Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

20 November 2025 *

(Reference for a preliminary ruling – European Electronic Communications Code – Directive (EU) 2018/1972 – Access remedies imposed on undertakings with significant market power – Article 72 – Obligations of access to civil engineering assets – Conditions)

In Case C-327/24 [Lolach], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Köln (Administrative Court, Cologne, Germany), made by decision of 2 May 2024, received at the Court on 3 May 2024, in the proceedings

Telekom Deutschland GmbH

v

Bundesrepublik Deutschland,

THE COURT (First Chamber),

composed of F. Biltgen, President of the Chamber, T. von Danwitz, Vice-President of the Court, acting as Judge of the First Chamber, I. Ziemele, A. Kumin and S. Gervasoni (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 20 March 2025,

after considering the observations submitted on behalf of:

– Telekom Deutschland GmbH, by F. Hölscher and J. von Lucius, Rechtsanwälte,

– Bundesrepublik Deutschland, by C. Mögelin, M. Otremba and J. Schölzel,

– the Greek Government, by K. Konsta, S. Papaioannou, M. Tassopoulou and D. Tsagkaraki, acting as Agents,

– the European Commission, by G. Conte, O. Gariazzo and G. Meeßen, acting as Agents,

* Language of the case: German.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

after hearing the Opinion of the Advocate General at the sitting on 15 May 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 72 and 73 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ 2018 L 321, p. 36).

2 The request has been made in proceedings between Telekom Deutschland GmbH and the Bundesrepublik Deutschland (Federal Republic of Germany), represented by the Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen (Federal Agency for Electricity, Gas, Telecommunications, Post and Rail Networks) ('the Federal Network Agency'), concerning an obligation for access to civil engineering in the telecommunications sector.

Legal context

European Union law

3 Recital 29 of Directive 2018/1972 states:

'This Directive aims to progressively reduce *ex ante* sector-specific rules as competition in the markets develops and, ultimately, to ensure that electronic communications are governed only by competition law. Considering that the markets for electronic communications have shown strong competitive dynamics in recent years, it is essential that *ex ante* regulatory obligations are imposed only where there is no effective and sustainable competition on the markets concerned. The objective of *ex ante* regulatory intervention is to produce benefits for [end users] by making retail markets effectively competitive on a sustainable basis. Obligations at wholesale level should be imposed where otherwise one or more retail markets are not likely to become effectively competitive in the absence of those obligations. It is likely that national regulatory authorities are gradually, through the process of market analysis, able to find retail markets to be competitive even in the absence of wholesale regulation, especially taking into account expected improvements in innovation and competition. In such a case, the national regulatory authority should conclude that regulation is no longer needed at wholesale level, and assess the corresponding relevant wholesale market with a view to withdrawing *ex ante* regulation. …'

4 Under recital 187 of that directive:

'Civil engineering assets that can host an electronic communications network are crucial for the successful roll-out of new networks because of the high cost of duplicating them, and the significant savings that can be made when they can be reused. Therefore, in addition to the rules on physical infrastructure laid down in Directive 2014/61/EU [of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (OJ 2014 L 155, p. 1)], a specific remedy is necessary in those circumstances where civil engineering assets are owned by an undertaking designated as having significant market power. Where civil engineering assets exist and are reusable, the positive

effect of achieving effective access to them on the roll-out of competing infrastructure is very high, and it is therefore necessary to ensure that access to such assets can be used as a self-standing remedy for the improvement of competitive and deployment dynamics in any downstream market, to be considered before assessing the need to impose any other potential remedies, and not just as an ancillary remedy to other wholesale products or services or as a remedy limited to undertakings availing themselves of such other wholesale products or services. …'

5 Under Article 3 of that directive, entitled 'General objectives':

'1. Member States shall ensure that in carrying out the regulatory tasks specified in this Directive, the national regulatory and other competent authorities take all reasonable measures which are necessary and proportionate for achieving the objectives set out in paragraph 2. …

…

2. In the context of this Directive, the national regulatory and other competent authorities as well as [the Body of European Regulators for Electronic Communications (BEREC)], the Commission and the Member States shall pursue each of the following general objectives, which are not listed in order of priority:

