%.

81. *What is the price of a basket of average user mobile retail services?*

26.4 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

Yes. Currently, SMP mobile network operators are required to enter into commercially-agreed MVNO agreements. This obligation will, however, soon be abolished since Market 15 has been found to be competitive.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Yes. TDC offers interconnecting leased lines.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Yes. Prices are subject to cost orientation (FAC HCA).

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbps/s 2 km?*

1,628 EUR (connection charges);
81 EUR/month (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

Yes.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

No.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

Wholesale Ethernet Service (WES) is available in specific forms. Currently, it is neither regulated nor under consideration by NRA.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access		Shared access	
Active loop:			
–	One-off: DKr 355 (47.69 EUR)	–	One-off: DKr 280 (37.62 EUR)
–	Per year: DKr 803 (107.88)	–	Per year: DKr 402 (54.00 EUR)

EUR), i.e. 9.00 EUR per month	i.e. 4.50 EUR per month
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92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Yes. Prices are cost-oriented based on LRAIC. The NRA has intervened to ensure internal cabling for access seekers. The Telecommunications Complaint Board has, however, reversed NITA's decision. In the market decisions, NITA will seek to ensure that internal cabling will be available.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

15% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes, delivery and restoration times are covered by the RUO. The question of financial penalties is addressed in the RUO, but there is no penalty set for delayed service.

95. *What connectivity options (according to ERG classification) are available for ADSL bNITAream?*

Option 2: available (12%).

Option 3: available (0%).

Option 4: available (2%).

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

85% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bNITAream offer to fully unbundled or shared loops?*

No.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

The price squeeze test has previously been applied by the NRA between wholesale broadband and retail. The potential price squeeze practices has also been considered in the analysis of the market for wholesale broadband access. However, NITA has not applied the price squeeze test between ULL and bitstream access. The price for ULL is based on LRAIC and the price for bitstream access is currently based on modified historic costs.

ANNEX V - FRANCE

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

Reservation of numbers takes a maximum of three weeks once the French NRA (ARCEP) has received a complete request.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

The time schedule announced by ARCEP is very tight and consider unsatisfactory by market players, given the potential impact of changes in the interconnection tariffs on the business planning of new entrants. Generally, the ARCEP took about 3 months for reviewing the proposed RIO.

RIO of 2005:

France Télécom ("FT") sent its draft RIO to the NRA on 16 and 22 November 2004. The NRA's approval of this RIO is dated 23 November 2004. In 2004, the NRA decided that FT's 2004 RIO would apply in 2005, since the market review process had not yet been completed. The RIO has not yet been amended. Thus, the 2004 RIO will apply throughout 2005, without any progress for new entrant operators.

RIO of 2004:

After conducting a public consultation, the NRA sent various comments to FT on 22 July 2003. FT sent a first draft version of its RIO on 1 September 2003, which was forwarded by the NRA to operators for comments. The NRA then sent a new series of observations to FT. FT sent a second draft version of its RIO on 12 November 2003. The NRA's approval of the RIO is dated 13 November 2003.

RIO of 2003:

After conducting a public consultation, the NRA sent various comments to FT on 20 June 2002. FT sent a first draft version of its RIO on 20 August 2002 and 16 September 2002, which the NRA forwarded to operators for comments. The NRA then sent a new series of observations to FT. FT sent a second draft version of the RIO on 22 and 26 November 2002. The NRA approved the RIO on 28 November 2002.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

The timeframe largely depends on negotiations with FT. The NRA does not intervene other than during a dispute resolution procedure. Thus, the timeframe may vary greatly. On average, the whole process, including negotiation, technical testing and set-up, can last for up to six months.

A.2. Transparency and consultation

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

The law requires the NRA to hold public consultations in respect of measures which have "an important incidence on the market". In addition, the law requires the NRA to hold a public market consultation in the context of the market analysis.

5. *What timescale is usually given for formal consultation?*

Under French law, public consultations must last at least one month. In practice, ARCEP launches two consultation processes for each market analysis. One at the beginning of the process and one during the notification procedure before the European Commission. The timeframe given for the consultation generally amounts to four or six weeks.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

Yes, the NRA regularly organizes workshops on key current issues. These workshops are usually open to operators affected by the issue. Stakeholders are generally allowed to express their views to the regulator. For example, in addition to regular meetings dealing with LLU or bitstream, ARCEP has also organized workshops on: migrations from bitstream to LLU, quality of service for LLU, and backhaul for LLU.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

French law establishes a list of categories of administrative decisions for which detailed reasons must be provided. In addition, the ARCEP always motivates its decisions and opinions. However, in practice, the degree of detail can be limited. Failure to motivate a decision may be appealed.

8. *Is your NRA required to publish all its decisions upon their adoption?*

Yes. All decisions of the NRA are published on its website. The most important decisions are also published in the State Gazette (*Journal Officiel*).

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

The NRA discloses its action plan once a year when it publishes its annual report. The NRA's president also holds an annual speech that addresses the NRA's action plan. Otherwise, the NRA does not comment on its action plan.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

A new scheme has been implemented this year for the 2006 State budget, which provides a better view on the various expenses. However, the scheme will also be less detailed and transparent. The NRA's budget is included in a program that includes several other projects, which is submitted to the Parliament. The NRA's annual report gives global figures on its size and budget. ARCEP has announced its intention to publish more detailed information in its Annual Report for 2005 to compensate for the loss of transparency resulting from the new financing scheme.

A.3. Powers and sanctions

11. Are the powers of your NRA clearly defined by law?

Yes.

12. Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.

Yes.

13. Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?

Yes. Fines may not exceed 3% of the undertaking's turnover in the last financial year. However, the fine may exceptionally amount to 5% of the annual turnover if the undertaking previously committed an identical offense. Periodic penalty payment have also been introduced by the new law, although they must be imposed by a Court. ARCEP can also suspend the authorization.

A.4. Scale of resources

14. What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?

As of 31 December 2004, the NRA employed 152 people. Approximately 25 persons are in charge of competition regulation, including 7 economists.

15. Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?

Yes. The recruitment procedures differ depending on whether employees are hired under an employment contract or as statutory civil servants. However, the ARCEP is in charge of recruiting its own staff, on the basis of the qualifications and expertise of the candidates.

16. Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?

The ARCEP must comply with the salary grid of the French Government. Financial benefits may therefore be lower than salaries in the private sector. This has generally not been considered to impede recruitment of qualified staff, and ARCEP has also been able to recruit senior qualified people since 2004.

17. Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?

In 2004, the budget for external studies amounted to EUR 1.042.286. The NRA carried out approximately 20 studies having an average duration of 5 months.

A.5. Effectiveness of appeal procedure

18. Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?

NRA decisions may be appealed before the highest administrative court in France ("Conseil d'Etat"). This, however, does not apply to dispute resolution decisions. The appeal does not automatically suspend the binding effects of the decision.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

Suspension of the binding effects of the NRA's decision must be requested in a summary proceedings (*"référé"*). Suspension will be granted only in case of a *prima facie* illegality and where it is required by an urgent necessity to avoid an irreparable harm.

20. *What percentage of decisions taken since September 2002 were appealed?*

Since September 2002, only 6 decisions were appealed.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

Concerning the six decisions mentioned above:

<u>Filing date</u>	<u>Date of decision</u>
27/09/02	18/06/03 (nine months)
30/11/01	15/10/03 (23 months)
23/09/03	20/10/03 (one month summary proceedings)
23/12/03	19/01/04 (summary proceedings)
02/08/02	25/06/04 (22 months)
14/06/02	25/02/05 (32 months)
20/01/02	29/01/03 (12 months)

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

Among the six decisions mentioned above, three decisions were annulled, one was partially annulled, one was suspended, and two were confirmed.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

In theory, no. In practice, the NRA can be tempted to consider the political context of its decisions.

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

The NRA is managed by an executive board called a "*Collège*". This board consists of seven persons appointed for a period of six years. The NRA President is one of the seven board members. Board members may not be dismissed or re-appointed. Different public authorities appoint the board members. The President of the Republic appoints three members (including the President of the NRA). The President of the National Assembly and the President of the Senate each appoint two members.

25. *What are the grounds for removal of your NRA's management?*

Members of the executive board cannot be removed.

26. *What are the eligibility requirements for your NRA's management?*

The ARCEP is in charge of recruiting its own personnel. Members of the ARCEP board are selected for their particular expertise in the telecommunications sector.

Although there are no specific exclusions from eligibility, principles of general administrative law provide for certain restrictions to avoid conflicts of interests and to ensure the independence of the public administration.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

Objectives provided for in the Framework Directive have been transposed and are defined in Article L. 32.1 II CPCE.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

The French government holds a 34.9 % stake in FT, which does not confer control. In practice, the Government retains a majority in the shareholder meetings, given the absence of many shareholders.

A.7. Market analysis procedure and imposition of remedies

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

As of 31 August 2005, the market analysis conducted by ARCEP can be summarized as follows.

Fix:

Markets 1 to 10, SMP analysis has been completed and will soon be published.

Leased lines:

SMP analysis has not yet been initiated with respect to Markets 7, 13 and 14.

Broadband:

On Markets 11 and 12, SMP analysis has been completed.

Mobile:

Market 15 (Mobile access and call origination): the procedure is suspended;

Market 16 (Mobile termination): analysis has been completed;

Market 17 (Wholesale international roaming): analysis has not yet commenced.

Broadcasting transmission:

Market 18: analysis still ongoing.

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Remedies have been imposed in all cases where ARCEP found SMP on a relevant market (e.g., as regards mobile termination, prices are capped). However, for Voice over Broadband, ARCEP has distinguished products within a same market and has decided to regulate only specific services on such market.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

Yes. The NRA regularly consults the French Competition Council. The Competition Council has on several occasions commented upon the competition law analysis made by ARCEP, which has led ARCEP to reconsider its position.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

The timeframe between the publication of the first consultation until the adoption of the final decision takes 7 months to one year on average (e.g., for Market 16: public consultation published on 16 April 2004 - decision rendered on 10 December 2004; for Markets 11 and 12: public consultation on 23 June 2004 - decision rendered on 6 June 2005).

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. Speed of process

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

Over the past two years, the median timeframe for obtaining a decision from the dispute settlement body was four months. Where interim measures were requested, the average timeframe for obtaining a decision was one month (included in the four month timeframe).

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

Yes, the NRA may adopt interim measures in case of serious breach of the law.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

The NRA most often rejects interim measures requested by undertakings.

B.2. Due process

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Decisions of the dispute settlement body may be appealed before the Paris Court of Appeal.

B.3. Effectiveness of sanctions

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

Yes. The ARCEP has the authority to impose fines when it establishes breaches of a legal obligation, SMP obligations, or obligations imposed pursuant to a dispute settlement procedure. These fines may not exceed 3% of the undertaking's turnover in the last financial year. However, the fine may exceptionally amount to 5% of the annual turnover, if the undertaking previously committed an identical offense. In practice, the NRA almost never imposes fines.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

Yes. The NRA may (i) fully or partially suspend, for one month or more, the operator's authorisation or (ii) impose a fine.

B.4. Effectiveness of appeal procedure

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice ?*

Suspension will only be granted if (i) the appealed decision would cause manifestly excessive consequences, or (ii) new and serious facts have arisen since the ARCEP decision was notified to the parties. These standards are applied very restrictively by the Court of Appeals of Paris.

42. *What percentage of decisions taken since September 2002 were appealed?*

In 2002, there were two appeals (Decisions 03-701 and 03-702).

In 2003, there were three appeals (Decisions 03-703 and 03-702 and 03-1038).

In 2004, there were three appeals (Decisions 04-374 of 24/4/04, 04-375 and 04-376).

In 2005, there has been one appeal.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

The average timeframe from the filing of an appeal until the outcome is six months.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

In 2002 and 2004-2005: none.

In 2003: one (annulment).

C. GENERAL MARKET ACCESS CONDITIONS

C.1. Access obligations (AD article 12)

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

ARCEP specifies access obligations through the analysis of relevant markets and does not have a general policy statement in relation to the regulation of access. In each decision analyzing an access market, ARCEP specifies the access conditions that are imposed upon the SMP operator.

46. *Where access has been mandated, does your NRA typically require (e.g. as part of a stated policy) dominant operators to publish a reference offer for access?*

Yes, except for smaller mobile operators in overseas departments with SMP for the provision of termination services on their networks (Market 16) and alternative local loop operators (Market 9).

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

There is no standard procedure for negotiation. In case of a failure of negotiations, operators can bring the case before ARCEP under the settlement of disputes procedure.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

Yes. SLAs have been made compulsory by ARCEP pursuant to the implementation of the new regulatory framework. However, the levels are not considered satisfactory.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Yes. Nevertheless, available financial penalties are too low to have any deterrent effect.

C.2. Non discrimination and price squeeze (AD article 10)

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Yes. This obligation was imposed on all SMP operators.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

The non-discrimination obligation is not fully implemented, since an actual accounting separation does not exist with FT. Moreover, there is no "functional separation", such as BT's Access Service Division.

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

Yes, however, some retail markets are no longer subject to regulation. ARCEP has announced its intention to verify that the wholesale tariffs do not result in a price squeeze on the downstream market.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

ARCEP has rendered two recommendations to the Competition Council in the context of an *ex post* enforcement procedure before the Competition Council in relation to broadband services (Advice n° 04-197 of February 2004 and n° 04-257 of March 2004 regarding retail prices in the residential broadband market).

ARCEP has also conducted price squeeze test on an *ex ante* basis between LLU and bitstream offers, in order to set bitstream charges at the proper level. Such tests can be found, for example in the following decisions:

- IP ADSL recommendation n° 04-615 (July 2004)
- IP ADSL recommendation n° 05-0089 (February 2005)
- TurboDSL recommendation n° 05-0397 (May 2005).

For the access part, a price squeeze model has also been discussed with the stakeholders and published by the NRA on its website to give visibility to stakeholders. The model is regularly updated. The latest update occurred on 18 November 2005.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms eg requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

Such transparency requirement has been mandated through the analysis of market "12bis", i.e., national bitstream access.

For Markets 11 and 12 (LLU and bitstream), the NRA has imposed a monthly publication obligation on France Télécom, requiring it to publish on its website a list of internal and external SLA, for delivery and fault repair. This publication aims at ensuring non discrimination on non-price terms for broadband services.

In addition, transparency of internal contracts has been mandated in October 2005 through the analysis of Market "12bis" (national bitstream access), and is being implemented. France Telecom has the obligation to transmit to ARCEP the technical and price conditions of internal transfers between its wholesale branch (network operations) and its retail branch (ex Wanadoo) in charge of residential broadband services.

For fixed markets, ARCEP has also imposed an obligation to publish a list of internal SLA for delivery and fault repair. This publication aims at ensuring non discrimination on non price terms for fixed services.

C.3. Price control (AD article 13)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

For fixed interconnection services, ARCEP has developed a model based on "replacement costs" and a LRAIC. For ULL, ARCEP has applied a LRAIC methodology based on "economic current cost (ECC)" and has notified its cost accounting methodologies for ULL on 10 November 2005. For universal services, the cost orientation is based on historic costs.

56. *If cost-orientation is applied, which methodology is used (e.g., historic or current FAC or LRIC)? Is the methodology clearly specified?*

The LRIC methodology is currently applied based on ECC for LLU and on "replacement costs" for replicable parts of infrastructures such as interconnection and bitstream. The NRA has clearly defined it.

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

Since 1997, in relation to the SMP fixed incumbent operator, the ARCEP has published many decisions related to cost issues, such as the decisions approving the FT Catalogue of Interconnection Services. These contain relevant information on cost issues (ARCEP Decision No. 03-1231, No. 02-1089, No. 01146). Each year, FT provides ARCEP with an audited report on costs and revenues. However certain market players consider that the available information does not allow meaningful review of FT's compliance with such obligations and claim that there is a clear lack of transparency.

Under the new framework, cost models are public and made available for operators. ARCEP also organizes workshops with operators to explain these models.

C.4. Cost accounting separation (AD article 11)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

FT was already subject to a cost accounting separation obligation under the old regulatory framework. However, except for the yearly publication of a certification, market players have been unable to verify whether the NRA has effectively enforced this obligation given the absence of a public methodology.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

The methodology for accounting separation is not clearly specified. The NRA has only recently started to work on this issue and is currently hosting workshops in order to prepare a public consultation in the near future. Thus, the accounting separation obligation is not yet enforced.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

No, so far only a certification has been published. Under the new regulatory framework, ARCEP intends to publish the accounts as well.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

No.

C.5. Rights of way and facility-sharing (FD article 11)

62. *Are operators entitled to rights of way on public land?*

Yes. Operators are entitled to rights of way on the public domain. Operators are granted rights of way within the framework of an agreement. The process is transparent and non-discriminatory.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

The law provides that fees must be reasonable and proportionate. Additionally, the law places a cap on applicable fees. However, the actual caps are contained in a draft decree, which raises serious concerns for new entrants and the ARCEP: some caps are very high and appear to be unjustified.

64. *Are there clear rules in place stipulating the procedure and cost?*

Actual costs will be set by each local authority. These will respect the caps and some general principles, but this will still lead to certain discrepancies. This regime will be modified pursuant to a decree that still needs to be adopted.

C.6. Numbering

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Yes.

66. *Is mobile number portability available?*

Yes. Number portability is available for fix, mobile and non geographic numbers. However, in practice, difficulties remain and affect the effectiveness of the existing obligations. ARCEP is currently seeking to address these issues.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

Fix: 10 days; 15 EUR (charged to the recipient operator).

Mobile: two months (for post-pay customers) and one month (for pre-paid customers) (the customer is required to terminate the agreement); 15 EUR (charged to the recipient operator).

68. *What proportion of fixed and mobile numbers were ported in 2004?*

Fixed, August 2004: 1.2% (approximately 400,000 numbers ported out of a total of 33,440,000 lines - 10th Implementation Report).

69. *Mobile, December 2004 : 0.6% (approximately 190 800 numbers ported out of a total of 42,2 million subscribers - ARCEP Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?*

Geographic and non-geographic numbers are available.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?

Interconnection services	Call setup Eurocents		Per minute Eurocents	
	Peak	Off-peak	Peak	Off-peak
Local	0.114	0.073	0.496	0.320
Simple transit	0.049 (night)		0.213 (night)	
	0.358	0.230	0.883	0.569
Double transit	0.153 (night)		0.379 (night)	
	0.451	0.291	1.098	0.708
	0.194 (night)		0.472 (night)	
On 28 Nov. 2002 ARCEP decided that double transit is no longer part of the RIO. FT must, however, apply the same prices across the country and publish price modifications at least one month in advance in case of price reductions and at least three months in advance for increases.				
Peak (Normal): Mon-Fri 08.00-19.00 / Off Peak (Réduit): Mon-Fri 07.00-08.00 & 19.00-22.00 & we 07.00-22.00 / Night (Bleu nuit): Mon-Sun 22.00-07.00				
Valid from 1 Jan. 2005 until superseded by a new RIO.				

71. Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?

The NRA completed market analysis for Market 9. Every new entrant operator is considered to be SMP on the market of call termination on its own network. Although rates must not be excessive, they are not cost oriented. In 2003, UPC, Completel and Estel have been authorized to charge higher rates on the basis of a delayed reciprocity model, whereby their termination charges for the period of 1 January 2003 until 31 December 2007 will correspond to the weighted average of FT's local and single transit call termination charges with a five year time lag. The principle of delayed reciprocity is not in the NRA's latest decision. Thus, the termination rates could in principle be justified on other grounds. However, ARCEP has not indicated how "excessive" will be determined.

72. Is carrier selection and pre-selection implemented?

Yes, carrier selection and pre-selection is implemented.

73. What is the market share (revenue) of alternative operators in the fixed voice market?

In 2003, FT's market share were (in value):

For national communications: 78.31% (professional); 73.86 (residential)

For international communications: 66.8% (professional); 75.1% (residential) .

In 2004, FT's market share were:

For national communications: 75.15 % (professional); 70.21% (residential).

For international communications : 59.9 % (professional); 69.2% (residential).

74. What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?

The interconnection rates for 2005 are as follows:
(in EUR, tax not included):

Local switch:

Call setup:	Peak: 0,00114	Off Peak: 0,00073	Night rate: 0,00049
Rate per minute:	Peak: 0,00496	Off Peak: 0,00320	Night rate: 0,00213

Single tandem switch level:

Call setup:	Peak : 0,00358	Off Peak : 0,00230	Night rate : 0,00153
Rate per minute:	Peak : 0,00883	Off Peak : 0,00569	Night rate : 0,00379.

An obligation to provide call origination at the double transit level has not been imposed on France Télécom, since the regulator wanted to stimulate Carrier Preselection operators to develop infrastructures at, at least, the regional level.

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?*

FT has recently published its offer for analogue lines, and will publish one for digital access in December 2005. It will be implemented for analogue lines as of April 2006, and for digital lines as of July 2006. The rate is 10,9 EUR (tax not included) per month. When the customer already has a line, the setup fee amounts to 12 EUR (tax not included). Those tariffs create a clear squeeze with FT's retail subscription rate. ARCEP has not yet determined the applicable price control.

D.2. Mobile

76. *What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?*

Mobile termination rates	Mobile termination rates	Comments
Peak time	Off-peak time	
Eurocents per minute	Eurocents per minute	
Orange has divided France into 17 interconnection zones ('Zones de raccordement' or 'ZA'). Orange's termination rates depend on whether the fixed operator is interconnected with Orange inside the SA where the call is originated ('Intra ZA') or in another ZA ('Extra ZA'). SFR's termination rates depend on whether the fixed operator is interconnected with SFR inside the ZA where the call is originated ('Intra ZA T1'), in the adjacent zone ('Extra ZA T2') or in a non-adjacent zone ('Extra ZA T3').		
Orange France	Orange France	Peak: Mon-Fri from 08.00 to 21.30+ Sat 08.00 to 12.00 for Orange and SFR Off-peak: Sat to Sun 00.00-24.00 (except Sat between 08.00-12.00) for Orange and SFR
Intra-ZA	Intra-ZA	
12.50	12.50	
Extra-ZA	Extra-ZA	
12.98	12.98	
SFR	SFR	
Intra-ZA T1	Intra-ZA T1	
12.50	12.50	
Intra ZA T2	Intra ZA T2	
12.96	12.96	
Intra ZA T3	Intra ZA T3	
13.46	13.46	

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Yes, it is subject to regulation. All three mobile operators in France are SMP operators on this market for call termination. The main regulatory condition applied is price control. The termination rate is already capped for 2004 to 2006, and will also be capped for 2007.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

Yes, the ARCEP implemented a glide-path for Orange and SFR's termination rates.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

Yes. In the context of enforcement proceedings before the Competition Council, the ARCEP has confirmed that the application of differentiated tariffs for on-net and off-net calls can constitute discrimination when such difference is not justified by objective reasons, such as differences in termination charges.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

In June 2005, the market shares of the two largest operators in France were:

Orange: 47,1 %

SFR: 35,7%.

81. *What is the price of a basket of average user mobile retail services?*

40.8 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

A certain number of MVNOs are operational. However, they launched their offer only very recently (Tele2, for instance). The regulator has only published information concerning the MVNO aggregated market share (0.24% in September 2005). Such wholesale access is currently not subject to regulation.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

There are several wholesale partial private line offers in densely populated areas of France. PPCs which had been normalized by ETSI are available nationwide

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Yes. PPCs are part of FT's RIO.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbits/s 2 km?*

1,107 EUR (connection charges).

325 EUR/month (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

Leased lines and ppcs from 64Kbits/s to 2 Mbit/s are contained in FT's RIO 2003. Other services provided are in accordance with an individual interconnection agreement. Parties may always request the ARCEP to ask FT to submit such interconnection agreements to ensure that it effectively complies with its non-discrimination obligation.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes, there are delivery and restoration times, and financial penalties for failure to meet targets.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

No, provided the line connects a customer site.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

FT recently published a wholesale Ethernet Service that was approved by the NRA.

D.4. Broadband

90. Is full local loop unbundling and shared access available?

Yes. There was a total of 2.153 million shared access lines as of 30 September 2005, and 361.000 fully unbundled lines on the same date.

91. What is the set-up and recurrent tariff charged for both full and shared ULL access?

Full access	Shared access
Active loop:	
– One-off: €50.00	– One-off: €55.00
– Per month: €9.50	– Per month: €1.80
– Reactivation of a preexisting loop - where a metallic path already exists (réactivation d'un accès préexistant de bout en bout):	– Separate monthly charge for provision, installation and maintenance of the splitter: €1.10.
– Same price as active loops	
– Reactivation of a preexisting loop - where a metallic path can be established by simple connections: ('activation d'un accès préexistant par tronçons'):	
– One-off: €159.92	

92. Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?

Yes. Last July, the NRA set lower tariffs for several such services.

93. What is the number of unbundled lines as a percentage of total DSL lines?

30% (ECTA Broadband Scorecard, July 2005).

94. Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?

Yes, contracts for LLU and associated facilities include a Service Level Agreement (including delivery and restoration times, and financial penalties) to meet the following targets: (i) delivery time for shared and full access, (ii) restoration time for full access aimed at the Business Consumers, and (iii) penalties if the line (shared or full) is declared repaired by France Telecom, but is actually not. However, it is too recent to assess whether such SLAs are satisfactory and effective.

95. What connectivity options (according to ERG classification) are available for ADSL bitstream?

Option 2: available (15%).

Option 3: available (19%).

Option 4: not available.

96. What % of DSL lines are provided by the SMP operator's downstream operating retail arm?

67% (ECTA Broadband Scorecard, July 2005). (ECTA Broadband Scorecard, July 2005). 48% as of September 30, 2005.

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

No. Pursuant to the obligation imposed on France Telecom, migration from resale ADSL offer to bitstream offer or LLU is possible without any restrictions; migrations from the bitstream offer to LLU is also possible without restrictions. Migrations between the ADSL wholesale offers were defined in 2003; over one million lines have been migrated to LLU or bitstream since then.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

Yes, a price squeeze test is applied between wholesale DSL products and LLU. The price squeeze is applied across the whole value chain (e.g., bitstream tariffs should not be set at a level that induces price squeeze on LLU). This is an obligation imposed on France Telecom in the Market 12 analysis.

ANNEX VI - GERMANY

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

Depending on the relevant number range, between 1 and 6 weeks. The average duration is 1 week.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

Under the old German Telecommunications Act, there were no Reference Interconnection Offers (RIOs) as defined in the European framework. Germany's NRA usually only required that certain interconnection tariffs or conditions become "standard terms" (*Grundangebot*). Such standard terms exist, for example, with regard to interconnection rates, the rates for ULL access and for line sharing, as well as for leased lines. However, there were no complete agreements on telecommunications services which were declared RIO. This was a hurdle for new entrants, as it increased their need to revert to the dispute settlement procedure.

Although the new framework provides for RIOs as of 2004, the German NRA (the Bundesnetzagentur, BNetzA) has only completed four market reviews. Only twice (on 20 April 2005, Market 11, and 5 October 2005 Markets 8-10) has it ordered an obligation to provide a RIO. To date, there are no RIOs in Germany. BNetzA has never reviewed a RIO and therefore, it remains unclear what the timeframe of such review would be.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

2 to 6 months.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Except in relation to market definition, market analyses and remedies, there is no such general legal requirement. However, the German regulator held several public consultations prior to deciding on issues of general interest (e.g., with regard to frequency allocations and the IP interconnection regime).

5. *What timescale is usually given for formal consultation?*

Legally, the time for consultation amounts to 6 to 10 weeks. In practice, it amounts to 4 to 8 weeks.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

No. BNetzA rarely consults with stakeholders informally, and if this is done, it is not carried out on a non-discriminatory basis. For example, BNetzA installed closed “green table groups” to advise on specific questions relevant to the entire market. BNetzA also founded the “NGN workgroup”, to which only few selected operators were invited. Market participants consider it unsatisfactory to be ‘represented’ in front of the NRA by another operator, who will inevitably have diverging interests.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Yes, according to Section 131 Paragraph 1 of the new German Telecommunications Act (TKG), the NRA is required to provide detailed reasons for its decisions. If the NRA fails to provide reasons, concerned parties may appeal the decision to the administrative court. In practice, such cases are unknown, since the NRA normally substantiates its decisions.

However the reasons for a decision are rarely published and, thus, are normally accessible only to concerned parties who were directly involved in the NRA proceedings. There is a possibility to participate in the NRA proceedings by requesting to intervene as a third party (*Beigeladener*) in order to obtain all available information about the proceeding.

8. *Is your NRA required to publish all its decisions upon their adoption?*

No, only certain decisions must be published where required by Law (e.g. access decisions pursuant to Section 26 TKG; frequency allocation pursuant to Section 54 Paragraph 2 TKG). Although BNetzA has often stated that it considers publishing non-confidential versions of its decisions in the official journal on its Internet pages, such publication typically does not occur. Where decisions are published, only the broad import is provided. Since the reasons are not provided, this unnecessarily limits the understanding of the rationale behind decisions and sometimes even of the decision itself.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

No. The NRA published an “Annual Plan” in early 2005, which basically paraphrases broad sections of the Framework objectives, but has not committed to work items or timeframes for action.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

BNetzA publishes its cost of operating in its annual reports. However, these are not audited.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

Yes, in theory. However, the transitory regime of the TKG is unclear, which has led to already over a year of uncertainty as to BNetzA's powers. This will probably lead to uncertainties well into the foreseeable future, until all market analyses are completed.

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

This is difficult to answer, as the Commission does not publish the subject of the infringement proceedings. Based on material that is publicly available, the concerns of the Commission

particularly address the restriction of powers available to the NRA and a complete failure to implement retail level regulation. The 10th Implementation Report addressed concerns regarding implementation of Articles 15, 16 FD and Art 13, 12 AD, which stipulate that the choice of remedies in case of market failure lies within the NRA's discretion. Market players contend that the TKG has violated this principle many times and have criticised the “predetermination of NRA's discretion” by the legislator.

Section 30 TKG limits the discretion of BNetzA with regard to rate regulation measures and its ability to mandate cost orientation. It contains an additional test for ex-ante rate regulation on the access markets, which is the double dominance test. Under such test, measures may only be taken where SMP occurs on the wholesale market *and* on the corresponding end user market. This will lead to a lack of *ex-ante* rate regulation of SMP operators in markets such as wholesale mobile termination.

The ability to impose Wholesale Line Rental (WLR) as a remedy for wholesale market failure has not been transposed properly into national law. Under Section 150 Paragraph 5 TKG, BNetzA's ability to mandate WLR is restricted to “bundled” resale until July 2008. Thus, before that date, BNetzA's power is restricted to mandating WLR together with connection services. This is in breach of Art 12 Paragraph 1 (d) and Art 13 Paragraph 1 AD. This restriction of NRA power had already been identified in a previous Implementation Report and constitutes an implementation failure in the new TKG. It is worth noting that absent any WLR obligation, DTAG has even refused to supply retail subscriber lines to alternative operators, claiming that delivery of retail products “constituted an illegal unbundled resale offer”.

Section 31 Paragraph 1 TKG provides that wholesale charges “shall not exceed cost of efficient service provisioning”, which is an excessive pricing rule that is not at the discretion of the regulator.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

Yes. The BNetzA has the power to impose fines from 10,000 EUR up to 500,000 EUR (and up to 1,000,000 EUR to enforce an order concerning network access). This does not include the possibility of imposing periodic penalty payments. BNetzA has the power to suspend the commercial launch of services; however, it has never used any such aforementioned powers.

A.4. Scale of resources

14. *What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?*

The German NRA recently took over the responsibility of a regulator for electricity, gas and railway (together with the name change from RegTP to BNetzA), but remains under the control of the Federal Ministry of Economics and Labor (*Bundesministerium für Wirtschaft und Arbeit*, BMWA).

According to the RegTP's annual report for 2002, it employed a total of 2,200 people. Among these, 1,050 handled regulatory issues (including 70 for frequency and numbering management), but only an estimated 100-200 employees handled actual telecom market regulation issues.

Widening the responsibility of former RegTP, in view of creating a regulatory body responsible for all network industries, was initially expected to deliver significant synergies and multidisciplinary expertise. However, within the NRA there is now a shift in focus, resource and expertise away from the telecommunications sector and towards other network industries. Many qualified and experienced staff of the telecommunications regulator have moved and joined the teams and ruling chambers responsible for the energy sector.

There is concern in the market that the “brain drain” of the telecommunication branch of BNetzA will further decrease the level of efficiency of telecommunications regulation in Germany, and some players have pointed out that increasingly long-winded and cumbersome proceedings are early indicators of this trend and reflect staff and resource bottlenecks.

It is estimated that among the staff working in market regulation, 20 per cent are economists and 80 per cent administrative lawyers, with very few competition lawyers. The proportion of staff with private sector experience is limited (if at all), as many former Ministry of Post staff hold legacy lifetime jobs. External selection aims at junior staff who gain their expertise on the job at the NRA.

15. Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?

Yes. As with all other public authorities, the criteria for selecting RegTP personnel are skill, qualifications, aptitude, and seniority, but not prior experience in the industry. Members of the ruling chambers must be qualified for "higher public services" or as judges.

16. Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?

No. The BNetzA does not have freedom to determine the level of remuneration of its staff. Most BNetzA staff are appointed civil servants and are therefore subject to fixed pay-scales (a few exceptions apply, e.g., for management roles). This means that NRA jobs are particularly attractive, especially to those seeking a lifetime position or who wish to take advantage of the benefits associated with public sector employers.

17. Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?

Yes, as provided in the TKG. In practice, BNetzA has often sought outside expert advice. With the *Wissenschaftliches Institut für Kommunikationsdienste (WIK)*, BNetzA also operates its own “think tank”. Budget allocation is not published and unclear, but appears to be more flexible than staff remuneration.

A.5. Effectiveness of appeal procedure

18. Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?

No. According to Section 137 TKG, the appeal of an NRA decision does not have suspensory effect. However, the practice of the Administrative Court is the opposite. Where the Court considers that it is unable to decide sufficiently quickly on a request for suspension under the statutory framework of § 80 sec. 5 VwGO by means of injunction, it issues “adjourned game” decisions. Under such decisions, suspensive effect is restored until an injunction decision is made. This effectively overturns the objectives of Art. 4 § 1 of the Framework Directive and encourages slow decision-making processes.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

Suspension of a BNetzA decision can be ordered by the administrative court, according to Section 80 Paragraph 5 of the German Federal Administrative Court Act (VwGO). Parties concerned by the BNetzA decision may invoke a preliminary stay order with the administrative court, if the decision is *blatantly illegal* or if they can claim that they will suffer material and irrevocable disadvantages because of the decision. However, as indicated above, in practice, Courts have circumvented these requirements by restoring the suspensive effect of the appeal.

