

Notification of a draft measure (“order”) according to Article 7 (3) of the Framework Directive (2002/21/EC) regarding Market 4 of Recommendation 2007/879/EC – Vectoring

The Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (Bundesnetzagentur) is hereby making a draft measure (so-called "regulatory order", cf section 13(1) sentence 1 TKG) available to the European Commission, to BEREC and to the national regulatory authorities of every other member state in accordance with Article 7(3) of the Framework Directive, transposed by sections 13(1) sentence 2 and 12(2) of the TKG.

With regulatory order from 21 March 2011, Telekom Deutschland GmbH was subjected to regulatory measures in market 4 of the Markets Recommendation. One of those measures was the obligation to grant access to the unbundled sub-loop.

The draft measure notified today provides for the following amendments of the above mentioned obligation:

- In principle, the obligation to grant access to the unbundled sub-loop is maintained.
- However, under certain conditions sub-loop unbundling may be denied in order to allow Telekom or a competitor the deployment of VDSL2-Vectoring-technique.
- In case a street cabinet has been or will be developed by a first-mover (Telekom or a competitor), access of a second-mover to the unbundled sub-loop with regard to spectrum above 2,2 MHz must or may be denied if
 - the first-mover uses or intends to use Vectoring-technique,
 - the second-mover has been advised when ordering the co-location at the street cabinet that someone else uses or intends to use Vectoring, and
 - the first-mover grants an appropriate access to bitstream (on layer 2, though until 31 December 2015 a layer 3 product suffices).
- As exception and taking its property rights (Art. 14 Basic Law) into account Telekom Deutschland is entitled to terminate or deny access to an unbundled sub-loop for use with spectrum above 2,2 MHz if
 - Telekom has installed Vectoring-technique at the street cabinet,
 - Telekom grants an appropriate access to bitstream (on layer 2),
 - Telekom has developed more cabinets with Vectoring-technique than a competitor with VDSL2 or Vectoring in the region concerned, the later being defined by a common area code, and
 - at least 75% of the buildings connected to the street cabinet in question are connected to a second fixed telecommunications infrastructure.
- The termination rights of Telekom Deutschland are softened by several counter-exceptions concerning grandfather rights and state aid cases.
- A so-called “Vectoring-Liste” will act as a register and grant legal security and non-discrimination when reserving street cabinets for development. Reservations may be made one year in advance before development. Though the Vectoring-Liste will be installed and operated by Telekom Deutschland Bundesnetzagentur retains far reaching monitoring and intervention rights.
- Further details will be determined in the Reference Offer. In order to grant predictability Bundesnetzagentur has already indicated (in the reasons) which rules and sanctions should be enacted at any rate in the Reference Offer.

The proposed amendment is based upon an application filed by Telekom Deutschland on 19 December 2012.

On 8 April 2013 the draft measure was posted on the website of the Bundesnetzagentur. An additional notice published in Official Gazette No 6/2013 as Communication No 120/2012 called attention to the posting. Comments were invited from interested parties within a period of one month from publication.

The comments from interested parties were published on 22 May 2013 as the outcome of the consultation procedure in Official Gazette No 9/2013 as Communication No 151/2013 and on the website of the Bundesnetzagentur.

Furthermore the interested parties had the opportunity to comment during the oral proceedings held on 24 January and 24 April 2013.

The Federal Cartel Office was given the opportunity in a letter dated 2 July 2013 to give its views on the draft.

Comments can be made on the draft within a period of one month of being thus advised.

This notification includes

- one draft regulatory order.

Bundesnetzagentur
Bonn, 9 July 2013