(a) promote connectivity and access to, and take-up of, very high capacity networks, including fixed, mobile and wireless networks, by all citizens and businesses of the Union;

(b) promote competition in the provision of electronic communications networks and associated facilities, including efficient infrastructure-based competition, and in the provision of electronic communications services and associated services;

(c) contribute to the development of the internal market by removing remaining obstacles to, and facilitating convergent conditions for, investment in, and the provision of, electronic communications networks, electronic communications services, associated facilities and associated services, throughout the Union, by developing common rules and predictable regulatory approaches, by favouring the effective, efficient and coordinated use of radio spectrum, open innovation, the establishment and development of trans-European networks, the provision, availability and interoperability of pan-European services, and end-to-end connectivity;

(d) promote the interests of the citizens of the Union, by ensuring connectivity and the widespread availability and take-up of very high capacity networks, including fixed, mobile and wireless networks, and of electronic communications services, by enabling maximum benefits in terms of choice, price and quality on the basis of effective competition, by maintaining the security of networks and services, by ensuring a high and common level of protection for [end users] through the necessary sector-specific rules and by addressing the needs, such as affordable prices, of specific social groups, in particular [end users] with disabilities, elderly [end users] and [end users] with special social needs, and choice and equivalent access for [end users] with disabilities.

…'

6 Article 67 of Directive 2018/1972, entitled ‘Market analysis procedure’, provides:

‘1. National regulatory authorities shall determine whether a relevant market defined in accordance with Article 64(3) is such as to justify the imposition of the regulatory obligations set out in this Directive. …

A market may be considered to justify the imposition of regulatory obligations set out in this Directive if all of the following criteria are met:

(a) high and non-transitory structural, legal or regulatory barriers to entry are present;

(b) there is a market structure which does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based competition and other sources of competition behind the barriers to entry;

(c) competition law alone is insufficient to adequately address the identified market failure(s).

…

3. Where a national regulatory authority concludes that a relevant market does not justify the imposition of regulatory obligations in accordance with the procedure in paragraphs 1 and 2 of this Article, or where the conditions set out in paragraph 4 of this Article are not met, it shall not impose or maintain any specific regulatory obligations in accordance with Article 68. …

…

4. Where a national regulatory authority determines that, in a relevant market the imposition of regulatory obligations in accordance with paragraphs 1 and 2 of this Article is justified, it shall identify any undertakings which individually or jointly have a significant market power on that relevant market in accordance with Article 63. The national regulatory authority shall impose on such undertakings appropriate specific regulatory obligations in accordance with Article 68 or maintain or amend such obligations where they already exist if it considers that the outcome for [end users] would not be effectively competitive in the absence of those obligations.

…’

7 Article 68 of that directive, entitled ‘Imposition, amendment or withdrawal of obligations’, provides:

‘1. Member States shall ensure that national regulatory authorities are empowered to impose the obligations set out in Articles 69 to 74 and Articles 76 to 81.

2. Where an undertaking is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 67, national regulatory authorities shall, as appropriate, impose any of the obligations set out in Articles 69 to 74 and Articles 76 and 80. In accordance with the principle of proportionality, a national regulatory authority shall choose the least intrusive way of addressing the problems identified in the market analysis.

3. National regulatory authorities shall impose the obligations set out in Articles 69 to 74 and Articles 76 and 80 only on undertakings that have been designated as having significant market power in accordance with paragraph 2 of this Article, without prejudice to:

(a) Articles 61 and 62;

(b) Articles 44 and 17 of this Directive, Condition 7 in Part D of Annex I as applied by virtue of Article 13(1) of this Directive, Articles 97 and 106 of this Directive and the relevant provisions of Directive 2002/58/EC [of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37)] containing obligations on undertakings other than those designated as having significant market power; or

(c) the need to comply with international commitments.

