

OPINION OF ADVOCATE GENERAL

POIARES MADURO

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1. The telecommunications sector is regulated by a Community regulatory framework in order to pursue several objectives, notably that of safeguarding competition. A specific institutional arrangement has been set up, whereby national regulatory authorities (NRAs) are assigned those objectives and are empowered to intervene, whenever necessary, by imposing obligations on telecommunications operators with significant market power.

2. The present case essentially deals with the margin of discretion of Member States in implementing that Community regulatory framework: first, their freedom to restrict the application of regulation when sensitive markets are concerned, namely new markets, and second, their freedom to guide the intervention of NRAs with respect to specific regulatory objectives, such as promoting investment and innovation.

I — Factual and legal background

3. Within the Community regulatory framework applying to the telecommunications sector, the following are relevant to the present case: the Framework Directive,² the Access Directive,³ and the Universal Service Directive.⁴

4. The German legislation at issue is the Law on telecommunications ('the TKG').⁵ While the TKG mostly transposes the Community regulatory framework, it was also subject to two amendments, concerning new markets, which lie at the root of the present case.⁶

1 — Original language: English.

2 — Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

3 — Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ 2002 L 108, p. 7).

4 — Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 1).

5 — 'Telekommunikationsgesetz' of 22 June 2004, BGBl. I, p. 1190.

6 — 'Gesetz zur Änderung telekommunikationsrechtlicher Vorschriften' of 18 February 2007, BGBl. I, p. 106.

5. These amendments to the TKG exempt new markets from regulation, unless that regulation is necessary for long-term competition. They also state that the German NRA,⁷ in analysing whether regulation is necessary, must take special account of the objective of promoting investment in infrastructure and innovation.

the Community regulatory framework, NRAs must take ‘the utmost account’ of the objectives defined in Article 8.

6. In setting out the background to the present case, I shall divide the references to the relevant provisions of the Community regulatory framework between its regulatory objectives (A) and procedural matters: the transparency regime, the cooperation system between NRAs and the Commission, market definition, and market analysis (B). Afterwards, I shall describe the TKG in more detail (C). Finally, I shall briefly refer to some events related to the pre-litigation procedure (D).

8. Article 8(1) of the Framework Directive states that Member States ‘shall ensure’ that NRAs will take all reasonable and proportionate measures aimed at achieving those objectives.

9. Article 8(2) of the Framework Directive then lists a first set of objectives, connected with safeguarding competition:

A — The objectives of the Community regulatory framework

‘[NRAs] shall promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by inter alia:

7. Article 7(1) of the Framework Directive states that, in carrying out the tasks set out by

(a) ensuring that users, including disabled users, derive maximum benefit in terms of choice, price, and quality;

⁷ — The ‘Bundesnetzagentur’.

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector; be imposed on undertakings with significant market power.⁸

(c) encouraging efficient investment in infrastructure, and promoting innovation; and

12. Article 15(2) of the Framework Directive tasks the Commission with adopting, 'in accordance with the principles of competition law', guidelines for market analysis and assessment of significant market power ('the Commission Guidelines').⁹

(d) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.'

13. Recital 27 of the Framework Directive states that Commission Guidelines are to treat the issue of the application of regulatory obligations to new markets:

10. Article 8(3) and (4) of the Framework Directive list two other sets of objectives, aimed at further promoting the internal market and protecting the interests of Community citizens, respectively.

'[the Commission Guidelines] will also address the issue of newly emerging markets, where de facto the market leader is

11. Article 8(4) of the Access Directive and Article 17(2) of the Universal Service Directive refer back to the Framework Directive's objectives. These objectives justify the obligations, referred to in those articles, which can

8 — It is worth listing some of those obligations in order to understand the economic impact they may have on their target: Article 8(4) of the Access Directive refers to obligations, inter alia, of granting access to, and use of, specific network facilities, and of price control and cost accounting; Article 17(2) of the Universal Service Directive includes obligations which can result in retail price caps, control of individual tariffs, or orientating tariffs towards costs or prices on comparable markets.

