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Undertakings offered by SMP operators and accepted by NRAs

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*The views expressed in this presentation are purely those of the author
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Outline

- Business separation in EU telecoms sector
- Undertakings in EU consultation
- Notifications by AGCOM
- Outlook



Business separation in EU telecoms sector

- Different forms in different Member States
 - “Voluntary” undertakings
 - Imposed separation
- Current telecoms rules
 - Art. 8(3) Access Directive
 - Commission to authorise
- Revised telecoms rules
 - Art. 8(3) Access Directive as revised
 - Art. 13a (functional separation) – role of BEREC
 - Art. 13b (voluntary separation)



Undertakings in EU consultation (1)

- Formally accepted by NRA?
- Undertakings are directly related and/or ancillary to regulatory obligations, if:
 - Aimed at the enforcement of regulatory obligations, or
 - Modify existing regulatory obligations, or
 - Replace existing regulatory obligations
- Such undertakings constitute regulatory obligations
 - Subject to national and EU consultation
 - Prior to adoption and in draft form
 - Same applies to modification of undertakings



Undertakings in EU consultation (2)

- Need to ensure:
 - Transparency
 - Harmonised application of regulatory framework
 - Compatibility with EU law (in particular Art. 8(4) of Access Directive)
- Integral part of NRAs` market analysis
 - Appropriateness of remedies
 - Modified greenfield approach
- Access seekers to remain in a position as least as good as under a pure regulatory approach



Notifications by AGCOM (1)

- Commission comments letters:
 - 14 April 2009 (market definition & SMP assessment)
 - 29 October 2009 (remedies)
 - Three different markets
 - Retail access (1)
 - Wholesale physical infrastructure access (4)
 - Wholesale broadband access (5)
- Commission comments on:
 - Status of undertakings in the regulatory process
 - Implementation and monitoring of undertakings
 - Enforcement mechanism (Supervisory Board, OTA)
 - Potential amendments of undertakings



Notifications by AGCOM (2)

- Commission reiterates conditions under which undertakings constitute regulatory obligations
- Commission stresses AGCOM` s role:
 - Monitor effectiveness of undertakings and reassess need to intervene when reviewing markets
 - Take all appropriate enforcement measures to ensure that undertakings produce necessary results
- Commission comments on enforcement mechanism
 - Supervisory Board and OTA Italia part of remedies
 - No interference with or replacement of AGCOM` s *ex officio* powers
 - No delays or additional burden for alternative operators and end-users



Outlook

- Increase regulatory consistency with the revised telecoms rules
- Commitment-driven vs. pure regulatory approach
 - Cooperation with NRA concerned early in the process
 - Transparent process
 - Status of NRA, SMP operator and access seekers
- Working towards the internal market
 - Close cooperation with BEREC
 - Consistent application of *ex ante* regulation in the EU



Thank you for your attention

