

## 2008 GSR Consultation

### Bundesnetzagentur – Federal Network Agency (Germany)

#### Infrastructure Sharing – Fixed Line

Extending fiber-optic networks closer to the end customer will have a substantial impact on the development of sustainable competition and its extent. Given the increased use of fiber-optic cables, it would be conceivable for the balance between infrastructure and service competition focused even more on conurbation areas in the future and service competition gaining more importance in other areas.

The relocation of networks – and thus also of fiber-optic networks – is bound up with substantial cost (e.g. for earthwork). The possibility of using existing cable networks lowers costs and can make the extension of the fiber-optic network economical where this would otherwise not be the case.

Federal Network Agency's goal is to ensure sustainable competition with equal opportunities and planning foundation for infrastructure investment in new broadband access networks thereby maintaining the balance between infrastructure competition and service competition as a result. Hence we face the challenge of having to bring existing wholesale markets and the access products based upon them into line with technical development.

The first occasion was the Federal Network Agency's legal obligation to review every two years the market conditions and the obligations imposed upon an undertaking with significant market power in the market for unbundled local loop in June 2007. The regulatory order maintained the DT AG's obligations for access to the local loop at the main distribution frame or at a point located closer to the end-user, e.g. the street cabinet as it was determined to have significant market power.

In addition DT AG will have to open up to competitors its cable ducts between the main distribution frame and the cable distributors. Only if access to the cable ducts is not possible for either technical reasons or for lack of capacity will DT AG be obliged to grant other undertakings access to dark fibre.

This new obligation is intended to enable competitors to connect local loops to their own fiber optic cable infrastructures for in particular broadband use of local loops, as DT AG has done or plans to do to a large extend as part of its VDSL roll-out.

The opening up of cable ducts is required to enable competitors to build up a fibre optic infrastructure for the use of high-speed broadband systems, just like the one Deutsche Telekom AG is currently building and planning itself on a larger scale, without the time and cost-intensive excavation works usually required for that. As a result of this we protect the interests of the consumers by ensuring the development of sustained competitive structures, inter alia in the area of highspeed broadband connections.

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In the interests of everyone involved details which still require clarification, in particular with regard to the concrete technical terms and conditions for access. Deutsche Telekom and its competitors are mutually negotiating these issues right now. Should a voluntary agreement not be brought about the Federal Network Agency would set the terms and conditions.

The approach to impose access to cable ducts as an ancillary service like colocation on the market for unbundled local loop is in line with the European Regulator's Group Common Position on Regulatory Principles of Next Generation Access, that was handed to the Commission in October 2007. The Commission also supported the approach taken by BNetzA.

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#### Infrastructure Sharing – Mobile

#### Interpretation of the UMTS Award Conditions in Light of More Recent Technological Advance

Shared use of sites, masts, antennas, cables and combiners is permitted under the Award Conditions.

Shared use of Site Support Cabinets, or SSCs (= more than one Node B in a single SSC) has no further implications for functions control (full legal control of the operator's network) and the independence of the licence holders as competitors and is thus compatible with the Award Conditions.

Use of logically distinct Node Bs in one and the same unit instead of physically distinct Node Bs at the same site is covered by the Award Conditions if the individual cooperation agreements guarantee that each licence holder will retain functions control and competitive independence. The preconditions are:

- a) each licence holder has independent control of his own logical Node Bs so that he can operate his assigned frequencies only (no spectrum pool);
- b) no exchange of any data relating to competition beyond that required for technical operations takes place (eg customer data);
- c) separation of the Operation and Maintenance Centres;
- d) operation of additional own Node Bs (to guarantee the operator's planning autonomy);
- e) no regional splitting up of coverage areas that rules out network and coverage area overlap.

Use of logically distinct RNCs in one and the same unit instead of physically distinct RNCs is covered by the Award Conditions if the individual cooperation agreements guarantee that each licence holder will retain functions control and competitive independence. The preconditions are:

- a) each licence holder has independent control of his own logical RNC, particularly of the usage-sensitive cell load and power;
- b) no exchange of any data relating to competition beyond that required for technical operations takes place (eg customer data);
- c) separation of the Operation and Maintenance Centres;
- d) possibility of operating additional own RNCs (to guarantee the operator's planning independence);

e) connection of the operator's own Node Bs, operated solely by himself, to his own logical RNC.

Shared use of the core network, i.e. of the MSC, would lead to a spectrum pool and is thus incompatible with the requirement of functions control as set out in the Telecommunications Act and the UMTS Award Conditions.

Transitional arrangements on the shared use of MSCs are ruled out in light of principle 5.