COMMISSION RECOMMENDATION

of 22.11.2013


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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,


Having called on interested parties to submit their observations pursuant to the provision cited above² and having regard to their observations,

Having regard to the opinion of the Body of European Regulators for Electronic Communication (BEREC)³,

Whereas:

1. PROCEDURE

(1) From 25 March 2013 to 26 April 2013, the Austrian Regulatory Authority, Telekom-Control-Kommission (TKK)⁴, carried out a national consultation⁵ concerning the markets for (physical) network infrastructure access and wholesale broadband access⁶ in Austria.

² Notice published at: https://circabc.europa.eu/w/browse/a98d04c1-0689-48cc-bd25-cf1e41caea20
³ Opinion of BEREC of 5 September 2013, BoR (13) 97.
⁴ In Austria all regulatory decisions are formally adopted by Telekom-Control-Kommission (TKK), which is supported by the Rundfunk und Telekom Regulierungs-GmbH (RTR). RTR is responsible for carrying out the market definition, market analysis, national and EU consultations, and proposes the decisions for the adoption by TKK.
⁵ In accordance with Article 6 of the Framework Directive.
On 25 June 2013, the Commission registered a notification from TKK concerning markets 4 and 5.

On 5 July 2013, a request for information (RFI) was sent to TKK and a response was received on 10 July 2013.

On 25 July 2013, the Commission, pursuant to Article 7a(1) of the Framework Directive, informed TKK and BEREC, respectively, of the reasons as to why it believed that the draft measure would create a barrier to the internal market and why it had serious doubts as to the compatibility of the draft measure with EU law (the "Serious doubts letter").

On 14 August and 16 August 2013, the Commission received in total six third party observations.

On 5 September 2013, BEREC delivered its opinion to the Commission.

On 7 October 2013, a meeting between TKK, BEREC and the Commission took place in order to identify the most appropriate and effective measure addressing the Commission's serious doubts. This was followed up by a telephone conference with the same parties on 17 October 2013.

2. DESCRIPTION OF THE DRAFT MEASURE

The previous (third round) of market analysis on market 4 was notified to the Commission under case AT/2008/0835 and the corresponding SMP analysis and remedies under case AT/2010/1084. The Commission commented stating that wholesale access prices should in principle be cost-oriented and invited TKK to reconsider its hybrid approach (imposing price control based on retail-minus with a maximum cap based on a FL-LRAIC model) and to apply a transparent and appropriate cost model.

The third round of market analysis for market 5 was notified to the Commission under case AT/2009/0970 while the SMP analysis and remedies were notified under case AT/2010/1136. In its market analysis, TKK concluded that the retail residential market tends towards effective competition mainly due to the competitive pressure exercised by mobile operators. Consequently, only the non-residential wholesale broadband market was further assessed and regulated.

In the proposed notified draft measure for market 4, TKK defines the market including copper and fibre infrastructures as well as virtual access over copper and fibre, and proposes to impose the following obligations on the identified SMP operator, A1 Telekom Austria (A1TA):

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7 In accordance with Article 5(2) of the Framework Directive.
8 In accordance with Article 7a(2) of the Framework Directive.
9 In accordance with Article 7a(3) of the Framework Directive.
(a) access to unbundled subscriber loops and unbundled optical fibre lines as well as virtual unbundling\textsuperscript{14} and backhaul services;
(b) obligations relating to information, planning and migration in relation to NGA;
(c) non-discrimination including proof of technical replicability;
(d) price control based on a FL-LRAIC model in combination with a margin squeeze test;
(e) transparency and;
(f) accounting separation.

\textbf{(11)} Regarding the price control obligation, TKK sets out that in addition to cost-orientation, which is a necessary remedy, a margin squeeze test is needed. TKK explains that the prices in the retail residential market are set below cost (due to the fierce competition coming from mobile and cable platforms), which may lead to a margin squeeze even with cost-oriented wholesale prices. The FL-LRAIC model calculates an average LLU price of 15.34\euro but TKK proposes to impose the price resulting from the margin squeeze test, i.e. 5.87\euro, and only keep the cost-oriented price as a safety cap. The proposed average price, resulting from the margin squeeze test, for the virtual unbundling is 14.36\euro, also below the cost-oriented rate. For both market 4 and 5, a combined margin squeeze test\textsuperscript{15} is used and also the margin between the two wholesale markets is monitored.

