

Competition Problems in Liberalized Telecommunications

Regulatory Solutions to Promote Effective Competition

Table of Contents

Acknowledgments	xiii
List of Acronyms	xv
Introduction	xvii
Chapter 1	
The Over-Regulation Trend and Ways to Avoid It	1
I. The Regulation of the EU Telecoms Sector	2
1. Where Are We Coming From? Historical Overview	2
2. The 2002 Common Regulatory Framework: Sector-Specific Regulation in Need of a Borderline?	10
II. Safeguards against Over-Regulation	27
1. Framework Directive Article Seven Consultation Mechanism	27
2. Technological Neutrality Principle	29
3. Proportionality Principle	35
4. Emerging Markets	37
III. Did the Framework Deliver the Right Mix between Regulation and Free Market? Examples.	45
1. Asymmetric Regulation	45
2. Imposition of Access Obligations	49
3. Is There Replicability Obligation on Incumbents?	52
3.1 Business Line Restrictions Imposed on Incumbents	55
3.2 AGCOM Approach to Regulating Telecom Italia	58
3.2.1 <i>'Offerta Unico'</i>	58
3.2.2 <i>'Alice 20 Mega' Offer</i>	60

IV. The Review: A Missed Opportunity?	62
V. Competition Law as a Safeguard of Regulatory-Driven Reform	69
VI. Conclusion	76

Chapter 2

Relevance of the Essential Facility Doctrine as a Remedy of Anticompetitive Unilateral Refusal of Access	81
I. Introduction	81
II. Regulatory or Competition-Law-Induced Obligation to Supply	85
1. Historical Remarks	85
2. Sector-Specific <i>Regulation v. Competition Law</i>	87
III. Legal Basis and Rationale of the Essential Facilities Doctrine	90
IV. Relevant Essential Facilities Doctrine Standard	97
1. Market Definition	98
2. Finding of Dominance	103
3. Finding of 'Essentiality'	105
3.1 Essentiality of an Asset	105
3.2 Essentiality of a Competitor: A Policy Decision to Limit or Extend the Scope of the Essential Facility Doctrine?	110
4. Elimination of Competition Requirement	116
5. Objective Justification as an Antitrust Defence	127
V. Is Competition between the Dominant Access Supplier and Its Competitor Downstream a Necessary Condition?	137
VI. Are There Essential Facilities in the Electronic Communications Sector? Attempted Examples	140
1. The Local Loop	140
2. Interface Information	143
VII. Conclusion	144

Chapter 3

Restrictions to Market Access and Refusal to Supply Resulting from Multifirm Conduct	147
I. Forms of Multifirm Conduct Having the Potential to Restrict Competition in the Electronic Communications Sector	147
1. Introduction	147
2. Types of Multifirm Restrictions Falling under Competition Law	149
II. Applying Article 81 of the Treaty to Cooperative Agreements between Electronic Communications Providers	153
1. Evolution in the Goals Pursued by the Commission through Application of Article 81 (1) of the Treaty	153

2.	General Principles for the Assessment of Contractual Clauses Falling under Article 81 of the Treaty	155
3.	Types of Agreements Falling under Article 81 (1) of the Treaty	161
3.1	Agreements between Telecommunications Operators That Join Resources for the Achievement of a Common Project	162
3.1.1	<i>Non-competition Clauses</i>	165
3.1.2	<i>Clauses on Exchange of Information</i>	168
3.1.3	<i>Exclusivity Arrangements</i>	169
3.1.4	<i>Price Agreements</i>	172
3.1.5	<i>Discriminatory Clauses</i>	173
3.2	Cooperation Agreements for (Essential) Facilities Sharing	174
3.3	Agreements between Electronic Communication Provider and Contractor from Another Industry	180
III.	Multifirm Restrictions of Competition Dealt with under Merger Control	182
1.	General Remarks	182
2.	Horizontal Mergers	186
3.	Non-horizontal Mergers	196
3.1	Concentrations Involving (Creating) a Vertically Integrated Electronic Communications Operator	197
3.2	Convergence-Driven Concentrations, Involving a Telecoms Company and a Company Active in an Industry Other than the Electronic Communications: Conglomerate Mergers	201
IV.	Conduciveness of the Electronic Communications Sector to Collective Dominance	208
1.	Introduction	208
2.	The Notion of 'Collective Dominance'	210
3.	The <i>Airtours</i> Test Applied to the Electronic Communications Sector	220
3.1	First Criterion: Transparency	220
3.2	Second Criterion: Sustainability	227
3.3	Third Criterion: Availability of Competitive Constraints	231
3.4	The <i>Airtours</i> Test Specified?	236
3.5	The 'Alternative Explanation' Element	238

Chapter 4

Prevention of Competition through Anti-Competitive Pricing: The Price Squeeze Abuse

I.	Introduction	241
II.	The Practice of Applying a Price Squeeze	243

III. Regulatory and Competition Law Approaches towards the Price Squeeze Problem	252
1. Definition of the Relevant Market	252
2. Market Assessment	255
3. Remedies to Prevent or Correct the Application of a Price Squeeze by Incumbents	261
3.1 Regulatory Remedies	261
3.2 Competition Law Remedies	272
IV. Conclusion	274

Chapter 5

Challenges Facing Regulation and Competition Law Enforcement in the Electronic Communications Sector in Bulgaria	277
I. Legislative and Institutional Problems to Coherent Regulatory and Competition Policies in the Electronic Communications Markets	279
II. Specifics in the Development of the Electronic Communications Sector in Bulgaria	284
III. Regulatory Tools to Promote the Development of the Electronic Communications Sector	286
1. Market Definition	286
2. Market Assessment	288
3. Applying Remedies to Competition Problems	293
3.1 Remedies for Market Power Leverage	298
3.2 Remedies to Prevent Attempts to Defend the Dominant Position and Remedies to ‘Textbook Monopoly Behaviour’	300
IV. The Role of Competition Policy for Providing Impetus to Regulatory-Driven Reform	300
1. Rules Favouring Industry Restructuring	301
2. Competition Law as a Safeguard of Effective Competition	304
V. Conclusion	308
Final Conclusion	310

Bibliography	317
---------------------	------------

Index	327
--------------	------------