[51] Or the merged entity or one of the parties to the concentration changes from one alliance to another as a result of the concentration.
[52] For example, through exclusivity arrangements or non-compete clauses.
[53] For example, being unable to steer a significant part of their roaming traffic.
[54] See analysis in point III.1.2.2.
[55] For the potential anti-competitive effects of such a concentration on the retail mobile telecommunications market, see point III.1.2.2.
[56] This may be the situation in case of a particularly popular tourist destination for citizens of a given Member State.
[57] The existence of alliances may further increase the amount of traffic steered into the network of the merged entity. This will be the case if the merged entity will become member of an alliance (or change from one to another) and members of that alliance will have an incentive or contractual obligation to direct a significant part of their roaming traffic into the network of the merged entity when their customers roam in the Member State in which the merged entity is active in. However, the impact will be mitigated if the alliance already had a member mobile operator in that Member State, as in such case members of the same alliance will compete for the roaming traffic.

András Tóth

The Promotion and Protection of Investments in the European Competition Law and the Electronic Communication Regulation

1. Introduction

The issue of investment protection has got into the centre of scientific interest in the course of the review of the electronic communication regulatory framework in 2006. According to a study[1] prepared by the Commission 25% of the respondents believed that the regulation encouraged investments and 18% of them thought that the uncertainty in the regulation set back investments. These numbers show that the majority of the market players in practice do not recognize the actual relationship between regulation and incentives for investments, despite the fact that they often use the arguments related to this.
Protection of investments has become a hot issue in competition law with the *Microsoft* case[2] where the interest to keep up the development of a whole sector has come into conflict with the protection of individual innovations.
This article intends to give an overview of how electronic communication and competition laws handle the question of investments.

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2. Promotion and protection of investments in the European electronic communication regulation

One of the main principles of the European regulatory model for electronic communication besides technology neutrality, proportionality, and internal market is the promotion and the protection of investments.[3]
The European electronic communication regulation is based on the static efficiency "competition on networks" model meaning that it aims to achieve the competitive outputs by intra modal or access competition in short time. However, the long-term "aim of the new regulatory framework is ultimately to achieve a situation where there is full infrastructure competition (i.e. inter modal) between a number of different infrastructures. This can occur within or between platforms. Regulation mandating access to existing networks serves as a transitional measure to ensure services competition and consumer choice until such time as sufficient infrastructural competition exists."[4]
The long-term aim of the regulation could only be achieved by strong efforts to make investments. At the same time, short-term access competition may seem to undermine this aim since it creates the typical free riding problem and discourages newcomers to make investments into infrastructure.[5] This, therefore, requires a system within the regulatory framework that in parallel ensures promotion and protection of investments in infrastructure as well.
According to de Streel the three criteria test already contains an investment safeguard, namely the second criterion that relates to dynamic considerations.[6] However, such a safeguard may not be able to provide sufficient legal certainty for investors.

2.1. Investment protection within the regulatory framework

The requirement of the protection of investments arises from the regulation on undertakings with significant market power (SMP). In high-tech markets innovation may be twofold: on the one hand it promotes competition (i.e. the competition key drivers), on the other hand, it creates monopolistic position which might be a starting point for anti-competitive effects.[7] The reasons of this can be found in the specific features of the high-tech market such as the lock-in and network effects, the winner-takes-all strategy and the low marginal costs.
Investments can lead to both first-mover-advantages and the mere strengthening of monopolistic position. Protection shall be

addressed only in case of the former.[8] Recital 27 of framework directive[9] notes that in emerging markets where the de facto market leader is likely to have a substantial market share should not be subject to inappropriate ex-ante regulation. There are several reasons against the regulation in this regard, even in the scenario where a first mover enjoys substantial market shares.[10] First, high market shares of the first mover are contestable because there are low entry barriers.[11] Second, even if there is market power regulators should forbear because the first mover should be able to recoup its investment risk and its incentives to invest should be preserved.[12] Third, premature imposition of ex-ante regulation may unduly influence the competitive conditions in that market.[13] Therefore, leveraging of market power from an established market into an emerging market shall be dealt with by competition law.[14]

Although the regulatory framework does not define what emerging market is potentially it is meant to be a market where there is insufficient information to carry out the necessary market definition procedures and the three criteria test as to whether the market is susceptible to ex-ante regulation or not.[15] The ERG notes that such markets will normally not be selected for regulation because it is not possible to assess the three criteria test as there is a high degree of demand uncertainty and entrants to the market bear higher risk. The emerging market differs from the regulated one, i.e. it is not part of any existing one.[16] Similarly ERG defines emerging market as distinct from a market that is already susceptible to ex ante regulation from both a demand and a supply side perspective.[17]

