

Abstract:

The discussion paper of the German Federal Ministry of Economics and Technology (BMWi), “Perspectives on regulation of the European communication markets,” announces a significant change of direction in German telecommunications policy. The ultimate consequence of this would be abandonment of the sustained opening of monopoly markets, which has been recognized up until now as the governing principle of telecommunications regulation in Germany and throughout Europe. It would give up the regulatory goal of assuring equal opportunity competition and promoting long-term competition-oriented telecommunication markets (§ 2 Par. 2 No. 2 TKG [German Telecommunications Act]). At the same time, it would put at risk both the interests of the consumers (§ 2 Par. 2 No. 1 TKG) and the competitive ability of companies, which depend on telecommunications products and services to continue to be reasonably priced and to meet their individual requirements. The best way to allow for both concerns is through properly functioning competition; that is, through a structurally secured process of selection among a number of suppliers. Regulation to promote competition therefore cannot be reduced to the freedom-restricting aspect of regulatory interventions, as is done in the discussion paper. Instead, the very first effect of regulation for competitors and consumers is to create and safeguard freedom. Given these facts, one effect of the reorientation of telecommunications policy hinted at in the discussion paper would be to call into question the additional investments of around € 8 billion expected from the competitors by the year 2010. It would affect the very companies that have already provided for investment of additional billions in infrastructure expansion as competitors of the market-dominating company, while relying the present regulatory goals and objectives.

When the discussion paper names natural monopolies and bottlenecks as causes of significant market power which carry the risk of inefficient and excessive regulation, this fails to recognize fundamental relationships in the economics of regulation. This is evident in the very naming of an additional constellation in which regulatory intervention is to be restrained: “Temporary Monopoly Positions”, as the Ministry calls them, only represent “a significant element of dynamic competition processes” if they are not based on monopoly structures that were passed down historically. These are not elements of dynamic processes, and (without regulation) are not temporary but permanent in nature. The departure from regulation relating to market power in sectors that base on earlier monopoly structures would result in a renewed monopolization of the telecommunications market, and would be a negative role

model for regulation in the postal, energy and railroad sectors. The same applies to extending this market power position to new service offerings, new products and even new markets: This too is not a matter of temporary monopoly positions, but of creating new permanent monopolies on the basis of already perpetuated market power positions. It has long been a recognized governing objective of telecommunications regulation to get rid of these positions, not to expand them.

The further roll-back of regulatory measures announced in the discussion paper also does not consider sufficiently the proven connection between effective regulation, intensity of competition and total investment in the telecommunications market, as substantiated for example by the ECTA Regulatory Scorecard published on December 2, 2005. That document shows that member states of the European Community with especially effective regulatory structures at the same time achieve the highest per capita investments in the telecommunications market.

Finally, the discussion paper indirectly calls into question almost twenty years of European harmonization policy in the field of telecommunications, by replacing a common domestic market with the beginnings of competing national regulatory models. However, this sort of fragmentation of European law would weaken both the competitive ability of the European economic region and our national economic position. The only beneficiaries would be Deutsche Telekom AG and subsequently also other monopolists in their home markets that formerly enjoyed state protection. However, an industry policy that is intentionally directed at creating “national champions”, which provides state safeguards to monopolies, is detrimental to economic policy and hostile to the consumer. Instead, the creation of a competitive European domestic market creates a need for more specific regulatory safeguards at the European level.

Detailed Analysis:

1. Introduction

In preparation for reworking the existing legal framework for the telecommunications sector at the level of the European Communities (ECs), the Federal Ministry of Economics and Technology (BMWi) developed a position paper as the basis for discussion (referred to below as the “discussion paper”). The discussion paper was made available to interested groups with a letter dated December 22, 2005, so that they could submit suggestions and comments. It contains numerous statements that are in need of a critical assessment. It should be assumed in the following analysis that the discussion paper refers exclusively to questions of market regulation, not to objects of non-economic regulation (such as customer protection, technical regulation or data protection).