9 — Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (OJ 2002 C 165, p. 6).

likely to have a substantial market share but should not be subjected to inappropriate obligations.’

imposed under the Access Directive and the Universal Service Directive (‘the Commission Recommendation’).¹⁰

14. Paragraph 32 of the Commission Guidelines addresses this issue of new markets by repeating Recital 27 of the Framework Directive and adding the following reasoning:

‘This is because premature imposition of *ex ante* regulation may unduly influence the competitive conditions taking shape within a new and emerging market. At the same time, foreclosure of such emerging markets by the leading undertaking should be prevented. Without prejudice to the appropriateness of intervention by the competition authorities in individual cases, NRAs should ensure that they can fully justify any form of early, *ex ante* intervention in an emerging market, in particular since they retain the ability to intervene at a later stage, in the context of the periodic re-assessment of the relevant markets.’

15. Article 15(1) of the Framework Directive also tasks the Commission with adopting a recommendation which will identify, ‘in accordance with the principles of competition law’, the markets where obligations may be

16. Recital 15 of the Commission Recommendation states in relation to the application of regulatory obligations to new markets:

‘new and emerging markets, in which market power may be found to exist because of “first-mover” advantages, should not in principle be subject to *ex ante* regulation.’

B — *The transparency regime, the co-operation system, market definition, and market analysis*

17. Article 6 of the Framework Directive institutes a regime of transparency regarding interested parties. NRAs must, as a general

¹⁰ — Commission recommendation 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 communication networks and services (OJ 2003 L 114, p. 45).

rule, allow such parties to present their observations on draft measures, publish the national consultation procedures that NRAs organise, and make the results of those procedures public.

18. Article 7(2) of the Framework Directive establishes a system of cooperation between NRAs, and between them and the Commission, in order to ensure a 'consistent application' of the regulatory framework.

19. Article 7(3) and (5) of the Framework Directive specifies the form that cooperation is to take. When an NRA intends to take a measure covered, inter alia, by Articles 15 or 16 of the Framework Directive, and which would also affect trade between Member States, it must inform the other NRAs and the Commission. Its draft measure and reasoning are to be made accessible to the other NRAs and the Commission for comments. The NRA must consider those comments, and if it goes ahead with the draft measure it must communicate it to the Commission.

20. Articles 15 and 16 of the Framework Directive deal with market definition and market analysis, to which cooperation applies.

21. Article 15(3) of the Framework Directive governs market definition by NRAs:

'[NRAs] shall, taking the utmost account of the [Commission Recommendation] and the [Commission Guidelines], define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. ...'

22. Article 16(1) and (2) of the Framework Directive state that, after defining the relevant markets, the NRAs are to analyse those markets, taking into consideration the Commission Guidelines (and, where appropriate, in collaboration with national competition authorities). Where an NRA is called to reach a decision on an obligation under the Access Directive or the Universal Service Directive, it must determine whether the market is effectively competitive.

23. Article 16(3) and (4) of the Framework Directive cover the situation where the NRA reaches its conclusion as to whether the market is effectively competitive or not. If the market is considered to be effectively competitive, the NRA must not impose or maintain the obligations referred to in Article 16(2), or withdraw existing ones. If it is not so considered, the NRA is to identify the undertakings with significant market power and impose, maintain or amend such obligations.

24. Article 7(4) of the Framework Directive gives the Commission a right of veto over certain NRA measures. Those measures must either define a market different from those identified in the Commission Recommendation or decide whether or not an undertaking has significant market power under, *inter alia*, Article 16(3) and (4); moreover, such measures must also affect trade between Member States. The Commission must indicate that the draft measure would create a barrier to the single market or that it has serious doubts as to the draft measure's compatibility with Community law, in particular the objectives of Article 8. In that event, the draft measure will first be delayed and, should the Commission so elect, the NRA will be forced to withdraw the measure if it cannot be adopted together with specific proposals for its amendment.

25. Article 7(6) establishes an emergency procedure to be applied, in exceptional circumstances, to the cooperation system described above.

26. Paragraph 2 of the TKG lists its legislative objectives, which essentially include the regulatory objectives specified in Article 8 of the Framework Directive.