\textbf{(12)} In the notified draft measure for market 5, bitstream based on xDSL and optical fibre, TKK proposes to continue regulating only the non-residential market and impose the following obligations on A1TA:
(a) access with regional and national handover and backhaul;
(b) traffic transport including different traffic classes for VoB;
(c) retail-minus price control;
(d) non-discrimination including a reference offer;
(e) obligations for switching and migration;
(f) transparency and KPIs;
(g) accounting separation.

\textbf{(13)} In market 5, TKK does not propose to impose cost-orientation since the potential problem of excessive pricing in the market is limited, but identifies the risk that A1TA may squeeze the margin of access seekers and therefore proposes retail-minus price regulation. The prices of the main wholesale bitstream offers lie between 7\euro/month and 130.67\euro/month depending on bandwidths, overbooking etc.

3. \textbf{SERIOUS DOUBTS EXPRESSED BY THE COMMISSION WHEN INITIATING THE SECOND PHASE OF THE ARTICLE 7a PROCEDURE}

\textsuperscript{14} As a substitute to physical unbundling where this is not possible.
\textsuperscript{15} The test first checks that all costs are covered for all broadband products over the period of one year. Moreover, regarding certain products (mainly promotions and products with especially low margins), the test makes sure that at least the avoidable costs are covered. The test is based on an Equally Efficient operator (EEO)-approach, apart from for the costs of DSLAM management in the context of virtual unbundling, where it is deemed more appropriate to use a Reasonably Efficient Operator (REO)-approach.
The Commission expressed serious doubts as to the compatibility of the draft measures with EU law and provided reasons why it believed that the draft measures would create a barrier to the internal market.

### 3.1. Compatibility with EU law

The Commission referred to Articles 8(4) and 13(1) and (2) of the Access Directive\(^\text{16}\), which require NRAs to impose proportionate and appropriate remedies in the light of the objectives laid down in Article 8 of the Framework Directive, encourage investments, and ensure that the chosen cost recovery mechanism promotes efficiency, sustainable competition and maximises consumer benefits.

Moreover, the Commission referred to Article 8(3)(a) of the Framework Directive, which requires NRAs to contribute to the development of the internal market. Lastly, the Commission referred to Article 16(4) of the Framework Directive, which requires NRAs to impose on SMP undertakings appropriate regulatory obligations.

The Commission took note of the explanation provided by TKK that the regulatory approach was driven by the particular circumstances in the Austrian market, where the average end customer prices of A1TA are below average costs. Still, the Commission stressed that while NRAs do have a margin of discretion when regulating access rates, any methodology has to be duly justified in order to show that it fully complies with the policy objectives and regulatory principles of the Regulatory Framework, in particular Article 8 of the Framework Directive.

The Commission stated that even though relatively low access prices may benefit competition and broadband take-up in the short term, low copper access prices resulting from a margin squeeze test have important shortcomings since they do not send the appropriate build-or-buy signals. In the Commission's view, buying wholesale infrastructure or broadband access at rates, which are much lower than the cost of rolling out the relevant infrastructure, makes investments into parallel infrastructure economically unviable.

The Commission feared that very low access prices are also likely to impede the SMP operator's efficient investment and innovation in new and enhanced infrastructures. Consumer benefit in the longer term is likely to be created by new and innovative services provided over next generation access (NGA) infrastructures, which require, however, a sufficient return on the legacy network as well as stable and predictable prices. Hence, the Commission noted that TKK's current regulatory approach appears not to be consistent with Article 8(5)d of the Framework Directive.

TKK's proposed fall-back option in market 4 is cost-orientation; however, the Austrian model provides a cost-oriented price which has increased\(^\text{17}\) since the last review and is high when compared to both the margin squeeze free price and to the EU average LLU price. Even though the Commission recognized that there are country specific circumstances which may affect the outcome of a FL-LRAIC model, the Commission pointed out that the Austrian model seemed to lack certain features,

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\(^{17}\) In the last market review, case AT/2010/1084, TKK calculated a cost-oriented price with an arithmetic mean of 14.97€. The increase, TKK explains, is due to both declining volumes as customers migrate to other infrastructures but also to a rise in copper and construction costs.
which would enable it to result in a stable, predictable and correct cost-oriented price for the copper LLU.

(21) Moreover, in case a cost model which took account of, for example, the replicability of assets and a shift to a NGA-network would still result in a price level which risks squeezing access seekers out of the market, the Commission invited TKK to consider whether the competitive situation in certain geographic areas may provide sufficient competitive safeguards, stemming from, in particular, mobile and cable networks, to prevent the SMP operator from setting excessively high wholesale prices. In such scenarios, price control may not be the appropriate remedy and the Commission invited TKK to consider an alternative regulatory approach.