20. *What percentage of decisions taken since September 2002 were appealed?*

The relevant figures are not published. It is estimated that around 40 to 60 per cent of BNetzA's decisions are appealed. In practice, the incumbent, Deutsche Telekom AG (DT), continues to appeal basically every decision affecting its interests, while the number of cases appealed by competitors is decreasing.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

2 to 4 years. Despite all efforts to accelerate judicial review of BNetzA decisions, market players say that final decisions on BNetzA rulings still normally take years. This hampers the operations of new entrants and results in extended periods of legal uncertainty.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

According to NRA statistics published in 2003, less than 30 percent of their decisions were annulled or overturned by the administrative courts. However, when examining decisions made by the NRA as a regulator, market participants estimate that over 65% of all regulatory decisions were annulled or overturned. After entry into force of the new TKG, nearly every NRA decision was overturned by the administrative court, since there was a different understanding of the transitional provisions in Section 150 Paragraph 1 TKG. Whereas the NRA tried to maintain the former regulation standard until completion of the market analyses, the administrative court held that the NRA could apply the transitional provisions only under exceptional circumstances.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

The BNetzA has an independent status (Section 116 TKG). However, its management is composed of political nominees. Although subordinate to the Ministry of Economy (BMWA), BNetzA enjoys a certain degree of freedom. The Ministry may instruct BNetzA in general terms, but not with regard to specific cases (Section 117 TKG). Although such instructions must be published whenever they constitute a 'general direction', market participants consider that the right to instruct could restrict NRA independence. Furthermore, Section 117 does not prohibit the BMWA from interfering on an informal basis with the day to day business of the NRA. Market participants also pointed out that there is no similar right to instruct the Federal Cartel Authority (*Bundeskartellamt*), which is also a subordinate of the BMWA. Important issues like access orders or rate regulation are decided by *ruling chambers*, which are administrative bodies within the BNetzA (Section 132 TKG). However, BNetzA's independence's independence is limited by BMWA's ability to instruct BNetzA in advance and the federal government's right to nominate the president of BNetzA. Some market participants

have stated that this influence was significant and that the management of the NRA seemed to be increasingly receptive to political influence during the last period of their term.

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

5 years (with a possibility for re-appointment).

BNetzA officials, at the non-management level, are generally lifetime civil servants.

25. *What are the grounds for removal of your NRA's management?*

The TKG does not specifically provide for reasons for the removal of BNetzA's management. However, under general principles for the conduct of civil servants, BNetzA's management may be removed for misconduct.

26. *What are the eligibility requirements for your NRA's management?*

Although the BNetzA management (the president and the two vice-presidents) are, by virtue of their position, members of the highest ruling chamber (the presidential chamber), there are no specific requirements as to their qualifications. According to Section 132 Paragraph 3 TKG, the president and the vice-presidents are exempt from the rule that members of a ruling chamber must be qualified for "higher public service" or as a judge.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

Section 2 TKG sets out 9 general objectives for regulation in Germany. They are broadly consistent with the objectives in the FD.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

30.92 per cent of DT shares are held by the German government directly, and 12.13 per cent indirectly through the German Recovery Bank (*Kreditanstalt für Wiederaufbau* (KfW)). The German Ministry of Finance (BMF) is represented in the Supervisory Board, but claims to always vote with the majority.

A.7. Market analysis procedure and imposition of remedies

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the Art 7 task force?*

To date, BNetzA has notified four draft market analyses with the Commission (Markets 8, 9, 10, 11), three of which were closed at the end of phase one with comments (Markets 8, 10, 11) and one was partly vetoed (Market 9) because the Commission held that BNetzA had failed to correctly evaluate the role of alternative operators with respect to termination on their individual fixed networks.

It is worth noting that BNetzA is strictly separating the notification of market analysis results from the notification of remedies, arguing that such two-step approach is necessary to reflect the different responsibilities of the presidential chamber (responsible for market definition and analysis) and the other ruling chambers (responsible for remedy decisions).

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Only with regard to one market (Market 11) have remedies been imposed. BNetzA mandated access and required DTAG to provide a reference offer. However, no such offer has been agreed yet.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

The market analyses are conducted in consultation with the German competition agency (the Federal Cartel Office), which must give its consent to the market analysis of the NRA.

Analyses regarding Markets 8 and 10 were conducted in accordance with competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power.

In respect of Market 9, the Commission's Guidelines were not followed, resulting in a veto by the European Commission (regarding the non-designation of SMP to alternative network operators) and subsequent re-notification.

With regard to Market 11 and the regulation of access to fibreglass local loops, there were discussions in relation to the need for the NRA to examine markets that were subject to *ex ante* regulation under the old regulatory framework but not included in the list of markets of the Commission's Recommendation.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

Over one year in respect of the first 4 Markets and probably close to 2 years in respect of the remaining Markets.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FD)

B.1. Speed of process

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

Under the old TKG, the timeframe for interconnection orders was 6 weeks, which could be extended to 10 weeks. This extension was used by RegTP in almost every case, resulting in an average timeframe for such procedures of 10 weeks.

Under the new TKG, the timeframe is 10 weeks, with a possible extension to 4 months in exceptional cases (Section 25 Paragraph 1 TKG). Thus far, BNetzA extended the 10 week timeframe in most cases, but did not use the full 4 months. The average is probably between 10 and 12 weeks.

It is also worth noting that, according to recent judgements by the relevant administrative court, application of the provisions on the obligation to provide interconnection access are conditional upon market analysis and remedy imposition. This is occurring even though the 2002

Regulatory Framework provides that the ONP Framework rules shall remain in place until the NRA has determined, in line with the new framework, the obligations that would be imposed, retained, or lifted.

In theory, this applies equally to access and interconnection obligations, as well as obligations relating to retail tariffs, carrier selection and carrier preselection, and leased lines. At this time, no interconnection orders will therefore be issued, unless a definite order had already been issued in the past and will therefore be upheld (if BNetzA issues such an order, the order will be annulled by the relevant administrative court).

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

Yes. Section 130 TKG provides for the possibility to adopt interim measures.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

With regard to interconnection or access orders, BNetzA rarely makes use of the possibility to adopt interim measures. In rate regulation procedures, interim rate approvals are standard practice. They usually are a simple extension of the old rate approval decision.

B.2. Due process

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes. The ruling chambers of BNetzA, which act as dispute settlement bodies, are subject to similar procedural rules as courts. They decide in a formal procedure, which consists of a written portion (*i.e.*, the parties to the proceedings exchange briefs) and a public hearing. The parties have the usual procedural rights, including the right to review non-confidential versions of the statements of the other procedural parties. Basic principles of due process are observed.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Each party may appeal a decision before the administrative court. Under the new TKG, an appeal must be filed with the lower administrative court (*Verwaltungsgericht*). Only in cases in the public general interest or other exceptional circumstances is a subsequent appeal possible to the federal administrative court (*Bundesverwaltungsgericht*) against the decision of the lower administrative court.

B.3. Effectiveness of sanctions

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

The BNetzA can impose fines to enforce its decisions, but not periodic penalty payments. However, it has never imposed fines.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

Yes, but in many cases, enforcement is not very effective in practice. BNetzA can enforce its decisions by applying general administrative enforcement measures and by imposing fines. However, parties may appeal against such sanctions and may ask the court for suspension of the decision.

B.4. Effectiveness of appeal procedure

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No (Section 137 TKG). The general rule is that an appeal does not suspend the binding effects.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice ?*

Suspension of a BNetzA decision can be ordered by the administrative court, according to Section 80 Paragraph 5 of the German Federal Administrative Court Act (VwGO). Parties concerned by the BNetzA decision may invoke a preliminary stay order with the administrative court, if the decision is *blatantly illegal* or if they can claim that they will suffer material and irrevocable disadvantage because of the decision.

However, as indicated above, the practice of the Administrative Court is the opposite. Where the Court considers that it is unable to decide sufficiently quickly on a request for suspension under the statutory framework of § 80 sec. 5 VwGO by means of injunction, it issues “adjourned game” decisions, whereby suspensive effect is restored until an injunction decision is made. Again, this effectively overturns the objectives of Art. 4 § 1 of the Framework Directive and encourages slow decision-making processes.

42. *What percentage of decisions taken since September 2002 were appealed?*

DT appeals nearly all decisions of the BNetzA affecting its interests in any way. The percentage of decisions appealed by alternative telecommunications operators is much lower. The total average is probably between 40 and 60 per cent.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

The appeals procedure in an interim procedure (to obtain a provisional stay order) takes 4 to 6 months. The appeal in the main action takes much longer (see above Question 21).

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

As indicated above, less than 30% overall and approximately 65% of the regulatory decisions.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. Access obligations (Art 12 AD)

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

Thus far, BNetzA has only given limited guidance and only in the few market analysis decisions (Markets 8-10 and 11) that have been completed.

46. *Where access has been mandated, does your NRA typically require (e.g., as part of a stated policy) dominant operators to publish a reference offer for access?*

This is difficult to answer since, as yet, only remedies with regard to four markets have been imposed. In these cases, BNetzA has required DT to publish a reference offer. However, none of these reference offers has been put forward.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a*

product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?

There is no standard procedure. It is usually not possible to obtain such access products/services through negotiations. After long (over one year) and fruitless negotiations on non-standard products, regulatory intervention will be usually necessary.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

SLAs are not commonly available for regulated products. BNetzA does not usually impose obligations in relation to SLAs, with the exception of certain specific SLA standards (especially concerning time limits for the provision of access services and facilities), which were brought to the attention of RegTP by alternative operators in a number of individual interconnection proceedings.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Not applicable, as there are usually no SLAs.

In the exceptional cases of decisions on provisioning times in interconnection proceedings under the old TKG, these decisions included financial penalties for a delay in provisioning. Nevertheless, there have been no access decisions concerning SLAs under the new framework. Of the few NRA decisions in the past, some were overturned by the courts.

C.2. Non discrimination and price squeeze (Art 10 AD)

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Yes.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

No, non-discrimination requirements imposed in the first BNetzA decisions only apply thus far to wholesale products.

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

According to Section 38 Paragraph 1 TKG, there is a notification requirement which applies to new tariffs of SMP operators who are subject to ex-post regulation. This notification requirement is intended to put BNetzA (not competitors without access to such information) in a position to discover possible price squeezes according to Section 28 Paragraph 2 TKG.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

Thus far, the NRA has only once applied a kind of price squeeze test to support its latest decisions concerning the monthly charges for LLU and line sharing access.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms e.g. requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

No.

C.3. Price control (Art 13 AD)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

In theory, Section 31 Paragraph 1 TKG provides for the primacy of cost-orientation. BNetzA can, alternatively, also refer to benchmarks and/or cost models. However, the primacy of cost orientation only applies in the area of *ex-ante* price control. Even in such case, benchmarking dominates the rate regulation decisions of the BNetzA in practice, as it usually considers the cost statements submitted by DT to be insufficient.

In the area of *ex-post* price control (which applies e.g., in respect of termination rates of non-SMP operators or SMP operators who are not dominant on the retail market as well), benchmarking is the general rule according to Section 38 Paragraph 2 TKG.

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

LRIC.

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

No. The relevant information is usually regarded as business secrets and therefore not available to the public or competitors. In 2005, BNetzA published the calculation of the WACC in its LLU rates decision. The information published remains, however, very limited, and third parties are unable to understand the cost model used.

C.4. Cost accounting separation (Art 11 AD)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

Cost accounting separation not yet been imposed by BNetzA. The NRA takes the view that accounting separation and cost accounting requirements should not be mandated, as the national implementation of the NRF stated price control should predominantly be carried out on the basis of benchmark decisions. As such, cost orientation is subsidiary to price benchmarking. Market participants claim this is contrary to the ERG recommendation on Accounting Separation and Cost Accounting.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

No.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

Not applicable, as accounting separation has never been imposed.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

Not applicable, as accounting separation has never been imposed.

C.5. Rights of way and facility-sharing (Art 11 FD)

62. *Are operators entitled to rights of way on public land?*

Yes.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

Yes. BNetzA decides on an application concerning rights of way within 6 weeks. The right of way itself is free of charge. There is only a fee for the administration procedure.

64. *Are there clear rules in place stipulating the procedure and cost?*

Yes, with regard to the procedure, but not with regard to administrative cost.

C.6. Numbering

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Yes, number portability is available for fixed numbers and is available for all types of numbers, (i) in case of geographic numbers within the relevant geographic area and (ii) in case of non-geographic numbers at any location within Germany.

66. *Is mobile number portability available?*

Yes, mobile number portability is available.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

Cost for fixed number porting: approximately 7 EUR.

Cost for mobile number porting: approximately 25 EUR.

Timeframe for porting is approximately 7 days.

68. *What proportion of fixed and mobile numbers were ported in 2004?*

Fixed: there is no public data available. However, number portability is considered effective in Germany.

Mobile: 349,000 (aggregated figure) out of total of 67.6 million subscribers (10th Implementation Report).

69. *Which, if any, number ranges are available to VoIP providers e.g., geographic/special VoIP range?*

Both the relevant geographical range and a special VoIP range (032-number range) are available to VoIP providers.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. *What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?*

	Call set-up	DT	
		Ct/min peak	Ct/min off-peak

local	0	0.59	0.40
single tandem	0	0.96	0.64
double tandem	0	1.52	0.99

71. *Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?*

New entrants are entitled to prices that are 0.0017 EUR above the DT prices (see table provided under Question 77). However, the relevant decisions by BNetzA expire in mid-2006, and it is not foreseeable whether BNetzA will extend them.

RegTP justified the decisions on the basis of the delayed reciprocity principle, but did not actually calculate the termination charges this way. Cost analyses were presented by the operators, but not accepted by the NRA. RegTP based the decisions on a benchmark of rates charged by incumbent operators, plus a 25 per cent “security surcharge” that was justified by applying general competition law principles.

72. *Is carrier selection and preselection implemented?*

Yes.

73. *What is the market share (revenue) of alternative operators in the fixed voice market?*

10th Implementation Report, Annex 3, page 16:

Local calls: 10%; long distance calls: 38%; and international calls: 43%.

74. *What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?*

	Ct/min peak	Ct/min off-peak
local	0.59	0.40
single tandem	0.96	0.64
double tandem	1.52	0.99

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?*

No. WLR is not implemented in Germany although it has been mandated since 2001. The standard offer that was published provided a price that was above DT’s retail prices. In addition, minimum revenue commitments foreseen in the offer foreclosed usage of the offer. The NRA has, however, refused to review the standard offer.

Although Art 12 d) Access Directive has reinforced the NRA’s power to require operators to provide specified services on a wholesale basis for resale by third parties, the German legislator has illegally, and in breach of EC law, restricted this. Section 150 para 5 Telecommunications Act holds that Wholesale Line Rental, until June 2008, may only be mandated in a “bundled” form, i.e., the access seeker is forced to buy minutes, together with the WLR service from the SMP operator.

D.2. Mobile

76. What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?

Mobile termination rates	Mobile termination rates	Comments
Peak time	Off-peak time	
<i>Eurocents per minute</i>	<i>Eurocents per minute</i>	
T-Mobile, Vodafone 13.20	T-Mobile, Vodafone 13.20	No peak/off-peak differentiation
Eplus, O2 14.9	Eplus, O2 14.9	

Interconnection with the operator '01051'

On 8 Nov. 2004, BNetzA set the interconnection rates that Vodafone may charge to the operator '01051'. The rates are the same as the ones above, but BNetzA specifies a surcharge depending on the number of point of interconnection.

1-3 PoI: 1.023 Eurocents/min	1-3 PoI: 1.023 Eurocents/min
4-8 PoI: 0.511 Eurocents/min	4-8 PoI: 0.511 Eurocents/min
more than 8 PoI: no surcharge	more than 8 PoI: no surcharge

On 28 Dec. 2004, BNetzA set the interconnection rate that O2 may charge to the operator '01051'.

14.9 Eurocents/min, no peak/off-peak differentiation and no variation depending the number of PoI.	14.9 Eurocents/min, no peak/off-peak differentiation and no variation depending the number of PoI.
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On 28 Dec. 2004, BNetzA set the interconnection rates that E-plus may charge to the operator '01051'.

11-16 PoI: 14.9 Eurocents/min	11-16 PoI: 14.9 Eurocents/min
8-10 PoI: 15.30 Eurocents/min	8-10 PoI: 15.30 Eurocents/min
4-7 PoI: 15.370 Eurocents/min	4-7 PoI: 15.370 Eurocents/min

77. Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.

Fixed to mobile termination was not subject to regulation in the past, as BNetzA had denied the SMP of mobile network operators. As BNetzA has not yet published the relevant draft remedy decisions with regard to the relevant market (Market 16), it is not foreseeable whether it will be subject to future regulation. However, according to the draft market definition, BNetzA proposed to designate SMP to mobile network operators. Fixed to mobile termination can therefore only be regulated on the basis of an individual interconnection order. In the three cases decided by RegTP/BNetzA thus far, prices were approved based on a benchmarking.

In theory, the same would apply to mobile to mobile termination, but no mobile network operator has thus far filed for an interconnection order.

78. Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?

Termination rates are not subject to SMP obligations. However, in the three individual cases decided thus far, the NRA did not require cost orientation, but decided based on a benchmark.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

Mobile termination is currently not subject to regulation. On-net rates are widely offered at price levels substantially below the termination rates.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

BNetzA has only published the market shares by number of subscribers in its annual report (*Jahresbericht 2004*, page 42). According to this information, the market shares in 2004 were as follows:

T-Mobile: 38.5 per cent.

Vodafone: 37.8 per cent.

81. *What is the price of a basket of average user mobile retail services?*

48.80 EUR (10th Implementation Report, Annex 3, page 60).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

MVNOs in the classic sense (*i.e.* having their own network management functions and some degree of technical independence) are not operational on the German market. Very recently, some operators have appeared, who claim to be MVNOs, but it may turn out that these are merely resellers (as in the case of Tchibo, which in 2004 claimed to be the first MVNO in Germany, but is only a reseller). Data on their market share is not available yet.

D.3. Business services

83. *Are there any wholesale partial private line offers ("PPCs") in your country?*

DT generally only offers end-to-end lines in Germany. There is no PPC offer in Germany.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Not applicable.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbits/s 2 km?*

There is no PPC offer in Germany.

86. *Are there any specific measures to prevent discrimination in the provision of PPCs and leased lines? e.g. KPIs*

Not applicable.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Not applicable.

88. *Are there any restrictions applicable to the migration from leased lines to PPCs?*

Not applicable.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

No.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes. Both unbundled and shared access to the local loop at the main distribution frame are available.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access	Shared access
Active loop: One-off: €45.61 (valid until 30 June 2007) Per month: € 10.65 (valid until 31 March 2007)	BNetzA approved prices on 3 Aug. 2005 valid from 1 July 2005 until 30 June 2007: One-off: €51.43 Per month: €2.31 Fees include splitter.

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Yes, with regard to co-location. Thus far, BNetzA has not intervened with regard to the specific terms.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

11% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes, but the only binding provisioning period is the 7 working day delivery time. The 24 hour restoration time; the 6 hour emergency restoration time (for an additional fee of 77.76 EUR); the 16 weeks for co-location space etc. are essentially meaningless, since violations of these are not sanctioned. No penalties apply.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: not available.

Option 3: available (0%).

Option 4: available (10%) (ECTA Broadband Scorecard, July 2005).

It should, however, be pointed out that there is no ADSL nor any other bitstream offering from the incumbent operator, as can be seen from COCOM05-34, page 20: All “Wholesale DSL” lines mentioned there are in the Simple Resale category, which is not part of the ERG classification for Bitstream Access as set out in ERG 03-33rev1. The Figures above relate to Bitstream offered by Altnets.

96. *What per cent of DSL lines are provided by the SMP operator’s downstream operating retail arm?*

90% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

There are no wholesale broadband products available in Germany.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

Bitstream access is not available in Germany.

The restrictions to move from resale ADSL/bitstream to LLU or Shared Access include a 7 day period of *no service* for the customer, which is prohibitive.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

No.

ANNEX VII - GREECE

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

The average timeframe for obtaining the reservation of numbers is 5 weeks.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

The current Reference Interconnection Offer (RIO) of the incumbent (OTE) is in force since 15 April 2003 and has only been partially revised by the NRA (EETT). Following OTE's cost-accounting audit (based on data of 2001), EETT issued a decision in December 2003 setting OTE's prices for 2003. Also, in November 2004, EETT issued a new decision setting OTE's prices for 2004 (based on 2002 data). The review of interconnection prices is published between October and December of each year, which renders business planning very difficult.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

Negotiations can be very lengthy (i.e., over one year). This is often because the incumbent imposes additional obligations on the new entrant, unjustifiably delays the process, or refuses to accept amendments to the proposed templates that often substantially deviate from the provisions of the RIO.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Currently, the law does not explicitly provide for any such obligation (Law 2867/2000). Nevertheless, the NRA generally holds public consultations prior to deciding on issues of general interest. The NRA bases this competence on other broader powers that it is granted under this law, such as the right to collect data on the market and to both regulate *ex ante* the telecommunication sector and apply *ex post* the competition rules.

The new Regulatory Framework, which requires the NRA to hold a public consultation when the general interest is at stake, has not yet been transposed into the Hellenic legal system.

5. *What timescale is usually given for formal consultation?*

Usually one month. The NRA is generally lenient in granting extensions where this is possible and appropriate.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

The NRA organized several working groups in the past to discuss specific issues (e.g. ADSL, Carrier Pre-selection, Number Portability and LLU). However, these working groups turned out to be unsatisfactory as a result of the incumbent's unwillingness to provide adequate solutions.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

The NRA is legally required to motivate its decisions. However, in practice, this requirement is not always complied with adequately. NRA decisions may be appealed, but the law does not specifically provide for the possibility to appeal a decision on the grounds that the NRA failed to adequately motivate its decision. Although a general principle provides for the possibility to challenge the NRA decisions for absence of motivation, this possibility remains largely theoretical, since such procedure would be very time consuming.

8. *Is your NRA required to publish all its decisions upon their adoption?*

Yes (Law 2867/2000). The EETT must publish its individual and regulatory decisions in the Governmental Gazette. Decisions relating to disputes between undertakings have only recently been published on EETT's website.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

The NRA discloses its action plan in its Annual Report. However, it does not hold consultations on the plan.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

Yes (Law 2867/2000).

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

Yes.

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

Since the new regulatory framework has not yet been transposed, the NRA powers are not consistent with the powers provided under the new regulatory framework. The European Commission has initiated an infringement procedure against Greece for failure to adequately implement the new regulatory framework.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

Yes. The NRA may impose fines and penalties for breach of both the telecommunications legislation and competition rules.

Penalties for violations of the telecommunications legislation are: (a) a recommendation to comply with the law, including a warning that further penalties may be imposed, (b) a fine ranging from EUR 14,673 to EUR 1,467,351, (c) a temporary suspension (max. three months)

of the commercial activities of the company, and (d) a modification or revocation of the license (Law 2867/2000).

Penalties for violations of competition law are: (a) a recommendation to comply with the law, including a warning that further penalties may be imposed, (b) a fine of up to 15% of the undertaking's turnover achieved in the current or previous fiscal year, and (c) a periodic penalty payment of up to EUR 10,000 for each day of non-compliance with the NRA decision (Law 703/77, as amended).

A.4. Scale of resources

14. What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?

The NRA currently has 160 employees (56% engineers, 16% economists, 8% lawyers and 20% having another specialization). It is not clear how many of them are dealing with general regulatory issues.

15. Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?

In general, they are considered fair and open.

16. Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?

In theory, yes.

17. Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?

The NRA may have recourse to outside consultants. In fact, the NRA is often assisted by external expertise.

A.5. Effectiveness of appeal procedure.

18. Does the appeal of an NRA decision automatically suspend the binding effects of the decision in question?

Both the NRA's binding decisions and injunction decisions may be appealed before the Hellenic Administrative Supreme Court. Decisions of the Hellenic Administrative Supreme Court may not be appealed. Such an appeal does not have a suspensive effect.

19. If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?

Suspension must be requested in a separate application and will only be granted where (i) the applicant's interest or the public interest are significantly endangered and (ii) where a *prima facie* breach of the law can be established. Courts have been reluctant to grant suspensions thus far. In addition, as regards collection of the fine, a separate administrative act is issued by the tax authority, which is the competent authority. The incumbent has appealed before the administrative courts against these separate decisions and, to the best of our knowledge, in all but one case has succeeded in suspending payment of the fine until adoption of a decision in the main procedure (against the decision imposing the fine). Also, experience shows that in the case of an administrative appeal, lawsuits before civil courts are suspended until the decision of the main administrative procedure is adopted.

20. *What percentage of decisions taken since September 2002 were appealed?*

Almost all of the NRA's decisions have been appealed, mainly by the incumbent.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

The time frame is very long. It should be noted that, thus far, no judgement has been handed down in ordinary proceedings concerning regulatory issues decided upon by the NRA (*i.e.*, other than interim measures). A number of appeals against NRA decisions have been pending before the Hellenic Supreme Administrative Court since 1998.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

Not applicable. There have been no such court decisions thus far.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

According to the law, the NRA enjoys financial and administrative autonomy. However, the NRA has no legal personality and is under the supervision of the Ministry of Transports and Telecommunications. Moreover, the Government holds a 38% stake in the incumbent. Thus, it is clear that the status of the NRA fails to ensure its overall independence from political authorities. It should also be noted that since an amendment to the law in June 2005, the new Director of the NRA will no longer be appointed upon a common decision of the Presidents of Parliament, but rather directly by the Ministry of Transports and Telecommunications.

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

Five years. Members of the NRA's management can be re-appointed once, for an additional period of five years.

25. *What are the grounds for removal of your NRA's management?*

The law does not provide for the possibility to collectively remove the NRA's management. A member of the managing body of the NRA can be removed if he or she fails to attend plenary sessions of the body three times in a row, absent valid justification. Furthermore, members of the NRA are automatically removed if a legally binding judgement finds them guilty of willfully committing a crime.

26. *What are the eligibility requirements for your NRA's management?*

According to the law, members of the NRA should be persons with a strong reputation and distinguished for their professional competencies in the areas of technology, economics, or law.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

The NRA published its 2005 objectives in its Annual Report. The Annual Report is published on the NRA's website. Most of these objectives appear to be consistent with the Framework Directive.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

The Government holds a 38.7% controlling share in the incumbent and appoints the members of the Board of Directors. The remaining capital is highly dispersed.

A.7. Market analysis procedure and imposition of remedies

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

Despite the failure to implement the new regulatory framework, the NRA has already taken the following steps: (a) it has notified draft measures to the Commission regarding voice call termination on individual mobile networks (Market 16). The Commission has sent its comments to the NRA; (b) it recently published the results of the public consultations for Markets 11 (Wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services) and 12 (wholesale broadband access); (c) it has carried out public consultations with regard to Markets 8 (call origination on the public telephone network provided from a fixed location), 9 (call termination on individual public telephone network provided from a fixed location), and 10 (transit services in the fixed public telephone network).

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

No remedies have been imposed thus far.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

Nothing indicates that the NRA has cooperated with the competition authority.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

Approximately one year.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. Speed of process

Preliminary remark. The NRA's decision N° 281/54/24-7-03 provides for the establishment of a permanent arbitration committee in charge of telecommunications issues. However, thus far, such committee has not been created.

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

A dispute settlement procedure exists for interconnection disputes only. According to the law, the decision shall be issued within 6 months. However, this timeframe has never been complied with.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

Yes. Interim measures are, however, often ineffective since periodic penalty payments cannot be imposed. As a result, the incumbent generally ignores decisions imposing interim measures.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

See Question 34.

B.2. Due process

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

The parties can request the NRA to review its decisions within 30 days. However, the regular appeal procedure that is usually followed is an appeal before the administrative courts.

B.3. Effectiveness of sanctions

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

Yes. However, it has not used this power in practice, except in one case where the NRA imposed a penalty of 100,000 EUR per day following the incumbent's persistent refusal to accept interconnection with OLO's for audiotext services.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

Yes. However, this power is not adequately used.

B.4. Effectiveness of appeal procedure

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice?*

A party may request suspension of the decision by means of an injunctive procedure before the administrative courts. Suspension will only be granted where the party seeking suspension establishes that implementation of the decision is likely to cause irreversible damages and that these damages are greater than those that the suspension could cause. In practice, the courts most often grant the suspension of decisions imposing penalties on the incumbent. The request is usually rejected where a party seeks the suspension of essential regulatory provisions.

42. *What percentage of decisions taken since September 2002 was appealed?*

Almost of the NRA's decisions have been appealed, mainly by the incumbent.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

The timeframe is very long. It should be noted that, thus far, no judgement has been handed down in normal proceedings concerning regulatory issues decided upon by the NRA (*i.e.*, other than interim measures). A number of appeals against NRA decisions have been pending before the Hellenic Supreme Administrative Court since 1998.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

Not applicable. There have been no such court decisions thus far.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. Access obligations (AD article 12)

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

No. The NRA's policy can only be inferred from the decisions it has taken in procedures mainly against the incumbent, as well as from its Annual Report.

46. *Where access has been mandated, does your NRA typically require (e.g. as part of a stated policy) dominant operators to publish a reference offer for access?*

The NRA has required the incumbent operator to publish a reference offer for interconnection and local loop.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

No. The most representative example is interconnection for the provision of PRS services. This took more than 3.5 years from the time that an operator first expressed its interest in interconnecting with the incumbent in view of supplying PRS services. Given the incumbent's reluctance to grant interconnection, regulatory intervention was eventually necessary, leading to the imposition of a fine and periodic penalty payments. Similarly, in August 2003, the NRA issued a decision requiring the incumbent to allow the use of wireless means of interconnection. However, the incumbent has failed to comply with this decision, and is thus denying the use of wireless means of interconnection owned by the operators. The incumbent claims, among other things, that the RIO does not provide for any such obligation. Additionally, the NRA's decision failed to impose periodic penalty payments, thus enabling the incumbent to effectively evade its obligations.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

SLAs are available only for the provision of leased lines. However, in practice the incumbent fails to comply with the provisions of SLAs and refuses to pay the penalties. OLOs have repeatedly requested the imposition of SLAs for other services (bitstream, LLU, CPS etc.), but no action has been taken by the NRA thus far.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

See Question 48 above.

C.2. Non discrimination and price squeeze (AD article 10)

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Yes. However, this only applies to the regulated markets.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

No.

52. *Does the NRA have rules in place to guard against price squeeze e.g., a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

The prices applied by the incumbent at wholesale and retail levels are subject to approval by the NRA. The NRA has, however, not taken a clear position with respect to the issue of price squeeze. Also, it is rather difficult to monitor compliance since the incumbent is not willing to co-operate by submitting the relevant information to the NRA. At the same time, the incumbent's competitors lack the necessary data to demonstrate price squeezing.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

Various alternative operators allege the existence of price squeezing practices by the incumbent. However, the NRA has not yet taken a position in relation to this issue. The only recent, relevant decision concerned a claim against a mobile operator who was found to have practiced price squeeze. In this case, the NRA prohibited the mobile operator from offering certain discounts, which resulted in retail prices that were clearly below wholesale prices.

The NRA has applied the price squeeze test on several occasions. In December 2004, for example, the incumbent was required to apply a 4% reduction on all interconnection costs to avoid price squeezing caused by the new retail prices. In other cases, however, the regulator failed to verify the absence of a price squeeze. In September 2004, for instance, several OLOs filed complaints alleging price squeezing between the tariffs charged for the retail ADSL access offer and the tariffs for the wholesale bitstream offer. However, the NRA has not yet taken any steps to address this issue.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms e.g. requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

No.

C.3. Price control (AD article 13)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

No.

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

Both methodologies are used depending on the product. The methodology is clearly specified.

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

No. The NRA once requested the regulated operator to provide it with information on the cost models it uses. This request for information has remained unanswered.

C.4. Cost accounting separation (AD article 11)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

The SMP operator is subject to cost accounting separation obligations in accordance with the old regulatory framework. Nonetheless, according to the last audit, the SMP operator failed to apply cost accounting separation correctly.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

No.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

Not entirely. The information that was published was considered unsatisfactory by competitors and third parties.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

No.

C.5. Rights of way and facility-sharing (FD article 11)

62. *Are operators entitled to rights of way on public land?*

Telecommunication operators are entitled to rights of way on public land, provided that this is indispensable and the least burdensome means of carrying out the specific telecommunication activities (Law 2867/2000). The competent authority is required to respond within 12 weeks from receipt of the application. Where the competent authority fails to provide a response within the given timeframe, the permission for rights of way is deemed to be given. High fees that are regularly imposed by local authorities often discourage operators. The draft law on electronic communications empowers EETT to review the current framework.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

See Question 63 above.

64. *Are there clear rules in place stipulating the procedure and cost?*

The lack of a clear procedural framework represents an additional hurdle for operators.

C.6. Numbering

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Number portability is available for fixed numbers within the same geographic area, as well as for the following groups of numbers: (a) non-residential (business) numbers and access numbers to VPN (series 50); (b) personal numbers (series 70); (c) numbers free of charge (series 800); (d) shared cost numbers (series 801); (e) numbers for call through a pre-paid cards (series 807), and (f) premium rate numbers (series 90).

66. *Is mobile number portability available?*

Yes.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

According to the law, number portability shall be provided within 10 days from the date of application. This period might be longer with respect to mobile numbers. However, it shall in any case not exceed 15 days from the date of application. In practice, procedures take much longer to be completed (at least 25 days). The cost for porting numbers largely depends on the commercial policy of each company. It can vary from 0 to 21 EUR. For mobile numbers, the 10th Implementation Report indicates a charge of 10 EUR.

68. *What proportion of fixed and mobile numbers was ported in 2004?*

Less than 1% for fixed numbers.

Less than 2% for mobile numbers.

69. *Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?*

There is no specific range available to VoIP providers.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. *What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?*

	Set up (Eurocents)		Tariffs per min (Eurocents)	
	Peak	Off-peak	Peak	Off-peak
Local	0.0	0.0	0.690	0.640
Single transit	0.0	0.0	1.070	1.000
Double transit	0.0	0.0	1.580	1.470
NB. On 12 Nov. 2004 EETT mandated reductions in OTE's interconnection charges. OTE has now to publish a new RIO following EETT's decision to reduce its average peak/off peak interconnect charges. Average peak/off-peak rates set by EETT available from CI. Peak: Mon.-Fri 08.00-20.00 Off Peak: Mon-Fri 20.00-08.00, Sat. 00.00-24.00, Sun. 00.00-24.00				

71. *Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?*

Yes. New entrant operators are entitled to apply higher charges for termination services on their network, as compared to the incumbent operator. However, there are constraints on that policy, imposed by the structure of the market, competition among the alternative operators and their interdependence on each other, and the countervailing bargaining power of the incumbent.

72. *Is carrier selection and preselection implemented?*

Yes, in theory. In practice, the incumbent jeopardizes implementation of carrier pre-selection. This has led to various complaints before the NRA, which has imposed interim measures. A large number of procedures are pending concerning the implementation of carrier pre-selection and the relevant practices applied by the incumbent.

73. *What is the market share (revenue) of alternative operators in the fixed voice market?*

According to the results of a market research carried out by Market Analysis in July 2005, the market share of alternative operators in the fixed voice market is 17.7%.

74. *What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?*

	Set up (Eurocents)		Tariffs in min (Eurocents)	
	Peak	Off-peak	Peak	Off-peak

Local	0.0	0.0	0.690	0.640
Single transit	0.0	0.0	1.070	1.000
Double transit	0.0	0.0	1.580	1.470
NB. On 12 Nov. 2004 EETT mandated reductions in OTE's interconnection charges. OTE has now to publish a new RIO following EETT's decision to reduce its average peak/off peak interconnect charges. Average peak/off-peak rates set by EETT available from CI. Peak: Mon.-Fri 08.00-20.00 Off Peak: Mon-Fri 20.00-08.00, Sat. 00.00-24.00, Sun. 00.00-24.00				

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?*

No.