…

4. Obligations imposed in accordance with this Article shall be:

(a) based on the nature of the problem identified by a national regulatory authority in its market analysis, where appropriate taking into account the identification of transnational demand pursuant to Article 66;

(b) proportionate, having regard, where possible, to the costs and benefits;

(c) justified in light of the objectives laid down in Article 3; …

…’

8 Article 72 of the directive, entitled ‘Access to civil engineering’, provides:

‘1. A national regulatory authority may, in accordance with Article 68, impose obligations on undertakings to meet reasonable requests for access to, and use of, civil engineering including, but not limited to, buildings or entries to buildings, building cables, including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, in situations where, having considered the market analysis, the national regulatory authority concludes that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market and would not be in the [end user]’s interest.

2. National regulatory authorities may impose obligations on an undertaking to provide access in accordance with this Article, irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that the obligation is necessary and proportionate to meet the objectives of Article 3.’

9 Article 73, entitled ‘Obligations of access to, and use of, specific network elements and associated facilities’, is worded as follows:

‘1. National regulatory authorities may, in accordance with Article 68, impose obligations on undertakings to meet reasonable requests for access to, and use of, specific network elements and associated facilities, in situations where the national regulatory authorities consider that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, and would not be in the [end user]’s interest.

…

2. …

Where a national regulatory authority considers, in accordance with Article 68, imposing obligations on the basis of [Article] 72 or of this Article, it shall examine whether the imposition of obligations in accordance with Article 72 alone would be a proportionate means by which to promote competition and the [end user]’s interest.

…’

10 Recital 28 of Commission Recommendation (EU) 2020/2245 of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code (OJ 2020 L 439, p. 23) states:

‘Furthermore, Article 72 of the Code allows national regulatory authorities to impose access to civil engineering as a stand-alone remedy on any relevant wholesale market. Such obligation to provide access to civil engineering may be justified irrespective of whether the physical infrastructure to which access is granted is part of the regulated relevant market and should be considered by national regulatory authorities before other access obligations are imposed downstream, if proportionate and sufficient to promote competition in the benefit of the [end users].’

German law

11 Paragraph 26 of the Telekommunikationsgesetz (Law on telecommunications) of 23 June 2021 (BGBl. 2021 I, p. 1858), in the version applicable to the dispute in the main proceedings (‘the TKG’), which transposes Articles 72 and 73 of Directive 2018/1972 into German law, provides:

‘Access obligations

(1) The Federal Network Agency may impose on an undertaking with significant market power obligations to grant other undertakings access if, otherwise, the emergence of a sustainable competitive retail market would be hindered and the end user’s interest harmed.

(2) In considering whether and which access obligations under subparagraph 1 are justified and whether these are commensurate with the objectives according to Paragraph 2, the Federal Network Agency shall examine whether

1. obligations already imposed or likely to be imposed under this Part or commercial access agreements already concluded or offered in the relevant or in a related wholesale market and

2. the imposition alone of obligations pursuant to point 10 of subparagraph 3

are sufficient to safeguard the objectives set out in Paragraph 2.

…

(3) The Federal Network Agency may, having regard to subparagraph 1, impose, inter alia, the following obligations on undertakings with significant market power:

…

10. to grant access to civil engineering including buildings or entries to buildings, building cables including wiring, antennae, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes, and cabinets, even if these are not part of the relevant market pursuant to Paragraph 10, provided that the access obligation is necessary and appropriate with regard to the problem identified in the market analysis as defined in Paragraph 11.

…'

The dispute in the main proceedings and the question referred for a preliminary ruling

12 Telekom Deutschland is a telecommunications undertaking which, in the context of a market analysis of 10 October 2019, was designated as an undertaking with significant market power in the market for the wholesale provision of local access at a fixed location.

13 By decision dated 21 July 2022, the Federal Network Agency imposed several access obligations on Telekom Deutschland, two of which are worded as follows:

'1.1.: To grant other undertakings access to cable duct systems as well as to masts and carrier systems for overhead lines existing at the time of demand, for the deployment and operation of very high capacity networks at fixed locations or for access to the local loop at the cabinet or Multi-Service Access Node (MSAN) (point 1.2 or 1.3) within the limits of the available capacity, allowing [Telekom Deutschland] to maintain an adequate operating reserve and to prioritise its own use. …

