

The principles and preconditions included in the reference offer regarding the co-location

Explanatory Memorandum

Legal framework

The legal framework for the regulation of co-location is stipulated in the EUG no.34/2002 regarding the access at public electronic communications networks and the associated infrastructure, as well as their interconnecting, published in the Official Journal of Romania no.88, from February 2002, approved through Law no.527/2002, published in the Official Journal of Romania no.602 from August 14, 2002 (named the ordinance regarding the access).

European normative papers by the national law:

1. The directive 2002/19/EC regarding the access at electronic communications and the associated infrastructure, as well as their interconnecting, published in the Official Journal of the European Community, series L, no.108/7 from 24.04.2002 (the directive regarding the access)
2. The Rule no.2887/2000 regarding the unconditioned access at the local loop, published in the Official Journal of the European Community, series L, no.336/4 from 30.12.2000.

Moreover, the European Commission has financed the study on "Recommended practices regarding co-location and other forms of shared use of the communications infrastructure", that recommend NRAs to elaborate ex-ante a document specifying the principles and preconditions of co-location. This document should include operational matters, such as the allocation conditions or the situations that justify the denial of space allocation. The document should also include the charging principles, so that the closure of co-locations agreements based on transparency and nondiscrimination should be ensured in due time.

The National Regulatory Authority for Communications considers that the denial of access to co-location or its granting under unreasonable terms, having a result similar that of denial, may prevent the development of an efficient and competitive retail market, impairing upon the interest of the end-users. As a consequence, according to the provisions of the Ordinance regarding the access, the National Regulatory Authority for Communications decides to ex-ante impose to the dominant operator a set of obligations regarding the co-locations facilities, which should be provided under reasonable and correct terms, in due time, as

well as the orientation of the co-location tariffs towards costs.

Means of obstructing the co-location

The new operators on the market may face difficulties related to:

a) discrimination: the significant power operator may act discriminatory regarding the access to co-location, through:

- non-applying equivalent conditions under equivalent circumstances to other juridical persons that provide equivalent services
- providing services and information under different conditions, including quality conditions, compared to those offered for its own services or for its own subsidiaries, secondary headquarters or partners.

In practice, the discriminatory treatment, used by the significant power operator towards an operator that demands access to co-location, may take the form of granting the co-locations under discriminatory conditions compared to the conditions applied by the significant power operator to other operators, to himself or his own subsidiaries, to his secondary headquarters or to his own partners. The discriminatory treatment may even consist of the denial to grant the co-location, if it has already been offered those above mentioned.

b) co-location tariffs excessively high by comparison to the costs required for providing the co-location: the experience of all European countries shows that the main problem the excessively high co-locations tariffs (installing tariff, monthly rents, escort taxes, etc.). If the co-locations tariffs are too high, the entrance of new operators on the market may not be profitable, as they might have already lost their interest, especially towards the services that require access at the local loop. These may happen because the access at the local loop requires for extended co-location services. This situation may lead to a slow development of the new technologies and innovation (especially the high speed access to Internet), to limited choice of the final users and to high tariffs.

c) insufficient information: the denial of the significant power operator to provide detailed information referring to the existing co-location possibilities. In some countries the co-location has been denied on reason of insufficient space, juridical difficulties or security risks. The detailed presentation of co-location solutions has also been denied.

d) delaying the granting of co-location: the time required for the new operators on the market to start the effective providing of services is essential in the electronic communications sector, which is characterized by a high level of dynamism and innovation. The delay in providing the required co-location gives the dominant operator the "first movement" advantage with regard to large band or other advanced services. The efficient and prompt implementing of ADSL

(Asymmetric Digital Subscriber Line) service - one of the main services that rely on unconditioned access to local loop (Local Loop Unbundling, LLP) - cannot be realized without prior assessment and solutions regarding the collocating problems.

