

Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (Text with EEA relevance)

PART II

NETWORKS

TITLE II

ACCESS

CHAPTER IV

Access remedies imposed on undertakings with significant market power

Article 78

Voluntary separation by a vertically integrated undertaking

1 Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 67 shall inform the national regulatory authority at least three months before any intended transfer of their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or establishment of a separate business entity in order to provide all retail providers, including its own retail divisions, with fully equivalent access products.

Those undertakings shall also inform the national regulatory authority of any change of that intent, as well as the final outcome of the process of separation.

Such undertakings may also offer commitments regarding access conditions that are to apply to their network during an implementation period after the proposed form of separation is implemented, with a view to ensuring effective and non-discriminatory access by third parties. The offer of commitments shall include sufficient details, including in terms of timing of implementation and duration, in order to allow the national regulatory authority to conduct its tasks in accordance with paragraph 2 of this Article. Such commitments may extend beyond the maximum period for market reviews set out in Article 67(5).

2 The national regulatory authority shall assess the effect of the intended transaction, together with the commitments offered, where applicable, on existing regulatory obligations under this Directive.

For that purpose, the national regulatory authority shall conduct an analysis of the different markets related to the access network in accordance with the procedure set out in Article 67.

The national regulatory authority shall take into account any commitments offered by the undertaking, having regard in particular to the objectives set out in Article 3. In so

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doing, the national regulatory authority shall consult third parties in accordance with Article 23, and shall address, in particular, those third parties which are directly affected by the intended transaction.

On the basis of its analysis, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with the procedures set out in Articles 23 and 32, applying, if appropriate, Article 80. In its decision, the national regulatory authority may make the commitments binding, wholly or in part. By way of derogation from Article 67(5), the national regulatory authority may make the commitments binding, wholly or in part, for the entire period for which they are offered.

3 Without prejudice to Article 80, the legally or operationally separate business entity that has been designated as having significant market power in any specific market in accordance with Article 67 may be subject, as appropriate, to any of the obligations referred to in Articles 69 to 74 or any other obligations authorised by the Commission pursuant to Article 68(3), where any commitments offered are insufficient to meet the objectives set out in Article 3.

4 The national regulatory authority shall monitor the implementation of the commitments offered by the undertakings that it has made binding in accordance with paragraph 2 and shall consider their extension when the period for which they are initially offered has expired.