

## **Explanatory remarks on the amendment to the Telecommunications Markets Ordinance 2008**

General:

This amendment to the Telecommunications Markets Ordinance 2008 (TKMV 2008) provides a basis for the procedure stipulated under Art. 37 TKG 2003 in which the Telekom-Control Commission is required to carry out market analyses to identify effective competition or significant market power, in this case on the wholesale market for the provision of broadband access for non-residential customers.

The wholesale broadband access market defined in Art. 1 No. 11 TKMV 2008 corresponds to market no. 5, "Wholesale broadband access," in the Commission Recommendation of 17 December 2007 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 L 344/65 of 28 December 2007; referred to as the "markets recommendation" below).

In order to avoid misunderstandings, the term "wholesale broadband access" used by the European Commission in its markets recommendation appears to require clarification; moreover, the term has to be adapted to the specific market definition in question. Therefore, RTR has chosen the designation "Wholesale market for the provision of broadband access for non-residential customers."

The wholesale market for the provision of broadband access for non-residential customers pursuant to Art. 1 No. 11 TKMV 2008 now comprises the provision of bidirectional broadband access to the subscriber at the wholesale level, regardless of the actual bandwidth, exclusively via digital subscriber line (DSL) using a copper wire pair connection, irrespective of the node from which any optical fiber might be used for the connection (e.g., from the distribution frame in a building, from the serving area interface or from the main distribution frame).

This market also includes all self-provided and externally provided DSL bitstream connections sold to business customers at the retail level.

In the case of externally provided DSL bitstream connections, the wholesale provider transports the data stream between the subscriber and the wholesale customer's interface without the wholesale customer having control over access network infrastructure (e.g. digital subscriber line access multiplexers, or DSLAMs) or the required transport network infrastructure. The data stream is handed over to/from the wholesale customer at one or more handover points using a common data interface based on current technology (e.g. based on ATM or IP).

Self-provided or externally provided connections based on different access technologies, such as CATV, UMTS/HSPA, PLC (power line communications), wireless (WLL, W-LAN, WiMax), fiber optics (FTTH), as well as broadband connections via satellite and forms of access such as leased lines or unbundled subscriber lines are not considered part of this market, regardless of whether they are provided for residential or non-residential customers at the retail level. Likewise, self-provided and externally provided DSL connections provided for residential customers at the retail level do not belong to this market.

Due to the objectively similar competitive conditions, this market comprises the entire federal territory of Austria.