



EUROPEAN COMMISSION

Competition DG

Markets and cases II: Information, Communication and Media
Antitrust: Telecoms

Brussels,
2013 - 94906

26 SEP. 2013

Ms. Helle Bojen Larsen
Head of Division
Danish Business Authority (DBA)
Dahlerups Pakhus,
Langelinie Allé 17
DK-2100 Copenhagen
Denmark

E-mail : hebola@erst.dk

Dear Ms Bojen Larsen,

Thank you for your letter of 27 August 2013 concerning TDC's plans to re-organise its CATV activities in the TDC group by creating a separate entity, i.e. YouSee Netco, which would run the cable network. In this context you ask for a clarification of the relevant provisions in Article 8 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services ("Competition Directive").

First of all, I would like to stress that the binding interpretation of EU legislation is the exclusive competence of the Court of Justice of the European Union. Therefore, views of the Commission services, expressed in this letter, cannot prejudge the position that the Court may take.

You ask whether Article 8 of the Competition Directive applies to undertakings which are fully privatised and do not benefit from exclusive or special rights. The Commission services are of the view that the three criteria as prescribed by Article 8(1) of Directive 2002/77/EC should be jointly met in order to create a legal obligation to separate a given legal entity (in this case, TDC, the Danish incumbent operator). Indeed, this is based on the wording of Article 8(1), in particular by the use of a word "and", and on the objectives of the Competition Directive (see in particular recitals 4 and 10). On the basis of your description, Article 8(1) is not applicable as TDC is not controlled by the Danish State and does not benefit from special rights.

The Commission services share DBA's understanding that, indeed, electronic communication services provided via cable networks can be provided by the same legal entity that provides other public electronic communications services.

With regard to your query whether it is possible to provide information on the outcome of the past review of Article 8 of the Competition Directive, I would refer to the explanation provided in my e-mail of 22 May 2013 to Ms Sylvesta Jensen (attached).

Yours sincerely,



Eduardo Martínez Rivero
Head of Unit

Attachment: e-mail of 22 May 2013 to Ms Sylvesta Jensen