2. Basic objectives

The proposals contained in the discussion paper pursue a total of five basic objectives (p. 2). At least two of these basic objectives at least unclearly formulated:

a) *Necessary regulation*

As the first of the fundamental objectives, the discussion paper pursues the goal of “limiting regulation to what is necessary.” That could imply that existing regulation exceeds the necessary dimensions, where it is possible in this respect to differentiate between quantity and quality of regulation, i.e. between the scope of regulation (Which circumstances will be regulated?) and the intensity of regulation (How will the selected circumstances be regulated?). The premise of excessive regulation, which appears to underlie the named objective, is dubious in two respects:

aa) Requirements of EC telecommunications law

From the aspect of law it is already not in harmony with the applicable (Community) legal framework for electronic communication. That framework is specifically tailored so that the necessary quantity and quality of regulation will occur. At the same time, the quantitative necessity of regulation is ensured through defining and analyzing the market according to Arti-

cle 15f EU Framework Directive. It states that (only) those markets shall be subjected to regulation whose particular characteristics point to the potential need for sector-specific regulation (definition of the market, see Art. 15 par. 1 p. 2 and par. 3 Framework Directive), and for which this initial regulatory suspicion is confirmed by the lack of effective competition (analysis of the market, see Art. 16 par. 2 Framework Directive). Community law does not provide for market regulation separate from such an actual need for regulation. Appropriate legal mechanisms exist with regard to the qualitative necessity of regulation. The latter is ensured by the fact that the regulatory measures which are to be implemented must also be selected exclusively to match the situation, and not provided by way of rigid conditional links detached from the reason for regulation. Instead, they must correspond to the nature of the problem that has arisen and must be necessary and appropriate in light of the regulatory goals (see reason for consideration 27, p. 1 Framework Directive, Art. 8 par. 4 p. 1 of the access guideline, Art. 17 par. 2 p. 1 of the EU Universal Service Directive). The basic objective pursued with the discussion paper, of limiting regulation to what is necessary, is therefore redundant from the legal perspective. This limitation is already guaranteed, at least at the level of legislation, through the flexible approach of the EU Directives.

bb) Consideration of the goal of the regulation

The premise underlying the objective is also dubious in terms of regulatory policy since it is detached from the goal pursued with the regulation. According to the discussion paper, the goal of the regulation is “a telecommunications market capable of high performance,” which “guarantees an optimal supply of telecommunications services for businesses and consumers and thereby makes the best possible contribution to growth, innovation and productive occupation of the economy as a whole” (p. 1). Starting from a particular level of regulation it may be necessary to increase the quantity and quality of regulation in order to attain this goal – not to reduce them. This statement does not only apply to the initial period of regulation through telecommunications law, as can be shown using the example of the areas of broadband access, cellular phone terminals and international cellular phone roaming. It has generally been assumed in these fields in recent years that the creation of a telecommunications market capable of high performance and an optimal offering of services necessitates additional regulatory intervention, not a limitation of regulation. The named objective of “limiting” regulation to what is necessary disregards this connection. Consequently the BMWi not only misunderstands the requirements of the law. It also assumes at the same time a corre-

lation of causes and effects that does not exist in the economics of regulation. The necessary measure of regulation is not always achieved by cutting regulation down. Instead, it can also be necessary to expand regulation in order to attain the desired goal of the regulation.

b) Transition to general competition law

As the last of the five basic objectives, the discussion paper names the goal of “consistently promot[ing] the smooth transition to law on competition.” This objective implies that it remains the goal of market regulation under telecommunications law to replace the sector-specific regulation regime with general competition law. There are significant doubts about this, however. From the perspective of the economics of regulation, the now widely accepted thesis that each carrier network constitutes an independent market for the area of termination (“One network, one market”) was at the heart of the legitimization for long-term market regulation. This is because the lack of substitutability of the delivery of calls to the subscribers who are connected with a specific network, is permanent in nature. It is impossible to see how this termination should be accomplished other than via the applicable terminating network. If this is true, it is also not possible to see how the exclusive control of call delivery by the operator of the terminating network should be eliminated.

Under such circumstances, regulation can in the long run only compensate for the structurally perpetuated problem with competition, but not itself create competition in the termination market. On the basis of the “One network, one market” thesis, market regulation for the termination markets no longer appears to be designed as transitional regulation but as eternal regulation. It may be possible to discuss this development in terms of regulatory policy, even if misuse of the exclusive control of bottleneck facilities can already be prevented in principle by general competition law – in particular if the size of the business in question is relatively small – and does not make sector-specific regulation of competition per se necessary. But in any case, it probably corresponds to the general view of the regulatory entities of Europe and the member states. By not addressing this paradigm shift, the discussion paper takes an objective for granted whose validity appears increasingly doubtful. The conclusions derived from that objective about regulatory policy are therefore without exception subject to the reservation that they are not in harmony with a paradigm shift which has by now occurred at the European and national levels: If the exclusive control of the terminating network operator delivering a call as such should make sector-specific regulation necessary, then

these termination markets must remain the object of sector-specific regulation permanently. Then it would specifically no longer be the goal of regulation to replace the sector-specific regulation regime with general competition law, so that the reduction of regulatory interventions also could not be explained on the basis of this goal alone.