Due to the undefined concept of emerging market the amendment of the German telecommunication act in 2007 incorporates a new Section 9a according to which the inclusion of a new market into the market regulation shall generally take place only if facts justify the assumption that otherwise the development of a sustainably competition-oriented market would be durably impeded. The Commission has launched an infringement procedure against Germany arguing that the amendment gives regulatory holiday only to Deutsche Telekom, i.e. the incumbent would be exempted from regulation which could stifle competition and therefore violate the community law.. "In the Commission's view, the German law jeopardizes the competitive position of Deutsche Telekom's existing competitors and makes it much harder for new competitors to enter German markets. It also attempts to influence the German regulatory authority in charge of electronic communications on whether or not to grant competitors' access to the new VDSL-network currently being built by Deutsche Telekom. The new law therefore interferes with the authority's discretion in defining and analyzing markets under EU rules. It is a legislative response to Bundesnetzagentur's decision in September 2006 to address Deutsche Telekom's significant market power in the German wholesale broadband market."[18]

It is useful to distinguish between retail and wholesale emerging markets. The relationship between emerging market and its regulation is illustrated in the table below:

Wholesale infrastructure		Retail service	
		Existing service	Emerging service
Existing		Ex-ante regulation (e.g PSTN)	Infrastructure subject to ex-ante regulation No ex-ante regulation on retail service (subject to competition law)
Emerging	Totally	No ex-ante regulation if the three criteria are not met (e.g. no barriers of entry) (e.g. VoIP)	No ex-ante regulation (e.g. 2G) ("regulatory holiday)
	Partially	Infrastructure subject to ex-ante regulation with proper wholesale access pricing (with respect to the investments) (e.g. VDSL)	Infrastructure subject to ex-ante regulation with proper wholesale access pricing No ex-ante regulation on retail service (e.g. ADSL)

The European regulatory framework based on the concept of emerging market safeguards not all investments but only those which lead to the creation of emerging markets. This is coherent with the market-based regulatory mechanism according to which markets are subject to ex-ante regulation if the three criteria are found to be met. At the same time, this mechanism raises some difficulties related to how to determine the investments exempted from a certain regulatory intervention.

If a new service was to be provided on an existing infrastructure - possibly partially upgraded (e.g. ADSL) - the position of the European Commission is relatively clear. On the one hand, the retail market is emerging and should not be regulated, on the other hand the wholesale market cannot be considered as an emerging one hence it may be regulated and furthermore a potential leveraging of market power into the emerging market would be subject to competition enforcement.[19]

However, a situation where an already existing service is provided on a newly deployed infrastructure like for example voice over IP is difficult because of two conflicting arguments. On the one hand, there is new investment which would require protection, on the other hand however there is a risk of leveraging of market power from the emerging market to the existing one.

The first approach is the regulatory forbearance or the so-called Nascent Service Doctrine[20] represented by the Federal Communication Commission in US[21] according to which the fiber-to-cabinet/bundling/home is not subject to any unbundling obligation. The US telecommunication regulation follows an "asset approach" according to which the obligations shall be imposed on the durable bottlenecks in the value chain and not on the identified markets. Nascent Service Doctrine holds that regulators should exercise restraint when faced with new technologies and services in order to facilitate the development of new products and services without the burden of anachronistic regulation, and in turn promote the goal of enhancing facilities-based competition. In Australia the dominant operator is also entitled to reap its monopoly on the dominated market for a certain period of time, but cannot leverage this position on related markets.[22]

The second scenario followed by European market based approach could be divided into two subparts. Firstly, if the emerging infrastructure is only partly upgraded then the Commission's view is that such network (e.g. VDSL) shall not constitute emerging network, and consequently shall not fall under regulatory forbearance.[23] The Commission confirmed this as its own approach in a recent competition decision[24] on price squeeze of Telefónica where it stressed that the deployment of ADSL services is not regarded as equivalent with the rolling

out of a new infrastructure from the regulators' point of view. Secondly, if the existing service is provided on a brand new, emerging infrastructure (e.g. VoIP) there are two further options: either the existing regulation is extended to the new infrastructure, or removed from the old network. The fact that a new infrastructure is deployed may indicatethat a parallel network is economically viable and entry barriers are low, hence sector regulation is not justified any more. [25] However, the Commission's view in this case based on its Guidelines[26] is that the wholesale market falls also under ex-ante regulation since the framework requires symmetry in regulation of infrastructures providing similar services. In both of these above presented cases the recovery of investments in emerging infrastructure has to be ensured.[27] This could be achieved by applying Article 12 of the Access Directive[28] which emphases that the regulatory authority shall take into account the investments making by the SMP in course of imposing any remedy on it.