1.2. To grant other undertakings physically unbundled access to the copper local loop at the main distribution frame or at a point situated closer to the local loop unit than the main distribution frame (in particular the cabinet or the subscriber distribution interface – termination point) unless, under the provisions of Annex 1 – refusal of access to the local loop outside the immediate vicinity of the main distribution frame – and of Annex 2 hereto – refusal of access to the local loop within the immediate vicinity of the main distribution frame – it may or is required to refuse access …'

14 To justify its decision, the Federal Network Agency stated that it was entitled, pursuant to the first sentence of Paragraph 26(1) of the TKG, to impose on operators of public telecommunications networks with significant market power an obligation to provide other undertakings access, including demand-side unbundling, in particular if, otherwise, the emergence of a sustainable competitive downstream retail market would be hindered or the end user's interest harmed. The Federal Network Agency added that it follows from Paragraph 26 of the TKG and its reference to the regulatory objectives set out in Paragraph 2 of the TKG that the measures imposed must meet an extensive bundle of objectives while satisfying certain preconditions.

15 In the Federal Network Agency's view, that bundle of objectives covered four basic purposes: first, to ensure connectivity and promote access to very high capacity networks by all citizens and undertakings; second, to promote competition, in particular on the retail market; third, to protect user interests, in particular consumer interests; fourth, to promote the development of the internal market of the European Union.

16 The Federal Network Agency explained that, in order to meet those objectives, it was necessary to satisfy certain preconditions. Thus, the assessment of the condition relating to whether the measure was necessary should, in particular, cover the question whether the mere imposition of access obligations regarding cable duct systems, masts and carriers for overhead lines is sufficient to safeguard the regulatory objectives set out in Paragraph 2 of the TKG.

17 On 19 August 2022, Telekom Deutschland brought an action before the Verwaltungsgericht Köln (Administrative Court, Cologne, Germany), which is the referring court, against the decision of 21 July 2022 of the Federal Network Agency.

18 Telekom Deutschland claimed that that court should annul that decision in part in so far as it requires Telekom Deutschland, in point 1.1 of the operative part, to provide other undertakings access to cable duct systems, masts and carrier systems for overhead lines for the purposes of the deployment and operation of very high capacity networks at fixed locations.

19 The referring court points out that the scope of the relevant provisions of national law is ambiguous. Certain aspects support an interpretation of Paragraph 26 of the TKG as meaning that the Federal Network Agency should have undertaken 'at the outset' a review limited to whether the conditions for the application of Paragraph 26(1) of the TKG were satisfied – namely that a refusal to grant access, first, would hinder the emergence of a sustainable competitive retail market and, second, would harm the end user's interest. Yet, other aspects suggest that that authority must examine whether it is necessary to impose access obligations with regard to a larger 'bundle of objectives'. The referring court adds that Paragraph 26 of the TKG, which transposes Articles 72 and 73 of Directive 2018/1972 into German law, must be interpreted in conformity with those articles.

20 The referring court is of the view that the outcome of the dispute in the main proceedings depends on the answer to the question whether a national regulatory authority that considers imposing a measure to ensure access to civil engineering assets on the basis of Articles 72 and 73 of Directive 2018/1972 must limit its review to the objectives set out in Article 72(1) of that directive or whether it may refer, in that regard, to a larger 'bundle of objectives' including, inter alia, the objectives set out in Article 3 of that directive.

21 The referring court considers that it is unable to resolve that question on the basis of the '*acte clair*' doctrine. In particular, the answer to that question cannot be clearly deduced from the first subparagraph of Article 73(1) of Directive 2018/1972, given that Article 72 of that directive alone is relevant for the purpose of imposing an obligation of access to civil engineering assets. Furthermore, Article 72(2) of Directive 2018/1972 is only seemingly clear as the interplay between that provision and Article 72(1) of that directive is not obvious.

22 In those circumstances the Verwaltungsgericht Köln (Administrative Court, Cologne) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Articles 72 and 73 of Directive [2018/1972] be interpreted as meaning that, when considering the question of "whether" to impose an obligation to provide access to civil engineering assets that are not part of the relevant market in accordance with the market analysis, the national regulatory authorities

must examine *solely* whether the non-imposition of this obligation would hinder the emergence of a sustainable competitive market and would not be in the [end user]'s interest,

or

may, when considering the imposition of an obligation to provide access to such assets, take into account not only the conditions mentioned above but also, *on an equal footing* as part of a "bundle of objectives", the other objectives of Article 3 of [Directive 2018/1972] and, if applicable, even further objectives?'