3. Principles of regulation

a) Regulation as an option

As its first factual statement about the principles of regulation, the discussion paper repeats the thesis that regulation does not make it possible to create an ideal world of competitive results, and that regulation will always remain only a second-best option compared to competitive processes (p. 3). When viewed in the abstract, this statement is certainly true, but it assumes that a competitive processes actually exists. This precondition is not true in the telecommunication markets, however – such processes still need to be introduced there. For that reason, in view of the existing sector-specific regulation, to assess the regulatory policy we also cannot assume a generally unregulated scenario, but rather a generally regulated scenario. If this is true, the basic reserve about regulation that is expressed in the quoted statement also no longer appears necessary. Instead, in response to the question of whether regulation in telecommunications markets should be retained or done away it is necessary to point to a status quo argument and an option argument.

aa) Status quo argument

The uncertainty from changing the regulation is greater than the uncertainty from retaining the status quo. That is the result of the fact that the future will be influenced by the regulation and by environmental variables. But the effects of this regulation (status quo regulation) on changing environmental conditions can be predicted better from experience with existing regulation than the effects of a change in regulation on the likewise changing environmental conditions. This speaks for retaining regulation.

bb) Option argument

The second argument is based on the consideration that doing away with regulation is very difficult to reverse. In consequence, through deregulation the state in fact deprives itself of the option of retaining regulation at first and doing away with it only at a later point in time.

This option has a value which argues, where all other probabilities and effects of error are equal, for continuing to retain regulation until it is sufficiently certain that the advantages which come with eliminating it outweigh the foreseeable disadvantages.

cc) Practical significance

The fact that retaining regulation in the telecommunications market is by no means an option of little value in the economics of regulation is ultimately confirmed in practical terms through empirical investigations of the connection between effective regulation, intensity of competition and total investments in the telecommunications market. The ECTA Regulatory Scorecard published on December 2, 2005 shows for example that member states of the European Community with especially effective regulatory structures at the same time achieve the highest per capita investments in the telecommunications market. Germany is in last place here with regard to both effectiveness of regulation and investments. The statement that regulation will always remain only a second best option compared to competitive processes may therefore be correct as a theoretical approach. For practical telecommunications policy it will still remain without recognition value for the foreseeable future, so that emphasizing it at a prominent location in the discussion paper appears at least unfortunate.

b) *Concept of competition*

The discussion paper emphasizes – correctly – the necessity of such an inherently conclusive concept of competition (p. 3). Establishing the production of effective competition as the main goal of regulation, if that means eliminating substantial market strength in the sense of the thesis of equality, is also correctly declined. However, there are serious doubts against the competition concept, both from the perspective of law and from that of the economics of regulation.

aa) Effective competition in the regulatory concept of the Framework Directive

The described understanding, according to which the main goal of market regulation is to produce effective competition, can actually be found in various statements from the ranks of the EU Commission. It is not consonant with the EU regulatory framework, however. The thesis of equality does not acquire significance until the market analysis stage. But the market analysis applies only to the relevant markets (Art. 16 par. 1 Framework Directive), which were defined earlier by the member states as those markets whose characteristics can jus-

tify measures of sector-specific regulation (Art. 15 par. 1 p. 2 and par. 3 of the Framework Directive). If a market does not have such features, it is not subjected to sector-specific regulation even if it does not have effective competition, i.e. if a company with significant market power is active in it (equality thesis, see Consideration 27, p. 1 of the Framework Directive). This link to the market definition is also evident in the requirements of Community law for the regulatory measures, which are to be found in defined markets that lack effective competition. These must correspond directly to the nature of the problem that has occurred (see reason for Consideration 27, p. 1 Framework Directive, Art. 8 par. 4 p. 1 of the Access Directive, Art. 17 par. 2 p. 1 of the Universal Service Directive), so that they address the particular features that can justify measures of sector-specific regulation. On the other hand, they are not aimed at reducing the significant market power. The actual reason for regulation is therefore found in these characteristics of the market in question, which are addressed in greater detail by the Commission with the 3-criterion test in the market recommendation. Particularly, this test focuses on legal and structural barriers to access, and not on the significant market power of a company. Instead, the latter is normally only be the consequence of the particular characteristics of the market in question.