27. Paragraph 9(1) and (2) of the TKG state that regulation will apply to those markets that fulfil the conditions mentioned in Paragraph 10 and in respect of which a market analysis carried out pursuant to Paragraph 11 shows there is no effective competition. Undertakings with significant market power in those markets are to have regulatory obligations imposed on them by the German NRA.

28. Paragraph 10(2) of the TKG describes the market conditions which are to lead to regulation applying (high barriers to entry, structural impediments to long-term effective competition, and insufficiency of competition law remedies). The German NRA is to define these markets, taking into consideration the Commission Recommendation.

29. Paragraph 11(1) of the TKG is concerned with assessing effective competition (there will be no effective competition if one or more undertakings have significant market power). The German NRA is to undertake this market analysis, taking into consideration the Commission Guidelines.

30. Paragraph 12 of the TKG establishes a procedure which essentially echoes the transparency regime and cooperation system of Articles 6 and 7 of the Framework Directive. Paragraphs 10(3) and 11(3) of the TKG state that the German NRA is to present, under this procedure, the results of its market definition and market analysis to the Commission

C — *The TKG*

whenever they involve trade between Member States.

‘A “new market” is a market for services or products which are significantly different from currently available services or products in terms of their effectiveness, their range, their availability for a large number of users (mass-market capacity), their price or their quality from the point of view of a knowledgeable buyer, and which do not simply replace those products.’

31. As mentioned, the TKG was subject to two amendments concerning new markets. It appears that, prior to these amendments being adopted, the incumbent German telecommunications operator (Deutsche Telekom) had lobbied for the broadband network it intended to create to be exempted from regulatory intervention (namely compulsory access at regulated prices).

34. Paragraph 9a was the second amendment made to the TKG, and introduces a rule of regulatory exemption of new markets in its first subparagraph, and an exception to that rule in its second subparagraph:

32. It can be inferred from the parties’ submissions, both written and at the hearing, that there was some debate in German society regarding a so-called ‘regulatory holiday’ for new markets. This debate included voices that questioned the compatibility of an outright exemption with Community law. It is not possible to ascertain, from parties’ submissions, whether a particular view prevailed and had a decisive influence on the amendments that were made to the TKG.

1. Other than as provided in the following subparagraph, new markets shall not be subject to regulation within the meaning of Part 2.
2. When certain facts allow the assumption that in the absence of regulation, the development of a sustainable competitive market in the area of services or telecommunication networks would be impeded in the long term, the [German NRA] may, in derogation from subparagraph 1 above, submit a new market to regulation within the meaning of Part 2, in accordance with Paragraphs 9, 10, 11 and

33. Paragraph 3(12b) was the first amendment made to the TKG, and sets out the definition of new markets:

12. In order to assess the need for regulation and in imposing specific measures, the [German NRA] will take into particular account the objective of promoting efficient investment in infrastructures and of supporting innovation.'

35. These amendments came into force on 18 February 2007.

D — *Pre-litigation procedure*

36. On 20 December 2006, against a background of contacts with Germany regarding the additions to the TKG, but before such additions came into force, the Commission decided to open the present infringement procedure.

37. On 26 February 2007, the Commission sent a letter of formal notice to Germany questioning the compatibility of the additions to the TKG with the Community regulatory

framework. On the same day, it also issued a press release stating 'the intention to bring the case as soon as possible before the Court of Justice of the European Communities'.

38. Since it was not satisfied with Germany's responses to its letter of formal notice and subsequent reasoned opinion, the Commission brought the present action under Article 226 EC.

II — **Admissibility**

39. Germany questions the admissibility of the present action. Its first objection is based on the fact that the Commission decided to open the infringement procedure before the additions to the TKG came into force.

40. However, that fact should be disregarded. Germany received the Commission's letter of formal notice after the additions to the TKG

came into force. Therefore, in accordance to Article 226, Germany was given an opportunity to submit observations on an infringement which, allegedly, was already ongoing.¹¹

41. Second, Germany argues that its rights of defence were not respected by the Commission's intention, expressed in a press release of the same day as the letter of formal notice, to bring the present action before the Court as soon as possible.

42. The Commission's impetuousness is regrettable, particularly in the light of its duty of loyal cooperation with Member States.¹² However, this is not enough to conclude that Germany's subsequent observations in response to the letter of formal notice and the reasoned opinion were not duly considered by the Commission. As such, the present action is admissible.