2.2. Promotion of investments in the regulatory framework

The tension between incumbent's investments and service based competition should be eased in the form of principle of promotion and protection of investments. At the same time, the newcomer's investments shall be promoted fostering development of infrastructure based competition.
Newcomers can also provide electronic communication services based on the access to the incumbent's network elements, i.e. without investments risk, they may, therefore postpone their infrastructure investments. As this should be avoided, such an encouragement mechanism is needed which allows the newcomers to receive access to the needed elements of the networks step-by-step. „When constructing a new alternative telecommunications infrastructure, it is of crucial importance to obtain a minimum critical network size in order to fully benefit from network effects and economies of scale and be able to make further investments."[29] This phenomenon is commonly referred to as the investment ladder according to which "it is necessary to impose remedies that enable the new entrant to reach a point of the investment ladder which makes commercial sense and which tends to maximize the extent of economically efficient competing infrastructure. This will require a coherent regulatory policy (and in particular a consistent price structure) along the relevant ladder."[30] The investment ladder does not mean that "alternative operators must follow a step-by-step approach to investing in infrastructure. Rather, it encapsulates the observed pattern of market entry and expansion by new entrants. This pattern has prompted regulators in Europe to tackle established barriers to entry and expansion by mandating access at various levels of the incumbent operators' infrastructure."[31]
The investment ladder theory "includes a move for the operators from service to infrastructure-based competition. Hence, by implementing this ladder, both infrastructure and service based competition is promoted."[32] Ladder of investments in the access competition could be wholesale line rental (WLR), bit stream access (WBA), and unbundling (LLU).

2.3. Regulatory holiday included in the regulatory framework?

The issue of regulatory holiday emerged during the review process of framework in 2006 from the part of the European incumbent operators who urged temporary exemption from regulatory intervention for the protection and promotion of their investments. However, the Commission holds that regulatory forbearance should be given only by national regulatory authorities and only where as a result of the market analysis an emerging market is concerned. According to the table below regulatory holiday theoretically could be given if the infrastructure is partially or fully emerging. However, in that case the infrastructures are subject to ex-ante regulation with proper wholesale access pricing based on Article 12 paragraph 2 point c) of Access Directive because it stipulates that the regulatory authority shall consider the initial investment made by the facility owner
The regulatory holiday could be given in practice if each and every upstream and downstream market is emerging. In that case the regulatory framework does not explicitly limit the forbearance in time. However, ERG Common Position on remedies implies that an emerging market meeting the three specific criteria may be regulated after the elapse of a sufficient amount a time.[33] Surprisingly, in that case a temporary regulatory holiday could be realized. The old services provided on emerging infrastructure could be exempted from any regulatory intervention if there are no barriers to entry and the leveraging of market power is impossible. These two circumstances are if the three criteria are meet or if there is no any SMP operator, namely the competition is effective on the relevant market. Namely, the access holiday given by US or Australian regulator is not an unknown possible outcome in the European regulation too. The difference is that the result is not named as regulatory or access holiday but removal of the regulation with respect to the effectiveness of the competition or the competition law. These factors are not specifically related to the protection or promotion of investments, rather they are part of the ordinary enforcement of ex-ante regulation.

3. Protection and promotion of investments in competition law

As we have seen above, the regulatory framework takes into account the investments in form of emerging markets and proper wholesale access pricing in case of new infrastructures. In contrast, competition law is being less concerned with these objectives[34] because explicit test for protection of investments has not yet been developed. Rather, a reverse tendency can be seen in the competition law practice: while there is an attempt to develop a transitory exemption from competition law in case of the tangible products, as regards intangible product the intrusion of competition law enforcement can be observed into the area of intellectual property that is protected by the transitional exclusivity rights.

3.1. Competition enforcement to protected intellectual property

It is very expensive to exclude anyone from enjoying access to information society goods because reproduction costs are generally very low, and at the same time creation costs are high. The creator will probably have no chance to recoup its investment and a market failure could be generated unless remedied by granting an exclusive right (legal monopoly) to the creator. Therefore, the intellectual property right is not perpetual; the legal monopoly position created never lasts forever, contrary to other forms of property.[35]
However, European competition law practice in several cases gives precedents when the exclusive right was granted unjustified. In that context competition law ensures the single available tool for the Community to set forth some control over the exercising of intellectual property right because Article 295 of the Treaty respects the rules of national ownership. Thus the European Court of Justice makes a difference between the existence and the exercise of intellectual property rights. [36]
The Court of Justice held in *Volvo v. Veng*[37] that the refusal to grant a license, even in

return for reasonable royalty, did not in itself constitute an abuse of the dominant position. However, the Court stated that the exercise of intellectual property right might constitute an abuse if it involved certain abusive conduct.[38] This is because the Court insists on balancing of interest in free competition and incentive for research and development. Advocate General Jacobs in his opinion in *Bronner*[39] highlighted that: *"In assessing such conflicting interests particular care is required where the goods or services or facilities to which access is demanded represent the fruit of substantial investment. That may be true in particular in relation to refusal to license intellectual property rights. Where such exclusive rights are granted for a limited period that in itself involves a balancing of the interest in free competition with that of providing an incentive for research and development and for creativity. It is therefore with good reason that the Court has held that the refusal to license does not of itself, in the absence of other factors, constitute an abuse."*[40]