Means of co-location used in EES (European Economic Space) states

The co-location inside the building of the significant power operator (physical co-location) is available in 17 EES states. The co-location inside the same space that hosts the equipment of the significant power operator, without a permanent protection barrier between the operators' equipments (so-called co-mingling), is available in 7 EES states (Belgium, Denmark, Spain and Great Britain) and is taken into consideration as a future solution in Portugal.

Where the physical co-location is not technically possible or where no space is available, alternative co-location forms are available: co-location inside or outside the adjacent space of the building belonging to the significant power operator.

The co-location inside the adjacent space of the building is in use in two EES states (Italy and Holland). The co-location outside this space is available in 10 EES states (Belgium, France, Greece, Italy, Luxemburg, Holland, Portugal, Spain, Great Britain).

The solution proposed by ANRC for the regulation of co-location:

A. Action directions

In order to prevent the emergence in Romania of problems similar to those above mentioned, according to the European Commission recommendations, the National Regulatory Authority for Communications has decided to establish ex-ante the principles and preconditions for co-location. This decision aims at encouraging and facilitating the negotiations for closing and implementing in due time of the co-location agreements, in a non-discriminatory manner and respecting tariff efficiency. The immediate purpose of the regulation is to balance the negotiation stands, naturally unbalanced, so that the new operators can benefit of efficient co-location conditions.

Under art. no.8 from "The ordinance regarding the access", the National Regulatory Authority for Communications will adopt a decision that establishing the principles and preconditions that the operators identified as significant power

operators will be obliged to respect during elaboration and publishing of the reference offer for co-location (ORC).

Through this decision, the new operators will acknowledge their rights in relation to the significant power operator and the support they are entitled to receive in case of difficulties. The framework created this way will offer the new operators a few negotiation instruments that would not be available otherwise.

B. Establishing principles and preconditions for co-location

The following aspects have been taken into consideration when establishing the principles and preconditions for co-location:

- a) imposing to the significant power operator the task to publish a reference offer for co-location
- b) providing detailed information regarding the spaces belonging to the significant power operator that can be used for co-location
- c) the equipment that can be collocated
- d) the building of facilities for direct connection of the co-location services beneficiaries
- e) rules for allocating the space for co-location
- f) ways of co-location
- g) the security conditions to be imposed to the beneficiaries of co-location services
- h) the access of the beneficiaries to the allocated space
- i) re-locating the collocated equipment
- j) co-location deadlines
- k) co-location tariffs

Regarding the co-location, there is a technical difference between:

- co-location with the purpose of interconnecting, in which case the significant power operator places at operator's disposal the space required for the interconnection equipments
- co-location for unconditioned access at the local loop, in which case the new operator needs space (common or separated) for installing the interface with the main switch of the dominant operator.

The National Regulatory Authority for Communications considers that both types of co-location may be regulated equally, as shown in a report of ONP Committee of 2001.

On grounds of the Prime-Minister Decision no.113/2002 on the designation of the president of the National Regulatory Authority for Communications,

On grounds of the provisions of art. no. 38, (3) and (5), of art. 34 (3) and of art. 46(1) p.6 from the GO no.79/2002 on the general framework for the electronic communication regulation approved with changes and completions By Law 591/2002, as well as of art. 8 (1), art. 9, art.10. art 12 and art 13(1) and (2) from the GO no.34/2002 on access to, interconnection of, electronic communications public networks and associated facilities approved with changes and completions by Law no. 527/2002, Taking in consideration the provisions of the National Regulatory Authority for Communications President Decision no. C/EI/2002 by which the S.N.Tc. Romtelecom S.A. has been designated as having significant market power on access to the fixed telephony public networks,

THE PRESIDENT OF THE NATIONAL REGULATORY AUTHORITY FOR COMMUNICATIONS

issues the present:

DECISION

regarding the principles and preconditions of the reference offer for collocating