The criticism of the equality thesis by the discussion paper is therefore only justified insofar as the concept of effective competition used in Art. 16 Framework Directive pursues the impression of a concept of competition that is to be implemented in the telecommunications markets. However, in reality it is only a parameter for again taking up regulation in markets which are (potentially) in need of regulation for other reasons. Consequently, the conclusion from the justified criticism of the equality thesis cannot be to further limit regulatory interventions, but to replace the misleading concept of effective competition with an explicit and exclusive reference to the absence of significant market power. To the extent that conclusions are drawn in the discussion paper that go beyond this, the function of the equality thesis in the regulatory concept of the Framework Directive is not recognized. Hence the conclusions in the discussion paper lack a basis in fact.

bb) Market strength that is acceptable in terms of economic regulation

The statements made at the location in question are questionable primarily for another reason (in terms of the economics of regulation): Adducing the concept of effective competition (which does not exist in law), the discussion paper explains “the danger of inefficient and

excessive regulation” by the fact that “natural monopolies and bottleneck positions are quite characteristic for telecommunication, and temporary monopoly positions represent an essential element of dynamic competitive processes” (p. 3). That implies that regulation which takes place in view of the forenamed special economic characteristics at least tends to be inefficient and excessive. At the same time, a distinction can be drawn between the existence of natural monopolies and bottlenecks identifying characteristics of the telecommunications sector as a network economy on the one hand, and temporary monopoly positions as an element of dynamic competitive processes on the other hand. We agree with the discussion paper that the last-named constellations of market power, without the addition of other circumstances, cannot solely justify sector-specific regulation. However, this does not rule out the possibility that even merely temporary monopoly positions can necessitate interventions under competition law. For example, it is also pointed out in the decision of the Supreme Court of the United States of America which is cited in the discussion paper (Decision 02-682 of January 13, 2004 – “Trinko”) that compliance with anti competition law laws can only be assumed as long as the company in question does not also practice anticompetitive behavior (“To safeguard the incentive to innovate, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive conduct.”). The US Supreme Court explicitly emphasizes the benefit of sector-specific regulation to avoid greater disadvantages of policy on competition (“Regulation significantly diminishes the likelihood of major antitrust harm.”). The court thereby strengthens the position of the sector specific regulatory authorities, such as the US Federal Communications Commission (FCC), and clearly supports the regulation of monopolies through sector-specific laws.

Moreover, this general economic observation that temporary monopoly situations as elements of dynamic competitive processes as such are not contrary to policy on competition must be strictly differentiated from the other constellation addressed in the discussion paper, namely a situation in which linking regulation with market power can lead to inefficient and excessive regulation. Such a constellation exists if substantial market strength arises due to natural monopolies and bottlenecks, and on the basis of a competitive edge due to genuine innovations. Fundamentally inefficient and excessive regulation is not a threat in such constellation – instead it is directly the necessary object of the sector-specific regulation. Economies of scale and synergies as peculiarities of network markets can only make market power appear acceptable if they are specifically not so pronounced that they result in a mo-

nopoly. Because only in that case is the market strength integrated into competitive processes and (without regulation) not permanent in nature. The same applies to extending this market power position to new service offerings, new products and even new markets: That too would not be a matter of temporary monopoly positions based on advantages gained in competition, but of creating new permanent monopolies on the basis of already perpetuated power positions. It has long been a recognized governing objective of telecommunications regulation to get rid of these positions, not to expand them. Accordingly, the German Scientific Task Force on Regulatory Questions recently spoke out specifically in favor of incorporating the expanded infrastructure elements due to the planned glass fiber build-out of the access network of Deutsche Telekom AG into the existing regulation. This independent advisory body of the German regulator (Federal Network Agency) demands instead that access by competitors continue to be guaranteed by regulation and that the existing access rules be adapted to the changed situation, so that the progress achieved in the competition via network connections will not be lost.

c) Innovation

A central statement of the discussion paper on the principles of regulation consists in the demand that facts of production technology be taken into account and that room be left for competitive processes as defined by Schumpeter (p. 3 f.), which will ultimately lead to promotion of special regulatory requirements for innovative markets (p. 4).

