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## **2006 Review: Comment on the European Commission's Call for Input on the Review of the EU Regulatory Framework**

The Austrian Association of Alternative Telecommunications operators welcomes the opportunity to comment on the European Commission's Call for Input on the forthcoming Review of the EU Regulatory Framework including the Review of the Recommendation on Relevant Markets and hopes the Commission will find its comments constructive.

VAT represents new entrants on the Austrian telecommunication markets. Our members offer a wide variety of communication services including mobile and fixed line services such as voice telephony as well as narrowband and broadband data services.

In order to avoid repetition we would like to refer to the ECTA Comments in this consultation process, which we strongly support. In addition we will highlight some specific problems based on the experience in Austria.

### **1. Recommendation on Relevant Markets**

In the fixed line sector, the Recommendation on relevant markets shall stick to the inclusion of retail markets as the market analysis has shown that the share of the incumbent is still at a very high level (access markets: approx. 93%; retail markets approx 55%). Thus, the market share indicates that all of the retail markets must be monitored closely as there is still a heavy lack in competition.

Whenever there is SMP found in a wholesale market, the remedy imposed must be appropriate to minimise squeeze effects occurring between the wholesale and the respective retail market. A possible squeeze effect implies that competition in the wholesale market will not be effective within the relevant time horizon and implies further that both, the wholesale and the retail market must be carefully monitored in order to ensure the competitiveness of alternative operators towards the consumer.

In addition to that, ex ante regulation must be maintained, as there is a high risk of losing all positive effects of liberalisation if some sort of "regulatory holidays" will be introduced in the fixed line sector.

In respect of the 3 criteria test, ANO believe that there shall be no fundamental changes made, as the results performed well in the past. Criterion 2 should refer to the actual market structure in order to prevent hypothetic trends to be the basis of the analysis of the NRA.

Also leased lines > 2 MB/s shall be included in the retail market as these lines were also sold to retail customers and as there is certainly less competition in the leased line sector > 2 MB/s as there is for < 2 MB/s.

## **2. Retail price control**

It is important to stress the role of retail regulation as a safeguard for competition. Experience shows that ex-post control alone is not sufficient in order to prevent exclusionary abuse by the incumbent and relief is too slow.

Even in the "TikTak" case where the Austrian competition authority supported the ANO's position it took more than a year from the announcement of the new tariff scheme by the incumbent till the definitive decision of the Supreme Court banning the tariff because of abusive bundling.

This shows that ex-ante retail regulation is essential for preventing anti-competitive behaviour like margin squeeze, predatory pricing or bundling.

## **3. Market Analysis**

The analysis of the markets shall be accomplished in a two years term in order to ensure a continuous and consistent view on the development of the market. This time period is considered to be reasonable for a finetuning of the remedies imposed.

## **4. Art. 7 procedure**

The notification of the draft measures for the European consultation procedure shall be initiated sequentially after the national consultation. At minimum, the start of the European consultation shall overlap with the end of the national consultation so that the EC is given the possibility to provide its statement within a sufficient period of time and with mature knowledge of the issues raised in the national consultation.

Having learned from the experiences regarding the EC-Veto decision against NRA's analysis of the Austrian Transit market, Art. 7 procedure shall be amended in a way as the NRA shall be obliged to proceed with the market analysis within a reasonable timescale after such Veto-decision was enacted by the EC.

## 5. Universal Service

The Austrian alternative operators are convinced that competition in supply of service is already effective in respect of directory and enquiry services as well as for public payphones. Nevertheless it must be ensured that consumers must have access to these services in future, so that one operator must still have the obligation to supply such services at a reasonable price to the consumer.

In respect to the obligation of financing the services mentioned above, Austrian alternative operators see no longer need to finance the services mentioned above as they may be offered to the customer by the operator in charge with the universal service without any economic loss.

Discussion in Austria has shown that the following facts must be defined with legal certainty on European level in order to harmonise the framework for all players on the market:

- the actual costs of the universal service that must be paid off by the alternative operators to the incumbent being in charge with universal service must be defined in advance and in a predictable way
- operators must have knowledge whether they belong to the group that must contribute to the universal service fund

## 6. Transition period

Having learned from the past in countries different than Austria, the transition from the current regulatory framework to the next regulatory framework shall be conducted smoothly in a legally secure and predictable way without any friction or infringement of rights at a defined period of time.

Yours sincerely,

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