Art.1 The object and aim of the regulation

(1) The National Telecommunications Company "Romtelecom" - S.A., designed according to the decision no.c/EI/2002 of The President of ANRC as having significant power on the access market of public telephony services, further referred to as "the operator", has the obligation not to discriminate with regard to the offer of co-location services for interconnection to network or services of access at the local loop. The networks and the local loop belong to the Operator and they should be placed at the disposal of all authorized providers of electronic communications networks or services, further referred to as "beneficiaries", as follows:

- a) The operator must apply equivalent co-location conditions under circumstances equivalent to all legal persons that solicit or already benefit of co-location services offered by the Operator.
- b) The Operator must make co-location available to third parties, including services and information similar to those used for its own services or for services provided to its subsidiaries, secondary headquarters or partners.

(2) The operator must publish, and also make available on its website, and make available upon demand, up to January 1, 2003, the reference offer for co-location, further named ORC. This offer will respect the principles and preconditions established by the present decision.

(3) The operator will transmit the National Regulatory Authority for Communications, by January 1, 2003, a copy of ORC, specifying the Internet address where it has been published.

(4) ORC will comprise a detailed description of the offers for each element of the network or of the associated infrastructure, according to needs of the market, as well as the technical and commercial conditions, including price, that correspond to each of the these elements

(5) The present decision establishes the principles and preconditions for the co-location services that the operator will offer, according to ORC, to all authorized providers of electronic communications services and networks, further named Beneficiaries, for interconnection at the Operator's network or for access at Operator's local loop.

(6) The Operator must update ORC with every apparition of new elements that could not have been included in the previous offer.

(7) The National Regulatory Authority for Communications may impose ORC clauses to ensure the respecting of the obligations stipulated by UG no.34/2002 regarding the access at public electronic communications networks and the associated infrastructure, as well as their interconnecting, approved with changes and annotations through Law no.527/2002

Art. 2 - Definitions

According to the present decision, the following terms are defined as following:

(a) physical co-location - way of co-location inside the building of the Operator, the Beneficiary having physical access at the collocated equipment;

(b) co-locating space - a space technically adequate for co-location that does not comprises the space where the active equipments of the Operator have been displaced.

(c) co-located space - collocating space that has been allocated to the Beneficiary for co-location

(d) available space - collocating place that does not comprise either the collocated place or the reserved space

Art. 3 - Information regarding the co-location

(1) The Operator will provide ORC with complete information regarding the disposal of the buildings used for physical co-location and the spaces available for every building as well as information regarding the spaces that have been

reserved.

(2) The Operator will stipulate in ORC the modalities in which the spaces for physical co-location are being offered as well as the restrictions regarding the co-location of certain equipments.

Art. 4 - The equipment for co-location

(1) The Operator will offer the Beneficiary the possibility to install and connect in the collocating space, according to the allocation rules stipulated in art.6, any equipment used for access to local loop or for interconnecting. This offer should include the equipments that strengthen the functions of the main equipment allowing it to commute or to provide advanced services (such as DSLAM, routers, ATM, or distance commuting modules).

(2) If a malfunction occurs to any of the utilities provided by the Operator, in a maximum of an hour after the notification of the malfunction by the Beneficiary or from the moment the Operator becomes aware of the malfunction in any other way, the Operator must take all the required measures to fix the malfunction and to eliminate the potential prejudices. The repair costs will be entirely supported by the Operator, except for the case where the Beneficiary is responsible of the malfunction.

(3) If the Operator does not intervene, according to the provisions of the paragraph (2), in order to remedy the malfunction and to limit or eliminate the potential prejudices, the Beneficiary will make the repairs at his own expense and then will recover the costs from the Operator. In addition, the Operator will pay the Beneficiary the delay penalties stipulated in the co-location agreement

Article 5. Building facilities for direct connection between the Beneficiaries

The Operator will allow the Beneficiaries who have been allotted co-location space in the Operator compound or in the space it owns in the vicinity of the compound, to build their own facilities for direct connection with other beneficiaries, with the observance of all the reasonable security requirements the Operator adopted for his own equipments.

