

EKSAMEN I JURIDISKE VALGEMNER

HØST 2015

Dato: Onsdag 9. desember 2015

Tid: Kl. 10:00 – 14:00

JUS5641 – Electronic Communications Law

The language of examination for this course is English: students may answer in English ONLY, answers in any other language than English will be given a F (F for fail).

The telecoms operator CableTel (CT) owns an electronic communications network in an EU member state. It also offers electronic communications services to the public. CT's network consists of a core network and an access network.¹

- CT's core network is based on fibre technology.
- Most of CT's access network uses (older) cable technology, which facilitates communication only at a slower speed. A minor part of CT's access network is based on fibre.

New entrant RailTel (RT) owns only a core network based on fibre running along railway lines, but it has no access network. Therefore, it currently cannot connect subscribers to its network. RT wishes to offer electronic communications services to the public based on fixed access.

The National Regulatory Agency (NRA) has found that CT has significant market power in several relevant markets (including the market for wholesale local access at fixed location, and the market for wholesale high-quality access at a fixed location). The NRA is assessing potential remedies.

Discuss how the NRA can address the following issues with the remedies available in the Access Directive (2002/19/EC). Your discussion of all 4 issues carries equal weight.

1. Use of cable-based access network

RT would like to use CT's access network, but that request is partly rejected by CT. CT is willing to grant access to its fibre-based access network, but it argues that access should not be given to its cable network. It states that RT should invest in an access network of its own. It can be assumed that if RT invests in an access network, it will deploy fibre technology. According to CT, a new fibre-based access network would lead to better networks and more competition. On the other hand, RT argues that it needs access to the cable-based network in order to enable it to compete with CT,

¹ A core network is the central part of a telecommunications network that provides various services to customers who are connected through the access network. An access network is the part of a network which connects subscribers to their immediate service provider.



particularly with respect to customers who do not wish to transition to fibre-based networks. **Can the NRA impose an obligation on CT to allow RT's use of CT's cable-based access network?**

2. Provision of information

Later, the NRA decides that CT must allow RT the use of its entire access network. RT then requests information about CT's access network, including the network architecture. It also asks for login information (passwords) for CT's network administration systems. CT argues that such information is business confidential and cannot be shared with its competitors. Moreover, CT argues that its software user license does not allow it to share the system with other actors. **Can the NRA impose an obligation that requires CT to provide this information?**

3. Price for cable-based access

A price comparison shows that CT's retail prices for cable-based access are kept at such a low level that RT has difficulties in attracting customers. RT's difficulty is caused by the high wholesale access fee it has to pay to CT. CT argues that the wholesale access fee is justified because RT only has relatively few end-users, which results in higher costs. **What can the NRA do to address this issue?**

4. Price for fibre-based access

CT and RT also disagree about the price for RT's use of CT's fibre-based access network. The NRA is considering the imposition of a non-discrimination obligation, and/or price control for wholesale access based on fibre.

- a. CT argues that it has taken a significant business risk when it invested the fibre-based part of its access network. Therefore, it argues, the wholesale access price should reflect that risk, resulting in a higher wholesale price for fibre-based access.
- b. Moreover, CT argues that an NRA-mandated price control of the fibre-based wholesale access would not create the right incentives for investment in new fibre-based access networks. It argues that a non-discrimination obligation would create better incentives for investment in new fibre-based access networks.

Discuss these arguments (a. and b.) in light of relevant regulatory instruments.

Attachment: Extract from Commission recommendation on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment (2013/466/EU).

The result of the exams will be announced Thursday 7 .January, at 15.00 hours. You can check the results in the StudWeb, or by contacting the Information Centre, phone 22 85 95 00. After the exam results are announced, candidates have the right to be informed of the grounds for the result as long as a request is made within one week of the announcement. The names and contact information of the examiners can be found on the Faculty's website, or by contacting the Information Centre. The deadline for appeal is three weeks after the announcement of the results.

Oslo, 09.12.2015

Extract from Commission recommendation on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment (2013/466/EU)

NON-IMPOSITION OF REGULATED WHOLESALE ACCESS PRICES ON NGA NETWORKS

48. The NRA should decide not to impose or maintain regulated wholesale access prices on active NGA wholesale inputs, except those inputs specified in point 49 pursuant to Article 13 of Directive 2002/19/EC, where — in the same measure — the NRA imposes on the SMP operator non-discrimination obligations concerning passive and active NGA wholesale inputs pursuant to Article 10 of Directive 2002/19/EC that are consistent with:

- (a) EoI, following the procedure in point 51;
- (b) obligations relating to technical replicability under the conditions set out in points 11 to 18 when EoI is not yet fully implemented; and
- (c) obligations relating to the economic replicability test as recommended in point 56;

provided that the actual take-up of upstream passive wholesale inputs or non-physical or virtual wholesale inputs offering equivalent functionalities or the presence of alternative infrastructures create a demonstrable retail price constraint.

49. The NRA should decide not to impose or maintain regulated wholesale access prices on passive NGA wholesale inputs or non-physical or virtual wholesale inputs offering equivalent functionalities, pursuant to Article 13 of Directive 2002/19/EC, where — in the same measure — the NRA imposes on the SMP operator non-discrimination obligations concerning passive NGA wholesale inputs or non-physical or virtual wholesale inputs offering equivalent functionalities, pursuant to Article 10 of Directive 2002/19/EC, that are consistent with:

- (a) EoI, following the procedure in point 51;
- (b) obligations relating to technical replicability under the conditions set out in points 11 to 18 when EoI is not yet fully implemented; and
- (c) obligations relating to the economic replicability test as recommended in point 56;

under the condition that:

- (d) the NRA can show that a legacy access network product offered by the SMP operator subject to a cost-oriented price control obligation in accordance with the costing methodology specified in points 30 to 37 or 40 constitutes a copper anchor and thus exercises a demonstrable retail price constraint; or
- (e) the NRA can show that operators providing retail services over one or more alternative infrastructures that are not controlled by the SMP operator can exercise a demonstrable retail price constraint. For the purposes of this condition, 'control' should be interpreted in accordance with competition law principles.