

Methodology of Defining Relevant Markets, Analysing Relevant Markets, Assessing Significant Market Power and Undertaking Remedies in the Area of Electronic Communications in the Czech Republic (“the Methodology”)

1. Background of the Methodology

1.1 Legislative Framework

The Czech Telecommunication Office (the “Office”) analyses the relevant electronic communication market in compliance with:

a) the Legal Regulations Currently in Force in the Czech Republic, Regarding Electronic Communications:

- Act No. 127/2005 on electronic communications and amendment to certain related Acts (the Electronic Communications Act), as amended (the “Act”);
- Decree No. 430/2005, laying down the criteria for assessment of whether two or more undertakings enjoy joint significant market power in the relevant electronic communications market (the “Decree”);
- Measure of General Nature No. OOP/1/07.2005-2 to determine the relevant markets in the electronic communications sector, including criteria to assess significant market power (the “Measure”);

b) the EU Regulatory Framework for the Electronic Communications Sector:

- Directive No. 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (“Framework Directive”);
- Directive No. 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services (“Authorisation Directive”);
- Directive No. 2002/22/EC of the European Parliament and of the Council on universal service and users’ rights relating to electronic communications networks and services („Universal Service Directive”);
- Directive No. 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities (“Access Directive”);
- Directive of the European Parliament and of the Council No. 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (“Directive on Privacy and Electronic Communications Sector”);
- Commission Directive No. 2002/77/EC on competition in the market for electronic communications networks and services;
- Commission Decision No. 2003/548/EC on the minimum set of leased lines with harmonised characteristics and associated standards, referred to in Article 18 of the Universal Service Directive;

c) Other Applicable Documents of the European Commission:

- Commission Recommendation No. 2003/561/EC of 23 July 2003 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (C(2003)2647 final);

- Commission Recommendation No. 2003/311/EC of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (C(2003)497) (“Relevant Markets Recommendation”);
- Explanatory Memorandum to the Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (C(2003)497);
- List of Standards and/or specifications for electronic communications networks and services and associated facilities and services (OJ C331, p. 32) of 31 December 2002;
- Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (2002/C 165/03) of 11 July 2002);
- Working paper of the European Regulatory Group (ERG), on the significant market power concept under the new regulatory framework, ref: ERG (03) 09 rev3 – September 2005.

1.2 Basic Phases of Relevant Market Analysis

The process of relevant market analysis takes place in three phases:

a) Defining the Relevant Market

The process of defining the relevant market starts from how the individual relevant electronic communication markets are determined in the Measure. When defining each relevant market, the Office does so in factual terms and in terms of territory and time.

b) Relevant Market Analysis as Such

The purpose of the analysis of the relevant market defined in this way is to determine whether the market is effectively competitive or whether there are solid reasons to believe that it would become effectively competitive within a reasonable period of time. If the Office finds on the basis of the results of the analysis that the market is not effectively competitive and if there are no solid reasons to believe that it would become effectively competitive in a reasonable period of time, then the Office should state that such a market needs regulation *ex ante* and should identify the entity/entities with significant market power in the relevant market.

The Office should identify the entity with significant market power after examining the criteria that are indicated in the Measure.

Market analysis with focus on the identification of entities with significant market power provides a basis for deciding whether to apply or lift regulatory measures. The Office takes into account the current market situation and the expected future development of the market within the defined time horizon.

c) Proposed Obligations and Prohibitions (“Remedies”)

In compliance with the provisions of Section 51(3),(4) and (9) of the Act, the Office will propose to impose one or more obligations on the undertaking(s) with significant market power either as prevention or to improve the competitive environment.

By proposing the imposition of the obligations, the Office follows the over-all major objectives of the EU regulatory framework. These are, in particular:

- a) encourage competition;
- b) contribute to the development of the Internal Market;

- c) support end users' interests.

The process of selecting suitable remedies has the following sequence of phases:

- a) analyse the objectives of *ex ante* regulation;
- b) select suitable remedies, adequate to the analysed objectives;
- c) propose the parameters of the remedies and specify their details.

1.3 Information Sources

To analyse the relevant markets, the Office uses the information and data requested (using questionnaires) and obtained from the entities participating in the market; in addition, it uses information from surveys conducted or ordered by the Office and information available from public sources.

2. Methodology

The methodology sets out the procedures and methods to be used in the individual phases of market analysis (see Point 1.2 above). These procedures and methods should be used in the relevant market analysis to an extent adequate to the nature of the market. Justification of that extent should be part of the analysis of any relevant market.