Article 6. – Rules for Collocable Space Allotment

(1) The collocable space allotment must take place in the following order of priorities (Annex, Figure 1)

- (a) for the Beneficiaries who have already been allotted co-location space
- (b) for the Operator, following a reservation application, according to the conditions stipulated by the paragraphs (2)-(6)
- (c) for the Beneficiaries that carry out a major investment in the national electronic communication infrastructure, following a reservation application, in the conditions stipulated in by the paragraphs (7)
- (d) function of the chronological order of the co-location applications

(2) The Operator is entitled to reserve for the development needs of his own network, for a maximal period of 2 years, following a reservation notification that has to be sent to The National Regulatory Authority for Communications alongside the corresponding development project, a maximum of 50% of the collocable space, within the limits of the space available at the moment of the receipt of the reservation notification by The National Regulatory Authority for Communications.

(3) The Development Project must specify:

- (a) the destination the Operator intends to give to the space whose reservation is been notified
- (b) the development goals, specified for each trimester, for the space whose reservation is notified and the detailed agenda of the works the Operator plans to execute in order to fulfill his objectives.

(4) If it is deemed that the development project does not reflect the development necessities of the Operator, The National Regulatory Authority for Communications will be entitled to compel the Operator to allot the Beneficiaries the space whose reservation has been notified.

(5) If the development project is not implemented, partially or totally, by the end of the period for which the reservation has been notified, the Operator will be fined with an amount of money equal to 500 times the co-location tariff for the space whose reservation has been notified, according to the charging principles specified by the art. 12.

(6) The Operator can set aside, for the development needs of his own network, for a period of maximum 2 years, following a request for reservation transmitted to The National Regulatory Authority for Communications, along with the respective development project, drawn up according to the provisions of the paragraph (3), more than 50% of the collocable space, within the limits of the available space at the moment when the request is received by The National Regulatory Authority for Communications, with the agreement of The National Regulatory Authority for Communications only.

(7) A Beneficiary that is carrying out a major investment in the national communication infrastructure is entitled to set aside for a period of maximum 2 years, following a request for reservation, which must be transmitted to the operator alongside the corresponding investment project, approved by a decision of the president of The National Regulatory Authority for Communications, up to 100% of the space available at the moment when the reservation request is received.

(8) The allotment of the collocable space can be refused by Operator only for one of the following reasons:
a) the lack of collocable space, according to the order of priorities specified by the paragraph (1)
b) the co-location is not technically possible

(9) The co-location is technically possible if it can be done in compliance with the Operator's technical conditions and does not impair the functionality and the integrity of the Operators' equipments. The proof that the co-location is not technically possible has to be provided by the Operator.

(10) The Operator has to allocate co-location space in the whole co-location space of his compounds, including the space where his equipments are operated, without imposing the building of a new room, enclosure or other similar structure that has a protective purpose, when it lacks the Beneficiary's consent.

(11) In order to create as much collocable space as possible, the Operator must remove any out of use equipment, aside from situations when the keeping of the out of use equipment is mandatory, according to the effectual legal provisions.

(12) When the co-location is refused, The Operator must grant access to the collocable space to a crew, consisting of representatives of The National Regulatory Authority for Communications and of the Beneficiary, so that it could establish the soundness of the refuse.

(13) When The National Regulatory Authority for Communications finds out, during an inspection, that there exists collocable or available room in any of the compounds of the Operator or in the spaces it owns in the vicinity of these compounds, space which that has not been included in the ROC published and placed at disposal of The National Regulatory Authority for Communications according to the provisions of article 1 Paragraph 1., the Operator has to include this space in the ROC in a 10 days time, starting the day of the finding.

(14) The Operator is bound to allot to the applicants the smallest space required for the installation of a supplementary equipment, so that the Beneficiaries will not have to pay for facilities they do not need

Article 7. Procedures for Setting Up the Co-location

(1) Where there is no more co-location space or the physical co-location is technically impossible, The Operator is bound to allow co-location in the space it owns in the vicinity of his building, inasmuch as the co-location in this space is technically possible. If the co-location in this space is not technically possible, the Operator is bound to provide co-location in a different space, at a certain distance.