Consideration of the question referred

23 The referring court asks the Court to clarify the nature of the examination to be carried out by national regulatory authorities when they consider imposing, on an undertaking designated as having significant market power, an obligation of access to civil engineering assets that are not part of the relevant market in accordance with the market analysis. The question referred by the national court to the Court of Justice mentions both Article 72 and Article 73 of Directive 2018/1972.

24 In that regard, it should be noted that Article 72 of Directive 2018/1972 makes it possible to impose access to civil infrastructure as a 'self-standing remedy', in the sense that it makes it possible to impose access only to civil engineering, whereas Article 73 of that directive makes it possible to impose access to civil infrastructure as an 'ancillary remedy', by providing for access to civil engineering elements associated with network access or access to an electronic communications service.

25 Although the wording of the question referred for a preliminary ruling refers both to Article 72 and to Article 73 of Directive 2018/1972, it is apparent from the order for reference, as agreed upon by all the participants to the hearing before the Court, that an interpretation of Article 72 alone is relevant to the resolution of the dispute in the main proceedings.

26 In those circumstances, by its question, the referring court asks, in essence, whether Article 72 of Directive 2018/1972 must be interpreted as meaning that, when examining whether an obligation of access to civil engineering assets is to be imposed – irrespective of whether those assets are part of the relevant market in accordance with the market analysis – on an undertaking designated as having significant market power, a national regulatory authority must examine solely whether the non-imposition of that obligation would hinder the emergence of a sustainable competitive market or would not be in the end user's interest, or whether, to that end, the authority may take into account, in addition to those two elements and on the same footing, the other objectives set out in Article 3 of Directive 2018/1972.

27 According to settled case-law, when interpreting a provision of EU law, account must be taken not only of its wording but also of its context and the objectives pursued by the rules of which it forms part (see judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, paragraph 12, and of 1 August 2025, *Alace and Canpelli*, C-758/24 and C-759/24, EU:C:2025:591, paragraph 91).

28 In the first place, as regards the wording of Article 72 of Directive 2018/1972, under paragraph 1 of that article, the imposition of a self-standing remedy for access to civil engineering is subject to the condition that denial of access or access given under unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market and would not be in the end user's interest.

29 It must be pointed out that, unlike several other language versions of that provision, including the Spanish-, English-, French-, Italian- and Hungarian-language versions, in which the linking word between the criteria for the imposition of an obligation to provide access relating to 'the emergence of a sustainable competitive market' and to 'the end user's interest' is the conjunction 'and', in the German-language version of that provision, the linking word between those criteria is the conjunction 'or'. In that regard, it is settled case-law that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Where there is divergence between the various language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see judgments of 27 March 1990, *Cricket St Thomas*, C-372/88, EU:C:1990:140, paragraphs 18 and 19, and of 4 September 2025, *Hakamp*, C-203/24, EU:C:2025:662, paragraph 34).

30 Furthermore, Article 72(2) of Directive 2018/1972 provides that national regulatory authorities may impose obligations on an undertaking to provide access in accordance with that article, irrespective of whether the assets that are affected by the obligation are part of the relevant market in accordance with the market analysis, provided that those obligations are necessary and proportionate to meet the objectives of Article 3 of that directive.

31 The objectives set out in Article 3 are (i) to promote connectivity and access to, and take-up of, very high capacity networks, by all citizens and businesses; (ii) to promote competition in the provision of electronic communications networks and associated facilities; (iii) to contribute to the development of the internal market; and (iv) to promote the interests of the citizens of the European Union, inter alia, by enabling maximum benefits in terms of choice, price and quality.

32 Those general objectives thus include the objectives to which Article 72(1) of Directive 2018/1972 refers when it sets out the two criteria for imposing an obligation of access, but they also include other objectives, such as the promotion of connectivity and of access to, and take-up of, very high capacity networks.

