ANNEX II: TWO-PAGER ON DISPUTE RESOLUTION

A timely and effective enforcement of regulatory measures: the benefits of dispute resolution mechanisms (DRM)

Overall, the DMA proposal could benefit from the introduction of a dispute resolution mechanism (DRM), compatible with other existing mediation mechanisms (e.g., those in Regulation 2019/1150). This could indeed allow competitors, business and end-users of the gatekeeper to file their complaints at competent regulatory authorities and, ultimately, enable a **better enforcement of regulation**. Indeed, experience in the ECS regulation shows that significant benefits can be produced by giving market players the possibility to access DRMs.

Dispute resolution: a long-proven mechanism

Ex ante regulatory measures in the ECS markets are implemented through the adoption of highly technical regulatory remedies. Some measures are only applied to selected dominant companies aimed at ensuring access to non-replicable or essential assets for new entrants. Other measures are applicable to all market players, irrespectively of their size and position in the market, mostly aimed at enabling end-users to be properly connected through different networks.

All remedies in the ECS regulatory framework have as a key objective the development of competition among providers, through the adoption of specific, highly-detailed measures setting prices for access or appropriate technical and economic conditions for interconnection, number portability or switching providers activities. Sometimes it implies drafting extensive regulatory documents (e.g., reference offers) detailing economic and technical conditions in order to increase transparency and the effectiveness of the obligations. However, given that such measures are **very complex** and can be **interpreted differently** by operators with conflicting interests, the ECS *ex ante* regulatory framework has provided National Regulatory Authorities (NRAs) with the possibility to apply a dispute resolution mechanism. This is a very different regulatory instrument than interim measures considered in ex post competition law, as it is structured in a different way as described below.

Since 2002, Art. 20 of the EU Framework Directive, enables ECS providers to request NRAs to issue a **binding decision** aimed at resolving a dispute with another ECS provider in a short timeframe (in general, a maximum of four months). Moreover, such binding decisions can be issued in relation to all measures that could possibly be imposed according to the Directives concerning ECS markets. The main principles governing the implementation of dispute resolution mechanisms are **swiftness** (e.g. if there are mediation proceedings that can solve the dispute in a shorter time, the NRA can decline a request for dispute resolution), **transparency** (e.g. the binding decision should be adequately motivated and made public) and **adherence** of the final decisions to **the general objectives of the EU Regulatory Framework** on ECS markets (e. g. ensuring fair competition, promoting investments etc..).

In some cases, such disputes can involve ECS providers from different Member States. For these cases, a special procedure is envisaged. Where the dispute affects trade between Member States, the competent NRAs shall notify the dispute to the supra-national coordination body (BEREC) in order to ensure a consistent resolution of the dispute. More precisely, BEREC shall issue an opinion inviting the concerned NRAs to take specific action in order to resolve the dispute or to refrain from action, in the shortest possible time frame, and in any case, within four months.

A tool to the benefit of competitors, business users as well as end-users

Dispute resolution mechanisms are **available for both ECS providers** – as described above – **and to end-users** and **business users**[1]. Such disputes can be raised with respect to a variety of important competitive issues both in the wholesale market (as application of wholesale access or different interpretations of reference offers) and in the retail market, ranging from the availability of contractual information, the degree of transparency and comparability of connectivity offers, accessibility of ECS for end-users with disabilities, quality of service, contract termination policies, barriers to switching providers, etc. In conclusion, dispute resolution mechanisms have been proven to be a very **useful and effective enforcement tool for the regulation of ECS wholesale and retail markets.** NRAs indeed have the possibility to **swiftly solve specific problems** in these markets that are crucial to safeguard competition (e.g. unblocking switching mechanisms between providers), taking into account business and consumers' needs. Moreover, for businesses and consumers it is crucial to have the ability to benefit from a quick intervention of a **skilled regulator**, who has an in-depth knowledge of the market and the necessary powers to act, without having to wait for the adoption of additional general rules and **avoiding lengthy judicial interventions**.

A **similar approach**, properly adapted to the context of the digital services, could be advantageously used in the DMA enforcement and could **maximize its efficiency** towards preventing gatekeepers from imposing unfair conditions on competitors, business users, and end-users. For instance, business users (e.g. app developers in the context of 6 (1)f) or competing platforms (e.g. an alternative search engine using 6(1)j) may find that the obligation is not effective and raise a dispute. The regulator can intervene to settle it and impose a solution which would also have a positive impact on other business users or competing platforms.

[1] This would for example be the case of business users using premium rate phone numbers.