

Brussels, 31 January 2008

## Telecoms Rules: Commission refers Poland and Belgium to the European Court of Justice

*In a new round of infringement proceedings for Telecoms Rules, the European Commission has decided to refer two cases to the European Court of Justice, and opened two new infringement proceedings. Three reasoned opinions, the second stage of an infringement proceeding, have also been sent and eight infringement cases are now closed. The most important issue of this round of telecoms infringement proceedings is the independence of national telecoms regulators.*

*"Independent regulators are the backbone of an efficient regulatory system and of fair regulation in the interests of competition and consumers. This is why the Commission cannot tolerate violations of the independence of national telecoms regulators required by EU law," said Viviane Reding, the EU Telecoms Commissioner. "I therefore regret that I have to refer Poland today to the European Court of Justice for the continued lack of independence of the Polish telecoms regulator. Also the Luxembourg's regulator will need to ensure that there is a clear division of responsibilities between regulatory and ownership functions – otherwise, we will also need to take Luxembourg to the European Court of Justice very soon. On the positive side, I note that Slovakia meanwhile has reacted to the Commission's concerns and has amended its national legislation to ensure that the Slovak regulator is independent to perform its tasks efficiently. This is a change that will improve competition in Slovakia and ensure that telecoms customers in Slovakia will get a better deal in the future."*

As a result of decisions adopted by the Commission yesterday, **Poland** will now be taken to the European Court of Justice as legislative changes introduced in August 2006 still do not ensure the full independence of the Polish regulator, as required by European rules. The Polish government still controls significant shareholdings in a number of telecoms companies and the President of the Council of Ministers has unlimited discretion to dismiss the head of the national regulator therefore undermining its effectiveness.

The Commission has also sent a letter of formal notice (the first stage of an infringement proceeding) to **Luxembourg** for the lack of independence of its regulator. Officials there are currently exercising both regulatory functions and management functions for an operator.

The case against **Slovakia** was closed since the Ministry's shareholding in the incumbent has been moved to another body, thereby ensuring the separation of regulatory and management functions.

**Belgium** is being taken to the Court of Justice concerning Universal Service. Problems related to the financial mechanism for social tariffs remain and concern the calculation of net costs and the unfair burden on operators in particular. Meanwhile, a case has been opened against **Poland** where legislation on consumer contracts has a wider scope than the provisions of the Universal Service Directive. The

Universal Service Directive gives the right to subscribers to withdraw from their contracts, without penalty, in case of modifications made to their contracts.

**Poland** has also been sent a reasoned opinion for retaining broadband retail regulation without conducting the market analysis required under EU law. The other two reasoned opinions concern **Portugal** and **Cyprus**. The former relates to an *a priori* exclusion of operators other than the incumbent for the provision of universal service, thereby failing to ensure an open selection procedure, while the latter concerns difficulties in obtaining rights of way for mobile operators

The Commission was able to close proceedings against **Belgium, Denmark, Germany, Luxembourg, Latvia** and **Portugal** since their first round of market analysis was considered complete. The case against **Belgium** concerning the must-carry regime for cable operators in the French speaking community (see [IP/06/948](#)) was also closed since the relevant legislation was annulled by the Belgian constitutional court.

A detailed overview of the state of infringement proceedings is available on the implementation and enforcement website of DG Information Society and Media: [http://ec.europa.eu/information\\_society/policy/ecom/implementation\\_enforcement/infringement/](http://ec.europa.eu/information_society/policy/ecom/implementation_enforcement/infringement/)

See also MEMO/08/67