

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 80

Wholesale-only undertakings

1 A national regulatory authority that designates an undertaking which is absent from any retail markets for electronic communications services as having significant market power in one or several wholesale markets in accordance with Article 67 shall consider whether that undertaking has the following characteristics:

- a all companies and business units within the undertaking, all companies that are controlled but not necessarily wholly owned by the same ultimate owner, and any shareholder capable of exercising control over the undertaking, only have activities, current and planned for the future, in wholesale markets for electronic communications services and therefore do not have activities in any retail market for electronic communications services provided to end-users in the Union;
- b the undertaking is not bound to deal with a single and separate undertaking operating downstream that is active in any retail market for electronic communications services provided to end-users, because of an exclusive agreement, or an agreement which de facto amounts to an exclusive agreement.

2 If the national regulatory authority concludes that the conditions laid down in paragraph 1 of this Article are fulfilled, it may impose on that undertaking only obligations pursuant to Articles 70 and 73 or relative to fair and reasonable pricing if justified on the basis of a market analysis including a prospective assessment of the likely behaviour of the undertaking designated as having significant market power.

3 The national regulatory authority shall review obligations imposed on the undertaking in accordance with this Article at any time if it concludes that the conditions laid down in paragraph 1 of this Article are no longer met and it shall, as appropriate, apply Articles 67 to 74. The undertakings shall, without undue delay, inform the national regulatory authority of any change of circumstance relevant to points (a) and (b) of paragraph 1 of this Article.

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4 The national regulatory authority shall also review obligations imposed on the undertaking in accordance with this Article if on the basis of evidence of terms and conditions offered by the undertaking to its downstream customers, the authority concludes that competition problems have arisen or are likely to arise to the detriment of end-users which require the imposition of one or more obligations provided in Article 69, 71, 72 or 74, or the amendment of the obligations imposed in accordance with paragraph 2 of this Article.

5 The imposition of obligations and their review in accordance with this Article shall be implemented in accordance with the procedures referred to in Articles 23, 32 and 33.