

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 IV

Access remedies imposed on undertakings with significant market power

Article 68

Imposition, amendment or withdrawal of obligations

1 Member States shall ensure that national regulatory authorities are empowered to impose the obligations set out in Articles 69 to 74 and Articles 76 to 81.

2 Where an undertaking is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 67, national regulatory authorities shall, as appropriate, impose any of the obligations set out in Articles 69 to 74 and Articles 76 and 80. In accordance with the principle of proportionality, a national regulatory authority shall choose the least intrusive way of addressing the problems identified in the market analysis.

3 National regulatory authorities shall impose the obligations set out in Articles 69 to 74 and Articles 76 and 80 only on undertakings that have been designated as having significant market power in accordance with paragraph 2 of this Article, without prejudice to:

- a Articles 61 and 62;
- b Articles 44 and 17 of this Directive, Condition 7 in Part D of Annex I as applied by virtue of Article 13(1) of this Directive, Articles 97 and 106 of this Directive and the relevant provisions of Directive 2002/58/EC containing obligations on undertakings other than those designated as having significant market power; or
- c the need to comply with international commitments.

In exceptional circumstances, where a national regulatory authority intends to impose on undertakings designated as having significant market power obligations for access or interconnection other than those set out in Articles 69 to 74 and Articles 76 and 80, it shall submit a request to the Commission.

The Commission shall, taking utmost account of the opinion of BEREC, adopt decisions by means of implementing acts, authorising or preventing the national regulatory authority from taking such measures.

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Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 118(3).

- 4 Obligations imposed in accordance with this Article shall be:
- a based on the nature of the problem identified by a national regulatory authority in its market analysis, where appropriate taking into account the identification of transnational demand pursuant to Article 66;
 - b proportionate, having regard, where possible, to the costs and benefits;
 - c justified in light of the objectives laid down in Article 3; and
 - d imposed following consultation in accordance with Articles 23 and 32.

5 In relation to the need to comply with international commitments referred to in paragraph 3 of this Article, national regulatory authorities shall notify decisions to impose, amend or withdraw obligations on undertakings to the Commission, in accordance with the procedure referred to in Article 32.

6 National regulatory authorities shall consider the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, influencing competitive dynamics.

If those developments are not sufficiently important to require a new market analysis in accordance with Article 67, the national regulatory authority shall assess without delay whether it is necessary to review the obligations imposed on undertakings designated as having significant market power and amend any previous decision, including by withdrawing obligations or imposing new obligations, in order to ensure that such obligations continue to meet the conditions set out in paragraph 4 of this Article. Such amendments shall be imposed only after consultations in accordance with Articles 23 and 32.