(2) The proof that the co-location is not technically possible has to be provided by the Operator. A procedure for co-location that has been used by a Beneficiary or has been declared mandatory by The National Regulatory Authority for Communications is supposed to be technically possible for any other Beneficiary.

Article 8. Security Requirements

The Operator cannot impose the Beneficiary security requirements for his equipments that are more severe than the ones the Operator has adopted for his own equipments.

Article 9. The access to the allotted space by the Beneficiary

The Operator must grant the Beneficiary access to the allotted space and to the other technical resources required to install, connect, operate and maintain the relevant equipments belonging to the Beneficiary, as well as the parking lots and the rooms used for repose, 24 hours a day, 7 days a week, including the non-working days, during the whole year.

Article 10. The relocation of the collocated equipment

If the Operator intends to reconfigure his own network, according to his business and development plans, the equipment installed in the space allotted to a Beneficiary can be moved into another space and then reinstalled in the new space, on the expense of the Operator and only after a written notification of this intent is addressed to the beneficiary whose equipment is to be relocated, at least 12 months before the Operator proceeds with the relocation.

11. Terms for Setting Up a Co-location

(1) The maximal negotiation term for signing a co-location agreement, based upon the ROC, is 2 months, starting the date the Operator received the corresponding written request.

(2) If the co-location agreement is not signed in before term specified by paragraph (1), at the request of one of the two parts, sent to The National Regulatory Authority for Communications in a 15 day time, starting the moment this term expires, The National Regulatory Authority for Communications will take action according to the provisions of the Decision of The President of The National Regulatory Authority for Communications [nr][date] [concerning the settlement of the disputations between the providers of electronic communications networks and services].

(3) The Operator is bound to place at the Beneficiary's disposal the allotted space during the 3 months following the day the co-location agreement has been signed. This term includes the period needed for finishing the work required by the preparation of the allotted space.

(4) The Beneficiary is bound to install his equipments in the allotted co-location space during the 3 days following the date the room has been placed at his disposal. At the Beneficiary's request, The National Regulatory Authority for Communications can decide that the installation of the equipments can be done over a longer time span, if it deems that it is necessary, given the technical features of the equipments that are to be installed.

(5) If the Beneficiary does not install his equipments in the allotted space within the time limits specified by the article (4), the Operator can reconsider the allotment, with the exception of the situations where the reasons for not using the space are justified.

(6) The co-location agreement will be effective for a minimum of 5 years. The National Regulatory Authority for Communications can establish a longer term, if it estimates that the applicant has carried out major investments in the national electronic communication infrastructure.

12. Co-location Tariffs

(1) The fees for the preparation of the collocable space and the other technical resources required for the installation, interconnection, operation and maintenance of the relevant equipments belonging to the Beneficiaries must be undiscriminating, based upon costs and detailed enough to guarantee that the applicants will not have to pay for resources that are not required by the service they have applied for.

(2) The maximal fee the Operator can charge the Beneficiaries for the use of the spaces allotted for co-location is the equivalent, in lei, of the following amount of money, calculated according to the official exchange rate established by the National Bank of Romania for the day the payment is made:

- (a) 10 euro per square meter, for the collocable spaces situated in the A zone¹
- (b) 5 euro per square meter, for the collocable spaces situated in the B zone
- (3) If there are more Beneficiaries that have been allotted space in the same collocable space, the fees for the preparation for co-location use of the respective space will be shared between the Beneficiaries as follows:
- (a) the first Beneficiary who has been allotted space will reimburse the Operator all the expenses for the preparation of the collocable space
- (b) the last Beneficiary to whom has been allotted space will pay each of the Beneficiaries who have already been allotted space the subsequent share of the costs, established according to the following formula:

$$C_n = C_t / [n (n - 1)],$$

where:

C_n is the amount of money the n-th Beneficiary has to pay to each of the Beneficiaries who have been already allotted space within the respective collocable space

C_t is the total cost for the preparation of the collocable space

n represents the total number of beneficiaries who have been allocated space within the respective co-location space²

Article 13. Final dispositions

The present resolution will be communicated to the S.N. Tc "Romtelecom"-S.A.