III — Assessment

43. Through its amendments to the TKG, Germany has restricted the application of regulation when new markets are concerned.

Paragraph 3(12b) of the TKG defines what constitutes a new market. Then, under Paragraph 9a(1) of the TKG, these markets are in principle exempted from regulation. Under Paragraph 9a(2) of the TKG, regulation is to apply only if, without it, long-term competition would be impeded; in assessing the need for regulation, the German NRA must take special account of incentives to investment and innovation — in particular when imposing obligations on undertakings with significant market power.

44. Paragraphs 3(12b) and 9a of the TKG have, according to the Commission, put Germany in breach of its obligations under several provisions of the Community regulatory framework, that is to say, Articles 6, 7, 8(1) and (2), 15(3), and 16 of the Framework Directive, Article 8(4) of the Access Directive, and Article 17(2) of the Universal Service Directive.

45. These alleged infringements can be grouped into two sets of questions, the first dealing with the substantive impact of restricting regulation, the second with its procedural implications.

46. The substantive questions deal with Germany's margin of appreciation in transposing the Community regulatory framework:

11 — See Case C-230/99 *Commission v France* [2001] ECR I-1169, paragraph 32.

12 — See Opinion of Advocate General Mischo in Case C-120/01 *Commission v Ireland* [2002] ECR I-6739, point 50.

— Can Germany establish a rule of regulatory exemption for new markets?

49. I shall therefore start my analysis with the substantive questions.

— Can Germany limit the discretion of the German NRA, by giving priority to a particular regulatory objective regarding intervention in new markets?

A — The alleged infringement arising from laying down of a rule of regulatory exemption for new markets

47. The procedural questions deal with how far the amendments to the TKG interfere with the procedural activities leading to the German NRA decision as to whether or not to intervene, as set out in the Community regulatory framework — the transparency regime, the cooperation system between the NRAs and the Commission, market definition, and market analysis.

50. Paragraph 9a(1) of the TKG establishes a rule of regulatory exemption for new markets unless the conditions laid down by Paragraph 9a(2) of the TKG are fulfilled. This rule is, according to the Commission, intended to favour the investment of the incumbent German telecommunications operator in a broadband network by removing the threat of regulatory intervention.

48. However, it will be necessary to deal with these procedural questions only if the Court's answer to the substantive questions accepts, in the first place, that Germany legally acted within its margin of appreciation in transposing the Community regulatory framework. If not, further illegalities relating to these procedural questions will no longer be relevant.

51. The Court has already found that intervention in privately-owned facilities will reduce the incentives to develop these facilities in the first place. That is why, under Article 82 EC, ordering the compulsory access

to a facility (as a remedy for an abusive refusal to supply) will be appropriate only if the strictest requirements are met.¹³ That is also why, under Community regulation of the telecommunications sector, imposing an obligation to enter into negotiations to grant access must be proportional and truly required by the competitive situation.¹⁴

52. Therefore, it can be established that the possibilities of intervention that regulation entails will reduce incentives to invest in infrastructure and innovation.¹⁵ As such, it is only natural that the incumbent telecommunications operator does not view regulation kindly; and if Germany wishes to promote investment in telecommunications infrastructure, it would do well to address those concerns. It would come down to a policy choice: to restrain regulation, and suffer the associated effects of substantive market power, in order to favour investment in infrastructure.

53. In normal circumstances, Germany would be allowed to make such a policy

choice; but not when there is Community regulation of the telecommunications sector. Here, the choice has already been made by the Community legislature to submit this sector to regulation, with all the possibilities for intervention that it entails.¹⁶

54. The telecommunications sector undoubtedly includes the new markets defined by Paragraph 3(12b) of the TKG. Therefore, Germany cannot reverse the decision of the Community legislature and, as a rule, exempt these new markets from regulation.

55. However, Germany argues that, in effect, the rule that new markets should not be subject to regulation is already present in the Community regulatory framework.