2.1 Defining the Relevant Market

A relevant market is a market for the products and services that are equivalent, comparable or substitutable for each other in terms of their characteristics, prices and intended use in a territory where the competitive conditions are sufficiently homogeneous and clearly discernible from those in the adjacent territories.

With respect to the expected future development and in compliance with the principles of the right to competition protection, the Office defines the individual relevant markets for *ex ante* regulation in factual terms and in terms of territory and time.

Concluding the process of defining the relevant market, the Office states, in particular:

- a) the existence of serious barriers hindering the entry in the relevant market, such barriers being either permanent or transient;
- b) whether developments in the market under review lead to the development of effective competition within a reasonable period of time;
- c) whether the shortcomings of the market can only be addressed on the basis of the competition law.

These statements made by the Office are then, in the next phase, subject to analysis and consultations under Section 130 of the Act.

2.1.1 Factual Definition

Factual definition of the relevant market means the description of the products and services that constitute the market. A product market means a group of products and services that can be replaced by, or substituted for each other with respect to their properties and the structure of demand and supply.

The Office analyses the products and services (including the partial services that are available within a given general service). Such an analysis is based on the main characteristics of those products and services, their prices, technical parameters and the conditions of their typical use.

2.1.1.1 Examining Substitutability on the Demand Side

To determine the possible substitutes on the demand side, the Office prepares a list of potential products and services that can be replaceable from the viewpoint of wholesale or retail users and that can be substitute in the case of a price rise or in the case of any other change in the competitive conditions.

To examine substitutability on the demand side, the Office:

- a) defines the functionality of the service with respect to the end users;
- b) identifies the possible substitutes on the demand side (retail or wholesale);
- c) evaluates the substitutes against specific criteria, including, but not limited to, the intended use of the service, the cross elasticity of the prices (sensitivity of the demand for a specific service to a change in the price of another service) and the prices.

2.1.1.2 Examining Substitutability on the Offer Side

Substitutability on the offer side comes to the fore when a service provider transfers its resources to the provision of a target service, i.e. also a service representing an alternative from the demand viewpoint. Such a transfer of resources may reduce the pricing scope available to the existing service providers, because the room for increasing their prices is limited by the possible availability of a competitive service. If substitutability on the offer side is to be feasible, it must be possible to carry out the transfer in a practicable manner at relatively low costs and within a short period of time.

The Office distinguishes between substitutability on the offer side and an entirely new entry in the market, facing all the entry barriers.

When determining substitutability on the offer side, the Office must, in particular:

- a) examine the functional and technical substitutability

In this respect, the Office mainly examines the providers' technical possibilities and the capacity of their networks, the "switchover" costs (including also opportunity costs) and the possible timescales for the "switchover". The Office also examines in this context the potential investment opportunities, including any obstacles to investing in the market;

- b) identify substitute providers

This step is focused on identifying substitute service providers, i.e. the competitors currently active in the market under review and the related markets, as well as other entities that have sufficient potential to become such competitors and that could – at reasonable costs and within a reasonable period of time – start providing services substituting the current services.

What is important for this step of substitutability determination is the identification of the network infrastructure that could be used to provide the service or to ensure wholesale entries in the service.

- c) examine the regulatory factors that affect substitutability

The Office should in particular examine the existence and nature of any regulatory measures limiting the provision of a given service by providers of other services, or examine the legal obligations associated with such a service (e.g. universal service, requirements for service quality) that may make impossible, or limit, the use of the infrastructure capacity.

- d) examine other factors

In examining substitutability on the offer side, the Office also takes into account other criteria, especially those for the effectiveness and timeliness of substitution on the offer side in different markets.

2.1.1.3 Hypothetical Monopoly Test

Where appropriate, the Office uses the hypothetical monopoly test as a tool to analyse substitutability on the demand and offer side. When performing the test, the Office should consider how to respond to a small (5–10%), yet significantly sustained (long-term) increase of the price by the hypothetical monopoly provider of the given service:

- should the relative price rise encourage many consumers to satisfy their needs by switching to another (substitute) service to avoid paying the increased price, the Office should consider the substitute service as part of the same market, and, at the same time,

- should the relative price rise encourage a critical number of the providers of similar services to transfer their resources to the provision of the substitute service, the Office should consider such services (depending on other factors) as part of the same market.

2.1.2 Definition in Terms of Territory

Defined in terms of territory, the relevant market is a territory (geographical market) where the entities involved are active on the side of demand for and offer of a given product and where the competitive conditions are sufficiently similar inside that territory while being distinguishable from those in another territory.

