Digital Agenda - Commission queries Finnish telecoms regulator's plans not to impose strict price control for wholesale broadband markets

The European Commission has decided to further investigate whether the Finnish telecoms regulator, FICORA, should allow regional Finnish telecoms operators to give alternative operators access to their broadband networks without proper pricing regulation. The Commission has, inter alia, serious doubts whether FICORA's decision not to impose cost-oriented prices for access to fibre networks of dominant operators in Finland contravenes EU telecoms rules. In the Commission's view, FICORA's decision could have a negative effect on competition and the future development of fibre and copper networks. Current prices for fibre local loops are already high. This suggests that dominant operators, without proper regulation, are in a position to charge access rates at excessive levels. As a consequence of the proposed regulatory approach, those operators who would normally immediately obtain access to regulated fibre-based products, may have to open dispute settlement procedures (delaying the price implementation) or wait for FICORA's intervention. In both scenarios market entries may be significantly delayed. The Commission has therefore suspended FICORA's plans and started a 3 month investigation.

Neelie Kroes, European Commission Vice President, said: ""We need to ensure competition for companies offering broadband services. Proper and consistent regulation in the EU is a key to building more competitive markets in broadband, including high-speed networks."

FICORA identifies 111 regional relevant markets for wholesale broadband access and wholesale physical network infrastructure access, which alternative operators need to provide their own internet services, and finds almost all of them to be non-competitive.

With regard to wholesale physical network infrastructure access, FICORA proposes to set maximum prices for access to copper based services provided by the 8 largest operators with significant market power (SMPs). However, no price cap for fibre based physical access is envisaged. With regard to the remaining 19 SMP operators, FICORA intends to impose only access, transparency and non-discrimination obligations.

As regards the market for wholesale broadband access, only access, transparency and non-discrimination obligations for connections above 8 Mbit/s are planned for all operators. The Commission has concerns that different treatment of lower speed broadband access within the boundaries of the same product market might result in a distortion of competition, in particular where no regulatory obligation is prescribed at all for such low speeds.

The Commission has issued a "serious doubts" letter because it believes that this fragmented regulatory approach requires further discussion with other European regulators.
Background
The Commission's decision to start an in-depth investigation begins a "second phase" procedure under Article 7a of the EU Telecoms Directive (MEMO11/321). FICORA now has three months to work with the Commission and the body of European telecoms regulators (BEREC) on a solution to this case and meanwhile implementation of FICORA's proposal is suspended.

Article 7 of the new Telecoms Framework Directive requires national telecoms regulators to notify the Commission, the Body of European Regulators for Electronic Communications (BEREC) and telecoms regulators in other EU countries, of measures they plan to introduce to solve market problems.

While regulators have some scope to tailor approaches for achieving effective competition in their national telecoms markets, notification of draft regulations to the Commission is required in order to achieve consistency across the EU. If the Commission believes a Member State's proposals are not compliant with EU telecoms rules the first step of the Commission's "Article 7 procedure" is to write a "serious doubts" letter to the national regulator (MEMO/11/321).

The EU telecoms rules enable the Commission to adopt further harmonisation measures in the form of recommendations or (binding) decisions if divergences in the regulatory approaches of national regulators, including remedies, persist across the EU in the longer term.

Useful Links
The Commission's letter sent to the Finnish regulator will be published at:
https://circabc.europa.eu/w/browse/0fc4cbf9-3412-45fe-84bb-e6d7ba2f010e

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