56. This is not so. Recital 27 of the Framework Directive warns only against imposing

13 — Namely the elimination of all competition, see Case C-7/97 *Bronner v Mediaprint* [1998] ECR I-7791, paragraph 41, and, as regards the effect on incentives, the Opinion of Advocate General Jacobs in that case, point 57.

14 — See Case C-227/07 *Commission v Poland* [2008] ECR I-8403, paragraphs 40 to 44, and the Opinion of Advocate General Ruiz-Jarabo Colomer in that case, points 38 and 39, which states that 'it is not appropriate to restrict a market economy without cause'.

15 — Notably in comparison with the possibilities of intervention under the general regime of competition law.

16 — This does not mean that regulation is insensitive to incentives to investment and innovation; indeed, those issues condition the Community regulatory framework through Article 8(2)(c) of the Framework Directive, as discussed below.

‘inappropriate obligations’ on new markets.¹⁷ It is only the Commission, first in the Commission Guidelines, and then in the Commission Recommendation, which expands on this. It is true that the latter states that new markets should not be subject to regulation; however, I find the former to be a better and more complete account of the issues at stake.

57. The Commission Guidelines state that evolving conditions in new markets may be disturbed by regulation; but, at the same time, that these markets should not be foreclosed at their outset by undertakings with significant market power. This puts a special duty of care on NRAs when intervening in these markets, particularly in the light of the possibility of delaying that intervention to a time when competitive conditions have stabilised. The Commission Recommendation, and its reference to market power acquired because of ‘first-mover’ advantages, should also be read in this light.

58. It is therefore clear, as regards exempting new markets from regulation, that the step from mere cautionary recommendations to a binding legal rule was unintended by the Community legislature.

17 — On the interpretative value of recitals see my opinion of 17 December 2008 in Case C-250/07 *Commission v Greece*, point 15.

59. As a result, Germany cannot institute a rule of regulatory exemption for new markets, as it does in Paragraph 9a(1) of the TKG.

B — The alleged infringement arising from limiting of the discretion of the German NRA by giving priority to a particular regulatory objective

60. Germany claims, none the less, that it has not established a general regulatory exemption. It argues that Paragraph 9a of the TKG must be read in light of its second subparagraph, which sets out the conditions necessary for regulation to apply — the first subparagraph being merely the consequence of not fulfilling those conditions. In this respect, Germany claims to be simply guiding — or, as it puts it, ‘pre-structuring’ — the German NRA’s intervention in new markets.

61. Key to this ‘pre-structuring’ is the singling out, by Paragraph 9a(2) of the TKG, of the objective of promoting investment and innovation.¹⁸ This objective corresponds to Article 8(2)(c) of the Framework Directive; however, the other objectives of Article 8 of the Framework Directive still apply through

18 — Another condition laid down in Paragraph 9a(2) of the TKG which attracted the Commission’s attention was the impediment, in the absence of regulation, to the development of a sustainable competitive market. However, this condition is also required for any regulation by Paragraph 10(2) of the TKG (structural impediments to long-term effective competition), mostly reproducing Recital 9 of the Commission Recommendation, and seems compatible with a proportional and correct application of regulation (see the references in footnote 14 above).

Paragraph 2 of the TKG. For Germany, the objectives of the Community regulatory framework can be balanced in different ways, and what its legislature did was to ‘instruct’ the German NRA on how to perform this balancing, giving priority to one particular objective.¹⁹

62. Germany argues that such instructions are within the margin of appreciation allowed in transposing the Community regulatory framework.²⁰ The issue, therefore, is to whom the Community regulatory framework assigns the balancing of its different objectives: to the national legislature, in transposing that framework, or to NRAs, in their specific assessments?

63. I must stress that the answer is independent of the particular objective pursued. It may turn out that Germany is correct, and special attention needs to be given, as regards new markets, to incentives to infrastructure and innovation. However, assigning such balancing to the national legislature has different consequences from assigning it to the NRAs. NRAs have been set up and given particular

powers by the Community regulatory framework for a reason: they are expected to be insulated from certain interests and to reach their decisions governed only by the criteria established in that framework.

64. As such, I believe that the balancing of the regulatory framework’s objectives lies with the NRAs. Article 8 of the Framework Directive expressly assigns the pursuit of these objectives — and therefore their balancing — to NRAs, not to the national legislature.