President

Ion Smeeianu

Annex

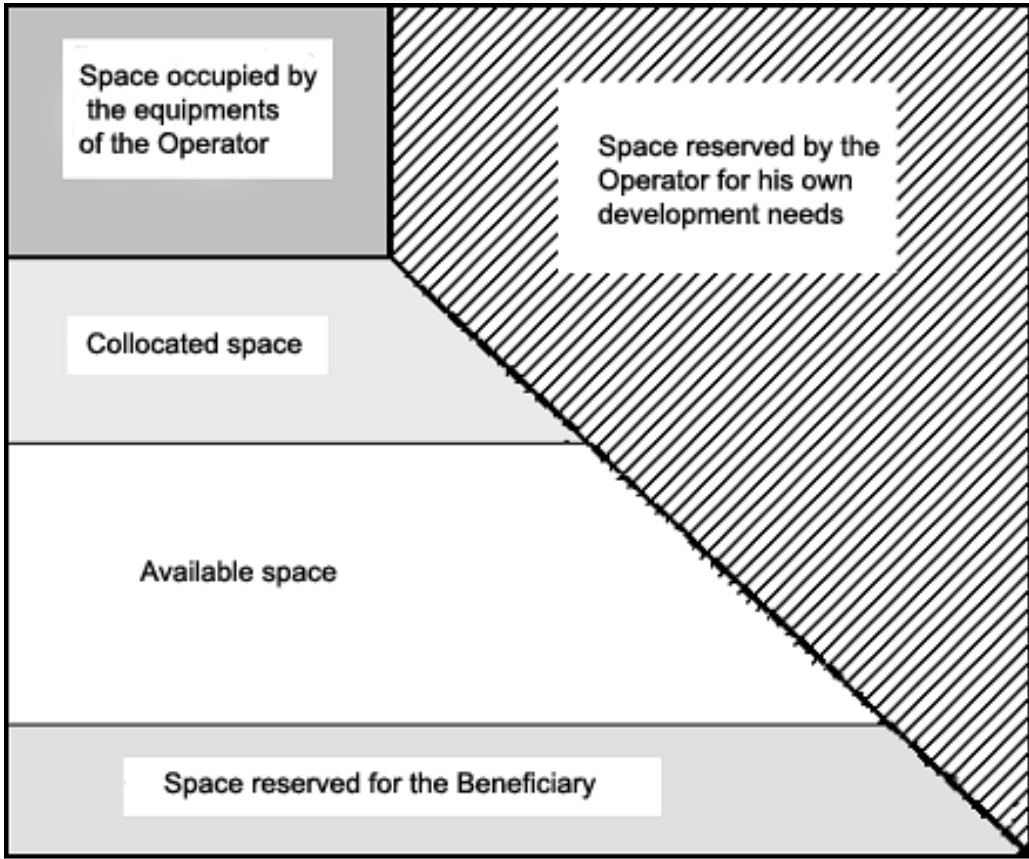
Figure-The Allocation of the Collocable Space

¹ The areas will be established by the The National Regulatory Authority for Communications, taking into account the results of the consultation. The initial proposition is that the A zone should include the large cities, and the B zone the other areas

² Example:

-the total costs for the preparation of the collocable space amount to 1000 euro

-the 4th beneficiary who will be allotted co-location space within the respective collocable space will pay each of the 3 existing Beneficiaries the following amount of money: $C_4 = 1000 / [4 \times (4 - 1)] = 83,3$ Euro



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