

Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (Text with EEA relevance)

PART II

NETWORKS

TITLE II

ACCESS

CHAPTER III

Market analysis and significant market power

Article 64

Procedure for the identification and definition of markets

1 After public consultation including with national regulatory authorities and taking the utmost account of the opinion of BEREC, the Commission shall adopt a Recommendation on Relevant Product and Service Markets ('the Recommendation'). The Recommendation shall identify those product and service markets within the electronic communications sector the characteristics of which may be such as to justify the imposition of regulatory obligations set out in this Directive, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.

The Commission shall include product and service markets in the Recommendation where, after observing overall trends in the Union, it finds that each of the three criteria listed in Article 67(1) is met.

The Commission shall review the Recommendation by 21 December 2020 and regularly thereafter.

2 After consulting BEREC, the Commission shall publish guidelines for market analysis and the assessment of significant market power ('the SMP guidelines') which shall be in accordance with the relevant principles of competition law. The SMP guidelines shall include guidance to national regulatory authorities on the application of the concept of significant market power to the specific context of ex ante regulation of electronic communications markets, taking account of the three criteria listed in Article 67(1).

3 National regulatory authorities shall, taking the utmost account of the Recommendation and the SMP guidelines, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory by taking into account, inter alia, the degree of infrastructure competition in those areas, in accordance with the principles of competition law. National regulatory authorities shall, where relevant, also take

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into account the results of the geographical survey conducted in accordance with Article 22(1). They shall follow the procedures referred to in Articles 23 and 32 before defining the markets that differ from those identified in the Recommendation.