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## Undertakings offered by SMP operators and accepted by NRAs

Reinold Krueger  
Head of Procedures related to National Regulatory Measures Unit  
Information Society and Media DG

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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