(22) For market 5, TKK proposed to impose only retail-minus price regulation, without a cost-oriented fall-back. The Commission commented that, in principle, regulation of wholesale access prices should be consistent across the value chain. A scenario where TKK would be applying a margin squeeze test, which potentially results in relatively low prices in market 5 while at the same time setting cost-oriented prices in market 4, would therefore not ensure consistency and may be detrimental to promoting investment by alternative operators.

(23) While there are circumstances, for example provided for in recital 37 of the NGA Recommendation, where an NRA may refrain from imposing cost-orientation in market 5, the Commission had doubts that in the Austrian context, where only the business segment of market 5 is regulated, such competitive constraints at retail level exist. The main constraints at retail level stem from mobile and cable-based operators, which serve the business segment only to a very limited extent.

(24) Finally, the Commission concluded that TKK had not sufficiently motivated that the proposed price regulation fulfils the requirements of Articles 8(4) and 13(1) and (2) of the Access Directive, read in conjunction with Articles 8 and 16(4) of the Framework Directive and therefore raised serious doubts as to the compatibility of the proposed draft measure with EU law.

3.2. Creation of barriers to the internal market

(25) The Commission feared that the outlined negative effects on investment and sustainable competition of TKK's proposed approach could at the same time have a significant detrimental effect on the development of the internal market.

(26) The Commission believed that the application of the margin squeeze test as proposed by TKK is likely to prevent the establishment and development of a trans-European network, thus creating barriers to the single market. Specifically, multi-national operators intending to invest in the Austrian network infrastructure access and broadband markets are likely to be deterred by the limited investment returns in light of the applied wholesale and prospective retail rates.

4. PROCEDURE FOR CONSISTENT APPLICATION OF REMEDIES

4.1. BEREC's opinion

(27) On 5 September 2013 BEREC issued an opinion on the Commission's letter of serious doubts pursuant to Article 7a(3) of the Framework Directive.

(28) BEREC considered that the Commission's serious doubts are not justified.

(29) In its introductory remarks, BEREC stated that the discretion given to NRAs by the Access Directive in how to best apply the regulatory tools in pursuit of the objectives
laid down in Article 8 of the Framework Directive means that it is important for each individual case to determine which remedy has to be imposed, taking account of specific national circumstances. The decision on the type of pricing methodology lies fully within the authority of the NRA, as long as it is compliant with the Regulatory Framework.

(30) Regarding market 4, BEREC shared the view of the Commission that an undistorted build-or-buy signal is normally best achieved by implementation of a CCA/LRIC based cost calculation methodology. However, BEREC has identified some market situations where other methods of price regulation are more appropriate and believes that the Austrian market is such an exception. BEREC stated that the evidence put forward by TKK on the retail competition stemming mainly from mobile and cable means that replicating the incumbent's fixed network would not presently be efficient in Austria. As such, an FL-LRAIC based price regulation would not induce investment, even if TKK took into account the features, which the Commission highlighted as lacking in the Austrian model.

(31) Further, BEREC found that TKK had provided sufficient reasons on why setting the price on the basis of a margin squeeze test is a better suited remedy for the Austrian market. Whilst A1TA is not covering the modelled costs, it may still make a profit and is able to maintain its presence in the retail market until it deploys new infrastructure. BEREC noted that according to the notified draft decision, the incumbent has made significant investments and since the proposed price regulation has already been used by TKK for six years, it does not seem to have had a negative impact on investments.

(32) In the Serious doubts letter, the Commission set out that if an amended cost model would still not provide a sufficient margin for access seekers, TKK was invited to consider if the competitive situation in certain geographic areas was such that price control would not be the appropriate remedy and in that case set out an alternative regulatory approach. In this regard, BEREC stated that they found the proposed measure of TKK to be the alternative regulatory approach the Commission mentioned and concluded that, in BEREC's opinion, TKK had presented sufficient evidence to justify its choice of price regulation in market 4.

(33) Regarding market 5, BEREC agreed with the Commission that NRAs should in principle impose cost-orientation on wholesale broadband access. However, BEREC believed that TKK had explained that sufficient competitive constraints exist in order to allow for a retail-minus approach. In this context, BEREC mentioned: (i) competitive pressure from unbundlers and cable network operators; (ii) an analysis provided by TKK which shows that A1TA's retail price for business subscriptions is only slightly higher than those of its competitors; and (iii) the low price of residential products has a large competitive impact on the price of low end business products.