In defining the market in terms of territory, the Office focuses on the national market and only in those cases where specific criteria indicate different (usually smaller) geographical markets does the Office consider the definition of other geographical markets.

2.1.3 Definition in Terms of Time

The relevant time frame may vary between the markets. Definition of the time frame as a period of 1 to 3 years, as set out in the Act, must serve as a basis. The Office defines the individual markets in terms of time with reference to the current situation on the market and, in particular, to the expected dynamics of its development.

2.2 Analysis of the Relevant Market

The purpose of relevant market analysis is to establish whether a market is effectively competitive or whether there are good reasons to believe that it will become effectively competitive within a reasonable period of time. If the Office proves on the basis of the analysis that there is an undertaking with a significant market power in the relevant market, then the Office must investigate the issues that would or could occur in the case that the undertaking with significant market power acted solely in its own interest, independently of the interests of its customers and regardless of the limitations represented by other players in the market.

Considered as a market that is not effectively competitive should be any market where one or more undertakings with significant market power are active and where the remedies under the national law or European Communities law regulating competition do not suffice to resolve the problem.

The Office therefore performs an analysis of the market in order to establish:

- a) whether any undertaking active in the market enjoys such significant market power; and
- b) whether the problems identified when examining the existence of significant market power can be resolved by means of remedies in the competition area.

If the relevant market analysis leads the Office to the conclusion that the market is not effectively competitive, the Office should propose appropriate remedies to be imposed on those competitors that are responsible, with their significant market power, for the market's being found not to be effectively competitive.

If the Office finds on the basis of the relevant market analysis that the market is effectively competitive, it decides to lift the imposed obligations.

Examining the market characteristics, the Office relies, in particular, on assessment of the current situation and on projection of future development. This is done prospectively until the next analysis of the relevant market.

2.2.1 Assessment of Significant Market Power

To assess the existence of significant market power in the relevant market, the Office uses the economic criteria specified in the Measure and in the Decree. The criteria are assessed in terms of the expected/assumed development and with respect to the conditions currently prevailing on the given market.

The Office should prove the existence of significant market power on the basis of a combination of these criteria, which, if taken separately, may not be definitely determining.

In making its assessments, the Office uses criteria that are suitable for the relevant market. An enumeration of these criteria is contained in the Measure, the Decree or in the relevant case law.

The Office should assess every market separately. This means that it may assign criteria weights to each case, independently of the weights applied to any other market. The Office should give grounds for this.

In assessing the existence of significant market power, the Office also takes into account the remedies currently in force, if any.

2.2.1.1 Examination of Individual Significant Market Power

When examining individual significant market power, the Office takes into account the criteria and characteristics including, but not limited to, those in the following basic groups:

- market share;
- criteria characterising the undertaking;
- criteria characterising the customers;
- criteria characterising competition in the relevant market.

Market Share

a) Market Share Size

The market share is the key indicator of any competitor's strength in the market. Although a considerable weight is assigned to this criterion of significant market power, a number of other criteria are also taken into account even in situations where the market share is relatively high; however, such additional criteria, by themselves, do not necessarily be of a determining nature or have a separate determining weight.

The Office's assessment of significant market power is based on the European competition law, due heed being taken of the market share size. This is ensured as follows:

- if an entity's market share is less than 25%, such an entity is not likely to have a significant market power; a significant market power may only occur in such cases if the Office, having examined other criteria, finds strong evidence supporting significant market power;
- if an entity's market power is between 25% and 40%, such an entity is likely to possess significant market power;
- if an entity's market power is more than 40%, there are reasons to assume the existence of significant market power;
- if an entity's market power is more than 50%, there are strong reasons to assume the existence of significant market power;
- if the market share is 75% or more, there is significant market power. The significant size of the share of the market in itself indicates the existence of a significant market power and there is no need to analyse other criteria.

A number of benchmarks, defined in both financial and performance terms, are available to measure the market share. They are based on the characteristics of the market.

b) market share change over time

When examining the market shares, the Office takes into account a number of factors, including, but not limited to, the direction and rate of the changes in the market, which affect the market share. Market share change over time is reflected in the Office's considerations as follows:

- a large market share, which is stable over time, strongly suggests the existence of individual significant market power, the more so if the situation is likely to remain unchanged;
- a declining market share may indicate that the market is becoming increasingly competitive, although it does not exclude the possibility of individual significant market power;
- a fluctuating market share size may suggest that there is no individual significant market power.