aa) Evolutionary creation instead of creative destruction

It is fundamentally doubtful whether Schumpeter's concept of creative destruction makes economic sense and is practically relevant in network markets such as telecommunication. In areas of the economy marked by network effects, the result of “creative destruction” would almost inevitably be that it would at least temporarily result in reciprocal segregation of the users of a new technological solution from the users of the technology employed earlier. That would result in losses of welfare for society as a whole. For that reason the continuing development of the affected areas of the economy since that time has for the most part been evolutionary rather than revolutionary. An example is the change from the analog telephone network to ISDN, followed by the introduction of DSL. In the field of mobile cellular telephony as well, with the development path from GSM900 through GSM1800 to UMTS, the commitment was largely to an evolutionary process, which makes use of the existing technology but

does not make it obsolete. It is therefore fundamentally questionable how well the concept of creative destruction actually applies in markets that base on networks, or whether it should be given up in favor of the concept of evolutionary creation as the regulatory premise.

bb) Regulation and innovation

Furthermore, the demand to refrain from regulation (or even its promise) in order to provide incentives for innovation is based on a consideration which is problematic in regulatory practice. It is undoubtedly true that regulation can lead to impairment of the innovative activity of the regulated company. The benefits of foregoing regulation are difficult to prove in a concrete case, however. This is due in part to the fact that dynamic efficiency is hard to measure, and in part to the fact that it is to evolve only through deregulation (or through foregoing regulation) and is therefore hypothetical in nature. In most cases it is impossible to determine with certainty whether a particular innovation will also take place under the condition of regulation. In particular, even in a regulated field an innovation can enable the company in question to make additional profits, or at least to acquire new customers. It can even be used as an instrument of market misuse, if the introduction of new techniques and products is used to create new possibilities for obstructing competitors (“misuse by obstruction through product innovation”). The regulated company therefore has a special incentive, particularly in regulated areas, to employ innovation as a strategy for circumventing regulation. Furthermore, the starting thesis on which the discussion paper is based narrows the focus to innovations at the level of the regulated products. This disregards the economics of regulation, since regulation through ensuring access to a network product can be the very thing that enables the competition to introduce innovations at later stages of the value chain.

Given these circumstances it is scarcely possible to analyze empirically whether and to what extent regulation really impedes innovation, so that reducing regulation promotes innovation. From the perspective of the economics of regulation, in view of these uncertainties the demands for structural protection of the achieved intensity of competition should be high and should rise in proportion to the extent of market dominance, before deregulatory steps are taken with a view to promoting innovation. Particularly in areas where monopolies are widespread – such as the area of subscriber connections in the fixed network – it will therefore generally be inappropriate in terms of the economics of regulation to refrain from regulation in order to promote innovation.

4. Instruments for achieving the goals in telecommunications policy

a) Matching the intensity of regulation to the intensity of competition

The discussion paper insists that regulation should be less intense in a market the greater the intensity of competition is in that market (p. 4).

aa) Theoretical approach

It is questionable whether this thesis is even based on an accurate theoretical approach. If competition increases under regulation, the problems of price regulation shift from abuse by exploitation to abuse by obstruction. But in the case of abuse by exploitation, ex post regulation is acceptable, particularly if its legal consequences can be retroactive. In the case of misuse by obstruction, on the other hand, ex post regulation is not well suited, since the company with market strength can utilize strategic delaying effects and thereby force competitors out of the market. As competition increases, in a transition period the ex ante aspect of regulation is needed almost more urgently than when competition is less intense. The regulation intensity offered by the economics of regulation can therefore definitely increase as competition intensifies, instead of decreasing. The underlying thesis in the discussion paper is therefore too sweeping, and thus is untenable in this form in terms of the economics of regulation.

bb) Practical relevance

Also questionable is the practical relevance of the demand that the intensity of regulation be matched to the intensity of competition. Since regulation is at least supposed to also replace missing competition, its result is that the particular market results normally cannot be reliably attributed to competitive processes or to regulatory intervention. Matching the intensity of regulation to the (supposed) intensity of competition, in the very cases in which regulation is especially efficient – and thus brings results which are adequate for competition – can therefore lead to the counterproductive result that this regulation is reduced.

b) Priority of incentive-based regulatory instruments

The discussion paper demands that incentive-based instruments must always be given priority (p. 5). That can certainly be agreed with in principle. However, the goal at which these incentives are directed is unilaterally restricted to dynamics and innovations. If the goal of

regulating telecommunications is to compensate for problems in competition, then the incentives must be directed at *eliminating those problems*. This applies in particular to reducing structural barriers to market access. The regulated company therefore does not have to be given any regulatory incentives to expand its market position, but to open up the market which it dominates. Only in that respect is the insistence on giving priority to incentive-oriented instruments in harmony with the sense and purpose of the regulation.