(34) Finally, BEREC agreed with the Commission that wholesale access prices should be consistent across the value chain but does not see that the current proposal by TKK would lead to inconsistencies as margin squeeze tests based on retail-minus are proposed to be applied in both markets. BEREC also pointed out that the Commission did not comment or express serious doubts on the geographical market being national in scope.

(35) Addressing the proposed cost-model, the Commission highlighted certain features that it found lacking in the model: a gradual shift from a copper to a NGA network, re-usable civil engineering infrastructure and the treatment of OPEX as a mark-up
rather than being modelled costs. BEREC pointed to the fact that: (i) TKK had showed that copper volumes were moving to mobile rather than NGA infrastructures; (ii) ducts only have a small share in A1TA's access network; and (iii) since OPEX only makes up for a small share of total costs, the treatment of OPEX should not lead to any change in results. Lastly, BEREC did not see the Commission's comments on the cost model as relevant since it de facto is the margin squeeze test which determines the LLU price.

4.2. Close Co-operation between TKK, BEREC and the Commission

TKK, BEREC and the Commission closely co-operated pursuant to Article 7a(2) of the Framework Directive in order to identify the most appropriate and effective measure in light of the objectives laid down in Article 8 of the Framework Directive.

The Commission also received comments from third parties. These comments voiced inter alia the concern that not applying the proposed margin squeeze test would force alternative operators out of the market and all submissions showed support for the price regulation proposed by TKK. One submission argued that the margin squeeze test is used because the average end customer product of the incumbent is offered below average costs and the incumbent itself is the trigger of price competition. Hence, the margin squeeze test needs to be kept even though one submission agreed that the cost model should also be reconsidered. Further, several submissions stated that any increase in the access price would have significant negative effects for alternative operators while the advantage for the incumbent would be negligible and not considered materially altering the financial resources available for A1TA to invest in NGA. Several comments concerned the special market situation in the Austrian market and feared that the Commission had not taken this sufficiently into account when questioning the regulatory approach of TKK. Further, concerning the Commission's doubts that the low access prices would hinder investments, third party comments suggested that this concern is not justified. On the contrary, there has been network investment in Austria, both by the incumbent and alternative operators, and what is ultimately decisive for investment is the end customer price.

On 7 October 2013 a meeting was held between TKK, BEREC and the Commission with the aim to identify the most appropriate and effective measure which could address the Commission's serious doubts in line with Article 7a of the Framework Directive. Both BEREC and TKK made short presentations of the issue at hand and their opinions. In TKK's view, any change in price regulation could only lead to either prices that are higher than the prevailing ones – and as thus creating margin squeeze, prices at the same level or lower prices – which was not considered likely. The difference in constraints on residential and non-residential products was discussed, since services provided over mobile and cable infrastructures are only found to be substitutes in the residential retail market but not in the business one. Hence, the discussion concerned how this affected the competitive situation and the SMP operator's ability to set prices and what the proper regulatory response should be. TKK explained that the SMP operator, absent regulation, could in particular have a possibility to foreclose the market when it comes to bundled offers, business and voice only products. Further, the retail level mobile substitution was discussed in a forward-looking perspective and the Commission pointed out that in any further analysis, TKK would need to assess whether mobile would continue being a substitute in light of NGA roll-out.
During the meeting, TKK signalled that it would not amend or withdraw its original proposal. A follow-up conference call took place between TKK, BEREC, and the Commission on 17 October 2013.

The Commission considers that the comments it received from third parties did not provide any additional justification as to how the notified measures could be compliant with the relevant provisions of the Regulatory Framework. However, the submissions further underlined the very specific circumstances prevalent in the Austrian market where mobile broadband, in the current situation, is able to constrain A1TA in its price setting to the extent that it offers its retail products below the average costs of provisioning such products.

At the end of the three month period following the Commission's notification of its serious doubts to TKK and BEREC on 25 July 2013, TKK did not amend nor withdraw its draft measure.

Conclusion of the procedure opened to ensure consistent application of remedies

Since TKK maintained its draft measures at the end of the three months period following the Commission's notification of its serious doubts in accordance with Article 7a(1) of the Framework Directive, the Commission, taking utmost account of the opinion of BEREC, may issue a recommendation requiring TKK to amend or withdraw the draft measure or take a decision to lift its reservations indicated in the letter of serious doubts.