Criteria Characterising the Undertaking

The criteria assessed by the Office in relation to the characteristics of the undertaking include, without being limited to, the following:

a) Over-all Size of the Undertaking

Assessment of the size of the undertaking is based on a comprehensive evaluation of its property, financial assets, income and the prospects of development.

b) Control of Infrastructure Difficult to Duplicate

Control of infrastructure that is not accessible to competitive operators contributes to dominance. When assessing infrastructure control, the Office primarily considers whether the infrastructure is non-duplicable or difficult to duplicate.

Control may be achieved in various ways, e.g. through ownership rights (in relation to the entire infrastructure or a part thereof), or through the existence, or by making use of, a direct or indirect influence on the infrastructure.

c) Technological Advantage or Dominance

Preferential or exclusive access to advanced technologies suggests dominance. The Office considers this criterion as very authoritative because the technologies that are used for the provision of services within the electronic communications market are very complex.

Further, the Office takes into account the factors or facts that significantly reduce the importance of this criterion in the assessment of the existence of significant market power. These include, without being limited to:

- the requirements for interoperability and interconnectivity, set out in many international conventions and agreements, lead in practice to a high standardisation of communication technologies;
- the markets for such technologies (i.e. equipment, including the software) are for the most part open;
- the relevant technologies, though complex, are for the most part advanced and stable;
- the Office seeks to avoid application of too strict restrictions in emerging markets (where technical innovation is most likely to be used).

The Office considers the data on capital expenditures for research and development (including the costs of development of new services) as the most relevant parameters for examining the advantage or dominance resulting from technological advance.

d) Easy or Privileged Access to Capital Markets or Other Financing Sources

Relatively easy or preferential access to capital markets or to any other sources of capital is a great advantage to operators. In practice, such access to financing is reflected in lower costs of capital-spending projects, i.e. lower weighted average costs of capital (WACC), compared to competitors or potential new market players. This may hinder access to the market or provide advantage against the existing competitors.

This criterion is authoritative mainly in the markets where costly projects need to be implemented (this applies to a whole range of relevant markets).

The factors examined by the Office in relation to access to capital markets or other financing sources include, in particular, the given operator's market share, its property, financial and income parameters and the changes thereof, its ownership structure, business strategy and management stability.

e) Extent and Variety of Products or Services

Where an operator offers several services within one service offer package, the Office should examine whether the competitors are also able to offer the same range of services.

f) Economies of Scale

Economies of scale lead to lower unit costs of production (and distribution etc.) as a result of producing/providing a large volume of products/services. The resulting "incremental revenues" may enable a competitor to behave independently of the market players operating on a smaller scale and prevent potential competitors from entry in the market, unless such competitors are able to achieve a large "critical volume".

Economies of scale make it possible for an undertaking to generate the same profit as minor competitors at lower prices for the customer. With this criterion, the Office assesses relative advantages rather than absolute economies of scale and size, which by themselves are not indicators of significant market power.

The advantages enjoyed by an operator as a result of the economies of scale will probably only last until a competitive operator builds an offer package of a similar size. The Office therefore compares this period of time with the timescale determined for the given market and sets out whether the time is long enough for not having to take this criterion into consideration.

When assessing the economies of scale, the Office considers, in particular, the factors related to the undertaking's market share and size, to the existence of a package of services, and to the cost structure.

g) Economies of Scope

Economies of scope lead to lower unit costs as a result of producing/providing a wide range of products/services by using (partially) shared resources. This may enable a competitor to behave independently of the market players that do not offer such a wide range of products or services.

Economies of scope make it possible for an undertaking to generate the same profit as minor competitors but at lower prices for the customer.

The advantages enjoyed by an operator as a result of the economies of scope will probably only last until a competitive operator builds a similarly varied offer package.

When assessing the economies of scope, the Office considers, in particular, the factors related to the undertaking's market share and size and to the existence of a package of services.

h) Vertical Integration

If a provider offers a whole range of products at different levels of its market chain (i.e., if it offers a product or service and, at the same time, the respective wholesale inputs), then the Office should examine whether the competitor is able to behave independently of its competitors. To assess vertical integration, the Office should examine, in particular, the ownership and management relations of the provider(s) that operate in the market, and should also investigate whether the competitors are able to compete with the vertically integrated provider.

i) Development Level of the Sales and Distribution Network

The Office examines whether the given competitor's sales and distribution channels hinder the market entry for new providers and whether such channels can make it possible for that

competitor to behave freely, without limitation by any other competitors, which do not have such channels and for which it would be very difficult and costly to acquire or build them. In this context, the Office may also examine other relevant factors such as, for example, the given competitor's ability to develop and support its brand.

j) Prices and Profitability

Consistently high prices, compared with other undertakings, may suggest the existence of significant market power. In this respect the Office should consider whether the high prices can be justified by innovation activities or by the provision of various benefits. A consistently high profitability may also signal the existence of significant market power.