D.2. Mobile

76. *What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?*

Cosmote 15.4	Cosmote 14.5	No peak/off-peak differentiation Minimum charge of 30 seconds The same MTRs are applied to both fixed-to-mobile and mobile-to-mobile call termination
Vodafone 14.5	Vodafone 14.5	

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Neither fixed to mobile, nor mobile to mobile termination is currently subject to regulation.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

Although the market analysis for termination to mobile networks has been carried out and remedies have already been ordered, the decision to implement the glide-path has not yet been imposed. Upon its implementation, a glide-path of 18 months (intervals of 6 months) will be put into place until prices reflect actual costs.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

In the relevant market analysis, clear provisions exist for non-discrimination between on-net and off-net calls. However, the remedies have not yet been implemented.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

The largest mobile operators have an estimated 80% market share (in revenues).

81. *What is the price of a basket of average user mobile retail services?*

32.4 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

MVNOs are operational and are not regulated.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Yes, in theory. There is only one old and largely inappropriate NRA decision. Even this offer, however, was never been implemented. OTE (SMP in leased lines) does not currently offer ppc.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Yes, but OTE has not yet modified the cost systems in order to include the ppc provisioning.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbits/s 2 km?*

751 EUR (connection charges).

160 EUR month (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

No.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

The wholesale leased line offer includes an SLA. The SLA refers to (a) maximum days to deliver and relevant penalties; (b) minimum restoration times and relevant penalties; and (c) refunds for service unavailability. However, the SLA is not fully complied with, and OTE refuses to refund the operators.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

No.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

OTE refuses to offer ppcs, and the decisions adopted by the NRA in relation hereto are inadequate. OLOs have repeatedly asked for these services, and a general hearing on ppcs has taken place and fines have been imposed. However, OTE still refuses to offer them or to allow migration. Specific requests for migration, submitted to OTE, have been rejected.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes, in theory. However, in practice, it appears that the incumbent seriously jeopardizes the availability of full local loop unbundling and shared access (mainly by unjustifiably delaying provision of the information required, drafting complex technical specifications for the specific local switches, and refusing to accept means of interconnection owned by the alternative operators).

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Active loop	Full	Shared
One-off:	55.00 EUR	65.00 EUR
Per month:	8.10 EUR	4.08 EUR

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

No.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

6% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

No.

95. *What connectivity options (according to ERG classification) are avail*

Option 2: not available.

Option 3: available (0%).

Option 4: available (20%).

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

80% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

No. This causes serious problems with respect to the reputation of alternative operators. End-users are left with the belief that alternative operators entirely control the services they provide, and in particular, the quality of these services. It appears that the incumbent has often taken advantage of the end-users' mistaken perception, claiming that it could offer services of better quality, when services provided by alternative operators failed to reach end-users' legitimate expectations.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

Not applicable, given the absence of a wholesale bitstream offer.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

The NRA has not yet applied a price squeeze test. However, it has reached all of its decisions without prejudice to the application of a price squeeze test and the results that it may reveal. The practical significance of such reservations remains to be seen. In general, operators are concerned about the delays registered in the application of the price squeeze test by the NRA.

ANNEX VIII - HUNGARY

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

Under the Telecommunications Act ("TA"), reservation of numbers may be obtained in 30 days. Upon reasoned request, the NRA will make the reservation in 15-20 days. According to the NRA, the average timeframe is 1-2 weeks.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

The NRA reviews draft RIOs in 2-3 months. However, in most cases, the NRA rejects the first draft RIO of SMP operators and orders operators to redraft the RIO. This can extend the procedure by an additional 2-3 month period. The average timeframe therefore amounts to 6 months.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

4-6 months.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Yes, the NRA is required to conduct a prior consultation for certain resolutions. However, experience has shown that, in practice, rights of the market participants during the consultation process can be very limited.

5. *What timescale is usually given for formal consultation?*

Different rules apply to formal and public consultations in Hungary.

(i) Public consultations: The NRA is required to disclose information 15 days prior to the public consultation (Art. 34(3) of TA). In practice, the NRA does not grant more than 15 days for public consultation.

(ii) Formal consultations: Whenever the NRA considers that an issue needs to be discussed with the interested parties, it shall disclose the draft of the resolution at least 30 days in advance. This shall include any related preparatory materials, excluding the data deemed by the relevant parties as business secrets. Any person whose rights or lawful interest may be prejudiced by the resolution may present his views, opinions or comments concerning the proposed resolution in writing to the NRA, within 20 days from the date of publication. To the extent possible, the NRA shall observe the comments received in connection with any draft resolution. The NRA may decide to hear the interested parties upon the justified request of a party affected by the resolution, or ex officio. In the preamble to the resolution, the NRA shall indicate the comments observed and those that have not been taken account and the reasons for not doing so.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

According to the NRA, this happens regularly regarding general policy issues with the participation of all interested parties. However, according to OLOs, this only applies to "main policy issues", but not to particular cases such as the identification of a given market, the types of remedies needed by stakeholders, etc.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Yes, the NRA is obliged to motivate its decisions and, if it does not do so, an appeal may be submitted for failure to comply with the legal requirements.

8. *Is your NRA required to publish all its decisions upon their adoption?*

Not all decisions must be published. The publication requirement only applies to the NRA and not to the dispute settlement body.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

Under Art. 16(8) TA, the NRA is required to publish its annual working plan. Such working plan is not subject to public consultation. In 2005, however, the NRA published a questionnaire on the regulatory strategy of the NRA for the next 5 years.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

NHH publishes the annual budget plan and its report after the financial year is closed. Lists all of their contracts with some information (contracted party, subject, amount), where the value exceeds 20,000 EUR.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

Yes. The powers of the NRA are clearly defined by law.

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

Yes. The NRA's powers are consistent with the new regulatory framework.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

The NRA may suspend the license of the party in breach. The NRA is also empowered to impose fines. However, the fine may not exceed 0.1 - 0.5% of the annual turnover of the undertaking

A.4. Scale of resources

14. *What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience*

Based on official sources, the NRA currently employs approximately 400 persons. There is no information available on the experience of the staff. However, members with particular experience in competition law matters do not appear to be present.

15. *Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?*

According to the NRA, the procedures are fair and open, and conducted by a thorough personal selection process. However, OLOs have indicated that no rule or procedure was communicated or discussed with regard to the selection of NRA personnel.

16. *Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?*

No. NRA employees are civil servants. Their remuneration is thus determined by law.

17. *Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?*

The NRA sometimes has recourse to external counsel. However, no information is available on the budget allocated for external expertise.

A.5. Effectiveness of appeal procedure

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

Yes, but this rule does not apply to the dispute settlement body of the NRA.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

Not applicable.

20. *What percentage of decisions taken since September 2002 were appealed?*

It is estimated that approximately 40% of the regulatory decisions are appealed.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

1 to 3 years.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

Most decisions are confirmed.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

No. However, there has been political influence in key matters.

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

The NRA's management is appointed for a period of five years. Members may be re-appointed.

25. *What are the grounds for removal of your NRA's management?*

A member of the NRA management may only be removed from office in the event of:

- inability to perform duties for a period exceeding 90 days;
- serious conflict of interest;
- condemnation for criminal offense.

The Chairman of the NRA may also be removed for failure to carry out his/her duties.

26. *What are the eligibility requirements for your NRA's management?*

Members of the NRA management must have a college degree and at least three years' experience (five years for the chairman) in the communications sector.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

The NRA's long-term objectives are laid down in its strategy plan. The strategy plan is published.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

The Government holds a golden share corresponding to 25% +1 share in the incumbent's capital. This does not confer control over the daily management.

A.7. *Market analysis procedure and imposition of remedies*

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

16 markets have been analyzed and reviewed by the Article 7 Task Force.

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Yes.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

Yes. The NRA has consulted the Competition Office in each case. However, observations of the Competition Office were not always taken into account (e.g., regulation of IC links).

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

According to the OLOs, the timeframe amounts to 12-18 months. The NRA has indicated that it conducted its market analysis in a period of 4 to 12 months.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. *Speed of process*

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

According to OLOs, 4-6 months. According to the NRA, 45 days.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

Yes.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

In practice, the dispute settlement body rarely adopts interim measures.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes, according to the NRA. However, according to OLOs, not every right ordinarily granted under due process in civil litigation is made available in these procedures. Therefore, OLOs believe that due process is not properly granted.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Yes. The party may bring an appeal before the Municipal Court of Budapest, where its rights or lawful interest have been prejudiced by the NRA management's (i) decision made on the merits of a case, or (ii) refusal to launch a proceeding. The statement of the claim shall be submitted to the NRA within fifteen days of receipt of the decision.

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

Yes. The NRA dispute settlement body is entitled to impose fines. However, in practice, the NRA has only rarely made use of this power.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

No.

B.4. *Effectiveness of appeal procedure*

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No, the courts must address the issue of suspension separately.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice?*

The party challenging the administrative order (such as the NRA's decision) may apply for suspension of this order (injunction). However, the party may only apply for suspension of the decision once it has submitted its written pleading. An application for injunction is granted by the court where:

- it is necessary to avoid an irreversible damage;
- granting such injunction will not cause damage more severe than what is likely to be caused by rejection of the application; and
- it is in the reasonable interest of the applicant.

In practice, the standards for granting the suspension of an administrative order are very high. It is generally very difficult to obtain such injunction.

42. *What percentage of decisions taken since September 2002 were appealed?*

30-40%.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

Appeal procedures are also ineffective. Courts are overburdened in Hungary, where the average judge in Budapest handles some 200 cases at a time. The average case is finished within a year, but complex cases can take 2-5 years. Unfortunately, there is no fast-track procedure available for

telecommunications dispute, and as such cases are generally very complex, the average appeals procedure in telecommunications cases usually takes 2-3 years.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

5-10%.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. Access obligations (AD article 12)

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

No.

46. *Where access has been mandated, does your NRA typically require (e.g., as part of a stated policy) dominant operators to publish a reference offer for access?*

Yes, but only for basic services.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

No such standard procedure is available.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

SLAs are available in the RIOs. However, SLAs are not reviewed regularly by the NRA in light of evolving market demands. The SLA is a very critical issue in relation to LLU. The LLU SLA is unsatisfactory and makes it impossible to offer business class services (such as private lines) on LLU.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Yes.

C.2. Non-discrimination and price squeeze (AD article 10)

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Yes.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

Yes, according to the NRA. However, according to OLOs, non-discrimination does not usually apply to retail products.

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

Legislation clearly forbids the application of price squeeze. However, no rules are in place to guard against price squeeze, i.e. there is no price squeeze test published by the NRA.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

The NRA has not carried out price squeeze procedures against SMP operators yet. Price squeeze issues are considered a joint task of the NRA and the Competition Office. If the price squeeze is due to the retail prices of the SMP operator (as in the majority of the cases), the issue belongs to the Competition Office; if the price squeeze is caused by the wholesale prices, it is the task of the NRA. A common methodology for price squeeze issues of the two authorities is under preparation.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms e.g. requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

No specific provisions are available.

C.3. Price control (AD article 13)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g., cost-orientation, retail minus or benchmarks?*

Yes, the NRA has thus far required SMP operators to apply cost-based prices subject to a separate cost model calculation method. Usually, this method is based on a long run incremental cost calculation or the fully distributed cost calculation method. The following table shows the wholesale markets where dominance was found and the price control mechanism applied by the NRA.

Wholesale market	Obligation of Service Provider	Price control of NRA
Call origination from the public fixed network	Price is calculated based on the Long Run Incremental Cost model with Top-down approach (LRIC)	The NRA applies the Long Run Incremental Cost calculation with Bottom-up approach and the price squeeze analysis.
Call termination in the public fixed network		
Local loop unbundling for voice and broadband services	Price is calculated based on Fully Distribution/Allocated Cost model (FAC)	The NRA applies the benchmark and price squeeze analysis.
Wholesale broadband access service (Wholesale ADSL and local bitstream)	Price is calculated based on Retail minus model	
Wholesale leased line service – termination section		
Call termination in the public mobile networks	Price is calculated based on Long Run Incremental Cost model with Top-down approach	The NRA can apply the Long Run Incremental Cost calculation with Bottom-up approach and the price squeeze analysis, but this has not yet been done.

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

Retail minus, LRIC and FDC/HCA methodologies are all used by the NRA.

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

According to the NRA, detailed methodology of the cost models is available and is part of the SMP decisions. The SMP decisions also contain other important parameters (like WACC), but do not

contain confidential information. However, OLOs consider that very limited information is available on cost models.

C.4. *Cost accounting separation (AD article 11)*

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

Yes. SMP operators are generally subject to cost accounting separation obligations.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

No. Only the basic requirements for accounting separation are set out in secondary legislation and the NRA resolutions identifying SMP operators.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

Yes, according to the NRA. However, OLOs believe that since only scarce information is publicly available, accounting separation has not been properly introduced in Hungary.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

No.

C.5. *Rights of way and facility-sharing (FD article 11)*

62. *Are operators entitled to rights of way on public land?*

Yes.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

For rights of way on public land (e.g., municipalities), the procedure may take several months. In addition, financial compensation must be paid to the owner, which can be very significant. In some cases (e.g., Pécs), municipalities have concluded exclusive contracts with other operators (e.g., Invitel), as a result of which new entrants cannot get the necessary authorisations.

For rights of way on private land, owners provide the necessary authorizations (e.g., T-Com), but with significant delays (2-4 months) and subject to a significant fee. In the event of a refusal by the owner, the NRA may intervene; however, such process can last from 6-12 months.

For facility sharing, the communications infrastructure (i.e., ducts) mainly belongs to T-Com, but other operators also own parts of it. The NRA only requires an operator to give access to ducts if there is no capacity shortage. However, new entrants are unable to verify and challenge a potential refusal.

64. *Are there clear rules in place stipulating the procedure and cost?*

There are only clear rules as to the procedure, but no rule is available on the costs. Costs that might be incurred in connection with rights of way are not specified. These are mostly in the form of compensation for restriction of the owner's rights. With respect to facility sharing, if the given operator is SMP, it might be subject to cost-based pricing based on an LRIC or FDC cost model.

C.6. Numbering

65. Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?

Yes.

66. Is mobile number portability available?

Yes.

67. What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?

Porting numbers is likely to take 30 days.

Fixed numbers : 17.5 EURO (10th Implementation Report).

Mobile numbers : tariffs are negotiated on a commercial basis.

68. What proportion of fixed and mobile numbers were ported in 2004?

Very limited.

Fixed: 28,288 out of a total of 2,618,010 lines (10th Implementation Report).

Mobile: 13,875 out of a total of 8.1 million subscribers (10th Implementation Report).

More recent data indicates that, as of 31 December 2004 47,864 fixed numbers were ported (out of a total of 3.56 million lines); and 43,896 mobile numbers (out of a total of 8.72 million subscribers).

69. Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?

No specific number range is available.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?

Interconnection services		Call setup		Per minute	
		Peak	Off-peak	Peak	Off-peak
Local	Eurocents	0.00	0.00	0,84	0,44
	<i>Ft</i>			2,07	1,09
Regional	Eurocents	0,00	0,00	1,26	0,66
	<i>Ft</i>			3,09	1,63
National	Eurocents	0,00	0,00	1,80	0,94
	<i>Ft</i>			4,42	2,32

Peak: Mon-Fri 07.00 to 18.00
Validity: from 15 June 2004 until supersede by new RIOs.

71. Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?

The incumbent's RIO does not allow new entrant operators to apply higher charges. However, in practice, some operators apply higher rates.

72. Is carrier selection and preselection implemented?

Yes.

73. *What is the market share (revenue) of alternative operators in the fixed voice market?*

The NRA estimates their market share at 18%. However, OLOs estimate their market share at approximately 4%. According to the 10th Implementation Report, the incumbent operator has a market above 98% (December 2003).

74. *What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?*

Origination	Peak HUF/minutes (EUR/minute)	Off-peak HUF/minute (EUR/minute)
Local	2.2 (0.009)	1.27 (0.005)
Single tandem	3.48 (0.013)	1.82 (0.007)
Double tandem	4.87 (0.019)	2.56 (0.01)

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?*

Wholesale line rental is not implemented.

D.2. Mobile

76. *What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?*

Mobile termination rates		Mobile termination rates		Comments
Peak time		Off-peak time		
<i>National currency per min</i>	<i>Eurocents per min</i>	<i>National currency per min</i>	<i>Eurocents per min</i>	
T-Mobile (average peak/off peak) <i>Ft</i> 27.17	<i>Eurocents</i> 11.04			NHH regulates average peak/off-peak Peak: Mon-Fri 07.00-18.00 Pff-peak: Mon-Fri 18.00-07.00 weekends and public holidays
Pannon GSM (average peak/off- peak) <i>Ft</i> 29.44	<i>Eurocents</i> 11.97			Billing meter is per second No call set-up charges No indivisible first minute

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Yes. Price control applies in this area.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

Cost-orientation, LRIC.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

No.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

Approximately 80%: T-Mobile has a market share of 45.29% and Pannon GSM has 34.11%.

81. *What is the price of a basket of average user mobile retail services?*

43.3 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

No. MVNO is currently available and is not regulated.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Yes. However, it does not exist in practice. The existing MTelekom voice RIO contains a chapter regarding the private line issue. It has a non-EU standard terminology, which separates the local loop from the private line service and defines the trunk as being subject to private line regulation. The new market analysis properly defined and named MTelekom as SMP, but the new RIO is expected sometime in early 2006.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Currently, only the incumbent is required to offer cost-oriented PPC on the trunk segment.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbps/s 2 km?*

OLOs:

T-Com prices in June 2005:

1984 kbps for MLLN circuit:

2 km: one-time fee: 1,903 EUR, monthly fee: 776 EUR.

3Mbps HSLN (2048 kbps) with G.703 interface:

2 km: one-time fee: 408 EUR, monthly fee: 456 EUR.

NRA:

Connection tariff: 416,000 HUF (approx. 1,670 EUR).

Rental tariff: 174,105 HUF (approx. 700 EUR).

The above tariff difference is probably due to interface selection.

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

The obligation of non-discrimination is imposed on the SMP operator in the leased line termination segment, but the RIO is not yet in place. The currently effective RIO on ppcs is of no practical use, and no operator has contracted with MTelekom, but rather use commercial agreements based on retail conditions.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

No.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

There are some Ethernet services available. However, wholesale prices are often higher than retail offers. The NRA has shown no interest in Ethernet.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access		Shared access	
Monthly rental:		Monthly rental:	
–	T-Com (Matáv): Ft 2932 (11.87 EUR)	–	T-Com (Matáv): Ft 1071 (4.34 EUR)
–	Emitel, Invitel, Hungarotel and Monortel: Ft 3225 (13.06 EUR)	–	Emitel, Invitel, Hungarotel and Monortel: Ft 1178 (4.77 EUR)
–	The one-off charges vary depending on whether distant or physical collocation is used. In practice, it amounts to 20 EUR.	–	The one-off charges vary depending on whether distant or physical collocation is used.

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Yes. However, their effectiveness and commercial value is very questionable.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

0% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: available (0%).

Option 3: available (26%).

Option 4: not available.

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

74% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

No.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain eg between different wholesale products in addition to between wholesale and retail?*

No.

ANNEX IX - IRELAND

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

According to Section 13(3) of S.I. No. 306 of 2003 (European Communities (Electronic Communications Networks And Services)(Authorisation) Regulations 2003), “*The Regulator shall make any decision on the grant of a right to use a class or description of number as soon as possible after receipt by it of the complete application and in the case of a number that has been allocated for a specific purpose within the national numbering scheme, within 3 weeks after such receipt.*” In practice, there have been no difficulties in obtaining number allocations for standard allocations. New number ranges and numbers for new types of service fall outside of the standard and can take several months (*e.g.*, numbers for VoIP), as there is no established procedure for new number types.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

The RIO is not issued annually in Ireland, and there is no formal timeframe for issuance and review. As and when text changes are proposed, the process is to review amounts, generally to six weeks. This includes a timeframe for industry consultation.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

No information is available on “negotiated” RIOs. The RIO is normally either rejected or accepted.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Yes.

SI 307 of the 2003 Framework regulations requires ComReg to publish the text of the proposed measure, give the reasons for it (including information on which of the Regulator's statutory powers gives rise to the measure), and specify the period within which interested parties may make submissions relating to the proposal.

Comreg has also published Consultation Procedures available at http://www.comreg.ie/_fileupload/publications/ComReg0331.pdf.

5. *What timescale is usually given for formal consultation?*

According to the published consultation procedures, the normal time allowed for receipt of responses will be four weeks, but there may be exceptions to this timeframe depending on the circumstances.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

Yes. ComReg frequently holds stakeholder meetings and workshops. There are a number of industry forums which meet regularly under the auspices of ComReg.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Yes. Regulations under the Communications Act require that decisions must be in writing, state the reasons on which it is based, and be addressed to the undertaking concerned (see e.g., Regulation 24 of the Authorisation Regulation, S.I. No. 306 of 2003).

Grounds for appeal include that the decision is vitiated by errors of fact, including inferences of fact and or errors of law, including issues of jurisdiction and procedure.

8. *Is your NRA required to publish all its decisions upon their adoption?*

The results of any consultation under must be made publicly available by the Regulator, except in the case of confidential information.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

ComReg consults and publishes a “Work Programme” covering:

- market developments;
- market framework;
- market operations;
- regulatory accounts.

The work programmes generally cover proposed consultations for the coming year and the month the consultations are expected to be issued.

In September 2005, ComReg published a Strategy Statement, detailing the focus and direction for the period 2005-2007. In addition, in October 2005, ComReg published a Spectrum Management Strategy Statement for the period 2005-2007.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

The statutory and annual accounts are available on ComReg’s website. Section 32 of the Communications Regulation Act of 2002 requires that the Commission keep accounts and submit them to the Comptroller and Audit for general audit within 3 months of the end of the financial year. Within 42 days of the audit, they must be presented to the Minister, and the Minister must present these before each House of the Oireachtas. The accounts are also published in an annual report.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

The powers of the ComReg are set out in the 1996 Act, 2002 Act, and all applicable regulations.

12. *Are the NRA’s powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

Yes, the powers are consistent with the powers of NRAs under the framework, and there are no infringement proceedings brought by the Commission for failure to adequately implement the framework in Ireland. Operators, however, have raised concerns over the perceived inability of

ComReg to ensure that regulatory decisions are implemented within a reasonable time. Moreover, the decisions of the NRA can only be enforced once the time limit for appeal has expired: this is a minimum of 28 days.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

No. In Ireland, any fines must be imposed by a Court. Violations under the Communications Regulations Act are offences and can result in a summary conviction and fines. For example, Section 39 on obstructing an investigation can result in a fine of up to 3,000 EUR on summary conviction.

Section 44 of the 2002 Act also allows ComReg to issue an offence notice. Within 21 days of receiving such a notice, the operator can remedy the offence to the satisfaction of the Commission, in addition to a 1,000 EUR payment to the Commission.

Under the regulations implementing the Framework, Access and Universal Service Directives, ComReg may apply to the courts for an order to compel compliance with any obligation or direction. On application from ComReg, the court may also impose a financial penalty to be paid by the offender to ComReg. There are no fixed limits, however, the court must consider the following in setting fines:

- the duration of the infringement;
- its effect on consumers, users, and operators;
- the submissions of ComReg on the appropriate amount; and
- any excuse or explanation for non-compliance.

* see e.g. SI No. 305 of 2003 (Access Regulations) regulation 18*

No such action has been taken as of yet, so it is difficult to predict how this will work.

In respect of ordering the suspension of a commercial launch of service, in the case of interconnection services, ComReg can, and has, prevented the launch of services (see e.g., Bitstream launch).

ComReg's power to impose fines is currently limited to summary convictions, which means the maximum amount of the fine is 3,000 EUR. This is wholly inadequate to be a deterrent for an incumbent in a market worth 4 billion EUR/annum.

A.4. Scale of resources

14. *What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?*

The total number of employees as of June 2005 was 105 (according to ComReg Strategy Statement 2005-2007). The percentage breakdown, by profession, was as follows:

Engineers	23%
Lawyers	13%
Accountants	10%
Economists	13%
Business Analysts -	12%

Support (HR, PR, IT, etc)	15%
Administration	14%

Approximately 80% of staff has private sector experience.

15. *Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?*

Under Section 20 of the 2002 Act, members of the ComReg staff are determined by ComReg. Selection procedures appear to be based on merit through open competition.

16. *Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?*

Under Section 20 of the 2002 Act, members of the ComReg staff are determined by ComReg. Selection procedures are based on merit through open competition. The HR team deploys a range of recruitment devices, including national advertisements, specialist external agencies and executive search and selection consultants.

ComReg has attained a number of national awards for its personnel/HR systems and procedures - providing external accreditation and recognition for these systems - including:

Irish Training and Development Awards 2002 and 2004;
Excellence Through People national standard since 2002;
Institute of Engineers of Ireland CPD Award 2003; and
Association of Chartered Certified Accountants CPD Award 2004.

17. *Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?*

Section 22 of the 2002 Act specifically provides that the ComReg may engage the services of consultants and advisers as it considers necessary. In practice, ComReg had engaged a significant number of consultants; however, expenditure has declined in recent years.

A.5. Effectiveness of appeal procedure

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

No.

Under Regulation 16 of the Framework Regulations (S.I. 307 of 2003), the decision of the Regulator stands pending an appeal. However, an appellant may apply for a decision to be suspended. In practice, there are few circumstances in which a decision would not be suspended if an application is so made.

In a recent judicial review of one of ComReg's directions, it was found that ComReg cannot enforce a direction in such a way as to remove the right of appeal. The right to appeal would be nullified if the operator was forced to implement before the appeal had concluded. In practice, this seems to mean that decisions that are being appealed will not be enforced, at least until the Appeals Panel has considered whether or not to suspend the decision.

Alternatively, if a decision of ComReg is challenged by way of judicial review by the High Court, then the effect of the decisions can be suspended by order of the court.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

An Electronic Communications Appeal Panel ("ECAP") may suspend the decision of the Regulator pending the determination of the appeal, where it considers it appropriate to do so. In making such a decision, it must take into account any submission made by any other interested party in relation to such application. An Appeal Panel may also impose such conditions as it sees fit on a suspension of a decision.

20. *What percentage of decisions taken since September 2002¹ were appealed?*

Since the submission of the first appeal to the ECAP (in August 2004), there have been a total of twelve regulatory decisions that have been appealed out of a total of 16. In addition, the incumbent sought judicial review of a ComReg decision relating market requirements for LLU in the High Court. Since ECAPs were only first convened in 2004, the percentage of appealed decisions is not necessarily representative, but is however indicative of a rate of 75%.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

According to the Framework Regulations, the Panel must endeavour to determine an appeal within 4 months. However, the only decision rendered so far by the ECAP was adopted one year after the appeal was lodged.

22. *What proportion of court judgements reached since September 2002² resulted in the NRA determination being annulled or overturned?*

On 26 September 2005, ECAP set aside the determination of ComReg that "3" has SMP in the market for wholesale call termination services. The High Court has also found against ComReg on a procedural matter regarding the ability to issue enforcement decisions prior to the appeal period expiring. There are no other determinations made as of yet.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

Under the Communications Regulation Act of 2002 ("2002 Act"), Section 13 provides that the Minister can give policy directions to the new Communications Commission, but only in conjunction with a public consultation setting out the reasons for the proposed policy direction. The introduction of the public consultation requirement constitutes an important safeguard. In addition, in his directions, the Minister may not exceed the powers contained within either the appropriate EU or national legislation.

The intent behind the 2002 Communications Act was that ComReg would be provided with national guidance/policy objectives. In March 2004, the Minister for Communications issued 3 policy directions:

- (1) general Policy on Competition;
- (2) broadband, Wholesale and retail telephone line rental, and Interconnection/Leased lines; and
- (3) national and Cross Border Roaming

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

The 2002 Act provides for a 3-person Communications Commission. Section 15 (3) of the Act provides that every Commissioner may be appointed for a period of not less than 3 years and not more than 5 years. Section 15 (4) provides that a Commissioner can serve up to 2 terms in office, thereby bringing a Commissioner's potential time in office to up to 10 years.

¹ The first ECAP was established in August 2004

² The first ECAP was established in August 2004

25. *What are the grounds for removal of your NRA's management?*

Under Section 18 of the 2002 Act, a Commissioner can be removed from office by the Minister if the Commissioner has "*become incapable through ill health of effectively performing*" his duties or "*for stated misbehaviour*".

26. *What are the eligibility requirements for your NRA's management?*

There are no formal eligibility requirements provided for under the law. Section 15 of the 2002 Act only provides that "*a person shall not be appointed as a Commissioner unless the Civil Service and Local Appointments Commissioners, after holding a competition on behalf of the Commission, have selected him or her for appointment as a Commissioner*".

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

Section 12 of the 2002 Act sets out the objectives of the Commission. These objectives essentially mirror the objectives for NRAs set out in the EC Framework Directive.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

The Irish Government no longer has any shareholding in the incumbent Eircom.

A.7. *Market analysis procedure and imposition of remedies*

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

ComReg has notified all markets except Market 17 (international roaming). Market 9 (Call termination on individual public telephone networks provided at a fixed location) is still under investigation by the Article 7 task force. There have been no vetoes, although one market was notified to the Commission and subsequently withdrawn ("Wholesale call termination services used to provide retail calls to service providers on public telephone networks, provided at a fixed location")

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

In theory, yes, but in practice, many of the decisions are under appeal and although not formally suspended, the remedies have not actually been imposed (*i.e.*, MVNO under mobile origination market)

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

In December 2002, ComReg and the Competition Authority signed a cooperation agreement (ref 03/06). Several of the appeals currently pending before the ECAP raise issues of ComReg procedure and analysis, but the decision of the Panel is still pending. All market analyses have included an opinion from the Competition Authority, which in all cases to date have been in agreement with ComReg's findings.

The ruling by ECAP on 26 September 2005 annulled the portion of ComReg's decision which designated Hutchison with SMP in the wholesale market for call termination, on the basis that ComReg over-relied on Hutchison's 100% market share and failed to thoroughly analyse issues in relation to countervailing buyer power that could potentially offset Hutchison's SMP. The ruling applies only to Hutchison. It does not apply to the other mobile operators namely, Vodafone, O2 and Meteor.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

As many of the market analyses are subject to appeal before the ECAP, and remedies have de facto not been implemented, this is not possible to determine.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. *Speed of process*

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

Under the Framework Regulations, ComReg must, except in exceptional circumstances, make a determination as soon as possible, but within 4 months from the date upon which the dispute was notified by either party.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

There are no explicit provisions in the Framework regulations that would enable ComReg to take interim decisions.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

So far, this is not understood to have occurred.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes. Under ComReg's dispute resolution process, where a party submits a dispute resolution request, it is sent to the respondent. Both parties are able to comment with respect to (a) whether ComReg should initiate an investigation, and (b) the determination on the merits.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

A party may notify the Minister of the intent to appeal a decision, and the Minister may establish a panel under the ECAP process. In addition, there is the possibility of judicial review before the Irish High Court.

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

Under Regulation 31(2) of the Framework Regulations, an undertaking failing to co-operate with an investigation or to comply with a determination is guilty of an offence. Summary proceedings for an offence under the Framework regulations may be brought and prosecuted by the regulator. A person guilty of such an offence is liable for summary conviction to a fine not exceeding 3,000 EUR.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

Under Regulation 18(4) of the Access Regulations, S.I. No. 305 of 2003, where an undertaking has not complied with an obligation or a direction, ComReg may, after issuing a notice of non-compliance, apply to the High Court to compel compliance. Similar provision is made under the Authorisation Regulations, S.I. No. 306 of 2003, the Universal Service Regulations, S.I. No. 308 of 2003, and the Framework Regulations, S.I. No. 307 of 2003. ComReg is understood to be dissatisfied with the enforcement mechanisms currently open to it.

B.4. Effectiveness of appeal procedure

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No (see above Section A.5).

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice?*

See above Section A.5. ECAP has yet to issue a ruling on that standard, but is likely to be heavily influenced by the common law principles for granting injunctions.

42. *What percentage of decisions taken since September 2002 were appealed?*

As per Question 20, 12 out of 16 (or 63% of overall decisions) were appealed; however, none of these arose from a ComReg determination of an Interconnect dispute. Since ECAPs were only first convened in 2004, the percentage of appealed decisions is not necessarily representative, but is indicative of a rate of 75%.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

See above Section A.5.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

See above Section A.5.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. Access obligations (AD article 12)

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

There is no general statement on ComReg's regulation of access issues, except for the general principles set out in Regulation 6 (1) of the Access Regulations S.I. No 305 of 2003, according to which it shall “*encourage and, where appropriate, ensure, in accordance with these Regulations, adequate access, interconnection and interoperability of services in such a way as to –*

- *promote efficiency;*
- *promote sustainable competition; and*
- *give the maximum benefit to end-users”.*

46. *Where access has been mandated, does your NRA typically require (e.g. as part of a stated policy) dominant operators to publish a reference offer for access?*

Eircom is required to publish its standard offering for all services where an obligation of access has been imposed under the market review process.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

Eircom's RIO provides for the process of requesting new services.

Several new access products were outlined in a document called the “Market Requirements Document” (MRD), which was agreed between access seekers and ComReg on 6 of January 2005.

ComReg subsequently issued a Direction to Eircom and, subsequently, an offence notice. The matter was eventually brought to the High Court by Eircom, and the High Court decided against ComReg in July 2005 and ComReg withdrew the Direction. Eircom has now agreed to respond to the MRD by 24 October 2005. ComReg's initial assessment of the document is outlined in ComReg 05/81 (27th of October), in which ComReg expressed disappointment with the response.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

SLA are available for some regulated products. For example, there are SLA for Leased Lines, PPCs and LLU, but not for Bitstream or Wholesale Line Rental.

There is no fixed process for regular review of the effectiveness of the SLAs.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Leased Lines SLA specifically provides for financial penalties.

C.2. Non discrimination and price squeeze (AD article 10)

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Yes.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

No, the non-discrimination obligation is usually applied within a particular market, and is generally related to the terms and availability of the market in which SMP has been found.

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

There does not appear to be a transparent prize squeeze test that would enable competitors to verify margin squeeze; however, this is listed as an objective of ComReg in the Strategy Statement 2005-2007 from ComReg. Thus, ComReg is currently consulting on the application of Retail Minus in the Wholesale Broadband Market (Bitstream) market. ComReg is committed to consulting on the application of margin squeeze tests as part of the introduction of the new framework.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

ComReg is currently consulting on Margin Squeeze in the Wholesale Broadband Market (Bitstream) market. Generally, the process behind ComReg's assessment of margin squeeze is not made clear to the industry.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms e.g. requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

Yes. However, the concept has not been extended to all product sets – it is only in place for leased lines.

C.3. Price control (AD article 13)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

The approach is dependent on the individual market. ComReg uses cost orientation, retail minus and benchmarking (with econometric adjustments). Yes, normally an explanation is given in the consultation documents for the choice made.

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

ComReg mostly uses Forward Looking LRIC according to the Principles of Implementation and Best Practice as established by the Independent Regulators Group (IRG).