After taking into account the reasoning provided in BEREC's opinion which did not provide any new arguments in addition to the ones put forward by TKK, and the information exchanged during the process of close co-operation as envisaged in Article 7a(2) of the Framework Directive, the Commission considers that the reservations expressed in its Serious doubts letter are still valid.

In line with what was expressed in the Serious doubts letter, the Commission considers that TKK has not provided sufficient evidence in support of the proposed price regulation for market 4 and 5, in particular in view of the objectives laid down in Article 8 of the Framework Directive. The Commission is concerned that by imposing an access price demonstrably below cost, TKK is not acting in line with Article 13 of the Access Directive.

The Commission is aware of the very specific situation in the Austrian market, and this was further elaborated in third party submissions, by TKK and BEREC during the close co-operation phase. In the retail market, mobile broadband has been found currently to substitute fixed broadband for residential customers and both mobile and cable networks seem to exert strong competitive pressure on the SMP operator. As such, the Austrian broadband access market is at the moment exhibiting atypical characteristics, since infrastructure competition is in fact driven by mobile (rather than fixed) networks, which have a different cost structure than the fixed network of A1TA, and differ also from any potential NGA network.

In principle, as stated by the Commission in its Serious doubts letter, and also supported by BEREC in its opinion, a forward-looking bottom-up model is able to send the correct build-and-buy signals. In the view of the Commission, TKK's proposed cost model lacked some important features which the Commission highlighted in the serious doubts letter. The Commission concluded in its Serious doubts letter that in a situation where a wholesale price resulting from an amended cost model which would take account of the important features mentioned would still
not allow for a sufficient margin for access seekers, TKK should reconsider whether
the competitive situation in certain geographic areas may provide sufficient
competitive safeguards to prevent the SMP operator from excessive pricing.

(47) However, taking into account the additional information provided during the phase II
investigation, the Commission notes, on the basis of all evidence gathered, that it
might be inappropriate for TKK to define separate geographic submarkets due to the
nationwide presence of mobile infrastructures. Moreover, TKK explained that even a
modified cost model, which reflects a gradual shift from a copper to an NGA
network, takes account of the fact that certain civil engineering assets would not be
reducible in the competitive process, may not, at present, result in an access price,
which is margin squeeze free\textsuperscript{18}. The reason for this, which became more evident
during the phase II process, is that the competitive constraints mainly stem from
mobile networks, which have a different cost structure than the SMP operator's fixed
network, and which are likely to be substantially depreciated. Thus, for market 4, a
margin squeeze calculation based on mobile networks will, in the Austrian context,
lead to a LLU access price which does not cover the costs of a modern efficient NGA
network, where all replicable assets are valued at replacement costs.

(48) In this respect, the Commission maintains that the proposed price regulation for both
market 4 and 5, where the SMP operator would not be allowed to earn a return
sufficient to replace its assets, would not be in line with Article 13(1) of the Access
Directive, which requires NRAs to take into account the investment made by the
operator and allow him a reasonable rate of return on adequate capital employed. The
Commission notes that BEREC was silent with regards to this effect of the proposed
price regulation.

(49) The specific Austrian situation of mobile-fixed broadband substitution at residential
retail level must be reflected in the chosen regulatory approach and remedies, and
properly acknowledge the constraints stemming from mobile, and to some extent
cable networks. Despite this not being recognized in the BEREC opinion, the
Commission particularly notes the difference in competitive constraints on
residential and non-residential segments in the Austrian broadband markets. TKK's
explanation that the constraints mainly affect the residential segment of the
wholesale markets is concurrent with the Commission's understanding based on the
market description provided in the notification\textsuperscript{19} as well as the additional information
gathered during the phase II process, in the Commission's view, the effects of these
differences in constraints on the chosen regulatory approach for both market 4 and 5
should be re-assessed by TKK, especially in light of the fact that only the non-
residential bitstream market is regulated.

(50) In line with the findings above and in order to address the concerns expressed by the
Commission, TKK should analyse more thoroughly whether the different
competitive constraints on residential and business products should not also be

\textsuperscript{18} During phase II, TKK submitted additional documentation on what the LLU price would be if it took
account of the modelling features mentioned in the serious doubts letter. Adapting the model would,
according to TKK, lead to a price of 10.43€ instead of 15.34€. Although the Commission has not been
able to verify these assumptions, it is likely that a price resulting from the cost model amended in line
with Commission's suggestions would still lead to an access price above the current margin squeeze-
free level.