33 In the second place, as regards the context of Article 72 of that directive, it should be noted, first, that that directive establishes the European Electronic Communications Code. The directive recasts several directives and introduces a harmonised and simplified framework, inter alia, for the regulation of electronic communications networks, electronic communications services, and associated facilities and services. Directive 2018/1972 does not merely codify the acts of EU law that it amends or replaces, rather it modifies the existing regulatory framework before its adoption in order to take account of technological and market developments (judgment of 27 February 2025, *T – 2*, C-562/23, EU:C:2025:126, paragraph 37 and the case-law cited). As for Article 72 of Directive 2018/1972, it constitutes a new provision as compared with the abovementioned regulatory framework.

34 The first sentence of Article 68(2) of Directive 2018/1972, that article being in Chapter IV of Title II of Part II of that directive, which concerns access remedies imposed on undertakings with significant market power, states that, where an undertaking is designated as having significant market power on a specific market as a result of a market analysis, national regulatory authorities are to impose, as appropriate, any of the obligations set out in Articles 69 to 74 and Articles 76 and 80 of that directive.

35 Among the access remedies in that Chapter IV are, on the one hand, Article 72 of Directive 2018/1972, which grants national regulatory authorities the power to impose on an undertaking with significant market power on a specific market the concrete obligation to meet reasonable requests for access to, and use of, civil infrastructure alone. On the other hand, Article 73 of that directive confers on national regulatory authorities the power to impose on an undertaking with significant market power on a specific market the obligation to meet reasonable requests for access to, and authorisation to use, specific network elements and associated facilities (see, to that effect, judgment of 19 June 2014, *TDC*, C-556/12, EU:C:2014:2009, paragraph 30). In accordance with point 10 of Article 2 of that directive, such an obligation to provide access to 'associated facilities' may include access to physical infrastructures, provided that the latter are associated with an electronic communications network or an electronic communications service.

36 In addition, as recital 28 of Recommendation 2020/2245 and the Commission Staff Working Document accompanying that recommendation moreover confirm, national regulatory authorities may impose obligations of access on the basis of Article 72 of Directive 2018/1972, even if the assets concerned are not part of the relevant market in accordance with the market analysis.

37 Second, it must be pointed out that the second sentence of Article 68(2) of Directive 2018/1972 provides that, in accordance with the principle of proportionality, a national regulatory authority must choose the least intrusive way of addressing the problems identified in the market analysis. In addition, pursuant to paragraph 4 of that article, obligations imposed in accordance with that article must, inter alia, be based on the nature of the problem identified by a national regulatory authority in its market analysis, be proportionate, having regard, where possible, to the costs and benefits, and be justified in light of the objectives laid down in Article 3 of that directive.

38 It follows that a national regulatory authority, when considering adopting a self-standing remedy in accordance with Article 72 of Directive 2018/1972, must ensure that that measure is proportionate and justified in the light of all the objectives laid down in Article 3 of that directive.

39 Third, it follows from Article 67 of Directive 2018/1972 that an access remedy may be imposed on an undertaking with significant market power only once it has been established, in the context of a market analysis, on the basis of the criteria stated in the second subparagraph of Article 67(1), that there is no effective and sustainable competition on a specific market. The second sentence of Article 67(4) provides that the national regulatory authority is to impose obligations on the basis of Article 68 of that directive only if, in the absence of such obligations, the outcome for end users would not be effectively competitive.

40 Moreover, under the second subparagraph of Article 73(2) of Directive 2018/1972, where a national regulatory authority considers, in accordance with Article 68 of that directive, imposing obligations on the basis of Article 72 or of Article 73 of the directive, it must ensure that the imposition of obligations in accordance with Article 72 alone would be a proportionate means by which to promote competition and the end user's interest.

41 It follows that, like Articles 67 and 73 of Directive 2018/1972, which refer both to competition and to the end user, the criteria for imposing an obligation of access, laid down in Article 72(1) of that directive and relating to 'the emergence of a sustainable competitive market' and to 'the end user's interest' are cumulative.