Criteria Characterising the Customers

The criteria to be considered in relation to the customers include, in particular, the following:

a) Non-existent or Poor Compensatory Power on the Demand Side

An undertaking may achieve or maintain significant market power if its customers do not have a chance to switch to another undertaking.

Customers may have a poor negotiating position for whatever reason when purchasing services. In such a case the customer is unable to threaten that he would switch to a competitor's services, or actually to do so, which is a situation that allows the provider to behave independently of the customers and competitors.

The Office examines whether the customers' purchasing power is strong enough to limit the provider's market power.

b) Costs of Switching to Another Provider

The Office examines whether the relative level of the costs the customer may incur if switching to another provider allows the providers to act independently of the customers, who therefore have a limited capability to use the services of another provider.

c) Barriers to Switching to Another Provider

The Office must also assess the existence of any other barriers as could prevent the customer from switching to another provider (e.g. any long-term contracts).

Criteria Characterising Competition in the Relevant Market

Competition in the market may develop towards a higher effectiveness, provided that the barriers to market entry and to further growth in the market are small and provided also that the situation where potential competitors can enter the market continues.

In this respect the Office considers, in particular, the following criteria:

- existence of competition;
- existence of potential competition;
- barriers to market entry;
- barriers to competition enhancement.

Non-existence of competition and even potential competition or new market entries (though perhaps caused by different factors) is an important indicator of significant market power, enjoyed by a provider. This criterion is closely associated with barriers to market entry. In this respect the Office examines whether within the time horizon of the assessment any new players can be expected to enter the market.

The Office also considers other barriers to market entry, or to growth. These may include, in particular, advantageous access to the infrastructure and the radio spectrum, strategic barriers such as discriminatory prices used by incumbent operators, vertical or horizontal leverage in the market, or sunken costs.

2.2.1.2 Examination of Joint Significant Market Power

The Office states the existence of significant market power in those cases where two or more competitors jointly hold a dominant position with no effective competition between them. This is possible in a market whose structure allows to develop conditions for co-ordinated action on the market even in a situation where there are no structural or other links between such competitors. Co-ordinated action must be possible and sustainable over time.

The Main Criteria of Identifying Significant Joint Market Power

The criteria for determining joint significant market power are specified in the Decree.

Joint significant market power can be identified, in particular, where the situation meets the specified characteristics, especially those in the area of market concentration or market transparency.

a) Market Concentration

A highly concentrated market, measured, for example, by the Hirschmann-Herfindahl index (HHI), is the main indicator of the market conditions that may lead to joint significant market power.

The Office considers a large market share and a highly concentrated market as significant indicators of the likelihood that the given entities possess joint significant market power.

b) Market Transparency

A poor transparency of the product and service price offer packages may also testify to the existence of joint significant market power.

Other Criteria to Identify Joint Significant Market Power:

a) Level of Development of the Market

When assessing the level of development of the market, the Office mainly considers the rate of its development and the level of penetration.

b) Stagnation or Modest Growth on the Demand Side

When assessing how advanced the market is, the Office mainly examines the rate of growth of the demand: stagnation or only a modest growth of demand increases the likelihood of the occurrence of joint significant market power.

c) Poor Elasticity of Demand

A reduced sensitivity of demand to price changes weakens motivation for price competition, because greater price cuts (potentially leading to losses) would be needed for winning a market share.

The Office uses empirical measurements of demand elasticity in the market if such measurements are available. Structural factors and evidence of the customers' purchasing behaviour (established, for example, by surveys) are also of substantial importance.

d) Similar Market Shares

Similar market shares at a higher concentration of the market may in certain circumstances weaken the motivation for effective competition between two or more competitors. This is why the Office examines them when investigating the existence of joint significant market power.

e) Product Homogeneity

Homogeneous product / service markets and advanced technologies (i.e. those that have already been available for a certain period of time and whose innovation continues at a slower rate) make comparison of offers clearer, thus facilitating co-ordination.

f) Similar Cost Structures

Entities with different cost structures may be less susceptible to agreement.