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

Participants in working groups to develop bottom up models have had access to non-confidential versions of these models. ComReg has published a more detailed description of Eircom's top down model in Document 02/61.

C.4. Cost accounting separation (AD article 11)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

Accounting separation has been imposed in all fixed markets where dominance has been found to exist. It has also been imposed in the Mobile Voice Call Termination markets and Mobile Access and Call Origination markets. The implementation of Accounting Separation in the Mobile Access and Call Origination Market is contingent on certain conditions and may not be implemented.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

Consultations are currently underway.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

They are available on Eircom's website.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

The Eircom accounts include a section on Transfer Charges – which explain how charges are raised from the Core Network and Local Access Network Businesses to the Retail Business for the use of the respective networks. http://investorrelations.eircom.net/pdf/2005_hca.pdf.

C.5. Rights of way and facility-sharing (FD article 11)

62. *Are operators entitled to rights of way on public land?*

In general, the building of infrastructure across both public and private land will entail some monetary payment to local authorities through a licence fee and/or long-term damage charge.

Details regarding road works, in particular, can be found in the Communications Regulations Act 2002 in Section 53.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

Yes, but congestion created by such works has led to stricter policies by local authorities.

64. *Are there clear rules in place stipulating the procedure and cost?*

Details regarding road works in particular can be found in the Communications Regulations Act 2002 in Section 53.

C.6. Numbering

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

“The numbering conventions require that all fixed network operators with Geographic or Non-geographic number allocations and all mobile network operators, including MVOs, are obliged to offer full Operator Number Portability to their customers. In the case of geographic numbers, Location Portability may also be offered by an operator, but only within the MNA for which the number was originally allocated.”

Number Portability occurs between different fixed networks and between different mobile networks, but not between fixed and mobile networks. For fixed networks, it currently applies to geographic numbers, Freephone numbers, shared cost numbers, Premium Rate Numbers, Personal numbers, Universal Access numbers and Internet access numbers based on 189X;

66. *Is mobile number portability available?*

Yes.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

Fixed: 27 EUR (10th Implementation Report, figure 58).

Mobile: 22 EUR (10th Implementation Report, figure 59).

More recent figures to be published provide the following data:

Fixed number portability 26.41 EUR (11th Implementation Report)

Mobile number portability: 20 EUR (11th Implementation Report).

68. *What proportion of fixed and mobile numbers were ported in 2004?*

Fixed: 27,787 numbers out of a total of 1.6 million lines (10th Implementation Report).

Mobile: 142,414 numbers of a total of 3.5 million subscribers (10th Implementation Report).

69. *Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?*

As well as a geographic number range, ComReg has also designated a new non-geographic number range, based on the access code 076, for VoIP-based services.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. *What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?*

	Set up (Eurocents)		Tariffs per min (Eurocents)	
	Peak	Off-Peak	Peak	Off-peak
Primary	0.818	0.456	0.306	0.171
Tandem	1.039	0.579	0.545	0.304
Double Tandem > 50km	1.136	0.633	0.819	0.456
Peak: 08:00-18:00 on weekdays / Off-Peak: 18:00-8:00 on weekdays/ W/e: Sat., Sun. and public holidays Eircom's RIO price list dated 15 Aug. 2005-11-02 Valid from 1 April 2004 until superseded by new price list.				

71. *Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?*

The rates are not required to be reciprocal. They are based on negotiation. ComReg has not, as yet, decided as to how these charges should be determined. As part of the ongoing market analysis review under the new framework, ComReg has found all fixed line authorised operators to have

SMP on their individual networks. As such, a price control remedy will be imposed on these operators. ComReg has issued a draft decision to this effect. The form that this price control will take has not been decided yet, and will be consulted on in 2006.

72. *Is carrier selection and preselection implemented?*

Yes.

73. *What is the market share (revenue) of alternative operators in the fixed voice market?*

According to ComReg's quarterly report published in September 2005, Eircom has 84% of total fixed line revenue and the OAO 16%.

74. *What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?*

Prices are available in Eircom's Switched Transit Routing and Price List, which is available on the Eircom wholesale website (http://www.eircomwholesale.ie/regulatory/subreg_details.asp?id=82)

Primary	0.299	0.166	0.162	0.610	0.340	0.330	01/04/03	31/03/04	Final
Tandem	0.586	0.327	0.317	0.922	0.514	0.499	01/04/03	31/03/04	Final
Double Tandem	0.836	0.466	0.452	1.187	0.661	0.642	01/04/03	31/03/04	Final
Primary	0.298	0.166	0.149	0.791	0.441	0.395	01/04/04		Interim
Tandem	0.542	0.302	0.271	1.013	0.564	0.506	01/04/04		Interim
Double Tandem	0.725	0.404	0.362	1.06	0.591	0.53	01/04/04		Interim

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?*

WLR has been implemented. 10% of Eircom's lines are provided by OAOs through WLR (approx. 150,000 lines). The current rates can be viewed on the Eircom website in the RIO price list (<http://www.eircomwholesale.ie>). Wholesale PSTN line rental is 17.98 EUR.

D.2. Mobile

76. *What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?*

Vodafone (Eircell) & O2 (Digifone) Peak 12.9	Vodafone (Eircell) Eve: 11.4 W/E: 5.9	Peak: Mon-Fri 08.00-18.00 Eve: Mon-Fri before 08.00 and after 18.00 Sat-Sun 00.00-24.00
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77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Yes. ComReg found Vodafone, Meteor, O2 and 3 as having SMP for termination on their own networks. Under the proposed remedies, SMP MNOs have each been imposed with an obligation to offer cost-oriented prices for MVCT, non-discrimination, transparency, cost accounting and accounting separation.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

SMP MNOs shall each have an obligation to offer cost-oriented prices for MVCT. A price cap has been proposed. Additionally, ComReg has proposed as part of the remedies (final decisions still pending) that "As and from 1 September, 2005 and prior to the establishment of a definitive level of cost oriented prices for each of the SMP MNOs, ComReg may, in pursuance of the aim of establishing such prices, issue directions to the SMP MNOs for the purposes of establishing a glide

path (that is to say, a graduated step approach) towards cost orientation or a price cap in respect of MVCT prices. In doing so, ComReg shall amongst other things, employ benchmarking.”

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own ‘internal’ onnet rates?*

Proposed remedies include (not yet final). The SMP MNOs shall have an obligation of non-discrimination, as provided for by Regulation 11 of the Access Regulations. Without prejudice to the generality of this obligation, each SMP MNO shall:

- (i) ensure that they apply equivalent conditions in equivalent circumstances to Access Seekers and other MNOs providing equivalent services; and
- (ii) ensure that they provide services and information to Access Seekers and other MNOs under the same conditions and of the same quality as the SMP MNO provides for its own services or those of its subsidiaries or partners.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

Vodafone: 47.1%.

O2: 42.6%.

81. *What is the price of a basket of average user mobile retail services?*

51.4 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

There are currently no MVNOs. The obligation imposed by ComReg to offer MVNO access is currently being appealed before the ECAP. “3” is obliged to offer MVNO as a condition of its licence.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Yes – there are both partial private circuits (“ppcs”) and wholesale leased lines available.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Yes. There also exists a discount for large volumes of leased lines. There is also a regulated wholesale leased line service available. The price is based on a retail minus method.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbps/s 2 km?*

809 EUR (connection charges;

497 EUR/month (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

ComReg has consistently emphasised Eircom's obligation to provision and maintain leased lines on a non-discriminatory basis. To this end, it determined (ODTR Decision Notice 2/02) that Eircom must make publicly available on the Eircom website both an aged analysis of pending orders, along with statistics in relation to compliance with the SLA process points on a monthly basis. In addition, Eircom must present ComReg with a bi-annual report on the subject.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes – The PPC product does include an SLA agreement that includes delivery and restoration times, with penalties for failure to meet the targets.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

Migration from leased lines to ppcs is a mature product in Ireland, and the process is workable.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

The Wholesale Ethernet Service is not yet available.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Local loop unbundling is available, but there remain ongoing issues. Although the products are available, there are some significant process difficulties and facilities missing, such as a reasonable migration products and number portability. These issues are being actively addressed as a matter of urgency by the NRA; however, as yet there is no indication that they will be resolved in the short term.

Line Share is available, but only if the line is not subject to WLR. This issue is also being actively pursued as a matter of urgency by the NRA; however, the timescale for resolution is not known.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access	Shared access
Active loop: One-off: 58 EUR (from 1 Feb. 2005 TO 1 Dec. 2007). This charge will be reduced as the cumulative volume of orders increases (see Table 1.6, p.15 in ARO - price list). Per month: 14.65 EUR See ComReg Decision Notice 04/110 of 5 Nov. Eircom is allowed to increase the price (i.e. 14.65 EUR) by no more than the rate of consumer inflation by reference to the CPI in each year up to Dec. 2007.	One-off: 58 EUR (from 1 Feb. 2005 to 1 Dec. 2007). This charge will be reduced as the cumulative volume of orders increases (see Table 1.6, p. 17 in ARO - price list). Per month: 7.52 EUR

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Associated facilities such as co-location are required to be made available at cost oriented rates. The NRA has intervened to specify the rates and terms for supply of these services. However, certain services such as site surveys remain very expensive.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

2% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes – The ULL does contain SLAs and penalties regarding delivery and restoration times.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: not available.

Option 3: available (23%).

Option 4: not available.

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

77% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes – The ULL does contain SLAs and penalties regarding delivery targets and service availability based on restoration targets.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

Yes – as below

- A major discrimination exists where the incumbent is allowed to offer itself wholesale PSTN and bitstream services; however, it has withdrawn the facility for other operators to offer WLR and line share on the same line.
- A second discrimination exists in that operators must cease bitstream service over several weeks before a circuit can then be provisioned for line sharing. In the other direction, the line share circuit is just taken from the LS provider and switched to bitstream in a short period of time.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

An interim price squeeze test is applied by the NRA in relation to retail bitstream products, and a recent consultation has addressed finalizing this approach. However, the incumbent has a formal appeal lodged against the principle of applying such a test, and this has led to a level of uncertainty in the market. A price squeeze test is not applied to LLU. It is costed on a forward looking LRIC basis. There is currently no regulatory price squeeze test between DSL and LLU products, or across the whole value chain.

ANNEX IX - ITALY

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

3 weeks. The maximum term is 30 days from the date of receipt of the request by the Ministry of Communications¹.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

The RIOs have generally been approved after the beginning of the calendar year.

2004: TI proposal published on 31 October 2003; Delibera 3/04/CIR (14 April 2004): AGCOM approved RIO 2004 with modifications; TI again published the price list (including modifications) on 1 June 2004 - (5 months after 1 January 2004).

2005: TI proposal published on 29 October 2004; Delibera 1/05/CIR (9 March 2005): AGCOM approved RIO with modifications; TI again published the price list after AGCOM's comments on 15 April 2005 - (4.5 months after 1 January 2005).

The decreasing timeframe is mainly the result of the network cap mechanism, introduced by AGCOM for access and interconnection price review in February 2003². Since 2004, the RIO has therefore been published before the reference period. AGCOM also reviews the technical and operational conditions proposed in the RIO by Telecom Italia, as well as the prices of services outside cap mechanism.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

Early in the liberalization process, the negotiation of an interconnection agreement required approximately 6 months. Now, based on experience, the process is faster (3 months), but most operators have an interconnection agreement in place.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Yes. AGCOM also detailed rules regarding public consultations for its market analysis proceedings and general regulatory measures. AGCOM had already established a general public consultation procedure (which still applies today for matters of general interest).

5. *What timescale is usually given for formal consultation?*

30 to 45 days for consultations in market analysis proceedings. According to AGCOM Decision No. 288/99, the minimum term is 60 days for general public consultations, which - in case of urgency - may be reduced to 30 days.

¹ Decision No. 9/03/CIR.

² Decision No 3/03/CIR.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

For all major regulatory proceedings, AGCOM conducts individual and/or plenary hearings. According to Article 3.1 and 3.2 of Decision 453/03/CONS, participants to public consultation can also ask for an *ad hoc* hearing.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Obligations to motivate are confirmed in the new regulatory framework and constitute a ground for appeal.

8. *Is your NRA required to publish all its decisions upon their adoption?*

The NRA is required to publish all of its decisions. In general, decisions settling disputes between operators must be adopted within four months following the initial request and must subsequently be notified to the parties and published in the NRA Official Bulletin (see Article 23 of the new Communications Code). With respect to the settlement of disputes in relationships among operators and users, a final decision is served to the parties and published in the NRA Official Bulletin³.

The decisions are also published on the NRA's website.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

The NRA is required to file a management plan with the Italian Parliament, disclosing the activity put in place during the previous year and its action plan. The management plan is published and available for consultation on the NRA's website⁴.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

AGCOM's annual balance sheet is regularly published in the Official Bulletin and audited by the the Corte dei Conti in accordance with national general legislation applicable to public administrations.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

With the new Communications Code, which transposes the New Regulatory Framework, some ambiguities remained regarding the relationship between the regulatory powers of AGCOM (the independent national regulatory) and the Communications Ministry (Government). It is considered that this matter has been resolved pursuant to a notification made by the Italian authorities to the European Commission.

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

Yes. The only aspect that has been discussed with the European Commission concerned the different emphasis given to broadband services.

³ Decision 334/03/CONS, Decision 182/02/CONS and Decision 148/01/CONS.

⁴ Law 249/97, Article 1.6.c.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

Yes, it has the power to impose fines (Communications Code, Art. 98). For infringements of SMP obligations, fines can range between 2 to 5% of revenues generated in the reference market. These fines can be significantly reduced as a result of the “oblazione”, which enables an operator to reduce its fine by paying 1,66% of relevant revenues (*i.e.*, 1/3 of the maximum fine). However, a recent Court decision seems to exclude the application of this mechanism for several specific infringements.

There are no periodic penalty payments. In the old regulatory framework still in force, AGCOM has the power to suspend the commercial launch of services (*e.g.*, for violating the price squeeze test). In the new regulatory framework, this power will depend on the remedies imposed (but it is not forbidden to impose such a remedy).

A.4. *Scale of resources*

14. *What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?*

There are 255 NRA employees. This includes 10 competition economists and 20 competition lawyers. Approximately 20% of the NRA staff has experience in the private sector.

15. *Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?*

Yes. However, a limited number of positions are reserved for internal staff.

16. *Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?*

Salaries of AGCOM officials are pegged to those of Banca d'Italia (the national Central bank); they are higher than those of other public administrations.

17. *Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?*

The NRA must use external consultants for some matters (auditing of accounting separation, Universal Service quantification). It may also use outside experts for other subjects, but rarely does so.

A.5. *Effectiveness of appeal procedure*

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

No.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

Interested parties may apply to the Administrative Court (TAR Lazio) for the immediate suspension of the appealed decision as an interim measure, if they can prove “*fumus boni iuris*” (apparent rights) and “*periculum in mora*” (danger in delay). In practice, this is applied rather restrictively.

20. *What percentage of decisions taken since September 2002 were appealed?*

The NRA does not disclose any figures in this respect. However, Telecom Italia used to appeal nearly every NRA decision imposing regulation on it.

21. What is the average (median) timeframe from the filing of an appeal until the outcome?

It is difficult to give an average timeframe. Legally-speaking, the Administrative Court is not subject to any time limit. In practice, the procedure lasts 2-3 years. Decisions to reject the appeal can be faster.

22. What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?

We are not aware of court judgements after September 2002 resulting in upholding NRA decisions. To our knowledge, only 2 NRA (relevant) determinations have been annulled by TAR⁵, which corresponds to less than 0.5% of the decisions being appealed.

A.6. Independence

23. Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)

AGCOM is an independent body, with the sole obligation of reporting to the Parliament on a yearly basis. However, political lobbying remains important to achieve regulatory objectives, which shows that the NRA is still subject to a certain degree of political pressures.

24. What is the duration of office of your NRA's management? Is there a possibility of re-appointment?

7 years. No possibility of re-appointment.

25. What are the grounds for removal of your NRA's management?

They cannot exercise – without removal – directly or indirectly, a professional or consulting activity, be administrators or employees of public or private bodies, nor can they have public assignments of any type, or have direct or indirect interests in companies operating in the market.

26. What are the eligibility requirements for your NRA's management?

Generally speaking, members of independent Authorities are chosen among persons of high and recognized professional experience and competence in the field.

27. Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?

Italian Law is consistent with the objectives outlined by the Framework Directive, but adds, in addition to these objectives:

- the promotion of broadband services;
- the “adoption of a flexible regulation for access and interconnection, also through negotiation among operators, in a way compatible with the market competitive conditions and having regard to the single typologies of communications services, with particular reference to those offered on broadband networks”.

28. What percentage of the incumbent share capital is held by the Government? Does it confer control?

⁵

Universal Service for the year 1999 and Decision 4/01/CIR regarding DSL services.

The Government holds no shares of the incumbent operator (fully sold). However, a golden share rule was introduced at the time of the privatization of Telecom Italia (Law 474/1994). The golden share has never been abolished, even if the rights originally attributed to it were progressively reduced⁶.

A.7. Market analysis procedure and imposition of remedies

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

As of 31 August 2005, none.

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

In the current proposals, remedies should be imposed in every market where a dominant position is found.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

The mandatory non-binding advice of the NCA is foreseen⁷.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

The Italian Communications Code was approved on 1 August 2003, and preliminary work by the Italian NRA started beforehand (May 2003), according to the European Directives statements.

As of 31 August 2005, no market analyses have been completed and notified to the Commission.

Since 31 August 2005, AGCOM has notified its draft measures for Markets 1 and 2 (retail telephone service access of residential and non residential customers), 11 (local loop unbundling), 12 (wholesale bitstream access), 13 and 14 (wholesale terminating and trunk segments of leased lines), and 15 (wholesale mobile access and call origination). For Markets 1, 2, 11, 12 and 15, the EC Task Force has already formally answered to AGCOM⁸. On July 2005, AGCOM also took urgent measures, pursuant to Article 7.6 of FD, for Market 16 (mobile termination)⁹. For all remaining markets, AGCOM has already conducted national public consultations.

⁶ At the moment of its introduction, the golden share accorded the following powers:

- Necessity of government approval of each shareholder holding 3% of the capital;
- Necessity of government approval of any pact among shareholders holding 5% of the shares;
- A right to veto certain arrangements such as mergers, transfer of the company, dissolution of the company itself, change or abolition of the special powers attributed to Treasury;
- The government's right to name one member of the board and one auditor of Telecom Italia.

⁷ Article 19 of Legislative Decree No. 259/2003.

⁸ All proposals and responses on the public consultations regarding market analysis and imposition of remedies are available at www.agcom.it website. However, the final drafts sent to the European Commission are not available on the website.

⁹ Decision No 286/05/CONS.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. *Speed of process*

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

The dispute settlement body is a Department of the NRA (Dipartimento Garanzie e Contenzioso); therefore, it is subject to the same provisions and procedure of the NRA. Article 23 of the new Communications Code limits the timeframe to 4 months. In practice, however, the average timeframe was over 1 year. This depends on the degree of complexity of the matter.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

Yes.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

No.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Every NRA decision can be appealed towards the Administrative Court of Lazio (TAR Lazio). (See Question 8 above).

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

Yes. However, as indicated above in Question 13, the effectiveness of these sanctions can be limited in practice.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

Yes. AGCOM may impose specific sanctions for non-compliance of its decision by a party, including suspending (up to 6 months) and revoking authorisation.

B.4. *Effectiveness of appeal procedure*

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice ?*

(See section A.5, Questions 18 to 22).

42. *What percentage of decisions taken since September 2002 were appealed?*

(See section A.5, Questions 18 to 22).

43. *What is the average timeframe from the filing of an appeal until the outcome?*

(See section A.5, Questions 18 to 22).

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

(See section A.5, Questions 18 to 22).

C. GENERAL MARKET ACCESS CONDITIONS

C.1. Access obligations (AD article 12)

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

There is no general policy statement in relation to AGCOM's policy for access services. However, AGCOM was among the first NRAs in Europe (before EU Regulation of December 2000) to impose detailed LLU obligations and to closely follow the implementation process through a dedicated Monitoring Task Force and through several procedural and technical decisions¹⁰. AGCOM also regulated a mandatory wholesale offer for x-DSL services at an early stage, based on the retail minus principle, and followed by many implementation decisions¹¹.

AGCOM confirmed its commitment on fixed access regulation within the general principles of the new framework. Recent decisions regarding Markets 11 and 12 (LLU and broadband wholesale access), and 1 and 2 (including also wholesale regulatory measures, such as WLR), show that AGCOM's regulatory strategy for fixed access protects the investments made on LLU and provides new wholesale access services, such as wholesale line rental in areas where LLU is not implemented.

46. *Where access has been mandated, does your NRA typically require (e.g. as part of a stated policy) dominant operators to publish a reference offer for access?*

Yes.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

No, there is no standard procedure to negotiate access services which are not included in the RIO. According to the non-discrimination principle, AGCOM has imposed that when the incumbent commercialises a product at the retail level, it must also offer it at the wholesale level¹². In several specific cases, an AGCOM intervention has nonetheless been needed in order to induce the incumbent to do so. In certain cases, the intervention of an administrative court has even been required in order to bring the NRA to intervene in certain matters.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

AGCOM imposes obligations in relation to SLAs for all wholesale services (interconnection, access, leased lines), and periodically reviews their target values within proceedings for the review of wholesale services supply conditions. However, the effectiveness of the SLAs is not regularly

¹⁰ Decisions 5/00/CIR; 13/00/CIR; 15/01/CIR (*inter alia*).

¹¹ General principles defined by decision 2/00/CIR and substantially detailed by decision No 6/03/CIR.

¹² See, *inter alia*, Decision 152/02/CONS.

reviewed in accordance with changes in retail services. Moreover, Telecom Italia has an obligation to report on its performances, in order to allow AGCOM to monitor the situation and to evaluate the need for possible update¹³. However, in practice, OLOs have neither access to this data, nor the ability to effectively enforce compliance with these obligations.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Yes. However, the level of the penalties are sufficiently deterrent and have not been reviewed in accordance with the changes in the retail SLAs. Moreover, in practice, it is very difficult to enforce these, given the absence of a certified procedure. For leased lines service, Telecom Italia has a specific obligation to provide a reporting system on the effective timeframes for provision of leased lines¹⁴.

C.2. *Non discrimination and price squeeze (AD article 10)*

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Yes.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

Yes, even if compliance is sometimes verified only on a case by case basis (except for voice telephony services, for which a standard procedure exists).

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

An obligation of advanced notification to the NRA (30 days) is imposed¹⁵, but a recent NCA case¹⁶ demonstrated that (i) Telecom Italia has often failed to notify all its business offers to the NRA, and (ii) some Telecom Italia business offers demonstrate a price squeeze.

This is why the NRA has proposed, in the market analysis consultation process, to impose an obligation to publish all its offers.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

The price squeeze test for voice telephony is an ordinary procedure for any offer notified to the NRA, but the results are not subject to publication. AGOM applies 2 different price squeeze tests (predatory test and replicability test) based on different costs, but operators have no evidence of models utilised by AGCOM. Competitors do not, however, have the ability to verify this review. The review by the NRA does not appear to be satisfactory, given that the Competition Authority has already established abusive offers.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms eg requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

¹³ Decision No 152/02/CONS

¹⁴ Decision N0 440/03/CONS

¹⁵ Decision No. 152/02/CONS.

¹⁶ A351 - Comportamenti Abusivi di Telecom Italia.

The decision on (internal/external) equality of treatment (Decision 152/02/CONS) imposed several transparency obligations in order to ensure non-discrimination on provisioning issues. SLAs for wholesale services are currently defined (and reviewed) on the basis of SLAs defined by Telecom Italia to its own customers at retail level. However, OLOs have experienced difficulties in enforcing compliance.

C.3. Price control (AD article 13)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

Thus far, under the old regulatory framework, the choice was essentially the result of historical circumstances (e.g., interconnection started with a benchmark approach and was subsequently regulated with a cost-orientation principle; as for leased lines, a retail minus approach was finally chosen for the wholesale price list; for interconnection and partial circuits, the rule was cost orientation). A variety of methods have been used, and there is no overall policy statement in relation to the price control mechanism.

AGCOM is currently reviewing the price control system for the entire range of retail and wholesale regulated services provided by all SMP operators, but did not issue any general document illustrating the principles of SMP assessment. In fact, in each draft decision, AGCOM explains the reasons behind the imposition of certain remedies and refers to EC guidelines. Such evaluation has led to a change in the approach adopted for price regulation of Telecom Italia's bitstream offers and leased lines, moving from the former "retail minus" methodology to cost orientation (see proposed remedies for Markets 12, 13 and 14).

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

Current cost (FAC) is the methodology used for interconnection. Historical Fully Distributed Costs is the methodology used for access services (LLU, SA). The use of FDC/HCA is supposed to be an exception, motivated by the circumstance that use of CCA in the access market would increase costs (access segment involves significant building and construction work, with a large percentage of labour costs growing over time).

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

The degree of information on the cost model (e.g., level of the WACC) is limited. Also, cost accountings are published very late and are therefore of limited or no use. In the current market analysis, market players also consider that there is lack of information regarding cost models and network architecture involved in wholesale services, in particular for those where significant changes are foreseen (i.e., leased lines and bitstream access).

C.4. Cost accounting separation (AD article 11)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

Yes, SMP operators are subject to cost accounting separation obligations under the old regulatory framework.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

Descriptions of accounting separation are not equally detailed in all draft documents. However, OLOs only have a limited knowledge of the methodology applied.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

Regulatory accountings are published, but with significant delay (the most recent certified and published regulatory accountings refer to the year 2001).

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

Separated accounts currently published only show aggregated information about transfer charging. OLO have requested to apply very tight and detailed obligations.

C.5. *Rights of way and facility-sharing (FD article 11)*

62. *Are operators entitled to rights of way on public land?*

There is no automatic right. Operators must obtain the rights from the owners (local authorities, public bodies managing public streets, public utilities companies, or private entities).

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

Italian law entitles operators to free rights of way only in specific and restricted cases (*i.e.*, if wires and cables do not need any fixed support on the land)¹⁷. In practice, public utilities already have agreements with the main operators, while public bodies often impose high costs. Timing for obtaining authorization is generally lengthy.

64. *Are there clear rules in place stipulating the procedure and cost?*

No.

C.6. *Numbering*

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Number portability is available for all types of fixed numbers (geographical and non geographical). However, there are still some problems in relation to non-geographic numbers.

66. *Is mobile number portability available?*

Yes.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

Fixed:

- Cost: 9.97 EUR (POTS, ISD, BRA, PRA, PBX, GNR, non geographic numbers); 1.54 EUR (multi-number access);
- Average timeframe: 10 working days for standard orders, 15 working days for non-standard orders.

Mobile:

- Cost: 10,02 EUR for each ported number;
- Average timeframe: 5 working days from the recipient's request to the donor operator.

68. *What proportion of fixed and mobile numbers were ported in 2004?*

Fixed: approximately 2%.

¹⁷ Articles 91 and 92 of Legislative Decree No. 259/2003.

Mobile: approximately 7,5%. The monitoring unit of the AGCOM surveyed more than 3 million numbers subject to mobile number portability between May 2002 and October 2004¹⁸.

69. Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?

VoIP regulation is now under scrutiny. A consultation document was issued,¹⁹ and a specific number range has been proposed for nomadic services, while the geographic numbers will remain available for fixed VoIP services. A final decision is not yet available. Currently, geographic numbers are available to VoIP providers authorised to provide PATS.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?

	Set up (Eurocents)		Tariffs per min (Eurocents)	
	Peak	Off-peak	Peak	Off-peak
Local	0.0	0.0	0.4691	0.3339
Metropolitan	0.0	0.0	0.8119	0.5824
Single transit	0.0	0.0	0.8362	0.5943
Double transit	0.0	0.0	1.3756	0.9754
Peak: Mon. to Frid. 08.00-18.30, Sat. 08.00-13.00 excluding public holidays				
Valid from 1 Jan. to 31 Dec. 2005				

71. Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?

Yes, new entrant operators are entitled to apply higher charges than the incumbent operator. Under the new regulatory framework, and the consequent notification of all terminating operators as SMP, some criteria will be set. The consultation document refers to the principle of “fair and reasonable” tariffs for the termination of alternative operators, but a final decision has not been made.

72. Is carrier selection and preselection implemented?

Yes.

73. What is the market share (revenue) of alternative operators in the fixed voice market?

OLO market shares - residential market (mkt 3)				
	2000	2001	2002	2003
local	7.5%	18.8%	25.7%	27.1%
national	18.3%	27.4%	31.5%	31.8%
f2m	22.5%	27.0%	33.6%	32.5%
OLO market shares - business market (mkt 5)				
	2000	2001	2002	2003
local	8.0%	22.7%	32.4%	28.8%
national	13.8%	19.8%	24.7%	23.1%
f2m	18.9%	24.5%	31.2%	29.9%

Source: AGCOM - Market Analysis - Shares expressed in value (not volumes)

74. What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?

(Eurocent/min)	peak	off peak
local	0,4691	0,3339

¹⁸ AGCOM Press Release, October 22, 2004.

¹⁹ Decision 26/05/CIR.

single transit	0,7887	0,5564
double transit	1,3480	0,9548

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?*

No. Notified measures within Markets 1 and 2 proposed the introduction of WLR obligations on Telecom Italia only in areas where LLU is not still implemented.

D.2. Mobile

76. *What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?*

Peak time <i>Eurocents per minute</i>	Off-peak time <i>Eurocents per minute</i>	Comments
TIM 12.10	TIM 12.10	TIM, Vodafone and Wind rates apply from Sept.1, 2005. Peak: Mon-Fri 08.00-18.30 Off-peak: Mon-Fri 18.30-08.00 Sat, Sun & public holidays 00.00-24.00
Vodafone 15.04	Vodafone 9.28	

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Yes. Obligations considered in Agcom's draft decision on Market 16 are transparency, non-discrimination, price control and cost accounting. M-M termination charges are subject to the same rules.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

Yes, prices must be cost-oriented. A glide path was proposed in consultation, but there is no final decision.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

In the current regulatory framework, on-net tariffs are not specifically regulated. This issue is being examined with the implementation of the new regulatory framework.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

In the year 2004, TIM and Vodafone held jointly 82,7% of the market (source: AGCOM, market analysis - share calculated on the basis of revenues).

81. *What is the price of a basket of average user mobile retail services?*

45.4 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

No MVNOs are present in the Italian mobile market, and this issue is not regulated.

D.3. *Business services*

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Yes, Partial Circuits (access circuits) are included in the RIO.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Yes, they are required to be cost-oriented. (Third parties have no means to check the effective application of the cost orientation principle.) Some PCCs are currently determined according to an EU Recommendation; the others are subject to a network cap mechanism. AGCOM's draft decision on leased lines market confirmed the cost orientation principle.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbps/s 2 km?*

688 EUR (connection charges);

350 EUR (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

Yes, but they are often difficult to enforce and to be respected.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

An SLA is provided for, but it is often difficult to have it respected.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

There is a restriction on the use of PPC for migration from LLU to PCCs: the PCC termination point must be located in the same district as the customer's premises. The migration process has also been extremely slow (an alternative operator large company took around 1.5 years to have all its access circuits migrated to the partial circuits offer).

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

Not available in RIO 2005 and not under consideration by AGCOM in the 13-14 market analysis.

D.4. *Broadband*

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access	Shared access
Active loop: <ul style="list-style-type: none">– One-off: 37.00 EUR– Testing loop for xDSL:<ul style="list-style-type: none">– Complete (verification of current degree of use of loop for technology requested and max. transmission speed supported): 11.99 EUR– Reduced (verification of current degree of use of loop for technology requested only): 7.79 EUR– Per month: 8.30 EUR	<ul style="list-style-type: none">– One-off: 44.50 EUR (with splitter provided by alternative operator); or– 39.00 EUR (with splitter provided by TI).– Testing loop for xDSL:<ul style="list-style-type: none">– Complete (verification of current degree of use of loop for technology requested and max. transmission speed supported): 11.99 EUR– Reduced (verification of current degree of use of loop for technology requested only): 7.79 EUR– Per month: 2.80 EUR

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Co-location costs were the object of a dedicated NRA analysis (early 2002), because of their excessive level. One very complex issue proved to be the issue of co-location costs, particularly in reference to site preparation costs. AGCOM had determined monthly rental prices for copper twisted pair lines, but initially failed to pay sufficient attention to co-location costs. This was partly due to the fact that while the cost of twisted pair lines could be inferred from regulatory accounting or from bottom-up network models, site preparation costs had to be assessed on a case by case basis in relation to external factors, such as operators' requests and the specific features of each individual site. AGCOM therefore intervened in order to decrease co-location costs

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

13% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes, even if it is difficult to enforce it.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: available (17%). Option 3: available (0%). Option 4: not available (ECTA Broadband Scorecard, July 2005).

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

83% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

Many restrictions were put in place, and the NRA had to intervene to eliminate them.

The OLOs' claim that there is still a need for NRA intervention, and in particular, that the NRA should set out specific principles to clearly regulate migration procedures in order to:

- reduce inefficiencies to subscribers, synchronizing the interruption and activation of the service;
- manage LLU access services by requiring subscriber communication to the OLO both in case of activation and deactivation of services;
- confirm current asymmetric principles to guarantee competition with particular reference to aggressive and illegitimate win back activities.

AGCOM's draft decisions about Market 11, 12, 1 and 2 include harmonized procedures for migrating among different access services independently of the intermediate service used by the operator or by Telecom Italia. Those procedures will guarantee minimal service interruption in the passage.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

There is no price squeeze test for DSL services, but Decision 6/03/CIR (15 April 2003) defined the costs which could be excluded to set wholesale prices (on a retail minus basis) and established for Telecom Italia the obligation of a prior notification to AGCOM of wholesale economic and technical conditions. Third parties only have a limited ability to verify the NRA's activity on this issue.

ANNEX X - THE NETHERLANDS

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

The reservation of numbers can be obtained within a few days.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

The experience thus far is that the review of reference interconnection offers takes between 6-12 months.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

In general, negotiations take from 3 to 6 months.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

There is no such legal requirement. However, the NRA generally holds public consultations prior to deciding on issues of general interest.

5. *What timescale is usually given for formal consultation?*

Consultations may take up to 6 weeks or less than 2 days (e.g., the retail discounts in 2002).

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

Arguably, the NRA sometimes fails to engage with stakeholders on a non-discriminatory basis. In fact, in the past, some operators have appeared to have privileged access to certain information and to have been aware of the subject-matter of a public consultation prior to other parties.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Yes, although decisions often paraphrase the views expressed by certain stakeholders and it is often considered that the NRA fails to adequately respond to their arguments. An appeal may be brought on the grounds that the NRA did not sufficiently motivate its decision.

8. *Is your NRA required to publish all its decisions upon their adoption?*

Yes.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

They have adopted this only recently.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

Yes.

A.3. Powers and sanctions

11. Are the powers of your NRA clearly defined by law?

These are not defined clearly enough. Under the previous Telecommunications Act, many cases brought before the administrative courts concerned the definition and extent of the NRA's powers (OPTA). The new Telecommunications Act defines OPTA's powers in a more precise way. However, there still seem to be certain issues in this respect.

12. Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.

There is currently an on-going discussion with the EC Commission on the scope of the power to impose remedies without the prior consent of the Minister. Otherwise, the powers are considered consistent with the principles of the new regulatory framework.

13. Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?

Yes. The NRA may impose a fine of up to 10% of the companies' annual turnover. The NRA may also impose periodic penalty payments and suspend the commercial launch of services.

A.4. Scale of resources

14. What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?

According to OPTA's annual report of 2004, there were 138 employees employed for general regulatory issues.

In 2003, approximately 20 persons working on market analysis under the new framework received training regarding general principles of competition law. OPTA has also committed itself to improving the economic reasoning on which strategic choices are made. In 2003, the OPTA bureau was complemented with the Economic Analysis Team ("EAT") headed by a Chief Economist. EAT is responsible for developing economic reasoning and stimulating discussion on key issues within the telecommunications and postal markets. To achieve this, EAT issues: (i) Economic Policy Notes (which focus on economic issues and principles), and (ii) Regulatory Policy Notes (which focus on strategic economic issues in specific regulatory fields). To stimulate discussion, EAT organises roundtables.

15. Are the procedures for selecting the NRA's personnel fair and open (eg conducted through a transparent external selection procedure)?

Yes.

16. Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?

No. OPTA staff are civil servants subject to standard civil servant pay-scales. Although salaries are lower compared to the private sector, other employee benefits (e.g., average 36-hour work week) offer some compensation. However, it has proven more difficult for OPTA to retain experienced staff, due to limited career prospects.

17. Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?

OPTA can and does have recourse to outside expertise.

A.5. Effectiveness of appeal procedure

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

No. Provisional relief must be requested.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

Suspension can be obtained only by a court injunction. Suspension is only granted in the event of urgency and the establishment of a *prima facie* illegality. It is not considered that these conditions are applied in a lax manner.

20. *What percentage of decisions taken since September 2002 were appealed?*

60%-70% of decisions, if not more, were appealed. This concerns mostly decisions concerning interconnection disputes and regulated wholesale services. End-user decisions are in most cases not appealed unless they concern retail discounts.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

The timeframe from the filing of an appeal until the outcome varies significantly and may take 3 months to over 6 years.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

50-60%, if not more. Decisions are mainly overturned as a result of absence of power or inadequate motivation.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

No. However, in practice, the Minister of Economic Affairs has exercised some political pressure on an informal basis.

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

On 1 September 2005, Jens Arnbak, who chaired OPTA since its founding on 1 August 1997, left OPTA. Other management members have been carrying out their activities for over 5 years.

25. *What are the grounds for removal of your NRA's management?*

OPTA's Board members are civil servants and cannot be removed except for "substantial reasons" giving rise to unsuitability for the office. In practice, these grounds for removal are seldom applied in practice and do not limit the independence of OPTA's management.

Removal is restricted to the following circumstances:

- reaching the age of 65;
- incapacity;
- criminal conviction;
- being under legal restraint;
- dismissal because of "revolutionary conviction or political unreliability";

- re-organisation;
- end of term.

Removal for purely political reasons is not allowed.

26. *What are the eligibility requirements for your NRA's management?*

Members of the OPTA Board are independent experts of different disciplines.

Holding a position at a Ministry, the Lower House, a provincial government, or a municipality is not compatible with OPTA membership. Also, OPTA members may not have any financial interest in a company, if this would jeopardise their integrity.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

No.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

19.3%. The Government also holds a golden share in KPN, which does not confer control, but enables the Government to impose certain decisions.

A.7. *Market analysis procedure and imposition of remedies*

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

None so far.

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Not applicable.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

Yes.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

No remedies have been put in place thus far. The process of market analysis started in June 2004.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. *Speed of process*

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

Between 6 and 12 months.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

Yes. However, the dispute settlement body has been very reluctant to do so, even in clear-cut cases.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

The law provides for an interim measures procedure. OPTA has, however, not used this procedure so far.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

The principle of contradiction applies unless OPTA applies the "simplified procedure". The simple procedure can be used, for example, in cases similar to cases previously decided by OPTA.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Appeal may be brought before a specialized jurisdiction ("*College beroep voor het bedrijfsleven*").

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

According to the new Telecoms Act, OPTA has broad powers to impose penalty payments.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

Yes.

B.4. *Effectiveness of appeal procedure*

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice ?*

The provisional decision requires a separate procedure. The suspension is often granted, in particular where financial or operational risks are at stake.

42. *What percentage of decisions taken since September 2002 were appealed?*

Between 70 and 80%.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

The average timeframe from the filing of an appeal until the outcome varies largely. It can take from 2 months up to 2 years.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

More than 60%.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. *Access obligations (AD article 12)*

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

Yes.

46. *Where access has been mandated, does your NRA typically require (e.g. as part of a stated policy) dominant operators to publish a reference offer for access?*

Yes. In practice, however, this appears to be of little use.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

Where conflicting commercial interests are at stake (which is most often the case), settlement generally requires regulatory intervention.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

Yes, however, disputes in relation to these types of issues remain very common.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Yes. However, they have limited impact in practice.

C.2. *Non discrimination and price squeeze (AD article 10)*

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

In general, yes.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

In general, yes.

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

In general, yes. This does not, however, apply to a comparison between different wholesale offers. Market players are also unable to verify whether these rules are applied correctly as a result of the confidentiality of the information.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

Yes (e.g., the OPTA decision of 24 July 2003).

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms eg requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

No.

C.3. *Price control (AD article 13)*

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

Yes.

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

FDC and BULRIC. These methods are clearly specified.

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

Yes. Information about the applied models is available.

C.4. Cost accounting separation (AD article 11)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

Not yet.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

No.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

No.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

No.

C.5. Rights of way and facility-sharing (FD article 11)

62. *Are operators entitled to rights of way on public land?*

Yes.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

Yes.

64. *Are there clear rules in place stipulating the procedure and cost?*

Yes.

C.6. Numbering

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Yes. Number portability is available for all numbers.

66. *Is mobile number portability available?*

Yes. Number portability is available for all numbers.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

Fixed: 10 EUR (10th Implementation Report).

Mobile: 9.5 EUR (10th Implementation Report).

68. *What proportion of fixed and mobile numbers were ported in 2004?*

Fixed: approximately 300,000 numbers out of a total of 7,773,000 lines (10th Implementation Report).

Mobile: 425,000 numbers out of a total of 13.9 million subscribers (10th Implementation Report).

69. *Which, if any, number ranges are available to VoIP providers eg geographic/special VoIP range?*

Number ranges for VoIP providers are not yet available.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?

Interconnection services	Call setup Eurocents		Per minute Eurocents		
	Peak	Off-peak	Peak	Off-peak	
Local	0.53	0.53	0.53	0.27 0.20 0.20	night w/e
Regional	0.60	0.60	0.70	0.35 0.26 0.26	night w/e
National	0.75	0.75	0.90	0.45 0.34 0.34	night w/e

71. Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?

For fixed network operators, a delayed reciprocity rule applies, unless new entrants can prove higher costs.

72. Is carrier selection and pre selection implemented?

Yes.

73. What is the market share (revenue) of alternative operators in the fixed voice market?

Local: 76%; long distance: 61%; international: 46% (10th Implementation Report).

74. What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?

national usage charge in EUR excl. VAT									
Call Setup charge					Conveyance charge per Time Units				
peak	off peak	night	Saturday	Sunday	peak	off peak	night	Saturday	Sunday
0.00720	0.00720	0.00720	0.00720	0.00720	0.01260	0.00630	0.00470	0.00470	0.00470
regional usage charge in EUR excl. VAT									
call Setup charge					Conveyance charge per Time Units				
peak	off peak	night	Saturday	Sunday	peak	off peak	night	Saturday	Sunday
0.00780	0.00780	0.00780	0.00780	0.00780	0.00800	0.00400	0.00300	0.00300	0.00300
local usage charge in EUR excl. VAT									
Call Setup charge					Conveyance charge per Time Units				
peak	off peak	night	Saturday	Sunday	peak	off peak	night	Saturday	Sunday
0.00510	0.00510	0.00510	0.00510	0.00510	0.00530	0.00260	0.00200	0.00200	0.00200

75. Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?

No.

D.2. Mobile

76. What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?

Peak time	Off-peak time	Comments
Eurocents per minute	Eurocents per minute	

KPN Mobile and Vodafone 13.00	KPN Mobile and Vodafone 13.00	Rates have been set by agreement between mobile operators.
Orange, Telfort, T-mobile, Tele 2 14.70	Orange, Telfort, T-mobile, Tele 2 14.70	

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Yes. A price control is in place based on a voluntary agreement to decrease prices in 3 subsequent steps. The 3rd step will be implemented on 1 December 2005. As of 1 July 2006, a BULRICK model will be in place.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

Not yet.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

This issue is expected to be addressed by the remedies imposed for regulating the market for call termination services on mobile networks.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

KPN: 40%

Vodafone: 35%.

81. *What is the price of a basket of average user mobile retail services?*

38.0 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

Yes. Various MVNO operators are operational on the Telfort and KPN networks, such as Tele2 and Versatel. MVNO access is not subject to regulation.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Yes.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Yes, via EDC.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbits/s 2 km?*

468 EUR (connection charges);

492 EUR/month (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? eg KPIs*

No.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes. However, no penalties are applied.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

No.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

No.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access	Shared access
Active loop: <ul style="list-style-type: none">– One-off: 28.81 EUR– Per month: 9.59 EUR	<ul style="list-style-type: none">– One-off: 37.44 EUR– Per month: 1.91 EUR

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Yes.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

26% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes. However, no penalties are applied.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: not available.

Option 3: not available.

Option 4: not available.

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

100% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

No.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

The migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops is not available in the Netherlands.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

No.

ANNEX XI - POLAND

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

The average timeframe for obtaining reservation of numbers is approximately 4 weeks.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

No reference interconnection offers have been reviewed so far.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

10 months.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Yes.

5. *What timescale is usually given for formal consultation?*

Formal consultations are usually given 30 days to be completed.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

Yes.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Yes. The NRA is required to effectively motivate its decisions. An appeal may be brought against an NRA decision that is not sufficiently motivated.

8. *Is your NRA required to publish all its decisions upon their adoption?*

Yes.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

Yes.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

Yes. The NRA is required to publish its operational costs on an annual basis, within 5 months of the end of each budgeting year.

A.3. *Powers and sanctions*

11. *Are the powers of your NRA clearly defined by law?*

Yes.

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

Generally, yes. However, there is one significant exception – the Ministry of Infrastructures (political authority) has the power to define relevant markets.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

Yes. The NRA may impose a fine of up to 3% of the turnover generated by the undertaking during the preceding year. Also, under certain circumstances the NRA may impose a fine on the director of the company of up to 300% of his monthly income. The law does not provide for the possibility for the NRA to impose periodic penalty payments. The NRA may suspend the commercial launch of services if their introduction on the market breaches the Law on Telecommunications.

A.4. *Scale of resources*

14. *What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?*

Approximately 50 employees.

The staff includes 2 economists and 3 lawyers, who do not have experience in the private sector.

15. *Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?*

Yes.

16. *Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?*

The levels of remuneration are laid down in the law on civil service. Although they are slightly higher than in other administrative bodies, they are by far lower than remuneration levels in the private sector. Thus, the NRA experiences very frequent rotation of its staff.

17. *Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?*

The NRA is entitled to use outside expertise. In fact, it often consults outside expertise. There is a sufficient budget to enable the NRA to hire external consultants.

A.5. *Effectiveness of appeal procedure*

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

No.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

Where the NRA decision is immediately effective and then appealed, the NRA may suspend the binding effects of such a decision, both upon its own initiative and upon special request of the appealing party. The binding effects of the NRA decision may also be suspended by the court, again either *ex officio* or upon special request of the appealing party. Polish law does not provide

for a specific standard to obtain such suspension. Thus far, the court has not suspended the binding effects of such decisions.

20. *What percentage of decisions taken since September 2002 were appealed?*

There is no public data on this. However, it is estimated that this should be below 30%.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

- Proceedings before the Court of First Instance: 1.5 years;
- Proceedings before the Court of Appeal: N/A. The procedure to appeal a Court of First Instance decision to the Court of Appeal ("SOFIK" - the Court for Protection of Competition and Consumers) was only introduced on 19 August 2004. To our knowledge, the Court of Appeal has not yet recognized any such appeals.
- Proceedings before the Supreme Court: N/A. Pursuant to Polish law, the procedure for admitting an action before the Supreme Court provides for limited grounds for admission (*i.e.*, not every appeal addressed to the Supreme Court will be admitted). According to our knowledge, the Supreme Court admitted two cases pertaining to the electronic communications sector. However, we are not aware of the duration of these proceedings.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

Around 20%.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

Generally, no. There is, however, one significant exception – the Ministry of Infrastructure (political authority) has the power to define relevant markets.

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

The NRA's management is appointed for a period of 5 years. Members may be re-appointed.

25. *What are the grounds for removal of your NRA's management?*

Members of the NRA's management may be removed only in case of:

- flagrant infringement of the statutory laws;
- a judgement prohibiting a member from holding a managing position or from carrying out activities that relate to particular responsibilities within the public authorities,
- a judgement finding a member guilty of committing a criminal offence intentionally;
- an illness that permanently prevents the member from carrying out his activities within the NRA;
- resignation of a member.

26. *What are the eligibility requirements for your NRA's management?*

The eligibility requirements for being appointed as a member of the NRA's management are:

- Polish citizenship;
- permanent domicile in Poland;

- higher education;
- experience in the postal or telecommunication sector.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

Yes.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

The Government holds a non-controlling 3,87 % stake in the incumbent's share capital.

A.7. Market analysis procedure and imposition of remedies

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

None. The NRA is most advanced with respect to the analysis of Market 15 (access and call origination on public mobile telephone networks). In fact, in September 2005, the NRA found that this market is not effectively competitive. The analysis of the remaining 17 markets has not yet reached the initial consultation phase.

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Not applicable.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

Yes. The only market analysis initiated thus far (Market 15) has been conducted in consultation with the competition agency. However, the analysis has not yet identified operators with SMP.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

N/A. None of the market analyses has been completed so far.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. Speed of process

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

12 months.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

No.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

No.

B.2. Due process

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Both parties may bring an appeal against the NRA decision before the Warsaw District Court, which is also referred to as the Competition and Consumer Protection Court.

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

Yes, the NRA is entitled to impose fines. It rarely uses this possibility, despite the fact that the incumbent frequently breaches its decisions.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

Theoretically, yes. The NRA has the power to enforce its own decisions. However, no enforcement proceedings have been initiated by the NRA so far.

B.4. *Effectiveness of appeal procedure*

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice ?*

See Question 19.

42. *What percentage of decisions taken since September 2002 were appealed?*

All decisions taken since September 2002 were appealed (excluding the decisions on dismissal of cases).

43. *What is the average timeframe from the filing of an appeal until the outcome?*

See Question 21.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

20%.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. *Access obligations (AD article 12)*

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

The NRA's policy is usually commented on at a very general level. Statements most often concern the NRA's overall policy objectives, rather than detailed regulatory measures in relation to the obligation to supply access.

46. *Where access has been mandated, does your NRA typically require (e.g. as part of a stated policy) dominant operators to publish a reference offer for access?*

Yes.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

There is no such standard procedure. The NRA generally considers that, unless an operator has been explicitly required to allow a specific type of access, this operator may not be required to allow access by means of regulatory intervention.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

No. SLAs are not commonly available, imposed, or reviewed by the NRA.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

No.

C.2. *Non discrimination and price squeeze (AD article 10)*

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

No operator has been found thus far to have SMP under the NRF. According to the interim provisions of the Law on Telecommunications, the incumbent has a general non-discrimination obligation.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

No. The non-discrimination obligation has not yet been precisely defined.

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

Yes. However, given the absence of implementation, the NRA has failed to effectively apply them.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

No.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms eg requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

Yes.

C.3. *Price control (AD article 13)*

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

No. The NRA has essentially applied benchmarks thus far.

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

Cost-orientation has not been applied yet. Once cost-orientation is implemented, the methodology shall be LRIC.

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

Information concerning the number of subscribers and the WACC is made available. Information on cost allocation between network components is not disclosed. Benchmarks pertained to tariffs and not to the cost allocation between network components.

C.4. *Cost accounting separation (AD article 11)*

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

The NRA has not imposed any cost accounting separation obligation under the NRF thus far.

Pursuant to the interim provisions of the Law on Telecommunications, the fixed-line incumbent is obliged to comply with the following obligations.

At wholesale level, the incumbent must:

- carry out regulatory accountancy in accordance with the Instruction approved by the NRA in a manner that allows for identification of internal transfers;
- calculate justified costs of interconnection and apply cost-oriented tariffs (the NRA may impose benchmarks in case these costs cannot be established).

At retail level, the incumbent must:

- carry out regulatory accountancy in accordance with the Instruction approved by the NRA;
- calculate costs of services in accordance with the Cost Calculation Description approved by the NRA;
- determine prices of services based on their costs;
- submit price lists and general rules on the provision of services to the NRA for approval.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

No.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

Yes.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

No.

C.5. *Rights of way and facility-sharing (FD article 11)*

62. *Are operators entitled to rights of way on public land?*

Yes.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

Yes.

64. Are there clear rules in place stipulating the procedure and cost?

No. This depends on the rules determined by the municipalities.

C.6. Numbering

65. Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?

Not yet. Number portability will be available by end-2005 for both geographic and non-geographic numbers. Portability of geographic numbers will be limited to one numbering zone.

66. Is mobile number portability available?

Not yet. Portability in mobile networks will be limited to the post-paid market.

67. What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?

Prices are not yet defined. The relevant regulations merely provide that prices should not be excessive. According to the Law on Telecommunications, operators are required to respond to customers within a fixed timeframe. Thus, donor operators have 14 days and recipients have 7 days to process such requests. Services to customers may be interrupted for a maximum period of 24 hours.

68. What proportion of fixed and mobile numbers were ported in 2004?

None.

69. Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?

A special numbering range is used for VoIP (AB = 39).

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?

Interconnection services		Call setup		Per minute		
		Peak	Off-peak	Peak	Off-peak	
Local	Eurocents	0,00	0,00	0,69	0,35	w/e
	ZI			0,0285	0,0143	
Regional(One numbering zone)	Eurocents	0,00	0,00	0,52	3,09	w/e
	ZI				0,58	
	Eurocents	0,00	0,00	1,16	0,58	w/e
	ZI			0,0476	0,0238	
National(single transit)	Eurocents	0,00	0,00	0,87		w/e
	ZI			0,0357		
	Eurocents	0,00	0,00	1,37	0,69	w/e
	ZI			0,0565	0,0282	
National(double transit)	Eurocents	0,00	0,00	1,03		w/e
	ZI			0,0424		
	Eurocents	0,00	0,00	1,79	0,90	w/e
	ZI			0,0738	0,0369	
	Eurocents	0,00	0,00	1,34		w/e
	ZI			0,0553		

Peak: Mon-Fri 08.00 to 18.00 / Peak week-end: Sat, Sun, public holidays 08.00 to 18.00
Validity: from 30 June 2004 until superseded by new RIO.

71. Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?

No. According to the NRA's policy, a new entrant should apply the same tariffs as the incumbent operator.

72. Is carrier selection and preselection implemented?

Yes.

73. What is the market share (revenue) of alternative operators in the fixed voice market?

21%.

74. What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?

Interconnection services		Call setup		Per minute		
		Peak	Off-peak	Peak	Off-peak	
Local	Eurocents	0,00	0,00	0,69	0,35	w/e
	ZI			0,0285	0,0143	
	Eurocents	0,00	0,00	0,52		w/e
	ZI				3,09	
Regional(One numbering zone)	Eurocents	0,00	0,00	1,16	0,58	w/e
	ZI			0,0476	0,0238	
	Eurocents	0,00	0,00	0,87		w/e
	ZI			0,0357		
National(single transit)	Eurocents	0,00	0,00	1,37	0,69	w/e
	ZI			0,0565	0,0282	
	Eurocents	0,00	0,00	1,03		w/e
	ZI			0,0424		
National(double transit)	Eurocents	0,00	0,00	1,79	0,90	w/e
	ZI			0,0738	0,0369	
	Eurocents	0,00	0,00	1,34		w/e
	ZI			0,0553		

Peak: Mon-Fri 08.00 to 18.00 / Peak week-end: Sat, Sun, public holidays 08.00 to 18.00
Validity: from 30 June 2004 until supersede by new RIO.

75. Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?

No.

D.2. Mobile

76. What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?

Mobile termination rates		Mobile termination rates		Comments
Peak time		Off-peak time		
<i>National currency per min</i>	<i>Eurocents per min</i>	<i>National currency per min</i>	<i>Eurocents per min</i>	
PTK Centertel (Idea)		PTK Centertel (Idea)		Peak: Mon-Fri 08.00-18.00
<i>ZI</i>	<i>Eurocents</i>	<i>ZI</i>	<i>Eurocents</i>	Off-peak: Mon-Fri 18.00-07.00
0.65	15.80	0.48	11.67	Mon-Fri 18.00-07.00
		0.40 w/e	9.73 w/e	Separate charges for weekends and public holidays.
PTC(Era GSM)		PTC(Era GSM)		No call set-up charges.
<i>ZI</i>	<i>Eurocents</i>	<i>ZI</i>	<i>Eurocents</i>	
0.65	15.80	0.48	11.67	
		0.40 w/e	9.73 w/e	

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Neither fixed to mobile, nor mobile to mobile termination is currently subject to regulation.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

No.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

No.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

PTC 36%, PTK Centertel 33%.

81. *What is the price of a basket of average user mobile retail services?*

39.6 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

No.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

No.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Not applicable.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbits/s 2 km?*

Not applicable.

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

No.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Not applicable.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

Not applicable.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

No.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

In theory, yes. Thus far, however, no end user has been connected through ULL access. Contracts with the incumbent are still under negotiation.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access	Shared access
Active loop:	
One-off: ZI 161.00 (40.00 EUR)	One-off: ZI 306.00 (76.50 EUR)
Per month: ZI 58.00 (14.50 EUR)	Per month: ZI 29.00 (7.25 EUR)

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

These rates are not specified as fixed rates, but are calculated each time based on cost estimation. In the Reference Unbundling Offer, the NRA did not determine the time limits for supplying these services.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

0% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

No.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: not available.

Option 3: not available.

Option 4: not available.

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

100% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Not applicable.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

Not applicable.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

No.

ANNEX XII - PORTUGAL

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

The decision on the grant of rights of use shall be taken, communicated and made public within a maximum period of 15 days for numbers that have been allocated for specific purposes within the National Numbering Plan.

Where the grant of rights of use is subject to competitive or comparative selection procedures, the 15 day period may be extended by an additional period of 15 days.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

The Reference Interconnection offer (RIO) is revised on an annual basis. The review process commences during the last quarter of the year and usually extends to the beginning of the following year. The tariffs generally apply with retroactive effect as of January. It would be helpful, especially for business planning purposes, to have tariffs established by November at the latest.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

4 months. However, no official data is available, nor has there been any recent experience.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Yes. Whenever the NRA intends to adopt measures that are likely to have a significant impact on a relevant market, it must make its project public and give interested parties the opportunity to comment on it (Portuguese Telecom Act (Regicom, Law 05/2004), Article 8).

5. *What timescale is usually given for formal consultation?*

A minimum of 20 week days. The NRA is required to publish the draft measure and give interested parties the opportunity to comment on it.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

No.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

NRA decisions and measures must be effectively motivated.

Infringement decisions may be appealed before the commercial courts.

Any other measures taken by the NRA may be appealed before the administrative courts. This procedure requires that three experts (one appointed by each party, and the third appointed by the court), appraise the merits of the appealed decision including the motivation.

8. *Is your NRA required to publish all its decisions upon their adoption?*

The NRA is required to publish its decisions. Also, decisions must be notified to the interested parties.

9. *Does your NRA disclose and consult on its action plan on a regular basis*

The NRA publishes its annual action plan. Comments that may be made on this plan do not have any formal implications on the NRA's activity.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

Data concerning the operating costs of the NRA is publicly available. However, this data does not appear to be sufficiently detailed.

The NRA budget is drawn up in accordance with the General Accounting Plan. The public accounting regime is thus not applicable. The NRA has a statutory audit council that is in charge of controlling the legality and economic practices of its management of assets and finances. The statutory audit council is also in charge of issuing an opinion on the budget and the annual report of the NRA and of informing the responsible entities where irregularities are detected.

The NRA's pluri-annual activity and financial plan, as well as its budget and annual report, are subject to the Government's approval.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

Yes.

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

Yes.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

Yes. The NRA may impose on an individual a fine ranging from 500 EUR to 3,740 EUR. It may impose on companies fines ranging from 5,000 EUR to 5,000,000 EUR. In

addition, the NRA may in certain cases prohibit the exercise of a specific activity for a period of up to 2 years. It may also prohibit participation in tenders or auctions for a maximum period of 2 years. Finally, the NRA may impose penalty payments where an individual or a legal entity fails to comply with its decision. Penalty payments may range from 10,000 EUR to 100,000 EUR. They are determined with regard to both the undertaking's turnover and the negative effects resulting from non-compliance in the market and on customers.

A.4. Scale of resources

14. What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?

Approximately 50.

There are 10 competition economists and 3 competition lawyers. About half of these have private sector experience.

15. Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?

Yes.

16. Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?

In general, the NRA must remunerate its staff according to the remuneration tables approved by its Managing Board. Remuneration levels of the NRA's staff do not significantly differ from average remuneration levels in the industry.

17. Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?

Yes.

A.5. Effectiveness of appeal procedure

18. Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?

Two appeal procedures are available:

(1) Appeals before the commercial courts.

Appeals brought before the commercial courts have a suspensory effect where the decision appealed is an infringement decision and imposes fines or additional sanctions.

(2) Appeal before administrative courts.

Appeals do not have a suspensory effect. This appeal procedure concerns any other measure or decision taken by the NRA.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

Operators/service providers may request the court to suspend the NRA decision until the court has reached a decision on the appeal. This request automatically suspends the binding effects of the NRA's decision. However, in such case, the NRA may submit to the court a declaration stating that non-execution of the decision affects the public interest, in which case the request is usually rejected. The court's decision to grant or reject the suspension may also be appealed.

20. *What percentage of decisions taken since September 2002 were appealed?*

Less than 10% of the regulatory measures are appealed.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

Over 1 year, possibly 3 to 5 years.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA decisions being annulled or overturned?*

No NRA decisions have been annulled or overturned since 2002. Court decisions only annulled or reduced fines.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal) when performing its regulatory tasks (e.g. grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

The NRA is independent in the exercise of its functions. Without prejudice to its organic and functional independence, it is subject to the tutelage of the member of Government in charge of communication and the Ministry of Finance. Also, the Government sets general guiding principles concerning the communication policy. A number of NRA acts are subject to the Ministry's approval (e.g., the activities plan, the budget and the annual accounts).

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

The NRA is managed by three different bodies: the board of directors, the statutory audit council, and the advisory council.

Members of the board of administration (3 or 5) are appointed by the Government for a non-renewable period of five years.

The statutory audit council consists of a chairman and two board members. One of the board members is the chartered accountant, appointed for a renewable period of three years upon the joint decision of the Ministry of Finance and the Ministry of Tutelage.

Members of the advisory council are appointed for a renewable period of three years. They may, however, be replaced by the entities in charge of their appointment.

25. *What are the grounds for removal of your NRA's management?*

Members of the board of directors may be removed in the following circumstances :

- permanent incapacity;
- resignation;
- resolution of the Council of Ministers in case of serious professional fault;
- where a court finds a member to be guilty of committing a criminal offence.

The board of directors may be dismissed upon a resolution of the Council of Ministers and the opinion of the NRA's advisory council in the following two cases:

- Serious irregularities in the functioning of the body;
- Unjustified expenses which significantly exceed budget, absent any justification.

26. *What are the eligibility requirements for your NRA's management?*

Members of the board of directors are chosen among persons of recognised independence and professional competence.

Members of the NRA's management cannot include persons who have been members of the managing bodies of companies that are active in the telecommunication sector.

Finally, members of the NRA's board of directors: (a) may not have financial interests or shares in regulated companies in the telecommunication industry; (b) may not, during their mandate, exercise any other public function or professional activity other than part-time teaching activities in higher education; and (c) must comply with principles of incompatibilities applicable to holders of high public offices.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRA's? Are such objectives consistent with the objectives in the Framework Directive?*

Yes. The NRA statute clearly defines its responsibilities. Also, the law on electronic communications defines the NRA's regulatory principles and objectives. These are in line with the EU Regulatory Framework.

28. *What percentage of the incumbent share capital is held by the government? Does it confer control?*

The Government currently holds a 1.82% stake in the incumbent's share capital.

Additionally, the Government holds 500 "A shares" that allow it to nominate the Chairman and one-third of the members of the Board of Directors. These shares also give the Government certain veto rights with respect to: (a) distribution of dividends in excess to 40% of each year's distributable cash, (b) alteration of equity, and (c) amendments to the Articles of Association.

A.7. Market analysis procedure and imposition of remedies

29. Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?

The NRA has completed most market analyses identified in the Commission's recommendation, except for Markets 15, 17 and 18. Further information may be found on the following link: [SMP market analysis](#).

30. For those analyses where significant market power was found, have remedies been imposed in all cases?

Yes. Further information may be found on the following link: [remedies imposed](#).

31. Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?

The NRA's draft measures are subject to the Competition Authority's prior opinion. According to the law, this opinion shall be issued within 30 days of the request.

Arguably, both the market analysis and imposition of remedies may not have been conducted in a rigorous manner, in accordance with competition law and economic principles, as set out in the Commission's Guidelines.

32. What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?

19 months.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. Speed of process

33. What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?

Approximately 6 months. The dispute settlement body is the NRA itself. The new Law provides for a timeframe of 4 months, except in exceptional circumstances.

34. Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?

Yes.

Where the NRA has evidence that an operator/service provider fails to comply with the conditions of exercise of its activities (e.g. general authorizations, rights of use of numbers and spectrum), it may take urgent interim measures to remedy this situation.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

The NRA has adopted interim measures in exceptional circumstances. In general, the NRA may take interim measures where these are required by the existence of an immediate and serious threat to public order, public security or public health, or where the situation that needs to be remedied is likely to cause serious economic or operational problems to other providers or users of electronic communication networks or services.

B.2. Due process

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Decisions of the dispute settlement body may be appealed before the administrative courts.

B.3. Effectiveness of sanctions

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

Yes.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

Yes. However, it appears that failures by the incumbent to implement the NRA's decisions on access and interconnection often remain unpunished.

B.4. Effectiveness of appeal procedure

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice?*

Operators/service providers may request the court to suspend the NRA decision until the court has reached a decision on the appeal. This request automatically suspends the binding effects of the NRA's decision. However, in this case, the NRA may submit to the court a declaration stating that non-execution of the decision affects the public interest, in which case the request is usually rejected. The decision of the court granting or rejecting the suspension may also be appealed.

42. *What percentage of decisions taken since September 2002 was appealed?*

Around 5% of administrative decisions were appealed, not including breach proceedings where information is not available.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

Over 1 year. Possibly 3 to 5 years.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

There is no data available concerning breach proceedings. For regulatory/administrative decisions, all appeals remain pending.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. Access obligations (AD article 12)

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

The NRA's policy is defined on a case-by-case basis according to the relevant markets. Basic principles are provided under Law 5/2004.

46. *Where access has been mandated, does your NRA typically require (e.g. as part of a stated policy) dominant operators to publish a reference offer for access?*

Generally, yes. While in some areas, reference offers have existed for years (e.g. ULL, Wholesale ADSL, Interconnection), in other areas the obligation to publish reference offers has only recently been imposed on the dominant operator and has not been implemented yet for e.g. Ducts, Wholesale Line rental and Leased Lines.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

Reference offers only provide for a general procedure. In most cases, if not all, regulatory intervention has been necessary in order to establish reasonable conditions. In fact, the conditions that the incumbent unilaterally requires have often not been accepted.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

Reference offers usually contain some SLA procedures. These, however, are often inappropriate. The NRA often appears to be reluctant to play a decisive part in these issues. Also, a “hands on” approach appears to be necessary in order to monitor the SLAs' effectiveness.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Yes. However, financial penalties are rarely significant enough to be deterrent.

C.2. Non discrimination and price squeeze (AD article 10)

50. Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?

Yes, in theory. In practice, however, implementation of the non-discrimination obligation is less clear.

51. Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?

Yes, in theory. In practice, however, implementation of the non-discrimination requirements across the value chain is less clear.

52. Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?

Substantive modifications of the wholesale offer in the broadband area must be notified to competitors two months in advance. Modifications that are not substantive must be notified to competitors one month in advance.

In other areas, such as ULL, the incumbent operator is required to notify competitors 30 days in advance. Concerning retail offers, the Telecommunications Act provides for an obligation to publish tariffs and to notify changes to the users.

However, as indicated below in response to Question 57, the granularity of the information is often considered insufficient.

53. Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples

The NRA has applied the price squeeze test in a limited number of cases (e.g. the incumbent's broadband access tariffs and voice telephony minutes packages). However, no detailed information has been published in this respect. Arguably, the test that is applied sometimes lacks relevance. For example, the NRA approved retail offers allowing margins as low as 5% (after product direct costs).

54. Does the NRA have specific provisions to enforce non-discrimination on non-price terms e.g. requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?

The NRA declared that it had investigated certain KPIs (e.g. broadband access delivery period), but had not found any evidence of discrimination. However, no detailed information has been disclosed on this issue. New entrants strive to have published KPIs comparing service levels to incumbent group companies and to their own requests.

With respect to the ULL offer, it appears that the incumbent fails to grant alternative operators with conditions that are equivalent to its own services. Incumbents' offers, which are downstream in the value chain, offer SLAs that are incompatible with the conditions provided in its ULL offer.

C.3. Price control (AD article 13)

55. Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost orientation, retail minus or benchmarks?

No. The policy depends on the specific service. The cost orientation argument has nevertheless been frequently brought forward to justify wholesale prices that the market considered to be excessive.

56. If cost orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?

The methodology is not always clearly specified. Where cost accounting data is used, it refers to the incumbent's system, which is based on historical costs. The LRIC system is not implemented. However, a recent evaluation of different cost models was submitted to public consultation, and some changes are expected in the near future.

57. Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?

No detailed information is available enabling competitors to understand cost models and assess compliance with cost orientation. The NRA has only published a very general informative document setting out the overall methodology of the incumbent's accounting system (based on the ABC – Activity Based Costing – technique) and recently launched a public consultation on accounting systems.

C.4. Cost accounting separation (AD article 11)

58. Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?

Yes. The NRA has imposed a cost accounting separation obligation on SMP operators in Markets 1 to 6, 8, 9 (in Market 9, only in relation to PT Group companies), 11 to 14 and 16.

This obligation has also been imposed with respect to publicly available telephone calls provided at a fixed location - non-geographic numbers, which is a new relevant market defined by the NRA outside the list contained in the European Commission Recommendation C(2003)311.

The NRA has not imposed a cost accounting separation obligation in Market 7. In Market 10, no PMS operators were identified. The other Markets (15, 17, 18 and 19) have not yet been subject to a market analysis consultation.