5. Analyzing the effects of regulation

a) The freedom-restricting character of state regulation

Where the discussion paper takes the view that state regulation is the exception which must be justified in the orderly framework of the market economy, since it has the effect of limiting competition (p. 5), this fails to recognize the special characteristics of the telecommunications sector. For the Federal Republic of Germany these special characteristics are also reflected in the constitutional requirements of Art. 87f of the Basic Law (German Constitution), which promotes the performance of private economy and thereby contains a declaration of commitment to competition in the field of telecommunication. For equal-opportunity competition to come out and flourish in a formerly monopolistically structured field, state regulation is required. As the German Federal Administrative Court has made clear in a number of decisions, the regulation by the state should enable competitors of the market-dominating entity (in the area of wholesale) to offer new telecommunications services and use them to break into the monopolistically characterized market. Regulation therefore creates the necessary breathing room for these competitors for the first time – and thereby also gives the consumers the freedom of choice of product quality and price that comes with competition.

b) Analysis of regulatory effectiveness by independent institutions

The discussion paper demands that the effectiveness of regulation not be left to the institutions that are themselves occupied with the task, but that it should be assessed by independent institutions (p. 6). In that respect it is not even clear who the institutions involved are supposed to be independent of. The only reasonable possibility is independence from the regulatory entities, but not that the institutions must be independent in general from the government. That would be almost impossible to arrange even in terms of democratic theory, and should be rejected as a weakening of political responsibilities. Furthermore, there would

have to be assurance of an adequate measure of plurality also on the part of the institutions performing the review, since otherwise the result could be the phenomenon of “regulatory capture.” Institutions in particular that specialize in consulting in specific areas are not objectively interested in the fact that the advice they render becomes superfluous.

6. Institutional design of the order and legal framework

a) Competition of the regulatory models

The consideration contained in the discussion paper that competition of the regulatory models offers benefits (p. 7) misses the sense and purpose of the requirements of Community law that apply to telecommunications. The central goal of the legislative policy of the European Community in the area of telecommunications is to create an internal market for services in that field. This is also evident from the fact that the new legal framework was issued essentially on the basis of Art. 95 EU Treaty. Differing regulatory models of member states can come into conflict with this goal. At least the material and legal level of the regulation basically needs harmonization - not only in terms of abstractly formulated goals but also in particular with regard to the concrete rights of the market participants, which rules out competition of the regulatory models in this respect. There are even strong arguments that the former approach of the EU Communications Directives, which consists primarily of pronouncing abstract goals of regulation and tying the regulatory measures to the sector-specifically defined principle of proportionality, does not go far enough toward reaching the goal of harmonization, so that material requirements at the level of the directives might make sense.

b) Competitive discovery processes in the institutional area

The discussion paper takes the view that there is much to argue in favor of also permitting competitive discovery procedures in the institutional realm (p. 7). One can agree with this insofar as there could be more freedom for independent solutions of the member states on the institutional side. However, the present EU legal framework shifts the implementation of the material rights and duties largely to the institutional level. Harmonization of the institutional requirements, and specifically of the regulatory process, thereby assumes a central role. The expansion of the freedom of member states on the institutional level would thus be contrary to this experience-defined approach of the present EU legal framework, and there-

fore cannot be reconciled with the current regulatory model. The very admission of competitive discovery processes in the institutional area urgently requires further harmonization of the material requirements as a component of a harmonized regulatory regime. Regaining institutional freedom of implementation therefore requires a reorientation of the EU regulatory framework that defines material rights and obligations already at this level.

Cologne, January 17, 2006

More than 50 of the telecommunications and service companies that operate in the German market are active in the VATM. All of them are in direct competition with the ex-monopoly Deutsche Telekom AG and are working for more competition in the telecommunications market – for the benefit of innovations, investments and employment. Since the year 2000 the competitors have made investments totalling over € 20 billion in the fixed network and cellular telephone areas. The new fixed network and cellular phone companies safeguard around 50,000 jobs in Germany, as well as about 50% of the employment in the supplier firms as well.