

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 V

Regulatory control of retail services

Article 83

Regulatory control of retail services

1 Member States may ensure that national regulatory authorities impose appropriate regulatory obligations on undertakings identified as having significant market power on a given retail market in accordance with Article 63, where:

- a as a result of a market analysis carried out in accordance with Article 67, a national regulatory authority determines that a given retail market identified in accordance with Article 64 is not effectively competitive; and
- b the national regulatory authority concludes that obligations imposed under Articles 69 to 74 would not result in the achievement of the objectives set out in Article 3.

2 Obligations imposed under paragraph 1 of this Article shall be based on the nature of the problem identified and be proportionate and justified in light of the objectives laid down in Article 3. The obligations imposed may include requirements that the identified undertakings do not charge excessive prices, inhibit market entry or restrict competition by setting predatory prices, show undue preference to specific end-users or unreasonably bundle services. National regulatory authorities may apply to such undertakings appropriate retail price cap measures, measures to control individual tariffs, or measures to orient tariffs towards costs or prices on comparable markets, in order to protect end-user interests whilst promoting effective competition.

3 National regulatory authorities shall ensure that, where an undertaking is subject to retail tariff regulation or other relevant retail controls, the necessary and appropriate cost-accounting systems are implemented. National regulatory authorities may specify the format and accounting methodology to be used. Compliance with the cost-accounting system shall be verified by a qualified independent body. National regulatory authorities shall ensure that a statement concerning compliance is published annually.

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4 Without prejudice to Articles 85 and 88, national regulatory authorities shall not apply retail control mechanisms under paragraph 1 of this Article to geographical or retail markets where they are satisfied that there is effective competition.