g) Lack of Technical Innovation or Advanced Technology

The likelihood of market entry by new players is among the indicators examined by the Office in this context. A high rate of innovation implies a higher likelihood of market entry of new players, which, in turn, reduces the possibility of the occurrence of joint significant market power.

h) Non-existence of Excess Capacity

If none of the providers does enjoy significant excess capacity, the Office will consider the existence of joint significant market power as more likely.

i) Large Barriers to Market Entry

The Office examines barriers to market entry, including, but not limited to, advantageous access to the infrastructure and the radio spectrum.

j) Insufficient Market Power on the Demand Side

The Office examines the existence of barriers that could prevent the customer from finding another provider.

k) Insufficient Potential Competition

The Office examines the existence of barriers to potential competitors' market entry.

l) Various Informal or Other Links between the Entities Concerned

The Office examines the links between the competitors. Any such links contribute to the likelihood of their acting as a single entity towards customers and competitors.

m) Retaliation Mechanisms

The possibility of a retaliation action is a very important indicator of the sustainability of co-ordinated impacts, if any do occur.

n) Insufficient or Limited Scope for Price Competition

Insufficient or reduced price competition allows dominant competitors to apply increased prices to increase profit without running the risk of losing their market share.

The Office examines the existence of competitors that are able not only to cut prices but also to do so with a significant impact on the market share: this reduces the likelihood of the existence of joint significant market power.

The Office may also examine non-price factors that influence the customers' purchasing decisions such as, for example, the image of the brand, sharing of premises, or access to distribution channels.

o) Use of the Criteria for Identifying Individual Significant Market Power

Joint significant market power means a joint dominant position shared by two or more undertakings. The criteria for identifying individual significant market power are also of major importance for the Office. These include, in particular, the criteria of large barrier to market entry, the insufficient market power on the demand side and non-existence of potential competition.

On the basis of the above criteria, the Office makes its decision on the existence of significant market power in the given relevant market.

2.2.1.3 Transferred Significant Market Power

The Office considers whether an entity enjoying significant market power in one market is able to extend its domination, either vertically or horizontally, to another (closely related) market.

2.3 Procedure in Determining the Remedies

Depending on the results of the analysis of the relevant market and of the evaluation of the regulatory measures taken so far, the Office proposes appropriate remedies in accordance with Section 51 of the Act, Articles 9 to 13 of Directive No. 2002/19/ES (Access Directive) and Articles 17 to 19 of Directive No. 2002/22/ES (Universal Service Directive). The proposed remedies must be reasonable, objective and justified.

The Office proposes one or more of the following remedies to be imposed on an undertaking with a significant market power:

- a) transparency under Section 82 of the Act and Article 9 of the Access Directive;
- b) non-discrimination under Section 77 and Section 81 of the Act and Article 10 of the Access Directive;
- c) separate records of costs and revenues under Section 86 of the Act and Article 11 of the Access Directive;
- d) access to specific network elements and associated facilities under Section 84 of the Act and Article 12 of the Access Directive;
- e) provision of leased lines services to the extent of a minimum set of leased lines in the whole territory of the State or any part thereof under Section 76 of the Act and Article 18 of the Universal Service Directive;
- f) allowing carrier selection and pre-selection under Section 70(1) of the Act and Article 19 of the Universal Service Directive; or
- g) obligations related to pricing regulation under Section 56 and Section 57 of the Act and Article 13 of the Access Directive.

The Office is entitled, in addition to the remedies indicated above, to impose other access-related obligations on the undertakings with significant market power upon obtaining an affirmative opinion of the Commission.

Once the Office identified an undertaking with significant market power in any relevant market for the end users, and once – on the basis of consultation in accordance with Section 130 and 131 of the Act – the Office arrived at the conclusion that remedy cannot be achieved by imposition of the above obligations, the Office may issue a decision to ban such an undertaking's

- a) unjustified or unreasonable preferential treatment of certain end users;
- b) unreasonable bundling of services;
- c) charging unreasonably high prices; or
- d) limiting economic competition by using dumping prices.

If the above bans already exist in the relevant market, the Office may decide either to maintain or change them or cancel them.

In the case of supranational markets, the Office shall proceed in compliance with Community legislation and shall co-operate with the concerned national regulatory authorities to analyse the relevant market and, if applicable, identify an undertaking with significant market power. Upon consulting with the national regulatory authorities concerned, the Office may decide to impose obligations on the undertakings with significant market power.

When performing the analysis and selecting the remedies, the Office must consider the possible impacts of its interventions and monitor those impacts during the entire interval between the analyses.