59. Is the methodology for accounting separation clearly specified and subject to consultation?

See Question 64. The NRA recently declared that a decision would be adopted upon the publication of the European Commission's Recommendation on accounting systems and accounting separation.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

No. The NRA only carries out an assessment of conformity in accordance with previous ONP Directives and in relation to the years prior to 2001.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

The published information does not allow drawing any such conclusion.

C.5. Rights of way and facility-sharing (FD article 11)

62. *Are operators entitled to rights of way on public land?*

Yes (Article 24 of Law 5/2004). However, implementation of these rights is not yet effective everywhere.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

No.

64. *Are there clear rules in place stipulating the procedure and cost?*

No. In fact, some municipalities limit the possibilities to install the necessary infrastructure. Also, local taxes often lack clarity, thus jeopardising effective implementation of the rights of way on public land.

C.6. Numbering

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Yes. Number portability includes non-geographic numbers.

66. *Is mobile number portability available?*

Yes.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

8 to 20 week days. Porting of numbers involves the payment of a fee to the Portability Reference Entity, as well as a fee paid to the donor operator. The cost of porting an individual fixed number currently amounts to 7,20 EUR. The cost of porting an individual mobile number is 15 EUR. Volume discounts are granted both by the Reference Entity and by the Donor operator for number ranges (DDIs).

68. *What proportion of fixed and mobile numbers were ported in 2004?*

During the year 2004, 41.914 fixed numbers and 27.818 mobile numbers were ported (according to the Portability Reference Entity data for 2004). These represented 0.99% and 0.28% , respectively, of fixed telephone lines and mobile subscribers.

69. Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?

No ranges are specifically available for VoIP providers.

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?

Interconnection services	Call setup <i>Eurocents</i>		Per minute <i>Eurocents</i>	
	Peak	Off-peak	Peak	Off-peak
Local	0.600	0.600	0.480	0.230
Simple transit	0.700	0.700	0.740	0.380
Double transit	0.800	0.800	1.200	0.640
Peak: Mon-Fri. 09.00-19.00				
Valid from 1 Jan. 2005				

71. Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?

Yes. New entrant operators are entitled to apply charges that are up to 20% higher than the incumbent's charges. This corresponds to a delayed reciprocity of 2 years. On 28 July 2005, the NRA launched a consultation on a decision that sets charges at 0.876 EUR/m. This figure is calculated based on the incumbent's average termination revenues per minute, plus 20%. New entrants have decisively opposed to this figure. The issue has not been resolved yet.

72. Is carrier selection and preselection implemented?

Yes.

73. What is the market share (revenue) of alternative operators in the fixed voice market?

7% and 19.9% respectively (1st quarter of 2005). These figures have been provided by the NRA. They are based on the number of fixed telephone accesses and traffic volumes (in minutes, including dial-up Internet).

74. What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?

The tariffs are the same as those applicable for call termination.

75. Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines is wholesaled through WLR?

No.

D.2. Mobile

76. What is the peak rate fixed to mobile termination charge applied by the largest mobile operator in your country?

Peak time	Off-peak time	Comments
<i>Eurocents per minute</i>	<i>Eurocents per minute</i>	
Optimus 19.50	Optimus 19.50	MTRs are based on per second billing after the first second No peak/off-peak set-up/conveyance differentiation. MTRs applying as of 1 Jul. 2005 until Sept. 2005 (3Q2005).

77. Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non discrimination

Yes.

78. Where price regulation is applied, are prices required to be cost oriented? Has a glide path been applied, and if so, at what date are prices projected to reflect actual costs?

Yes. There is a glide-path with reductions each quarter (initiated on 7 March 2005, until 31 December 2005):

The NRA has not given any explanation as to whether prices at the end of the period reflect actual costs. The NRA only stated that it took into account the convergence of the various termination regimes and the principles underlying the evolution of fixed-mobile termination, mobile-mobile termination, and international call termination when drawing up this price control.

79. Where non discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?

The NRA set equal prices for fixed to mobile and for mobile to mobile off-net rates. The NRA examined the possibility of imposing a non-discrimination obligation, under which the SMP operator would not be allowed to charge on-net retail prices lower than termination prices. The NRA considered that applying such a remedy “*could not be justified in respect of the identified problem. The obligation would imply controlling the prices charged in the retail market. Bearing in mind that this market is not identified as a relevant market for ex-ante regulation, such imposition would be improper. On the other hand, the obligation would be disproportionate and intrusive, and would excessively limit the commercial strategies of the mobile operators*”.

Thus, the mobile operators are free to charge mobile to mobile on-net call rates that differ from the off-net call rates.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

No official data is available. Based on information provided by the MNOs to the press, it can be inferred that market shares were 47.5% and 32.5% respectively (2004).

81. *What is the price of a basket of average user mobile retail services?*

29.7 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

There are no MVNOs operating in Portugal. The issue could possibly be regulated within the framework of Market 15 analysis. This analysis is delayed and has not been submitted to public consultation yet.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Yes, in the sense that an operator that is co-located in the incumbent's premises may collect at such point local tails connecting different users located in the corresponding switch coverage area.

84. *Are PPCs required to be cost oriented, and is the cost orientation principle effectively applied?*

In theory, yes. No specific data is available on the application of the cost orientation principle.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbits/s 2 km?*

751 EUR (connection charges).

134 EUR (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

No. The issue may be addressed in the Leased Lines Reference Offer, which the NRA is currently preparing.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

In its deliberation of 8 July 2005 concerning the leased lines market, the Regulator placed the PT Group under the obligation to include, in the upcoming Leased Lines Reference Offer, SLAs regarding the supply and migration conditions, as well as communication and repair time.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

Yes. PPCs are offered for access only to final users in the geographical coverage area of the switch where the OLO is co-located. PPCs cannot be used to establish interconnection circuits between third parties or between them and the incumbent.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

Yes. However, this is not regulated and has not attracted the interest of new entrants.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set up and recurrent tariff charged for both full and shared ULL access?*

Full access	Shared access
Active loop: – One-off: 38.00 EUR Same as for provision of voice services. Optional loop testing for high frequencies: 69.83 EUR.	– One-off: 38.00 EUR – Per month: 2.95 EUR

92. *Are associated facilities such as co-location required to be made available at cost oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

In principle, yes. However, new entrants have complained that current tariffs may not be cost-oriented. The NRA has modified the rates and terms contained in the Reference Offer defined by the incumbent.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

5% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

There is only the Reference Offer, which includes different QoS objectives and provides for penalties for failure to meet them. Since penalties have been rather inefficient, the NRA recently launched a public consultation on a draft decision on this issue. The final outcome is pending.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: not available.

Option 3: available (8%).

Option 4: not available.

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

92% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes. These are, however, particularly ineffective.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

The resale ADSL offer does not provide for any procedure allowing for the migration of customers, whose services are supported on this offer, to services supported on unbundled local loops. Such process thus requires deactivation of the ADSL access (this generally takes between 12 and 20 working days), followed by the request of transfer to the local loop (this generally takes 7 working days). Such transfer usually causes temporary service interruption.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

There is no formal and public price squeeze test. Nevertheless, the NRA set prices in both cases, invoking the need to allow the "investment ladder". New entrants, however, claim that these tests have not been applied with respect to options 2 and 4 of the bitstream offer, since price structures seem to be incompatible.

ANNEX XIII - SPAIN

A. REGULATOR - GENERAL FUNCTIONS

General comment. According to Article 46 of the General Telecoms Law ("GTL"), there are 5 regulators in Spain (the Government, the bodies of the Ministry of Industry, Tourism and Commerce with telecom competencies, the superior bodies of the Ministry of Economy in retail price-related issues (until the market review is completed and therefore, when the transitory period expires) and universal service prices; the Telecommunications Market Commission ("CMT"); and the National Radio - Communications Agency). Answers provided below will refer, unless otherwise specified, only to the CMT.

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

Currently, reservation of numbering is not foreseen in the Spanish legislation. Only the assignment of numbers is contemplated. Art. 56 of Royal Decree 2296/2004 of 10 December, which approves the Regulation on Electronic Communications markets, access to networks and numbering (Regulation MEAN) states a term of 3 weeks for the CMT to assign numbers to operators. In practice, numbers are granted in two weeks on average.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

Although these offers were to be reviewed annually, in practice it takes two years. Meanwhile, there are usually modifications of the RIO in force. The last RIO was published on 10 July 2003, and the last modification dates from 31 March 2004. This year, the new RIO is expected to be approved for November 2005.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

Regulation MEAN provides for a timeframe for negotiations of 4 months as of the date of the start of negotiations.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

While not compulsory, the CMT may initiate public consultations to gain better knowledge of market conditions. In practice, the CMT has held public consultations on a variety of issues of particular importance.

5. *What timescale is usually given for formal consultation?*

The general administrative law states that the minimum term for interested parties to submit comments should be 20 days from the date of publication in the Official Journal and in practice, this usually varies between one and three months.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

Yes. The CMT is generally very open to meet operators informally.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Yes, this is required by general procedural law. Failure to motivate is a reason for annulment of the decision.

8. *Is your NRA required to publish all its decisions upon their adoption?*

Yes, if the decisions are not determined to be confidential. Recently, the CMT has increasingly considered resolutions to be confidential, and this is becoming a concern for operators. Also, the CMT no longer publishes decisions concerning disputes between operators (such as access disputes), with the exception of decisions considered as affecting the public interest. Finally, the Secretary of State of Telecoms ("SETSI") does not publish its decisions.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

No.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

Yes. CMT is required to prepare a draft budget each year, according to the structure determined by the Ministry of Finance. Once approved by the Government, the budget is sent to Parliament and included in the General State Budget. Annual accounts of the CMT are audited annually and published in the BOE (State Official Gazette). Moreover, the CMT's economic and financial results are also published in the Annual Report each year.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

Yes. The CMT's functions are clearly defined in Article 48 of the General Telecoms Law. However, in practice, there are certain conflicts in interpreting these powers. Conflicts exist mainly between (i) the CMT and SETSI (e.g., regarding issues of numbering, carrier selection and pre-selection) and (ii) the CMT and the Competition Authority (regarding competition matters, as the CMT is not entitled to apply competition law (Articles 81 and 82 EC Treaty and subsequent national legislation), but nonetheless decides on anti-competitive practices).

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

The New Telecoms Law has reinforced the CMT's regulatory powers according to the principles of independence, transparency and non-discrimination, in accordance with the new regulatory framework.

In October 2003, the European Commission opened proceedings against eight Member States, including Spain, due to the failure to notify transposition measures. However, the following month, Spain notified the Commission of its implementation of the Directives and the infringement proceeding was subsequently closed.

In the 10th Implementation Report (December 2004), the European Commission identified some issues that merited consideration in relation to full implementation of the new framework. Regulations developing the New Telecom Act, which were necessary to fully transpose the new regulatory framework, had yet to be adopted. Such implementing regulations were adopted on 31 December 2004 and 15 April 2005 (Regulation on Electronic Communication Markets, Network Access and Numbering, approved by Royal Decree 2296/2004; and Regulation on Electronic Communication Services, Universal Service and Users Protection, approved by Royal Decree 424/2005).

13. Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?

Yes (Art. 56.4 GTL). The minimum penalty is fixed at 30.000 Euro, applicable to non-serious infringements and the maximum is up to 5 times the benefit of the infringement. If this amount is not quantifiable, the maximum fine can amount to: (a) 1% of total revenues, (b) 5% of total assets or (c) 20.000.000 Euro.

Periodic penalty payments are not foreseen, but the CMT is entitled to suspend the commercial launch of services. A penalty has also been introduced (maximum of 60.000 Euro) for legal representatives and managing committees participating in the decision process that is subject to sanction.

A.4. *Scale of resources*

14. What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?

The CMT's authorised staff for 2004 was 140 employees. As of 31 December 2004, there were 110 employees, plus 9 members of the Council. Half of these are assigned to the relevant service (Legal, Market and Economics, Technical, and Operators Regulation). Numbering management is done within the Technical department.

Additionally, CMT's headquarters will be moved from Madrid to Barcelona (Royal Decree 2397/2004). Around half of the staff has decided to resign and, consequently, public examinations have been held in order to hire new employees.

There is no public information on actual competition staff and experience. In any event, due to impending relocation scheduled for November 2005, the existing staff will largely be changing soon. Currently, there are lawyers in (i) the legal department (8); (ii) the operators regulation department (around 6), and (iii) the market and economics department (around 3). Of these 17 lawyers, it is estimated that about half of them have competition experience. Half of these civil servants have experience of the private sector.

15. Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?

Yes. The Council members (President, Vice-president and 7 Council members) are appointed by the Government by Royal Decree, following a proposal made by the Economy and Industry, Tourism and Commerce Ministries. Members of the management (directors and subdirectors) are nevertheless appointed by the Board. Recruitment of other personnel is conducted through public examination and according to merit and capability.

16. Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?

The NRA has freedom to set remuneration at the upper staff levels. Lower levels are fixed and public. They are all controlled by the Ministry of Economy. The general feeling is that members of CMT are considered to be fairly paid.

17. Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?

Yes.

A.5. Effectiveness of appeal procedure

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

No. The appeal does not suspend its binding effects. Suspension can be requested as an interim measure.

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

It must be demonstrated that (i) execution of the resolution will cause irreparable harm and (ii) there is a fair cause for nullity.

20. *What percentage of decisions taken since September 2002 were appealed?*

There is no public data. However, in practice, Telefónica appeals almost every decision that is detrimental to its interests.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

There are two types of appeal: an administrative appeal before the CMT and a judicial appeal before the High Administrative Court ("*Audiencia Nacional*").

Proceedings before *Audiencia Nacional* usually take 2 or 3 years¹. These judgements can subsequently be appealed before the Supreme Court ("*Tribunal Supremo*"), which may take another 2 years.

The final decision can take 5 years in the worst case.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

There is no public data regarding this matter. However, according to a public speech by a CMT Director, only a very limited number of decisions are (or are likely to be) annulled on appeal.

A.6. Independence

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

Not legally. The CMT is an independent organism, affiliated with the Ministry of Industry, Tourism and Commerce. In practice, since members of the Board are appointed by the Government, two different Ministries exercise *de facto* influence over the CMT (Industry and Economy).

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

6 year duration, with a one-time re-appointment (total of 12 years) (Art. 48.7 General Telecoms Law (GTL)).

25. *What are the grounds for removal of your NRA's management?*

The grounds for removal are: (a) removal approved by the Government, with previous instruction by the Minister of Industry, Tourism and Commerce, (b) permanent inability to perform the duties,

¹ Information from the BIICL. These figures include both appeals against decisions of the NRA and the dispute settlement body.

(c) serious infringement of the obligations, (d) condemnation for a willful crime and (e) incompatibility Art. 48.8 GTL.

26. *What are the eligibility requirements for your NRA's management?*

Persons with a reputable professional competence in the telecommunications sector (Art. 48.5 GTL).

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs?*

Yes, the objectives are stated in Art. 48.2 GTL and are fully consistent with the objectives in the Framework Directive.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

The Government holds no equity. However, the Spanish Government still holds a formal "golden share" for certain decisions (Royal Decree 8/1997, 10 January 1997). The European Court of Justice considered (13 May 2003, C-463/00) the golden share held by the Spanish Government to be incompatible with the EC Treaty and, consequently, the Spanish legislation was modified. However, in July 2005, the European Commission announced its decision to send a formal request to Spain to comply with the aforementioned judgement, because the amendments made by the Spanish Government did not comply with Community Law.

A.7. Market analysis procedure and imposition of remedies

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

None of the identified markets has been completely reviewed (*i.e.*, accepted by the Article 7 Task Force). However, the NRA has proposed draft measures on Markets 9, 15, 16 and 18.

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Not applicable.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

Prior consultation of the competition agency is legally required, although the outcome of the consultation is not binding or published. The Guidelines are *gross modo* followed, although apparently there are several inconsistencies. Comments from the EC Commission are still pending.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

Not applicable.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. Speed of process

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

Legally, the CMT is obliged to resolve disputes and adopt a decision with binding effects within a maximum term of 4 months. In practice, the CMT often exceeds this term and, in some cases, the

proceedings have taken 6 months or more. Moreover, lately, the CMT is not adopting decisions that could affect the market analysis to be carried out.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

Yes. Once the proceedings have started, the CMT can adopt interim measures, on its own initiative or ex parte, in order to ensure the effectiveness of the decision.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

Yes, the adoption of interim measures is not considered as something exceptional. Therefore, the CMT adopts interim measures, if necessary, taking into account the speed that the telecommunications sector requires.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Decisions can be appealed before the CMT (administrative appeal) and before the Administrative Court, the "Audiencia Nacional".

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

Yes, it can impose penalties, but only after issuing a resolution (sanction proceedings).

The number of sanction proceedings has not increased significantly since 2003. Six proceedings were conducted in 2003, compared to seven proceedings initiated or continued in 2004. Two of these ended in 2004 with economic sanctions, and the five others were pending.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

No, only courts can seize property etc., but an operator has never failed to comply after imposition of the fine.

B.4. *Effectiveness of appeal procedure*

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

No.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice?*

It must be demonstrated that (a) execution of the resolution will cause irreparable harm and (b) there is prima facie illegality.

42. *What percentage of decisions taken since September 2002 were appealed?*

See Question 20.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

See Question 21.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

There is no public data on this matter. However, according to a public intervention by a CMT Director, only a very limited number of decisions are (or are likely to be) annulled on appeal.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. Access obligations (AD article 12)

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

Not as a matter of policy, but it rules on access requirements in the context of individual disputes.

46. *Where access has been mandated, does your NRA typically require (e.g. as part of a stated policy) dominant operators to publish a reference offer for access?*

The NRA has required this in case of interconnection (there is a RIO) and LLU (there is a RLLUO).

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

No.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

There are SLAs for PPCs and for LLU, but not for the provision of PSTN lines. The SLAs are appropriate, but the CMT is only reactive to demands of operators and does not proactively review compliance by Telefónica.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Yes. There are nevertheless difficulties to enforce these.

C.2. Non discrimination and price squeeze (AD article 10)

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Yes, thus far. The proposed measures notified by the NRA to the EC Commission propose to impose *ex novo* non-discrimination obligations for Market 15, Market 18, and Market 16, and to maintain the obligation for Market 9.

51. *Do non-discrimination requirements apply across the value chain – i.e., between wholesale products as well as between wholesale and retail?*

Yes, but only for regulated retail services. For example, ADSL is not regulated at the retail level, and there is therefore no non-discrimination obligation.

52. *Does the NRA have rules in place to guard against price squeeze e.g., a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

Only for ADSL services, an *ex ante* price squeeze test is applied. This is, however, considered ineffective (as the imputation test does not show the existence of sufficient margin for an efficient operator). An *ex ante* price squeeze test is missing in all the other services.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

Yes, but mainly for ADSL services. A recent resolution by CMT applying such a price squeeze test includes:

- MTZ 2004/609, 15 July 2004
- DT 2004/1008, 22 July 2004
- DT 2004/418, 19 May 2004
- MTZ 2005/993, 21 July 2005
- DT 2005/912, 21 July 2005

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms e.g. requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

Sometimes, but the outcome of the examination is not made public. Therefore, there is no way operators can verify that they are not being discriminated against.

C.3. Price control (AD article 13)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

No. Under the former regulatory framework (transitory in force), cost orientation was used for interconnection (fixed and mobile) and ULL access, while retail minus was used for wholesale ADSL services.

Under the new framework, draft measures regarding price control have been proposed for Market 9 (only for Telefonica) and for Market 16 to the three SMP operators.

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

LRIC is used, but there is complete opacity as to how it is applied (although the methodology and results are public, the volume of confidential information within the decisions makes it difficult to assess how LRIC is applied).

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

No information available.

C.4. Cost accounting separation (AD article 11)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

Yes. Voice mobile, interconnection and leased lines services. The draft measure proposed by the NRA for Market 16 introduces accounting separation obligations for access and interconnection services.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

No.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

No.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

No.

C.5. *Rights of way and facility-sharing (FD article 11)*

62. *Are operators entitled to rights of way on public land?*

Yes, as long as they request this in their authorization for the provision of electronic communications networks.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

No. The exercise of these rights requires the authorization of the particular administration involved, depending on the location and nature of the public land (Central Administration, Autonomous Community (17 in total), or Local Administration). Primarily local municipalities, which apply different rules and regularly seek to coordinate all excavation requests in order to minimize environmental and urban development impact, lead to significant delays.

64. *Are there clear rules in place stipulating the procedure and cost?*

No. The procedure to exercise rights of way depends upon the administration that is involved. There is a general tax for use of the public domain, but it is not applied uniformly. Furthermore, as noted in the 10th Implementation Report, the right of way tax system has become a great financial burden for network operators, due to the combination of a series of different central, regional and local taxes.

C.6. *Numbering*

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Yes, number portability for fixed numbers is available, as long as there is no service modification or geographic location modification. It is also available for non-geographic numbers, as long as there is no service modification.

66. *Is mobile number portability available?*

Yes.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

The law provides for a maximum term of 4 working days, as from the day after the submission. According to the 10th Implementation Report, the costs for porting of numbers were as follows;

- Fixed: 14 EUR.
- Mobile: 0 EUR.

68. *What proportion of fixed and mobile numbers were ported in 2004?*

Fixed numbers: 440,115 in 2004. On 30 September 2005, the number (accumulated) of ported lines in fixed telephony amounted to 1,673,792 lines (August and September CMT Monthly reports on portability) out of a total of 17,226,520 lines (ECTA scorecard)

Mobile numbers ported: 2,283,611 Mobile number portability increased by 268% in 2004, compared to the previous year (619,657 lines in 2003). On 30 September 2005, the number (accumulated) of ported lines in mobile telephony reached 5,910,558 lines or 37.3 million subscribers (10th Implementation Report).

69. Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?

Both geographic and non-geographic are available (since the Decision taken on 30 June 2005 by the Secretary of Telecommunications and the Information Society).

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?

Interconnection services	Call setup Eurocents		Per minute Eurocents	
	Peak	Off-peak	Peak	Off-peak
Local	0.0	0.0	0.710	0.420
Metropolitan	0.0	0.0	0.950	0.570
Single tandem	0.0	0.0	1.050	0.630
Double tandem	0.0	0.0	2.140	1.290

Peak and off-peak periods equal to the periods offered by Telefonica in its retail offers
Valid from July 2003 until modified by CMT or superseded by new RIO.

71. Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?

No. Telefonica even pays the rates corresponding to its own local interconnection tariffs to new entrants.

72. Is carrier selection and preselection implemented?

Yes, on fixed networks.

73. What is the market share (revenue) of alternative operators in the fixed voice market?

For 2004: 21% (source: CMT annual report).

74. What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?

Same tariffs as those applicable for call termination mentioned above.

75. Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?

No.

D.2. Mobile

76. What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?

Peak time <i>Eurocents per minute</i>	Off-peak time <i>Eurocents per minute</i>	Comments
Vodafone 12.88	Vodafone 9.84	MTR are based on per minute charges, with per second billing after the first minute. <i>Vodafone</i>

Telefónica Móviles (TME) 12.27	Telefónica Móviles (TME) 9.46	Peak: Mon-Fri 08.00-20.00 except public holidays <i>TME</i> Peak: Mon-Fri 08.00-22.00 except public holidays
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77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Yes.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

Yes. Currently, under the transitory framework, only termination charges are regulated. Prices are currently changed annually on the basis of the cost accounting results that are verified by the NRA (verification results are published with confidentiality restrictions).

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

No. However, both the CMT and Competition Service have considered that the non-discrimination principle also applies to on-net rates. Under the new regulatory framework, as one of the draft measures for Market 16, the NRA has proposed "*accounting separation obligations with respect to access and interconnection operation, towards creating transparent prices and transparent internal transfer prices*".

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

Telefónica Móviles: 54,8% traffic revenues; 51,7% global revenues.
Vodafone: 27,2% traffic revenues; 28,6% global revenues.
Amena: 18,0% traffic revenues; 19,8% global revenues.

81. *What is the price of a basket of average user mobile retail services?*

42.9 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

There are no MVNOs in Spain (only a service provider in the Basque Country, which resells Amena's services).

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Yes. They are included in the RIO.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Yes, it is applied on the basis of a "retail minus" method.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbps/s 2 km?*

557.41 EUR (connection charges).
503.05 EUR (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

Yes. Telefónica must provide information to the CMT on delivery times. This is, however, not publicized.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

No.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

No. The NRA does not think it is appropriate to regulate an emerging service such as Ethernet, although some operators have requested this in the last RLLUO modification procedure.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access	Shared access
Active loop:	
– One-off: 22.37 EUR	– One-off: 30.13 EUR
– Per month: 11.35 EUR	– Per month: 3.00 EUR
	The installation and connection of the splitter is included in the service 'tendido de cable interno' that links Telefonica's MDF to the competitor's HDF.
	– One-off: (€1,266.98) for 100 pairs
	– Per month: €5.46

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Yes. It has done so and has included them in the RLLUO.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

7% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream*

Option 2: available (13%).

Option 3: available (0%).

Option 4: available (14%).

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

73% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

Yes, the number of pairs to be migrated within a special procedure (not individually) must be above 15 and below 50.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

A price squeeze test is applied between wholesale and retail prices. The test takes both wholesale ADSL and LLU into account.

ANNEX XIV - SWEDEN

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

Legally-speaking, decisions relating to obtaining numbers shall be taken within 21 calendar days of receipt of the completed request. The average timeframe for obtaining a number is 9 days (September 2005).

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

There is no *ex ante* review prior to the publication of reference interconnection offers. However, in 2003, PTS conducted a major review of the incumbent's reference offer for fixed interconnection. This review included, *e.g.*, a hearing with new entrants and others and a possibility to provide PTS with written comments on the interconnection offer. The full review took 10 months to conduct.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

There is no negotiation of interconnection agreements. TeliaSonera has one set of agreements that applies by default.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Yes. The law provides that "affected parties" shall be granted the opportunity to express their views on market reviews. The law provides that consultations involving "affected parties and others who may have an interest in the matter" shall also be conducted if the subject matter is related to (a) co-location or other opportunities for shared use of property that is required to protect the environment, public health or public security, or in order to achieve the objectives of physical planning; and (b) concerning the amendment of a licence or conditions to use a radio transmitter or a number. Additionally, consultations involving the interest organisations affected shall be conducted if the subject matter relates to "matters affecting end user rights of publicly available electronic communications services", if such consultation can be made without inconvenience.

5. *What timescale is usually given for formal consultation?*

The law merely provides that "affected parties" shall be given a reasonable time to make their views known. This period shall in principle last at least 4 weeks (Chapter 8, paragraph 8 the Electronic Communications Act). PTS usually gives a timescale of 1 – 2 months for consultations on market reviews.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

The NRA usually allows stakeholders to meet with the NRA on a case by case basis. In practice, stakeholders can generally arrange to have one meeting per market review.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Yes. A failure to motivate is a ground of appeal. An appeal against the NRA's decisions may be brought before the County Administrative Court ("Länsrätten"). The ruling of this court may, under certain circumstances, be appealed before the Administrative Court of Appeal ("Kammarrätten"), (Chapter 8, paragraphs 19 and 20, Electronic Communications Act).

8. *Is your NRA required to publish all its decisions upon their adoption?*

Yes.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

No. The PTS does not consult on its action plan, although it is published.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

In general, yes. Accounts are audited and may be consulted, as the annual report is published.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

Yes.

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

The PTS is entitled to impose the remedies outlined in Articles 9-13 of the Access Directive. However, with regard to implementation of the new regulatory framework, the Swedish legislator erroneously implemented Article 7 of the Access Directive. It inserted a 'cut-off date' for when the old regulation ceased to be applicable, which expired prior to the completion of market reviews for some markets.

In particular, there is currently a regulatory vacuum regarding the market for trunk segments of leased lines, which is crucial for the activities of new entrants. The EC Commission has commenced infringement proceedings and sent a reasoned opinion to the Swedish Government. One operator, BT Nordics, has brought an action against the PTS (currently pending before the administrative court of appeal), seeking damages for the losses incurred.

In the meanwhile, obligations to provide PPCs have been imposed on the incumbent as remedies for Market 13. However, TeliaSonera is appealing this.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

The NRA may impose fines and/or suspend the commercial launch of services (Chapter 7, paragraph 4-6, the Electronic Communications Act). The power to impose fines includes the possibility to impose periodic penalty payments. The level of fines is not restricted to a certain amount, but should be determined on the basis of the operator's financial performance.

A.4. *Scale of resources*

14. *What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?*

The total number of employees at the PTS is currently about 270 (besides those responsible for market reviews, authorisations and compliance control in these fields, this also includes frequency and numbering management, network security/integrity and consumer protection issues, as well as clerical staff).

Approximately 40 employees at PTS are involved in telecom regulation issues (frequency and numbering management excluded), some of which have industry experience. Approximately five competition economists and six competition lawyers work at PTS. Four economists at PTS have a doctorate degree. Two experienced competition lawyers are recruited from the NCA. At present, the personnel at the legal affairs department and some employees at the market review department are participating in a special course in competition law, given by the University of Stockholm.

15. *Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?*

Yes. Recruitment is normally made by way of a transparent external selection procedure. All vacant positions are also published internally, giving all NRA employees the possibility to compete on equal terms with applicants from other labour market sectors.

16. *Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?*

PTS has recently revised the levels of remuneration. This revision led to an increase of 6% in all salaries.

17. *Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?*

The PTS has an annual budget for external consultants. In the calendar year ending on 31 December 2004, it spent 26 million SEK for external expertise.

A.5. *Effectiveness of appeal procedure*

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

The appeal of a NRA decision does not have an automatic suspensive effect. The party appealing against the decision must seek an injunction before the County Administrative Court

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

The party seeking an injunction must establish a risk of irreversible damage. In practice, suspension has been granted in a number of cases.

20. *What percentage of decisions taken since September 2002 were appealed?*

Approximately 50% of the market reviews have been appealed. Almost all decisions which negatively impact Telia Sonera are being appealed. In the mobile termination markets, all operators of mobile networks have appealed PTS' decisions.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

The average timeframe is 8-12 months in the first instance, the County Administrative Court. For decisions on remedies under the new regulatory regime, the timeframe is substantially longer.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

Less than 50%. Regarding market reviews and remedies under the new regulatory regime, no determinations have been annulled or overturned thus far, even though the effect of the remedies, such as the obligation to provide bitstream access on a wholesale level and price control for termination, has been suspended by court injunctions.

A.6. *Independence*

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

No.

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

The Board of Directors of the NRA is appointed for one year, but can be discharged before the end of the appointment. The Board of Directors is appointed for one year, but can be discharged before the end of the appointment. There is a possibility of reappointment. The head of the NRA, Director-General Marianne Treschow, was appointed by the Swedish Government for the period 17 December 2004 – 30 April 2006. Previously, she acted as Deputy Director-General between June 2004 – 17 December 2004.

25. *What are the grounds for removal of your NRA's management?*

The Director-General can be removed from office in accordance with governmental rules and procedures. Other staff are subject to general labour law regarding dismissal.

26. *What are the eligibility requirements for your NRA's management?*

There are no specific requirements in the Government instructions. NRA managers are, however, not allowed to hold positions in the industry which would compromise their integrity.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

The government's instructions to the PTS lay down its general, long term objectives. These are in line with the Framework Directive.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

The Government holds a 45.3% controlling stake in the incumbent. The Finnish Government holds 13.7%.

A.7. *Market analysis procedure and imposition of remedies*

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

6 SMP analyses were completed on 31 August 2005. Since then, 9 other markets have been examined. It should be noted, however, that many decisions have been suspended on appeal, as a result of which the new regulatory framework is not being effectively applied today.

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Yes, this is mandatory under the Act on Electronic Communications.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

According to the Swedish legislation, PTS has an obligation to obtain a reasoned statement from the NCA when it comes to defining markets and finding SMP. The NCA usually also comments on suggested remedies. PTS also holds regular meetings with the NCA to discuss PTS market analyses, and two experts from the NCA have participated in the first round of market reviews as project team members. There is a divergence of views as to whether the NRA's analysis complies with competition law and economic principles.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

The median timescale of the market reviews is between 12 and 18 months. Remedies having immediate effects are generally imposed.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIRECTIVE)

B.1. *Speed of process*

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

There is no publicly available data. However, during 2004, approximately 80% of the decisions were taken within the timeframe of four months. The average timeframe may be about 6 months, since the average is subject to the influence of decisions which, in accordance with the regulation, require an extended timeframe.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

No. Interim measures can be imposed only by the administrative courts.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

No.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

A party may appeal the NRA's decision.

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

No, not the dispute settlement body. However, the NRA may impose administrative fines in connection with orders and prohibitions.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

Yes.

B.4. *Effectiveness of appeal procedure*

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

An injunction is not granted automatically; it must be requested.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice?*

The party requesting an injunction must demonstrate a substantiated need for it. In practice, suspensions have been granted on appeal.

42. *What percentage of decisions taken since September 2002 were appealed?*

Although there is no publicly available data, approximately 95% of the decisions of the dispute settlement body of PTS have been subject to appeal since September 2002.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

A case at the County Administrative Court (court of first instance) generally takes between 12 and 18 months to be decided. An appeal before the Administrative Court of Appeal usually takes another 12 to 18 months.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

There is no statistical data available. However, operators estimate that over 50% of the NRA's decisions have generally been upheld.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. *Access obligations (AD article 12)*

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

The PTS has been clear as to its policy when carrying out the market analysis. However, its regulatory decisions are often rather brief and do not contain any details as to the specific policy.

46. *Where access has been mandated, does your NRA typically require (e.g., as part of a stated policy) dominant operators to publish a reference offer for access?*

Yes.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

There is no standard procedure available. Operators must first seek a commercial agreement. Where they fail to reach such agreement, they may request the regulator to intervene. In practice, the incumbent will not enter into negotiations for services that they are not mandated to provide by regulation. All matters require regulatory intervention.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

Wholesale services tend to come with some SLAs. It appears that the regulator has not specifically reviewed SLAs so far. Generally, the PTS has taken a very laissez-faire approach to SLAs. For example, the proposed SLAs on terminating segments merely state that "the specified services shall contain a description of the service level and that the incumbent shall report yearly on the service level achieved".

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Not mandated by regulation, though nominal financial penalties have been agreed by TeliaSonera.

C.2. *Non discrimination and price squeeze (AD Article 10)*

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Yes. However, since no public accounting separation is imposed on SMP operators, operators consider that they are limited in their ability to ensure effective enforcement.

51. *Do non-discrimination requirements apply across the value chain – i.e., between wholesale products as well as between wholesale and retail?*

In principle, yes. However, some wholesale services, for instance, are more expensive than their retail counterparts (ATM based bitstream versus IP based DSL access). This results from the fact that TeliaSonera's obligation to provide bitstream access on a non-discriminatory has been suspended by the courts. A certain number of retail leased lines are up to 40% cheaper than their wholesale counterparts.