42 It also follows that the condition for imposing an obligation of access laid down in Article 72(1) of Directive 2018/1972 essentially coincides with the requirement, resulting from Articles 67 and 73 of that directive, that such an obligation must be necessary and proportionate in relation to the objectives of promoting competition and the end user's interest. Given that those two objectives are among the general objectives set out in Article 3 of that directive, that condition must be considered to be satisfied where an obligation of access to civil engineering assets, imposed on an undertaking designated as having significant power on a specific market and based on the nature of the problem identified in the market analysis, in accordance with Article 68(4) of the directive, is necessary and proportionate with regard to all the objectives set out in Article 3.

43 The interpretation emerging from paragraphs 28 to 42 of the present judgment is, in the third place, supported by the objectives pursued by the legislation at issue. Indeed, as is apparent from Article 68(4) of Directive 2018/1972, the access remedies imposed on undertakings with significant market power pursue the objectives set out in Article 3 of that directive. According to recital 29 of the directive, *ex ante* intervention is intended, inter alia, to produce benefits for end users by making retail markets effectively competitive on a sustainable basis. It also follows from that recital that the EU legislature aims, inter alia, at progressively reducing such intervention as competition develops and, ultimately, ensuring that electronic communications are governed only by competition law.

44 Article 72 of Directive 2018/1972 is intended to achieve those same objectives. Recital 187 of that directive further specifies that effective access to civil engineering assets serves the purpose of improving competitive dynamics and network deployment in any downstream market. That recital emphasises that civil engineering assets, that can host an electronic communications network, are crucial for the successful roll-out of new networks because of the high cost of duplicating them, and the significant savings that can be made when they can be reused.

45 It follows that a national regulatory authority must not merely establish that a measure based on Article 72 of Directive 2018/1972 is proportionate and necessary to promote competition and end user interest, but must also assess whether that is so with regard to all the objectives set out in Article 3 of that directive (see, by analogy, judgment of 15 September 2016, *Koninklijke KPN and Others*, C-28/15, EU:C:2016:692, paragraph 50).

46 It must also be borne in mind that the general objectives set out in Article 3 of that directive are not listed in order of priority.

47 Therefore, where a national regulatory authority examines whether it is appropriate to impose a measure on the basis of Article 72 of Directive 2018/1972, it is not required to examine, at the outset, whether that measure is proportionate and necessary to promote competition and the end user's interest. The national regulatory authority may assess whether that measure is necessary and proportionate by analysing first one or the other of the objectives set out in Article 3 of that directive.

48 Thus, it is for the referring court to assess whether the obligation of access to civil engineering assets imposed on Telekom Deutschland, pursuant to the national legislation transposing Article 72 of Directive 2018/1972, is based on the nature of the problem identified in the market analysis in accordance with Article 68(4) of that directive, and whether it is necessary and proportionate, with regard to all the objectives set out, in no order of priority, in Article 3 of that directive.

49 It follows from the foregoing that Article 72 of Directive 2018/1972 must be interpreted as meaning that, where a national regulatory authority examines whether an obligation of access to civil engineering assets is to be imposed – irrespective of whether those assets are part of the relevant market in accordance with the market analysis – on an undertaking designated as having significant market power on a specific market, that authority must examine whether the non-imposition of that obligation would hinder the emergence of a sustainable competitive market and would not be in the end user's interest. In addition, that authority must also ensure that the obligation is based on the nature of the problem identified in the market analysis and that it is necessary and proportionate, with regard to all the objectives set out, in no order of priority, in Article 3 of that directive.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 72 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code

must be interpreted as meaning that, where a national regulatory authority examines whether an obligation of access to civil engineering assets is to be imposed – irrespective of whether those assets are part of the relevant market in accordance with the market analysis – on an undertaking designated as having significant market power on a specific market, that

authority must examine whether the non-imposition of that obligation would hinder the emergence of a sustainable competitive market and would not be in the end user's interest. In addition, that authority must also ensure that the obligation is based on the nature of the problem identified in the market analysis and that it is necessary and proportionate, with regard to all the objectives set out, in no order of priority, in Article 3 of that directive.

[Signatures]