65. This creates an institutional arrangement whereby the task of the national legislature is limited to ensuring that NRAs take all necessary measures to pursue those objectives, as the Court has confirmed on several occasions.²¹ Even the autonomy of the Member States as regards the organisation and structuring of the NRAs has been subordinated to this pursuit.²²

19 — At the hearing, Germany presented a more nuanced argument: Paragraph 9a(2) of the TKG would be necessary for the purposes of enabling judicial review of the discretionary power of the German NRA. However, judicial review limited to one objective is equivalent to an instruction to prioritise it in relation to others.

20 — This refers to binding instructions. It should be noted that Paragraphs 10(2) and 11(1) of the TKG already refer to the Commission Recommendation and the Commission Guidelines, allowing their non-binding recommendations to apply to new markets.

21 — See Case C-380/05 *Centro Europa 7* [2008] ECR I-349, paragraph 81, and *Commission v Poland*, cited in footnote 14 above, paragraph 63. In its judgment of 10 January 2008 in Case C-387/06 *Commission v Finland*, paragraph 23, the Court held that, in order to prove that the pursuit of the regulatory objectives of Article 8 of the Framework Directive had been impeded, the Commission was required to specify in detail the whole of the NRA’s powers. Similarly, in *Commission v Poland*, paragraph 66, the Court was satisfied that the NRA had been given ‘wide powers of intervention’ to pursue the objectives laid down in Article 8 of the Framework Directive.

22 — See Case C-82/07 *Comisión del Mercado de las Telecomunicaciones* [2008] ECR I-1265, paragraph 24.

66. This also presupposes that it is NRAs, faced with specific assessments, which are better placed to decide how those different objectives are to be balanced in order to maximise them. In other words, a decision by a national legislature to give priority to one particular objective would, in fact, affect the way in which the Community legislature intended the specific market assessments to be made: by the NRAs, taking into account the different objectives on a case-by-case basis. The absence of a system attributing priority as between the objectives laid down in the Community regulatory framework, and the consequent discretion granted to the NRAs, was therefore fully intentional on the part of the Community legislature.

67. Thus, Germany cannot limit the discretion of the German NRA regarding intervention in new markets by subjecting it to conditions, such as those laid down in Paragraph 9a(2) of the TKG, which give priority to one particular regulatory objective.²³

68. Germany has, therefore, infringed its obligations under the provisions setting out

or making reference to the Community regulatory framework's objectives: Articles 7(1) and 8 of the Framework Directive, Article 8(4) of the Access Directive, and Article 17(2) of the Universal Service Directive.²⁴

C — The alleged infringements concerning the transparency regime, the cooperation system, market definition, and market analysis

69. All the remaining provisions referred by the Commission relate to procedural activities leading to the German NRA decision as to whether or not to intervene, as set out in the Community regulatory framework: the transparency regime, the cooperation system between NRAs and the Commission, market definition, and market analysis.

70. Since it has already been established, regarding intervention by the German NRA, that the amendments to the TKG went

23 — *Commission v Poland*, cited in footnote 14 above, paragraphs 42 to 44, also confirms this conclusion. There, the Court considered as inadequate transposition of the Access Directive, and in particular of the obligation to pursue the objectives of Article 8 of the Framework Directive, a decision by Poland to favour access to network infrastructures by ignoring the concrete competitive conditions.

24 — There are also provisions corresponding to Article 8(1) of the Framework Directive in the Access Directive and the Universal Service Directive — Paragraphs 8(1) and 17(1), respectively. However, the Commission has not raised this issue before the Court.

beyond Germany's margin of appreciation in transposing the Community regulatory framework, it is irrelevant whether or not such amendments also infringe Germany's obligations concerning the mentioned procedural matters.

IV — Conclusion

71. In light of all the above, I propose that the Court declare that, in adopting Paragraphs 3(12b) and 9a amending its Law on telecommunications, the Federal Republic of Germany has failed to fulfil its obligations under Articles 7(1) and 8 of the Framework Directive, Article 8(4) of the Access Directive, and Article 17(2) of the Universal Service Directive.