52. *Does the NRA have rules in place to guard against price squeeze e.g., a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

The NRA has never imposed rules to guard against price squeeze. Unsatisfactory price squeeze control is confirmed by the various decisions of the Swedish NCA, which have established price squeeze practices in the context of *ex post* enforcement actions. In order to address this concern, PTS has now foreseen the imposition of a retail minus access obligation for wholesale line rental and bitstream access (the latter is suspended by the court) and has, in that way, also imposed guards against price squeezes on an *ex ante* basis.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

The NRA has thus far never applied price squeeze tests. This is rather surprising, since some of TeliaSoneras Wholesale services (ADSL ATM, for example) are undeniably more expensive than TeliaSoneras retail services.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms eg requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

The publication of SLAs and, (to a lesser extent) KPIs, is required as concerns wholesale services. However, the actual use of this information appears to be rather limited.

C.3. Price control (AD article 13)

55. *Where dominance is found in wholesale markets, are price control obligations routinely applied?*

The price control that is typically applied on the wholesale level is rather weak. For bitstream and terminating segments, for instance, the NRA simply states that TeliaSonera shall propose prices in accordance with the PTS' price control obligations. Once TeliaSonera proposes its prices, the PTS is supposed to conduct a review of these prices. However, such review is conducted on a confidential basis and does not prevent application of the tariffs. Thus, TeliaSonera has a clear advantage in inflating its prices, whilst being 'compliant' with the price control required.

The cost methodology applied greatly varies among services. For unknown reasons, the NRA shifted its preference from LRIC to FAC on Bitstream services in the course of a consultation.

56. *Which of the above is typically used (i.e. cost-orientation, retail minus, benchmarks)? If a combination, is a clear rationale given for the choice of methodology?*

Interconnection prices and ULL are subject to price control under the LRIC model. Wholesale forms of access that risk being subject to margin squeeze (e.g., WLR and bitstream access, due to the fact that they are closely related to a retail access), are price-controlled by a retail minus model. Accordingly, a retail minus model has been imposed for WLR and bitstream access. For leased lines, there are fewer generic services, and where no LRIC model is available, FDC applies. Market players consider that the methodology has not always been applied coherently and transparently.

57. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

This varies. For example, leased lines follow the FDC methodology, whereas interconnection and LLU follow the LRIC methodology.

58. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

Yes. A description of the LRIC model used is published on PTS' website.

C.4. Cost accounting separation (AD article 11)

59. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

Yes, on Markets 1-2, 8-13 and 16. For Market 18 (currently being reviewed by the Article 7 Task Force), PTS has suggested a cost accounting separation obligation. On Markets 3-6 and 15, PTS has found effective competition and has imposed no obligations.

60. *Is the methodology for accounting separation clearly specified and subject to consultation?*

No. The accounts are not drawn in accordance with cost accounting separation methodology that is published or otherwise made publicly available.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

No. There is no public information showing internal transfer charges.

C.5. Rights of way and facility-sharing (FD article 11)

62. *Are operators entitled to rights of way on public land?*

Yes. Operators must apply for right of way with the local council.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

In recent years, councils have become increasingly restrictive with respect to granting permission to operators to install new masts / lay new networks.

64. *Are there clear rules in place stipulating the procedure and cost?*

The procedural rules of local governments apply.

C.6. Numbering

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Number portability is available for all numbers.

66. *Is mobile number portability available?*

Yes.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

Fixed: 17.5 EUR (10th Implementation Report); fifteen day timeframe

Mobile: 4 EUR (10th Implementation Report); five day timeframe.

More recent tariffs are available at <http://www.snpac.se/indexEN.htm>.

68. *What proportion of fixed and mobile numbers were ported in 2004?*

Fixed: 26,361 numbers out of a total of 5,403,0000 numbers (10th Implementation Report).

Mobile: 486,936 numbers out of a total of 9,200,000 numbers (10th Implementation Report).

More recent figures are available at <http://www.snpac.se/indexEN.htm>.

69. *Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?*

VoIP providers currently use numbers from 010 and 075 for non-geographic number ranges, respectively reserved for "geographically non-independent services" and "personal number services".

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. *What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?*

Interconnection services	Call setup		Per minute	
	Peak	Off-peak	Peak	Off-peak
Local exchange	0374	0374	0.534	0.406
SKr	0.035	0.035	0.050	0.038
City tandem	0.374	0.374	0.534	0.406
SKr	0.035	0.035	0.050	0.038
Single tandem	0.470	0.470	0.726	0.545
SKr	0.044	0.0445	0.0683	0.051
Double tandem	0.491	0.491	0.780	0.577
SKr	0.046	0.046	0.073	0.054

The city tandem is equivalent to the local segment in Stockholm, Göteborg and Malmö.

Peak: Mon-Fri 8.00-18.00 except public holidays.
Valid from 30 Sept. 2003 until superseded by a new RIO.

On 6 July 2004 PTS adopted a final decision on SMP designations and remedies regarding fixed interconnection markets (M 8-10). SMP obligations for TeliaSonera included LRIC-based cost-oriented interconnection charges.

On 27 Jan. 2005 PTS stated that TeliaSonera's interconnection charges still do not comply with LRIC. TeliaSonera must modify its charges in accordance with the maximum rates stated in the decision by 28 Feb 2005. On 28 April 2005 PTS requested TeliaSonera to modify its interconnection charges within 4 weeks. In case of non-compliance, TeliaSonera will be fined SKr 100m.

71. *Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?*

No. The principle of reciprocity applies.

72. *Is carrier selection and pre-selection implemented?*

Yes.

73. *What is the market share (revenue) of alternative operators in the fixed voice market?*

56% (10th Implementation Report).

74. *What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?*

Tariffs for call origination are identical to the tariffs for call termination.

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?*

Yes. WLR was implemented as an obligation on Markets 1-2 in February 2005. Previously, a WLR service existed on a commercial basis. PTS has not yet analysed numbers of WLR customers, but based on information from two operators, estimates that those two operators had a WLR customer base of 350,000 in 2004.

D.2. Mobile

76. *What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?*

Peak time	Off-peak time	Comments
<i>Eurocents per minute</i>	<i>Eurocents per minute</i>	
Telia Mobile 8.54	Telia Mobile 8.54	Peak: Mon-Sat 08.00-19.30 See Table 34 for cost-oriented MTRs of SMP operators decided by PTS following the analysis of the market for voice call termination on individual mobile networks (M 16°.

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Yes. Prices are set on an LRIC basis (implemented in phases: Year 1 = 25% LRIC and 75% Historic; then progressively to Year 4 = 100% LRIC).

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

LRIC glide path. Prices are projected to reflect actual costs by 1 July 2007.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile off-net rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

No. In practice, new entrants are faced with low on-net retail tariffs, which they cannot match considering the level of termination rates. The obligation of accounting separation enables PTS, to some extent, to monitor internal pricing and cross-subsidy regimes. Supervision of the non-discrimination obligation may thus include the unveiling of internal charges.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

TeliaSonera: 50,1 %.

Tele 2: 24,5 %.

81. *What is the price of a basket of average user mobile retail services?*

35.1 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

There is one MVNO. Together with the service providers in the market, it had a market share of 3% (subscribers) in 2004. The MVNO must apply fair and reasonable termination tariffs.

There are also two MVNOs operating in the market, which are not subject to regulation.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Effective PPCs are not yet available.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

The proposed PPCs will be cost orientated (FAC HCA).

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbps/s 2 km?*

1,261 EUR (interconnection charges);

217 EUR/month (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

KPIs have been proposed. It is not possible to determine whether they are effectively being complied with.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

The proposed remedies refer to SLAs. The current SLA offers a nominal financial penalty for failing to meet target.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

The PTS has not taken a position on this issue. TeliaSonera will not allow for migrations unless this would be mandated by regulation.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

The PTS proposed a technologically-neutral PPC that would embrace all technologies, including Ethernet.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access	Shared access
Active loop:	
– One-off: SKr 1370 (149 EUR) for the first pair	– One-off: SKr 770 (83.80 EUR)
– Per quarter: SKr 315 (34.28 EUR) i.e. 11.43 EUR per month	– Per quarter: SKr 150 (16.32 EUR) i.e. 5.44 EUR per month
RUO covers only already active loops, where no new installation is required (Appendix 1, Product specification).	

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Yes. Associated facilities are regulated. The PTS intervened to lower these costs.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

29% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level Agreement including delivery and restoration times and financial penalties for failure to meet targets?*

TeliaSonera's offer contains an SLA. However, its terms and conditions are considered unsatisfactory, and PTS is therefore currently reviewing it.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: available (0%).

Option 3: available (0%).

Option 4: available (19%).

The low availability of bitstream products in Options 2 and 3 essentially results from the fact that the courts have suspended PTS' regulation on the bitstream market.

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

81% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Wholesale Bitstream is not effectively available.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

PTS has mandated TeliaSonera on the bitstream market to facilitate migration from a resale ADSL offer to a bitstream offer. However, PTS' regulation on the bitstream market has been suspended by the courts and, in practice, market players still consider that there are restrictions on the migration paths.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

PTS is currently studying the margins for the different products in the value chain. The NCA has carried out a price squeeze test regarding resell DSL and retail prices. The bitstream market is, because of suspension of regulation, currently unregulated, and PTS therefore cannot act upon possible price squeezes in the market. PTS is also involved in the work that is presently being carried out in the IRG regarding possible price squeeze in the value chain.

ANNEX XIV - SWEDEN

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

Legally-speaking, decisions relating to obtaining numbers shall be taken within 21 calendar days of receipt of the completed request. The average timeframe for obtaining a number is 9 days (September 2005).

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

There is no *ex ante* review prior to the publication of reference interconnection offers. However, in 2003, PTS conducted a major review of the incumbent's reference offer for fixed interconnection. This review included, *e.g.*, a hearing with new entrants and others and a possibility to provide PTS with written comments on the interconnection offer. The full review took 10 months to conduct.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?*

There is no negotiation of interconnection agreements. TeliaSonera has one set of agreements that applies by default.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Yes. The law provides that "affected parties" shall be granted the opportunity to express their views on market reviews. The law provides that consultations involving "affected parties and others who may have an interest in the matter" shall also be conducted if the subject matter is related to (a) co-location or other opportunities for shared use of property that is required to protect the environment, public health or public security, or in order to achieve the objectives of physical planning; and (b) concerning the amendment of a licence or conditions to use a radio transmitter or a number. Additionally, consultations involving the interest organisations affected shall be conducted if the subject matter relates to "matters affecting end user rights of publicly available electronic communications services", if such consultation can be made without inconvenience.

5. *What timescale is usually given for formal consultation?*

The law merely provides that "affected parties" shall be given a reasonable time to make their views known. This period shall in principle last at least 4 weeks (Chapter 8, paragraph 8 the Electronic Communications Act). PTS usually gives a timescale of 1 – 2 months for consultations on market reviews.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

The NRA usually allows stakeholders to meet with the NRA on a case by case basis. In practice, stakeholders can generally arrange to have one meeting per market review.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Yes. A failure to motivate is a ground of appeal. An appeal against the NRA's decisions may be brought before the County Administrative Court ("Länsrätten"). The ruling of this court may, under certain circumstances, be appealed before the Administrative Court of Appeal ("Kammarrätten"), (Chapter 8, paragraphs 19 and 20, Electronic Communications Act).

8. *Is your NRA required to publish all its decisions upon their adoption?*

Yes.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

No. The PTS does not consult on its action plan, although it is published.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

In general, yes. Accounts are audited and may be consulted, as the annual report is published.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

Yes.

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

The PTS is entitled to impose the remedies outlined in Articles 9-13 of the Access Directive. However, with regard to implementation of the new regulatory framework, the Swedish legislator erroneously implemented Article 7 of the Access Directive. It inserted a 'cut-off date' for when the old regulation ceased to be applicable, which expired prior to the completion of market reviews for some markets.

In particular, there is currently a regulatory vacuum regarding the market for trunk segments of leased lines, which is crucial for the activities of new entrants. The EC Commission has commenced infringement proceedings and sent a reasoned opinion to the Swedish Government. One operator, BT Nordics, has brought an action against the PTS (currently pending before the administrative court of appeal), seeking damages for the losses incurred.

In the meanwhile, obligations to provide PPCs have been imposed on the incumbent as remedies for Market 13. However, TeliaSonera is appealing this.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

The NRA may impose fines and/or suspend the commercial launch of services (Chapter 7, paragraph 4-6, the Electronic Communications Act). The power to impose fines includes the possibility to impose periodic penalty payments. The level of fines is not restricted to a certain amount, but should be determined on the basis of the operator's financial performance.

A.4. *Scale of resources*

14. *What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?*

The total number of employees at the PTS is currently about 270 (besides those responsible for market reviews, authorisations and compliance control in these fields, this also includes frequency and numbering management, network security/integrity and consumer protection issues, as well as clerical staff).

Approximately 40 employees at PTS are involved in telecom regulation issues (frequency and numbering management excluded), some of which have industry experience. Approximately five competition economists and six competition lawyers work at PTS. Four economists at PTS have a doctorate degree. Two experienced competition lawyers are recruited from the NCA. At present, the personnel at the legal affairs department and some employees at the market review department are participating in a special course in competition law, given by the University of Stockholm.

15. *Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?*

Yes. Recruitment is normally made by way of a transparent external selection procedure. All vacant positions are also published internally, giving all NRA employees the possibility to compete on equal terms with applicants from other labour market sectors.

16. *Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?*

PTS has recently revised the levels of remuneration. This revision led to an increase of 6% in all salaries.

17. *Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?*

The PTS has an annual budget for external consultants. In the calendar year ending on 31 December 2004, it spent 26 million SEK for external expertise.

A.5. *Effectiveness of appeal procedure*

18. *Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?*

The appeal of a NRA decision does not have an automatic suspensive effect. The party appealing against the decision must seek an injunction before the County Administrative Court

19. *If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?*

The party seeking an injunction must establish a risk of irreversible damage. In practice, suspension has been granted in a number of cases.

20. *What percentage of decisions taken since September 2002 were appealed?*

Approximately 50% of the market reviews have been appealed. Almost all decisions which negatively impact Telia Sonera are being appealed. In the mobile termination markets, all operators of mobile networks have appealed PTS' decisions.

21. *What is the average (median) timeframe from the filing of an appeal until the outcome?*

The average timeframe is 8-12 months in the first instance, the County Administrative Court. For decisions on remedies under the new regulatory regime, the timeframe is substantially longer.

22. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

Less than 50%. Regarding market reviews and remedies under the new regulatory regime, no determinations have been annulled or overturned thus far, even though the effect of the remedies, such as the obligation to provide bitstream access on a wholesale level and price control for termination, has been suspended by court injunctions.

A.6. *Independence*

23. *Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)*

No.

24. *What is the duration of office of your NRA's management? Is there a possibility of re-appointment?*

The Board of Directors of the NRA is appointed for one year, but can be discharged before the end of the appointment. The Board of Directors is appointed for one year, but can be discharged before the end of the appointment. There is a possibility of reappointment. The head of the NRA, Director-General Marianne Treschow, was appointed by the Swedish Government for the period 17 December 2004 – 30 April 2006. Previously, she acted as Deputy Director-General between June 2004 – 17 December 2004.

25. *What are the grounds for removal of your NRA's management?*

The Director-General can be removed from office in accordance with governmental rules and procedures. Other staff are subject to general labour law regarding dismissal.

26. *What are the eligibility requirements for your NRA's management?*

There are no specific requirements in the Government instructions. NRA managers are, however, not allowed to hold positions in the industry which would compromise their integrity.

27. *Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?*

The government's instructions to the PTS lay down its general, long term objectives. These are in line with the Framework Directive.

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

The Government holds a 45.3% controlling stake in the incumbent. The Finnish Government holds 13.7%.

A.7. *Market analysis procedure and imposition of remedies*

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

6 SMP analyses were completed on 31 August 2005. Since then, 9 other markets have been examined. It should be noted, however, that many decisions have been suspended on appeal, as a result of which the new regulatory framework is not being effectively applied today.

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Yes, this is mandatory under the Act on Electronic Communications.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

According to the Swedish legislation, PTS has an obligation to obtain a reasoned statement from the NCA when it comes to defining markets and finding SMP. The NCA usually also comments on suggested remedies. PTS also holds regular meetings with the NCA to discuss PTS market analyses, and two experts from the NCA have participated in the first round of market reviews as project team members. There is a divergence of views as to whether the NRA's analysis complies with competition law and economic principles.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

The median timescale of the market reviews is between 12 and 18 months. Remedies having immediate effects are generally imposed.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIRECTIVE)

B.1. *Speed of process*

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

There is no publicly available data. However, during 2004, approximately 80% of the decisions were taken within the timeframe of four months. The average timeframe may be about 6 months, since the average is subject to the influence of decisions which, in accordance with the regulation, require an extended timeframe.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

No. Interim measures can be imposed only by the administrative courts.

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

No.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Yes.

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

A party may appeal the NRA's decision.

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

No, not the dispute settlement body. However, the NRA may impose administrative fines in connection with orders and prohibitions.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

Yes.

B.4. *Effectiveness of appeal procedure*

40. *Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?*

An injunction is not granted automatically; it must be requested.

41. *If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice?*

The party requesting an injunction must demonstrate a substantiated need for it. In practice, suspensions have been granted on appeal.

42. *What percentage of decisions taken since September 2002 were appealed?*

Although there is no publicly available data, approximately 95% of the decisions of the dispute settlement body of PTS have been subject to appeal since September 2002.

43. *What is the average timeframe from the filing of an appeal until the outcome?*

A case at the County Administrative Court (court of first instance) generally takes between 12 and 18 months to be decided. An appeal before the Administrative Court of Appeal usually takes another 12 to 18 months.

44. *What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?*

There is no statistical data available. However, operators estimate that over 50% of the NRA's decisions have generally been upheld.

C. GENERAL MARKET ACCESS CONDITIONS

C.1. *Access obligations (AD article 12)*

45. *Does your NRA clearly specify its policy in relation to the obligation to supply access?*

The PTS has been clear as to its policy when carrying out the market analysis. However, its regulatory decisions are often rather brief and do not contain any details as to the specific policy.

46. *Where access has been mandated, does your NRA typically require (e.g., as part of a stated policy) dominant operators to publish a reference offer for access?*

Yes.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

There is no standard procedure available. Operators must first seek a commercial agreement. Where they fail to reach such agreement, they may request the regulator to intervene. In practice, the incumbent will not enter into negotiations for services that they are not mandated to provide by regulation. All matters require regulatory intervention.

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

Wholesale services tend to come with some SLAs. It appears that the regulator has not specifically reviewed SLAs so far. Generally, the PTS has taken a very laissez-faire approach to SLAs. For example, the proposed SLAs on terminating segments merely state that "the specified services shall contain a description of the service level and that the incumbent shall report yearly on the service level achieved".

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

Not mandated by regulation, though nominal financial penalties have been agreed by TeliaSonera.

C.2. *Non discrimination and price squeeze (AD Article 10)*

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Yes. However, since no public accounting separation is imposed on SMP operators, operators consider that they are limited in their ability to ensure effective enforcement.

51. *Do non-discrimination requirements apply across the value chain – i.e., between wholesale products as well as between wholesale and retail?*

In principle, yes. However, some wholesale services, for instance, are more expensive than their retail counterparts (ATM based bitstream versus IP based DSL access). This results from the fact that TeliaSonera's obligation to provide bitstream access on a non-discriminatory has been suspended by the courts. A certain number of retail leased lines are up to 40% cheaper than their wholesale counterparts.

52. *Does the NRA have rules in place to guard against price squeeze e.g., a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

The NRA has never imposed rules to guard against price squeeze. Unsatisfactory price squeeze control is confirmed by the various decisions of the Swedish NCA, which have established price squeeze practices in the context of *ex post* enforcement actions. In order to address this concern, PTS has now foreseen the imposition of a retail minus access obligation for wholesale line rental and bitstream access (the latter is suspended by the court) and has, in that way, also imposed guards against price squeezes on an *ex ante* basis.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

The NRA has thus far never applied price squeeze tests. This is rather surprising, since some of TeliaSoneras Wholesale services (ADSL ATM, for example) are undeniably more expensive than TeliaSoneras retail services.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms eg requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

The publication of SLAs and, (to a lesser extent) KPIs, is required as concerns wholesale services. However, the actual use of this information appears to be rather limited.

C.3. Price control (AD article 13)

55. *Where dominance is found in wholesale markets, are price control obligations routinely applied?*

The price control that is typically applied on the wholesale level is rather weak. For bitstream and terminating segments, for instance, the NRA simply states that TeliaSonera shall propose prices in accordance with the PTS' price control obligations. Once TeliaSonera proposes its prices, the PTS is supposed to conduct a review of these prices. However, such review is conducted on a confidential basis and does not prevent application of the tariffs. Thus, TeliaSonera has a clear advantage in inflating its prices, whilst being 'compliant' with the price control required.

The cost methodology applied greatly varies among services. For unknown reasons, the NRA shifted its preference from LRIC to FAC on Bitstream services in the course of a consultation.

56. *Which of the above is typically used (i.e. cost-orientation, retail minus, benchmarks)? If a combination, is a clear rationale given for the choice of methodology?*

Interconnection prices and ULL are subject to price control under the LRIC model. Wholesale forms of access that risk being subject to margin squeeze (e.g., WLR and bitstream access, due to the fact that they are closely related to a retail access), are price-controlled by a retail minus model. Accordingly, a retail minus model has been imposed for WLR and bitstream access. For leased lines, there are fewer generic services, and where no LRIC model is available, FDC applies. Market players consider that the methodology has not always been applied coherently and transparently.

57. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

This varies. For example, leased lines follow the FDC methodology, whereas interconnection and LLU follow the LRIC methodology.

58. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

Yes. A description of the LRIC model used is published on PTS' website.

C.4. Cost accounting separation (AD article 11)

59. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

Yes, on Markets 1-2, 8-13 and 16. For Market 18 (currently being reviewed by the Article 7 Task Force), PTS has suggested a cost accounting separation obligation. On Markets 3-6 and 15, PTS has found effective competition and has imposed no obligations.

60. *Is the methodology for accounting separation clearly specified and subject to consultation?*

No. The accounts are not drawn in accordance with cost accounting separation methodology that is published or otherwise made publicly available.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

No. There is no public information showing internal transfer charges.

C.5. Rights of way and facility-sharing (FD article 11)

62. *Are operators entitled to rights of way on public land?*

Yes. Operators must apply for right of way with the local council.

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

In recent years, councils have become increasingly restrictive with respect to granting permission to operators to install new masts / lay new networks.

64. *Are there clear rules in place stipulating the procedure and cost?*

The procedural rules of local governments apply.

C.6. Numbering

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Number portability is available for all numbers.

66. *Is mobile number portability available?*

Yes.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

Fixed: 17.5 EUR (10th Implementation Report); fifteen day timeframe

Mobile: 4 EUR (10th Implementation Report); five day timeframe.

More recent tariffs are available at <http://www.snpac.se/indexEN.htm>.

68. *What proportion of fixed and mobile numbers were ported in 2004?*

Fixed: 26,361 numbers out of a total of 5,403,0000 numbers (10th Implementation Report).

Mobile: 486,936 numbers out of a total of 9,200,000 numbers (10th Implementation Report).

More recent figures are available at <http://www.snpac.se/indexEN.htm>.

69. *Which, if any, number ranges are available to VoIP providers e.g. geographic/special VoIP range?*

VoIP providers currently use numbers from 010 and 075 for non-geographic number ranges, respectively reserved for "geographically non-independent services" and "personal number services".

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. *What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?*

Interconnection services	Call setup		Per minute	
	Peak	Off-peak	Peak	Off-peak
Local exchange	0374	0374	0.534	0.406
SKr	0.035	0.035	0.050	0.038
City tandem	0.374	0.374	0.534	0.406
SKr	0.035	0.035	0.050	0.038
Single tandem	0.470	0.470	0.726	0.545
SKr	0.044	0.0445	0.0683	0.051
Double tandem	0.491	0.491	0.780	0.577
SKr	0.046	0.046	0.073	0.054

The city tandem is equivalent to the local segment in Stockholm, Göteborg and Malmö.

Peak: Mon-Fri 8.00-18.00 except public holidays.
Valid from 30 Sept. 2003 until superseded by a new RIO.

On 6 July 2004 PTS adopted a final decision on SMP designations and remedies regarding fixed interconnection markets (M 8-10). SMP obligations for TeliaSonera included LRIC-based cost-oriented interconnection charges.

On 27 Jan. 2005 PTS stated that TeliaSonera's interconnection charges still do not comply with LRIC. TeliaSonera must modify its charges in accordance with the maximum rates stated in the decision by 28 Feb 2005. On 28 April 2005 PTS requested TeliaSonera to modify its interconnection charges within 4 weeks. In case of non-compliance, TeliaSonera will be fined SKr 100m.

71. *Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?*

No. The principle of reciprocity applies.

72. *Is carrier selection and pre-selection implemented?*

Yes.

73. *What is the market share (revenue) of alternative operators in the fixed voice market?*

56% (10th Implementation Report).

74. *What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?*

Tariffs for call origination are identical to the tariffs for call termination.

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?*

Yes. WLR was implemented as an obligation on Markets 1-2 in February 2005. Previously, a WLR service existed on a commercial basis. PTS has not yet analysed numbers of WLR customers, but based on information from two operators, estimates that those two operators had a WLR customer base of 350,000 in 2004.

D.2. Mobile

76. *What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?*

Peak time	Off-peak time	Comments
<i>Eurocents per minute</i>	<i>Eurocents per minute</i>	
Telia Mobile 8.54	Telia Mobile 8.54	Peak: Mon-Sat 08.00-19.30 See Table 34 for cost-oriented MTRs of SMP operators decided by PTS following the analysis of the market for voice call termination on individual mobile networks (M 16°.

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Yes. Prices are set on an LRIC basis (implemented in phases: Year 1 = 25% LRIC and 75% Historic; then progressively to Year 4 = 100% LRIC).

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

LRIC glide path. Prices are projected to reflect actual costs by 1 July 2007.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile off-net rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

No. In practice, new entrants are faced with low on-net retail tariffs, which they cannot match considering the level of termination rates. The obligation of accounting separation enables PTS, to some extent, to monitor internal pricing and cross-subsidy regimes. Supervision of the non-discrimination obligation may thus include the unveiling of internal charges.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

TeliaSonera: 50,1 %.

Tele 2: 24,5 %.

81. *What is the price of a basket of average user mobile retail services?*

35.1 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

There is one MVNO. Together with the service providers in the market, it had a market share of 3% (subscribers) in 2004. The MVNO must apply fair and reasonable termination tariffs.

There are also two MVNOs operating in the market, which are not subject to regulation.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Effective PPCs are not yet available.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

The proposed PPCs will be cost orientated (FAC HCA).

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbps/s 2 km?*

1,261 EUR (interconnection charges);

217 EUR/month (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

KPIs have been proposed. It is not possible to determine whether they are effectively being complied with.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

The proposed remedies refer to SLAs. The current SLA offers a nominal financial penalty for failing to meet target.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

The PTS has not taken a position on this issue. TeliaSonera will not allow for migrations unless this would be mandated by regulation.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

The PTS proposed a technologically-neutral PPC that would embrace all technologies, including Ethernet.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access	Shared access
Active loop: – One-off: SKr 1370 (149 EUR) for the first pair – Per quarter: SKr 315 (34.28 EUR) i.e. 11.43 EUR per month RUO covers only already active loops, where no new installation is required (Appendix 1, Product specification).	 – One-off: SKr 770 (83.80 EUR) – Per quarter: SKr 150 (16.32 EUR) i.e. 5.44 EUR per month

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Yes. Associated facilities are regulated. The PTS intervened to lower these costs.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

29% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level Agreement including delivery and restoration times and financial penalties for failure to meet targets?*

TeliaSonera's offer contains an SLA. However, its terms and conditions are considered unsatisfactory, and PTS is therefore currently reviewing it.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: available (0%).

Option 3: available (0%).

Option 4: available (19%).

The low availability of bitstream products in Options 2 and 3 essentially results from the fact that the courts have suspended PTS' regulation on the bitstream market.

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

81% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Wholesale Bitstream is not effectively available.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

PTS has mandated TeliaSonera on the bitstream market to facilitate migration from a resale ADSL offer to a bitstream offer. However, PTS' regulation on the bitstream market has been suspended by the courts and, in practice, market players still consider that there are restrictions on the migration paths.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

PTS is currently studying the margins for the different products in the value chain. The NCA has carried out a price squeeze test regarding resell DSL and retail prices. The bitstream market is, because of suspension of regulation, currently unregulated, and PTS therefore cannot act upon possible price squeezes in the market. PTS is also involved in the work that is presently being carried out in the IRG regarding possible price squeeze in the value chain.

ANNEX XV - UNITED KINGDOM

A. REGULATOR - GENERAL FUNCTIONS

A.1. *Speed of process*

1. *What is the average (median) timeframe for obtaining reservation of numbers?*

Ofcom determines any application for telephone numbers within three weeks of receipt of a completed application form by an eligible applicant. Where Ofcom has required any additional information in relation to any application, it will determine the application by the end of the period of three weeks after the date of receipt of that additional information.

Additional information on the procedure to be followed for the allocation of number is set out in Ofcom's National Telephone Numbering Plan, as published in August 2005. The full document is accessible via the link below:

<http://www.ofcom.org.uk/telecoms/ioi/numbers/261701.pdf>.

2. *What is the average (median) timeframe for reviewing reference interconnection offers (assessed over the past three years)?*

There is no timeframe specified for periodic review of interconnection offers. However, Ofcom monitors BT's wholesale charges on an annual basis. BT's interconnection charges are subject to annual RPI-X charge control, and BT must demonstrate their compliance with this. Further, BT must re-notify proposed changes to charges 3 months before they take place and supply Ofcom with details of how these new charges satisfy their charge control obligations. During this period, Ofcom carefully checks the calculations and investigates any discrepancies. Further, a review can take place at any time during the year following a complaint or at Ofcom's initiative.

3. *In practice, what is the average (median) timeframe for the negotiation of a standard (reference) interconnection or access agreement for a new entrant which does not yet have an interconnection agreement with the incumbent operator?* 9-12 months

The timeframe for signing of the standard interconnection agreement typically takes 4-6 weeks. However, prior to this, there needs to be a period for technical discussion which involves the necessary planning, placement of orders, testing time, data implementation, physical interconnection etc. This pre-period can take up to 9 months.

A.2. *Transparency and consultation*

4. *Is your NRA required to hold public consultations prior to deciding on issues of general interest?*

Yes, Ofcom usually holds public consultations prior to deciding on issues of general interest. Ofcom will consult widely with all relevant stakeholders and assess the impact of regulatory action before imposing regulation upon a market.

To that effect, Ofcom publishes on its website a calendar that lists all the issues in relation to which it expects to begin specific consultations. The calendar includes a brief summary of the timeframe and purpose of each consultation. The website also lists all current consultations and all consultations that have recently come to an end.

For dispute cases, Ofcom will formally consult on its proposals to resolve disputes where the outcome is of interest to a number of stakeholders. When the outcome is only of interest to the parties involved, consultation is limited to the parties themselves. Ofcom will then publish final determinations and reasons for its decisions in all dispute cases.

Ofcom has appointed a 'Consultation Champion', who is responsible for ensuring that Ofcom maintains its own consultation guidelines and reaches out to the largest number of people and organisations interested in the outcome of any public consultations.

Details of Ofcom's consultation policy, and a list of issues on which it must consult can be found at the following link:

http://www.ofcom.org.uk/consult/consult_method/ofcom_consult_guide?a=87101.

5. *What timescale is usually given for formal consultation?*

The duration of the consultation process varies according to the complexity of the issues and their familiarity to stakeholders. Ofcom will generally allow ten weeks for complicated policy issues. Some formal consultations may nevertheless be shorter than ten weeks if certain criteria are fulfilled (*i.e.*, (i) the issue or community involved is small or only affects a particular group, which has been identified ahead of time; (ii) a proposal will have a limited effect on a market; (iii) a proposal is only a limited amendment to existing policy, or (iv) an issue needs to be looked at urgently). In those cases, Ofcom will usually aim to allow five weeks. However, the time may vary depending on the issue.

For dispute cases, the consultation period is limited to no more than 10 days. In some cases, it may not even be possible to consult at all. This may be explained by the fact that Ofcom needs to comply with the new EU Regulatory Framework that obliges it to rule on disputes in less than four months.

In addition, under the Communications Act 2003, Ofcom must usually allow at least one month for consultation on issues related to electronic communications networks and services. For example, Ofcom needs to consult for at least one month on a formal direction or approval given to organisations which provide those networks and services.

6. *Does the NRA engage with stakeholders on a non-discriminatory basis early in the decision-making process other than through formal written consultation, e.g., through workshops or meetings?*

Yes. Where possible, Ofcom will hold informal talks with people and organisations before announcing a formal consultation. If Ofcom does not have enough time to do this, it will hold an open meeting to explain its proposals shortly after announcing the consultation.

7. *Is your NRA required to effectively motivate its decisions? If so, is there any possibility of appeal in the event of the NRA's violation of its obligation to motivate its decision?*

Ofcom has a general duty to give reasons for its decisions as part of its best practice on transparency.

In case of a conflict between the interests of citizens in relation to communications matter and the interests of consumers in relevant markets, the Ofcom decision resolving the conflict must contain a statement of reasons (Section 3(8) of the Communications Act 2003).

Moreover, before implementing any proposals which would be likely to have a significant impact on the general public, on market players or would entail an important change in Ofcom's policy, Ofcom must either (i) carry out and publish an assessment of the likely impact of implementing the

proposal, or (ii) publish a statement setting out its reasons for thinking that it is unnecessary for them to carry out an assessment (Section 7(3) of the Communications Act 2003).

Finally, whenever the Consumer Panel has been consulted on a specific issue or proposal, Ofcom has a duty to give reasons for its decisions agreeing or disagreeing with the opinion or advice of the Consumer Panel (Section 16(10)(a) of the Communications Act 2003).

In the following specific proceedings, Ofcom is also required to give reasons:

Enforcement notification for contravention of Section 33 of the Communications Act (Section 36(4)(a) and 37(8)(a))

Penalties for non-payment of charges (Section 41(7)(a))

Procedure for setting, modifying and revoking conditions of entitlement (Section 48(2)(c))

Directions and approvals for the purposes of a Section 45 condition (Section 49(4)(e))

Modification of document referred to in numbering condition (Section 60(2)(d))

Proposals for identifying markets and for market power determinations (Section 80(3)(c))

Enforcement notification for contravention of conditions (Section 95(4)(a))

Penalties for contravention of conditions (Section 96(6)(a))

Procedure for directions applying code (Section 107(7)(b))

Enforcement notification for contravention of code restrictions (Sections 111(4)(a) & 112(8)(a))

Penalties for contravention of information requirements (Section 139(7)(a))

Notification of cessation by person to whom it applies (Section 116(6)(a))

Variation and revocation of wireless telegraphy licences (Section 169(1)(a))

Information requirements in relation to wireless telegraphy licences (Section 171(2)(a))

Special procedure for contravention by multiplex licence holders (Section 175(2)(a))

Action by Ofcom on dispute reference (Section 186(4))

Procedure for resolving disputes (Section 188(7)(a))

Proscription orders in relation to unacceptable foreign television and radio services (Section 239(1)).

If Ofcom fails to give reasons, then the matter can be appealed under Section 192 (2) of the Communications Act. Appeals against Ofcom decisions are made to the Competition Appeal Tribunal (the "CAT"), a specialist judicial body with jurisdiction over competition and regulatory cases, which assumed its responsibilities in April 2003.

