

The Commission requests Slovenian Regulator to review its proposal on wholesale high-quality broadband access market

The European Commission has issued a recommendation asking the Slovenian regulator AKOS to amend or withdraw its proposal on the wholesale high-quality broadband access market. The Commission considers that AKOS did not correctly determine the weighted average cost of capital. This is a parameter used for setting the cost-oriented access prices and its miscalculation may lead to higher prices for accessing Telekom Slovenije's wholesale high-quality broadband network.

The European Commission has adopted a recommendation under Article 7a of the Framework Directive on the proposal of the Slovenian telecoms regulator – Agencija za komunikacijska omrežja in storitve Republike Slovenije (AKOS). The recommendation concerns the calculation of the weighted average cost of capital (WACC), which is used to set the new cost-oriented prices to be charged on the wholesale high-quality broadband access market by Telekom Slovenije – the operator found to have significant market power (SMP) on this market. The Commission criticised, in particular, the inclusion of a mark-up for company size (“size premium”) in the methodology used by AKOS to calculate the WACC.

AKOS included a size premium in the WACC calculation, it argues, to better reflect the risks inherent to a Slovenian operator, which is generally smaller (and therefore allegedly more risky) than the average European telecoms operator. In the Commission's view, such mark-up leads to an overestimation of the cost of equity, which in turn increases the final value of the WACC.

The Commission considers that the use of a size premium is a deviation from the Capital Asset Pricing Model (CAPM), which is typically used by European regulators to calculate the WACC. Furthermore, in the Commission's view, AKOS did not sufficiently explain the reasons for including a size premium in the standard WACC formula nor justify how it determined the exact level of the premium.

Hence, the Commission concluded that the size premium should not be included in the WACC calculation, as it would lead to an inflated cost of capital and, as a result, to higher regulated prices on the market for wholesale high-quality broadband access.

Following a three-month in-depth investigation, the Commission - fully supported by the Body of European Regulators for Electronic Communications (BEREC) - now requests AKOS to amend its proposal or to withdraw it in order to bring the WACC calculation in line with EU telecom rules. AKOS is required to communicate its decision to the Commission within one month of the Commission issuing its recommendation.

Background

The EU's Regulatory Framework for electronic communications requires National Regulatory Authorities (NRAs) to review national telecoms markets regularly and assess the need for ex-ante

regulatory remedies to foster competition. NRAs are required to determine appropriate regulatory measures to be applied to operators with SMP in these markets and notify such measures to the Commission under Article 7 of the Framework Directive. They should also apply price control where justified. Despite this, SMP operators are allowed a reasonable rate of return on their investments, which is typically measured via the WACC. NRAs often use different assumptions to estimate the WACC, a practice which does not always reflect market fundamentals and may distort the Digital Single Market. Following the publication by the Commission of a study on this subject in July 2016, on 14 December 2017 the Commission published a roadmap summarising the milestones of its ongoing initiative aiming at developing an EU methodology for determining the WACC in telecoms regulation.

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