\textsuperscript{19} In the retail market, mobile broadband is only included in the residential market and the same applies to
cable although 6.5% of business products are provided over cable networks.
reflected in its regulatory approach to market 4. Subject to the outcome of this analysis, TKK might find it appropriate to delineate distinct market segments in market 4 as separate markets and, consequently, analyse whether A1TA still holds significant market power in the market segment for residential customers.

(51) If TKK would not find it appropriate to define separate product sub-markets in market 4 as described above, TKK should analyse whether the competitive situation would instead require differentiated remedies. In particular, TKK should assess whether the residential segment of market 4 would still warrant the imposition of a price control remedy as described in Article 13 of the Access Directive. In this respect, when analysing whether in the absence of any price regulation on residential markets 4 and 5 A1TA would increase its wholesale prices, the following should be taken into account. First of all, in the event of a wholesale price increase which could potentially force access seekers out of the market, A1TA could not be sure to recoup the resulting losses at retail level. As many end-customers would most probably consider switching to mobile and cable networks, in order to seize these end-customers A1TA would need to maintain its low retail prices and thus not be able to make any increase in revenues. Secondly, the removal of ex ante regulation on residential market 5 did not result in A1TA raising prices or refusing access. In addition, anti-competitive behaviour in the form of margin squeeze is also monitored by the relevant competition authority.

(52) Regarding the non-residential segment of both markets 4 and 5 and for the reasons explained above in recital 49 and 50, the Commission believes that price control in the form of cost-orientation would be the appropriate remedy. In this regard, the Commission regrets the position of BEREC, who found the Commission's concerns relating to the cost model to be irrelevant since BEREC considered that the LLU price would in any case be determined by the margin squeeze test. On the contrary, the Commission considers that for the non-residential segments in both markets 4 and 5, the prices should be based on TKK's proposed cost model, amended in line with the Serious doubts letter. Thus, the cost model should reflect a gradual shift from a copper to an NGA network and take account of the fact that certain civil engineering assets would not be replicable in the competitive process. The Commission believes that these cost-oriented prices resulting from an amended cost model should allow the access seekers a sufficient margin. This is due to the fact that the competition stemming from mobile and cable products affects the level of retail prices of residential products but not to the same extent the retail prices of the non-residential products (as products delivered over mobile and cable have not been found substitutable to non-residential products at retail level). The application of such a cost model would further ensure consistency between the access prices in markets 4 and 5 which was also a concern the Commission had in the Serious doubts letter.

(53) The degree of inter-platform competition could change in the short- to medium term with NGA deployment enabling the provision of new and enhanced services, which the mobile networks might not be able to replicate. Hence, the Commission finds it vital that TKK closely monitors future market developments, as indicated in Commission's comments.

(54) On the basis of the above, and recalling its reasons expressed in the Serious doubts letter, the Commission issues the present recommendation requiring TKK to amend or withdraw the draft measures.
HEREBY ISSUES THIS RECOMMENDATION:

1. TKK should amend or withdraw the draft measure.

2. Where TKK amends the draft measure or decides to withdraw and notify a new draft measure, TKK should not impose a price regulation which does not allow the SMP operator a reasonable rate of return on investment.

3. In particular, with regards to market 4 TKK should assess whether the competitive constraints are equally strong concerning both residential and non-residential products. In this respect, even assuming that both segments are correctly included in the same product market, TKK should assess whether the competitive constraints coming from mobile and cable operators make it appropriate to differentiate remedies between the residential and non-residential market segment, in particular by not imposing a price control remedy in the residential segment. Regarding the non-residential segment of both markets 4 and 5, TKK should reassess whether a cost-oriented rate based on an amended cost model should be imposed as the most appropriate price control remedy.

4. The Commission will publish this recommendation on its website. TKK is invited to inform the Commission within three working days following receipt of this recommendation whether it considers that, in accordance with European Union and national rules on business confidentiality, it contains confidential information which TKK wishes to have deleted prior to publication. Any such request should be reasoned.

5. In accordance with Article 7a(7) of the Framework Directive, where TKK decides not to amend or withdraw the draft measure on the basis of this recommendation, it shall provide the Commission with a reasoned justification.

6. In accordance with Article 7a(6) of the Framework Directive, TKK shall communicate the adopted draft measure to the Commission and BEREC by 25 December 2013. This period might be extended, at TKK's request, to allow TKK to undertake a public consultation in accordance with Article 6 of the Framework Directive.

7. This Recommendation is addressed to TKK.

Done at Brussels, 22.11.2013

For the Commission
Neelie Kroes
Vice-President