

## Mid-Term Paper Assignment Autumn 2016

**Assignment:** Discuss the role of SMP-based obligations under the EU electronic communications regulatory framework in light of recent proposals for strengthening ‘symmetric obligations’ (see background information below). In your paper, please (i) *identify* the role of SMP and SMP-based obligations under the current regulatory framework, and (2) *critically discuss* the rationale behind the calls for the strengthening of ‘symmetric obligations’ and the purported impacts of ‘symmetrical regulation’ on the European telecommunications market and competition.

**Background:** The obligations for operators with Significant Market Power (SMP) in the current EU legal regulatory framework on electronic communications can be characterized as asymmetric obligations, because they do not apply to all operators. Recent calls for reform have highlighted some challenges of using asymmetric obligations in light of changing technological and market demands. For example, in July this year, the Nordic regulators for the electronic communications sector jointly issued a policy document outlining the challenges of using the SMP regime as a regulatory tool, particularly in light of the ‘rapid expansion of Next Generation Access (NGA) networks’ and ‘a strong demand for speed and capacity’. In light of these challenges, the Nordic regulators called for the introduction of what they referred to as ‘symmetric regulation’ in some areas (obligations imposed on all operators, not only those with SMP).

While cognizant of the continuing importance of SMP-based regulation, the reform proposal on electronic communications issued by the European Commission on 15<sup>th</sup> September (Proposal for a DIRECTIVE establishing the European Electronic Communications Code (Recast)) indicates the need for reinforcing and adjusting the existing SMP rules for supporting deployment of Very-High-Capacity (VHC) networks. Among other things, the Commission proposes to clarify and strengthen the power for NRAs to impose ‘symmetrical obligations’ in certain circumstances. To this end, the Commission proposed various measures, including some amendments to the Access Directive (see e.g. Articles 59 and 74 of the proposed Directive, relative to Article 5 of the current Access Directive ).

### Relevant documents<sup>1</sup>

- The EU telecommunications legislation for the Digital Single Market: The Nordic NRAs’ viewpoints, available at: <http://www.nkom.no/aktuelt/nyheter/attachment/24508?ts=155bf60dbfb>
- Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Electronic Communications Code (Recast) - COM(2016) 590 final, available at: <https://ec.europa.eu/digital-single-market/en/news/proposed-directive-establishing-european-electronic-communications-code> COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposals for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast) Part I (particularly Section 4.1.1 on Access regulation), available at: <https://ec.europa.eu/digital-single-market/en/news/proposed-directive-establishing-european-electronic-communications-code>

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<sup>1</sup> These are not the only documents you ought to consult for the purposes of the assignment, but they are centrally relevant.