The application must set out the grounds of appeal. In particular, it must indicate (i) to what extent (if any) the appellant contends that the decision appealed against was based on an error of fact or was wrong in law or both, (ii) to what extent (if any) the appellant is appealing against the exercise of a discretion by Ofcom, by the Secretary of State or by another person.

8. *Is your NRA required to publish all its decisions upon their adoption?*

The Communications Act 2003 requires Ofcom to publish a vast number of decisions, subject to confidentiality, including for example, decisions resolving disputes, the outcome of market reviews etc. In addition, Ofcom is subject to general obligations of transparency and has general powers to publish information for consumers.

9. *Does your NRA disclose and consult on its action plan on a regular basis?*

Yes. Ofcom publishes a very detailed action plan on an annual basis. For example, the draft Ofcom annual plan for 2005/2006 was published for consultation in January 2005, and the final plan was adopted and published in April 2005. This document also sets out Ofcom's strategic framework for the coming three years.

Details of Ofcom's annual plan for 2005/2006 can be found at the following link:

http://www.ofcom.org.uk/about/account/reports_plans/annual_plan0506/annual_plan0506.pdf.

10. *Are the costs of operating the NRA transparent and available through audited accounts?*

Yes.

A.3. Powers and sanctions

11. *Are the powers of your NRA clearly defined by law?*

Yes, throughout the Communications Act.

12. *Are the NRA's powers consistent with powers attributed to NRAs in the new regulatory framework? Please answer with reference to any infringement proceedings undertaken by the European Commission for failure to adequately implement the framework.*

The United Kingdom completed transposition of the new framework into national law at a relatively early stage, and it is well advanced in terms of the practical implementation of the framework following the market review exercise.

13. *Is your NRA entrusted with the power to impose fines? If so, up to what level? Does it include also the possibility of imposing periodic penalty payments or of suspending the commercial launch of services?*

Yes, up to 10% of relevant turnover. There is no specific power for periodic penalty payments. General enforcement powers would, in principle, include suspending launch of service.

It should be noted that the power to impose fines under sector-specific legislation (the Communications Act) can only be exercised where the offending party has first been given an opportunity to correct its behavior (section 96 (2) of the Communications Act).

The actual amount of any penalty imposed is calculated by following the method set out in Ofcom's Penalty Guidelines. As a general rule, the amount of any penalty must be appropriate and proportionate to the contravention in respect of which it is imposed. In addition Ofcom must have regard to any representations made to them by the regulated body in breach. Accordingly, Ofcom, in setting the level of penalty, will consider all relevant circumstances. In general, in determining the starting figure of any penalty, Ofcom is likely first to consider the following factors: (i) the seriousness of the contravention, (ii) any precedents set by previous cases, and (iii) the need to ensure that the threat of penalties will act as a sufficient incentive to comply.

A.4. Scale of resources

14. *What is the number of employees employed for general regulatory issues (excluding frequency and numbering management)? How many competition economists are included in the staff? How many competition lawyers? What proportion of staff have private sector experience?*

Ofcom currently employs 791 to cover all functions, no breakdown is available.

Ofcom has a significant number of both competition economists (20) and lawyers, many of whom have private sector experience.

15. *Are the procedures for selecting the NRA's personnel fair and open (e.g. conducted through a transparent external selection procedure)?*

Ofcom selects candidates solely on the basis of merit - it is committed to equality of opportunity for all job applicants regardless of race and ethnicity, gender, sexual orientation, disability, religion

and belief and age. The applicants are requested to complete a monitoring form to ensure the effective implementation of Ofcom's diversity policy.

16. Does your NRA have the financial freedom to set levels of remuneration to attract appropriate staff?

Yes, but within the bounds of the budget allocated to it. Ofcom has been successful at recruiting from outside government service, suggesting that salary packages are attractive.

17. Can and does your NRA have recourse to outside expertise such as consultants? Is sufficient budget allocated to enable them to do so where necessary?

Yes – Ofcom uses specialist consultants as required, including accountancy, economic, legal, consumer research and technological research.

Ofcom publishes tenders and contracts for outside consultants on its website at the following address: http://www.ofcom.org.uk/about/jobs/contracts_tenders/?a=87101.

A.5. Effectiveness of appeal procedure

18. Does the appeal of a NRA decision automatically suspend the binding effects of the decision in question?

No, an order from an appeal body would be needed.

Appeals against Ofcom decisions are made to the CAT, a specialist judicial body with jurisdiction over competition and regulatory cases, which assumed its responsibilities in April 2003.

The lodging of an appeal does not suspend the effect of the decision to which the appeal relates. Henceforth, the appellant would have to apply for interim measures to suspend the effects of the decision pending the outcome of the appeal.

19. If the appeal does not automatically suspend the binding effects of the decision of the NRA, what is the applicable standard to obtain such suspension and how is it applied in practice?

It is possible to apply to the CAT for a stay of the decision, but Ofcom's decision will remain in place on appeal unless the Tribunal orders otherwise. If the appealing organisation seeks to have the decision set aside until the appeal is determined, and should Ofcom oppose this (*i.e.* argue to keep the decision in place), the CAT will decide the issue based on normal legal principles relating to applications for interim relief. In accordance with Rule 61(3), the matters the tribunal must take into account include the urgency of the matter, the effect on the party making the request if the interim order is not made, and the effect on competition if the order is made.

20. What percentage of decisions taken since September 2002 were appealed?

Since the CAT was established, only five appeals have been lodged against the Director General of Telecommunications and Ofcom (one judgement is still pending and one appeal was withdrawn). These include the following cases:

Freeserve.com plc v. Director General of Telecommunications, Case number 1007/2/3/02 registered on 10 September 2002 - Final judgment handed down on 16 April 2003

- BT plc v. Director General of Telecommunications, Case number 1818/3/3/03, registered on 21 August 2003 - Final judgement handed down on 12 May 2004
- BT plc v. OFCOM (CPS save activity), Case number 1025/3/3/04, registered on 7 January 2004 - Final judgment handed down on 9 December 2004

- BT plc v. OFCOM (WLR save activity), Case number 1040/3/3/04, registered on 9 July 2004 - Appeal withdrawn on 11 August 2005
- Hutchison 3G Limited v. OFCOM, Case number 1047/3/3/04, registered on 29 July 2004 - Final judgment is pending.

It is a matter of note that, despite completion by Ofcom of most of its initial market reviews, only one appeal had been made against the resulting decisions or choice of remedies.

21. What is the average (median) timeframe from the filing of an appeal until the outcome?

As indicated in the CAT's guidance on appeal proceedings, in general, the CAT will aim to complete straightforward cases in less than six months. Based on the CAT's previous practice, the average time frame for appeals proceedings against Ofcom's decisions is 10 months.

22. What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?

As indicated above, 5 appeals have been lodged against Ofcom (formerly the Director General of Telecommunications) since the CAT was established. In two of those cases, the CAT set aside the direction issued by the Director General of Telecommunications (Case BT plc v. Director General of Telecommunications, Case number 1818/3/3/03, and Freeserve.com plc v. Director General of Telecommunications, Case number 1007/2/3/2).

A.6. Independence

23. Is your NRA subject to any injunctions from political authority (other than through removal), when performing its regulatory tasks (e.g., grants authorizations, conducts market analyses, defines SMP operators, imposes/enforces remedies?)

No. The Secretary of State may give general or specific directions only for the purposes of national security, foreign relations, international obligations, public safety/health and promptness standards in specific area.

24. What is the duration of office of your NRA's management? Is there a possibility of re-appointment?

There is no fixed term of appointment laid down in law for the Chairman, Chief Executive and Executive or Non-Executive Directors. The Office of Communications Act 2002 only states that the term must be stated in their contracts of employment. The Chairman and Non-Executive Directors are eligible for re-appointment (see schedule of the Office of Communications Act 2002, Section 1.2).

25. What are the grounds for removal of your NRA's management?

The Chairman and Non-Executive Directors may only be removed on grounds of un-discharged bankruptcy, prejudicial conflicts of interest, misbehaviour or incapacity/unfitness (see schedule of the Office of Communications Act 2002, Section 1.2(4)).

26. What are the eligibility requirements for your NRA's management?

There are no specific eligibility requirements laid down in the law. There are ineligibility conditions, specifically that the Chairman and Non-Executive Directors must not have a financial or other interest in any of the companies that is likely to be prejudicial to carrying out their functions (see schedule of the Office of Communications Act 2002, Section 1.1).

27. Are clear objectives assigned to the NRA for its long term actions set in the law or defined by NRAs? Are such objectives consistent with the objectives in the Framework Directive?

Under Section 3(1) of the Communications Act 2003, "it shall be the principal duty of Ofcom, in carrying out their functions (i) to further the interests of citizens in relation to communications

matters; and (ii) to further the interests of consumers in relevant markets, where appropriate by promoting competition."

Ofcom's specific duties fall into six areas:

- Ensuring the optimal use of the electro-magnetic spectrum
- Ensuring that a wide range of electronic communications services - including high speed data services - is available throughout the UK
- Ensuring a wide range of TV and radio services of high quality and wide appeal
- Maintaining plurality in the provision of broadcasting
- Applying adequate protection for audiences against offensive or harmful material
- Applying adequate protection for audiences against unfairness or the infringement of privacy

28. *What percentage of the incumbent share capital is held by the Government? Does it confer control?*

None.

A.7. Market analysis procedure and imposition of remedies

29. *Of the 18 markets identified in the Commission's recommendation, how many SMP analyses have been completed and accepted by the article 7 task force?*

Ofcom has notified 17 of the 18 markets, and all have been completed and accepted by the Art. 7 Task Force. The consultation process for the wholesale national market for international roaming on public mobile networks is still under way. Ofcom has, in a number of cases, notified its finding as to SMP and the generic remedies, and then further developed the details of the remedies by means of subsequent notifications.

30. *For those analyses where significant market power was found, have remedies been imposed in all cases?*

Yes.

31. *Are market analyses conducted in consultation with the competition agency? Has the analysis been conducted in a rigorous manner following competition law and economic principles as set out in the Commission's Guidelines on the interpretation of Significant Market Power?*

Ofcom is the competition authority, as well as the NRA. All market analysis have been conducted in the rigorous manner following competition law and economic principles, as set out in the Commission's Guidelines on the interpretation of Significant Market Power.

32. *What is the average (median) timescale from the start of the market analysis process to the imposition of remedies where significant market power is found?*

Ofcom has not kept specific records of the timescale for individual reviews. A market review takes between 9-12 months, depending on the size and complexity of the market and market structure, the availability of the necessary data, the changes since the previous market review, and allowing time for separate national and Art. 7 consultations.

B. REGULATORY DISPUTE SETTLEMENT IN INTERCONNECTION AND ACCESS ISSUES (ART 20 FRAMEWORK DIR)

B.1. *Speed of process*

33. *What was, over the past two years, the average (median) timeframe for obtaining a decision from the dispute settlement body?*

Since it assumed its powers on 29 December 2003, Ofcom has undertaken ten dispute referrals for resolution. Ofcom resolved six of these disputes by issuing a Determination under the Communications Act 2003. All six disputes were resolved within the four month deadline set by the Communications Act, at an average of four months each. Three of the disputes accepted for resolution by Ofcom were subsequently withdrawn within the four month target. The one remaining dispute is currently open.

Ofcom has stated in its "Guidelines for the handling of competition complaints, and complaints and disputes about breaches of conditions imposed under the EU Directives" that the four month deadline runs from the date at which it is clear that it is appropriate for Ofcom to resolve the dispute. Ofcom aims to make that decision within 15 working days of receipt of the referral.

The regulatory deadlines set out above are the maximum time that Ofcom intends to take to complete an investigation. Ofcom will always seek to resolve issues in the shortest possible time. When it fails to meet its deadlines, Ofcom will publish reasons.

For further details on Ofcom's approach to disputes, see link below.

http://www.ofcom.org.uk/bulletins/eu_directives/?a=87101.

34. *Can your dispute settlement body adopt interim measures prior to final settlement of the dispute?*

Ofcom's powers in an urgent case to issue an immediate direction only apply in the case of an allegation of a breach of condition where Ofcom considers that, in light of certain factors, it is necessary to act urgently. The powers do not apply to dispute resolution

35. *Has the dispute settlement body adopted interim measures in practice, and if so, is this standard practice or only in exceptional circumstances?*

No.

B.2. *Due process*

36. *Is the dispute settlement process subject to the principle of contradiction (due process)?*

Under English public law, both sides must have a fair hearing (which will not necessarily involve oral representations, but will normally be a matter of written submissions).

37. *What are the possibilities to appeal a decision of the dispute settlement body?*

Full appeals on the merits of the cases may be made to the CAT against regulatory decisions.

B.3. *Effectiveness of sanctions*

38. *Is your dispute settlement body entitled to impose fines or periodic penalty payments? Has it used these powers? Please elaborate.*

There is no possibility for Ofcom to impose fines or periodic penalty payments when it acts as dispute settlement body.

39. *Does your dispute settlement body have the power to enforce its own decisions?*

Section 190(8) of the 2003 Act merely says that a determination by Ofcom for resolving a dispute binds all parties to the dispute. It does not go further and give Ofcom power to enforce the decision. This is unlike s.95(5) and (6), dealing with enforcement of breaches of condition, which provide that a person who is given an enforcement notification has a duty to comply with it, and specifically empower Ofcom to enforce this duty by civil proceedings. Therefore, the parties of the dispute would have to enforce the binding decision via the private courts

B.4. *Effectiveness of appeal procedure*

40. Does the appeal of a decision of the dispute settlement body automatically suspend the binding effects of the decision in question?

No, however an application to the CAT for a stay is possible.

41. If the appeal does not automatically suspend the binding effects of the decision of the dispute settlement body, what is the applicable standard to obtain such suspension and how is it applied in practice ?

It is possible to apply to the CAT for a stay of the decision. The CAT applies the normal legal principles relating to applications for interim relief.

42. What percentage of decisions taken since September 2002 were appealed?

To date, only one appeal has been lodged against a Direction of the Director General of Telecommunications (now Ofcom) relating to a dispute between BT and Vodafone Limited concerning the provision of partial private circuits (BT plc v. Director General of Telecommunications, Case number 1818/3/3/03).

43. What is the average timeframe from the filing of an appeal until the outcome?

As indicated above, to date, only one appeal has been lodged against Ofcom (formerly the Director General of Telecommunications) in case 1818/3/3/03. In this case, the CAT handed down its final judgement 9 months following receipt of the notice of appeal.

44. What proportion of court judgements reached since September 2002 resulted in the NRA determination being annulled or overturned?

Only one appeal has been lodged against Ofcom as a dispute settlement body. In this case, the Direction was set aside and the matter was remitted to Ofcom for further review (see case 1818/3/03, BT plc v. Director General of Telecommunications).

C. GENERAL MARKET ACCESS CONDITIONS

C.1. *Access obligations (AD article 12)*

45. Does your NRA clearly specify its policy in relation to the obligation to supply access?

Yes, Ofcom applies the access guidelines published by Oftel on 13 September 2002. These guidelines set out how Oftel applies certain provisions of the Access and Interconnection Directive which relate to imposition of access obligations on operators found to have significant market power. The Strategic Review of Telecoms recently concluded a review of Ofcom's policy towards access.

For further details, see the internet link attached below:

http://www.ofcom.org.uk/static/archive/oftel/publications/ind_guidelines/acce0902.htm.

46. Where access has been mandated, does your NRA typically require (e.g. as part of a stated policy) dominant operators to publish a reference offer for access?

Yes, such providers are typically subject to an SMP condition requiring them to publish reference offers.

47. *Is there a standard procedure available for operators to negotiate access products/services not explicitly provided for in the standard reference offers? In the last 3 cases where such a product was requested, how long did it take for the matter to be resolved and was regulatory intervention necessary?*

Yes. There is a standard process, known as the Statement of Requirements (SOR) process, and this is set out in some detail in a specific SMP obligation faced by BT. This sets a time limit of 60 days within which BT must respond to a request. Ofcom only receives visibility of these cases when BT refuses a request for network access and the dispute is referred to Ofcom

48. *Are SLAs commonly available for regulated products? Does your NRA impose on SMP operators obligations in relation to SLAs? Is the effectiveness of SLAs regularly reviewed in light of evolving market demands and changes in the retail offers of SMP operators?*

SLAs are available for PPCs. According to Ofcom, they are effective, and the onus is on the operators to refer a complaint to Ofcom, should they be unable to resolve any issues through commercial negotiation.

49. *Do SLAs include provision for financial penalties for failure to meet contractual conditions?*

SLAs include provision for financial penalties to meet contractual obligations - e.g., - WLR, PPCs, LLU.

C.2. *Non discrimination and price squeeze (AD article 10)*

50. *Is non-discrimination an obligation routinely imposed in markets where one or more operators are found to have SMP?*

Yes.

51. *Do non-discrimination requirements apply across the value chain – i.e. between wholesale products as well as between wholesale and retail?*

Yes.

52. *Does the NRA have rules in place to guard against price squeeze e.g. a notification or publication requirement for wholesale and retail tariffs which enables the NRA/competitors to verify compliance?*

Yes, for example, price publication obligations exist for both PPCs and retail leased lines. In relation to fixed call termination, there are requirements to publish a reference offer and to notify charge changes 90 days before they take effect, and BT is required to publish retail tariffs. Also, as a general rule, any access must be on fair and reasonable terms.

53. *Has your NRA applied price squeeze tests in response to allegations of discrimination? Please provide recent examples.*

Yes. The most recent example is Freeserve.com plc - BT's residential broadband pricing – see link http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_613/?a=87101market.

54. *Does the NRA have specific provisions to enforce non-discrimination on non-price terms e.g. requirement for transparency of internal contracts, publication of internal SLAs, use of KPIs to identify differences in treatment?*

Yes, Ofcom is required to impose conditions on all SMP providers, where appropriate, where those conditions are objectively justifiable, not unduly discriminatory, proportionate and transparent. In most cases where a provider has been found to have SMP, Ofcom (or Oftel) has imposed a requirement prohibiting undue discrimination.

There are various SMP conditions which require transparency so that discrimination can be identified, such as accounting separation, internal reference offers, KPIs. For example, on PPCs, BT is required to publish KPIs on a quarterly basis, and for fixed wholesale narrowband services, BT and Kingston have obligations to pre-notify technical information a minimum of 90 days in advance of providing new wholesale services or amending existing technical terms and conditions. BT also has an obligation to publish some KPIs on quality of service.

Ofcom is currently reviewing its approach on this question and has initiated a public consultation on how it may investigate potential contraventions of these requirements. The consultation closed on 8 September 2005. For additional information on this consultation process, see link below

<http://www.ofcom.org.uk/consult/condocs/undsmpp/#content>.

C.3. Price control (AD article 13)

55. *Does your NRA have a clear policy about how price controls are applied in given circumstances e.g. cost-orientation, retail minus or benchmarks?*

Yes, see below.

56. *If cost-orientation is applied, which methodology is used (e.g. historic or current FAC or LRIC)? Is the methodology clearly specified?*

Ofcom uses either CCA, FAC or LRI + EPMU because these methodologies approximate more closely to the costs of an entrant. The methodology is always clearly set out.

However, Ofcom's view is that the most appropriate and economically efficient basis for regulatory charge controls is forward-looking LRIC. LRIC has also been identified as the most appropriate methodology to use for setting interconnection charges by the European Commission in its 1998 Recommendation on Interconnection. For further details, see The Use of Long Run Incremental Cost (LRIC) as a Costing Methodology in Regulation, 12 February 2002. Furthermore, the Competition Commission has agreed with the use of LRIC as the appropriate costing methodology for setting termination charges. For further details see the Internet link attached below:

http://www.ofcom.org.uk/static/archive/oftel/publications/mobile/ctm_2002/lric120202.pdf.

57. *Is information made available (e.g., number of subscribers, cost allocation between network components, WACC) enabling competitors/third parties to understand cost models and assess regulated operators' compliance with cost orientation?*

Yes, Ofcom publishes costs models (subject to confidentiality issues). Competing providers also met with Ofcom to get a detailed explanation of the cost model. For instance, in order to ensure greater transparency, setting charge controls on BT for fixed wholesale narrowband services for 2005-9, Ofcom has moved to using published CCA FAC data as the basis for setting the controls.

Some competitors still nevertheless have concerns that the information available is not sufficient to really assess whether BT's retail businesses are operating on a truly equivalent basis to competing operators.

C.4. Cost accounting separation (AD article 11)

58. *Are SMP operators subject to cost accounting separation obligations? Please indicate the markets in relation to which cost accounting separation is applicable?*

Yes, this is currently being worked out, following the undue discrimination guidelines (consultation closed 8 September 2005). The main SMP operator in the UK (British Telecommunications) has cost accounting and accounting separation reporting obligations in 20

wholesale and 7 retail markets. On mobile call termination, Ofcom has imposed its own specific LRIC model on the 2G MNOs.

59. *Is the methodology for accounting separation clearly specified and subject to consultation?*

Yes.

60. *Are the accounts drawn in accordance with cost accounting separation published or otherwise made publicly available?*

Yes.

61. *Do the separated accounts clearly show transfer charging arrangements between SMP products and all relevant downstream markets?*

Yes.

C.5. *Rights of way and facility-sharing (FD article 11)*

62. *Are operators entitled to rights of way on public land?*

Yes.

Operators granted powers under the Electronic Communications Code (the “Code”) have certain rights to install infrastructure on public land and also benefit from certain exemptions under Town and Country Planning legislation. Operators are required to apply to Ofcom for these powers. There are presently 150 individual holders of Code powers.

For additional information, please refer to the link below:

http://www.ofcom.org.uk/telecoms/ioi/e_c_c/160778/?a=87101

63. *In practice is it possible to exercise these rights in a reasonable timescale and at a reasonable cost?*

Code operators exercise their powers continuously for various reasons – to provide new connections, to repair services, and to upgrade their networks – and it is clear that the regime works in practice. However, there are clearly costs involved in giving notice and liaising with Highway Authorities. The Department for Transport is currently evaluating how the regime for access to roads is working – not just in relation to communications infrastructure – and considering amending the certain rules in relation to notices.

64. *Are there clear rules in place stipulating the procedure and cost?*

Yes, the procedure is clearly set out in the Electronic Communications Code (which is laid down in Schedule 2 to the Telecommunications Act 1984, as amended by Schedule 3 to the Communications Act 2003. See also the revised statement of Charging Principles published by the Director General of Telecommunications on 10 October 2003 for the purpose of fixing charges in accordance with sections 38 and 39 of the Communications Act 2003.

C.6. *Numbering*

65. *Is number portability available for fixed numbers? If so, is it available for all types of numbers (used for fixed services) or is it limited to geographic numbers?*

Yes, number portability is available for all types of numbers.

66. *Is mobile number portability available?*

Yes.

67. *What is the average timeframe and cost for porting numbers for fixed and mobile (if available)?*

The timeframe for porting numbers depends on a number of factors which would make an assessment of average timeframe misleading. Ofcom assumes that average “cost for porting” refers to retail porting charges.

For mobile number portability, the minimum timeframe is 5 days to port 25 or less mobile numbers and no more than 35 days to port more than then 25 mobile phone numbers. For mobile subscribers, the average cost to port is usually zero, although for a small proportion (less than 10% of all mobile subscribers) of subscribers (who take service from independent airtime resellers) a porting charge of £20-£25 per number may be levied.

For fixed non-geographic number portability (number translation services like freephone, shared cost and shared revenue services), the minimum lead time is 5 working days. Subscribers are unlikely to be charged.

Installation type - Minimum Order Lead-time	Lead-time in working days	Subsequent Port Lead-time in working days
Single Line	4	7
Single Lines with greater than 10 Lines porting at same installation / time	14	17
PBX 10 lines or less	7	10
PBX 11 lines or greater (or a Centrex site)	17	20
Simple DDI	17	20
Complex DDI (or a multi-site full/partial VPN)	22	25
ISDN 10 lines or less	7	10
ISDN 11 lines or greater	17	20
Subsequent growth of previously exported numbers, step increase of 11 lines or more	10	

68. *What proportion of fixed and mobile numbers were ported in 2004?*

In April 2004, Mason Communications Ltd, who carried out a study for Ofcom, estimated cumulative ports of geographic numbers as a percentage of exchange lines to be 5.2%, with annual ports as a percentage of exchange lines being 0.9%. Ports of geographic telephone numbers (in 2004) were estimated to have leveled off at about 300,000 per year. For mobile number portability, it is estimated that the percentage of ported number to mobile subscribers was 1.54% in 2003, increasing to 2.11% in 2004.

69. *Which, if any, number ranges are available to VoIP providers eg geographic/special VoIP range?*

Geographic, Location Independent ECS, Personal and NTS numbering ranges (if appropriate).

D. KEY ACCESS PRODUCTS OR REGULATORY TOOLS BY AREA

D.1. Narrowband voice

70. *What is the level of interconnection tariffs for call termination with interconnection at the local, single and double tandem switch level?*

Interconnection services	Call setup		Per minute		
	Peak	Off-peak	Peak	Off-peak	
Local exchange			0.3700	0.1694	Eve
				0.1334	w/e
<i>pence</i>	<i>0.0</i>	<i>0.0</i>	<i>0.2514</i>	<i>0.1151</i>	Eve
				<i>0.0906</i>	w/e

Single tandem			0.5233	0.2396	Eve
				0.1887	w/e
<i>pence</i>	0.0	0.0	0.3555	0.1628	Eve
				0.1282	w/e
Double tandem short			0.8912	0.4080	Eve
				0.3213	w/e
<i>pence</i>	0.0	0.0	0.6055	0.2772	Eve
				0.2183	w/e
Double tandem medium			1.1469	0.5252	Eve
				0.4135	w/e
<i>pence</i>	0.0	0.0	0.7792	0.3568	Eve
				0.2809	w/e
Double tandem long			1.4999	0.6866	Eve
				0.5408	w/e
<i>pence</i>	0.0	0.0	1.0190	0.4665	Eve
				0.3674	w/e
Daytime: Mon-Fri 08.00-18.00 / Evening: Mon-Fri 18.00-08.00 / Week-end: all Sat & Sun					
Valid from 1 April 2005 until superseded by new price list.					

71. *Are new entrant operators entitled to apply higher charges than the incumbent operator for termination services on their networks? If so, are these tariffs based on an application of the delayed reciprocity principle or can these tariffs be justified on the basis of a cost analysis?*

Ofcom reviewed competition in the provision of fixed geographic call termination services in 2003. This review concluded that all operators who terminated fixed geographic calls had significant market power in doing so. As a result, Ofcom imposed obligations on all operators, which required them to meet reasonable requests for fixed geographic call termination and to do so on fair and reasonable terms, conditions and charges. In practice, most operators have chosen to set charges on the basis of a contractual agreement with BT, in which charges are set on the basis of BT's costs.

In terms of a completely new entrant, they would, at least until such time as Ofcom carried out a market review in relation to the market for fixed geographic call termination on their network (if that was the defined economic market), be allowed to charge what they liked. Or at least they would, in theory. In reality, it is likely that Ofcom would receive a dispute should anyone propose to charge more than others.

72. *Is carrier selection and preselection implemented?*

Yes, Carrier Selection and Carrier Pre-Selection are both implemented in the UK.

73. *What is the market share (revenue) of alternative operators in the fixed voice market?*

The incumbent held a 63.7% share of the fixed voice telephony market (all fixed calls including internet, in terms of revenue) at 31 March 2004, down 0.8% on the previous year (Source: European Commission 2004 report on the implementation of the new EU regulatory framework).

74. *What is the level of interconnection tariffs for call origination at the local, single and double tandem switch level?*

BT's interconnection rates as of 1 April 2005 are shown below. These were, at that point, all subject to regulation for these services, based on BT's market power. BT's 24 hour average pence per minute charges from that date were:

- local exchange call origination: 0.1827
- single tandem call origination: 0.2541
- double tandem call origination has 3 prices based on distance
- short (under 100km): 0.4254

- medium (100-200km): 0.5445
- long (over 200km): 0.7088

(Note - for all services, add 0.061 ppm if the call origination service is purchased with operator assistance).

75. *Is wholesale line rental (WLR) implemented? What proportion of active incumbent fixed lines are wholesaled through WLR?*

Yes, WLR is implemented in the UK. As of end-August 2005, there were 600,332 residential WLR analogue lines in the UK (representing 3.1% of the incumbent's (*i.e.* BT's) fixed residential lines) and 795,472 business WLR analogue lines in the UK (representing 9.8% of BT's fixed business lines), making a total number of 1,395,804 analogue WLR lines (equal to 5% of BT's fixed lines).

BT's WLR charges are cost-oriented. Currently, the residential WLR charge is £8.74 / month (excluding VAT), and the business WLR charge is £9.95 / month (excluding VAT). The charges for setting up WLR are: £1.41 (ex VAT) for transferring an existing line from BT (or another WLR provider), and £91.99 / line (ex VAT) if a new physical line needs to be installed. There are also separate charges for additional services. These are also required to be cost-oriented, and further details can be found at:

http://www.btwholesale.com/application?origin=spplParts.jsp&event=bea.portal.framework.internal.refresh&pageid=spplSubpartSummary&nodeId=navigation/node/data/service_and_support/pricing/sppl/36/Part6/navnode_8_11_1_1_36_6.

D.2. Mobile

76. *What is the peak-rate fixed to mobile termination charge applied by the largest mobile operator in your country?* 8.5 pence per minute or 11.19 eurocents per minute

Peak time		Off-peak time		Comments
Eurocents per minute		Eurocents per minute		
O2		O2		Day
(GSM) Pence 6.310	(GSM) Eurocents 9.29	(GSM) Pence 6.310(E) 3.140(W)	(GSM) Eurocents 9.29 4.62	Mon-Fri 08.00-18.00 Eve(E) Mon-Fri before 08.00 & after 18.00 Weekend(W): all day Sat and Sun
T-Mobile		T-Mobile		Ofcom has set price regulation for 2G MTRs applicable from 1 Sept. 2004
(DCS-1800) Pence 8.900	(DCS-1800) Eurocents 13.10	(DCS-1800) Pence 4.000(E) 4.000(W)	(DCS-1800) Eurocents 5.89 5.89	

77. *Is fixed to mobile termination subject to regulation? Is mobile to mobile termination subject to regulation? If so, please specify the regulatory conditions applied e.g. price control, non-discrimination.*

Yes, price control and non-discrimination are imposed on both fixed to mobile and mobile to mobile termination.

78. *Where price regulation is applied, are prices required to be cost-oriented? Has a glide-path been applied, and if so, at what date are prices projected to reflect actual costs?*

The charge caps are fixed and believed to reflect costs today, so there is no need for a glide path.

79. *Where non-discrimination is applied to fixed to mobile and/or mobile to mobile offnet rates, is the mobile operator required to demonstrate that it is not discriminating with respect to its own 'internal' onnet rates?*

No.

80. *What are the market shares (by revenues) of the 2 largest mobile operators?*

Vodafone: 29%.

O₂: 23%.

81. *What is the price of a basket of average user mobile retail services (OECD methodology)?*

44.8 EUR (10th Implementation Report, figure 56).

82. *Is one or more MVNO operator operational? If so, what is the MVNO market share of mobile revenues (or subscribers)? Is MVNO access subject to regulation?*

The UK has a number of mobile providers that could be called MVNOs (although Ofcom does not define 'MVNO' specifically). The ones with the most subscribers (at the end of June 2005) are:

- Virgin Mobile (c.4 million subscribers, or c.6.5% total UK subscribers)
- Tesco Mobile (c.550,000, or 0.9% total subscribers)
- BT Mobile (c.400,000, or 0.6% total subscribers).

In total, there are 6.7 million subscribers who are signed up to a company other than one of the 5 UK networks. This equates to about 11% of the total. New entrants are still emerging, such as easyMobile and ExtremeMob.

The UK does not have regulation mandating access for MVNOs. No UK MNOs have SMP in the market for wholesale access & call origination, so all MVNO agreements with MNOs are arranged on a commercial basis.

D.3. Business services

83. *Are there any wholesale partial private line offers ("ppcs") in your country?*

Yes. PPCs were first introduced in 2002, and the leased lines market review of June 2004 concluded that it was still appropriate to require BT to make available PPCs at bandwidths up to and including 155Mbits/s.

84. *Are PPCs required to be cost-oriented, and is the cost-orientation principle effectively applied?*

Yes. PPC terminating segments are the subject of a price control, as well as a cost orientation obligation, and trunks segments (symmetric broadband origination) are required to be cost orientated.

85. *What are the tariffs offered (connection and rental) for PPCs for 2Mbits/s 2 km?*

2,824 EUR (connection charges).

157 EUR (rental charges) (10th Implementation Report, figures 38 and 39).

86. *Are there any specific measures to prevent discrimination in the provision of ppcs and leased lines? e.g. KPIs*

Yes, BT is prohibited from undue discrimination between PPCs and retail leased lines and is required to publish KPIs on a quarterly basis to enable Ofcom and its competitors to assess this.

87. *Do the leased line wholesale and PPC products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

88. *Are there any restrictions applicable to the migration from leased lines to ppcs?*

No.

89. *Is a Wholesale Ethernet Service (WES) available? If not, is it under consideration by the NRA?*

Yes it is available.

D.4. Broadband

90. *Is full local loop unbundling and shared access available?*

Yes.

91. *What is the set-up and recurrent tariff charged for both full and shared ULL access?*

Full access		Shared access	
Active loop:			
–	One-off: £ 34.86 (50.30 EUR)	–	One-off: £ 34.86 (50.30 EUR)
–	Annual: £ 80 (115 EUR i.e. 9.60 EUR per month)	–	Annual: £ 15.60 (22.50 EUR i.e. 1.90 EUR per month)
		–	Charges <u>set</u> by Ofcom on 16 Dec. 2004. Applicable from 1 Jan. 2005.
		–	See Big Five Update No 54.

92. *Are associated facilities such as co-location required to be made available at cost-oriented rates? Has the NRA intervened to specify the rates and terms for the supply of these services?*

Yes. Ofcom is currently in the process of setting certain co-location charges.

93. *What is the number of unbundled lines as a percentage of total DSL lines?*

1% (ECTA Broadband Scorecard, July 2005).

94. *Do contracts for ULL and associated facilities include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

95. *What connectivity options (according to ERG classification) are available for ADSL bitstream?*

Option 2: available 9%.

Option 3: available 57%.

Option 4: not available.

96. *What % of DSL lines are provided by the SMP operator's downstream operating retail arm?*

34% (ECTA Broadband Scorecard, July 2005).

97. *Do the wholesale broadband products include a Service Level agreement including delivery and restoration times and financial penalties for failure to meet targets?*

Yes.

98. *Are there any restrictions on the migration from a resale ADSL offer to a bitstream offer to fully unbundled or shared loops?*

No.

99. *Is a price squeeze test applied by your NRA in relation to wholesale DSL products and LLU? Does your NRA apply a price squeeze test across the whole value chain e.g. between different wholesale products in addition to between wholesale and retail?*

No, not on an ex-ante basis. Such a test was conducted in 2002 ex-post.

Over the past few years, the entire Broadband value chain LLU-Wholesale-Intermediate-Retail has been assessed for margin squeeze.