In the *Renault* and *Volvo* cases the Court did not set out circumstances in which a refusal to license is abusive, but merely gave non-exhaustive examples of abusive conducts.[41] The Court of Justice elaborated the conditions under which a refusal to license will be abusive first time in the *Magill*.[42] Court stated that the mere ownership and exercise of intellectual property right cannot itself confer a dominant position or consist of an abuse of such a position. There must be additional circumstances for an abuse to occur. These are: (i) prevention of the appearance new product which the intellectual property right holder did not offer and for which there was a potential consumer demand, (ii) refusal is not justified, and (iii) intellectual property right holder reserves to himself a secondary market by excluding all competition on that market.

The Court left open several question in the *Magill* which was answered in *Ladbroke*[43] and *IMS Health*.[44] The Court of First Instance said in *Ladbroke* that the applicant cannot rely on the Magill judgment to demonstrate the existence of the alleged abuse, since in this case the parties are not on the same market.[45] The Court confirmed in the *Microsoft* case[46] that in order that a refusal to give access may be considered abusive, it is necessary to distinguish two markets. (335.) The Court held in the *IMS Health* that (i) the requested party does not intend to limit itself essentially to duplicating the goods or services already offered by the owner of the intellectual property right (49.) (ii) the three criteria elaborated in Magill are cumulative, (38.) (iii) it is determinative that two different stages of production may be identified (45.).

However, some questions remained still open after the *IMS Health* e.g. what does the "excluding all competition", the "new product" notions mean in practice, and what sort of objective justifications could be accepted. Some of these questions are answered by the Court of First Instance in its recent decision on *Microsoft* case.[47]

3.1.1. The new product requirement does not constitute the single criteria

The Court notes that the circumstance that the refusal prevents the appearance of a new product for which there is potential consumer demand is found only in the case-law on the exercise of an intellectual property right. (334.) The Court referred to the *IMS Health* stated that the balancing of the interest in protection of the intellectual property right and the economic freedom of its owner against the interest in protection of free competition, the latter can prevail only where refusal to grant a license prevents the development of the secondary market, to the detriment of consumers. (646.) According to the Court the appearance of a new product cannot be the only parameter which determines whether a refusal to license an intellectual property right is capable of causing prejudice to consumers within the meaning of Article 82(b) EC. As that provision states, such prejudice may arise where there is a limitation not only of production or markets, but also of technical development. (647.)

Microsoft's refusal discouraged its competitors from developing and marketing work group server operating systems with innovative features, to the prejudice, notably, of consumers (653.) This is because the same specification can be implemented in numerous different and innovative ways by software designers. (655.) It must be borne in mind, that Microsoft's competitors would not be able to clone or reproduce its products solely by having access to the interoperability information. The Court also notes that the protocols whose specifications Microsoft is required to disclose represent only a minimum part of the entire set of protocols implemented in Windows work group server operating systems. (657.) It must be borne in mind that the implementation of specifications is a difficult task which requires significant investment in money and time. (658.) The court highlighted that the issue to be decided is the impact of the refusal to supply on the incentive for Microsoft's competitors to innovate and not on Microsoft's incentives to innovate. That is an issue which will be decided when the Court examines the circumstance relating to the absence of objective justification. (659.)

3.1.2. The risk of elimination effective competition

Article 82 EC does not apply only from the time when there is no more or practically no more competition on the market. If the Commission was required to wait until competitors were eliminated from the market, or until their elimination was sufficiently imminent, before being able to take action under Article 82 EC, that would clearly run counter to the objective of that provision, which is to maintain undistorted competition in the common market and, in particular, to safeguard the competition that still exists on the relevant market. (561.)

Nor is it necessary to demonstrate that all competition on the market would be eliminated. It is sufficient to demonstrate for the purpose of establishing an infringement of Article 82 EC that the refusal at issue is liable to, or is likely to, eliminate all effective competition on the market.

3.1.3. Objective justification

The Court considers that, the fact that the communication protocols or the specifications are covered by intellectual property rights cannot constitute objective justification within the meaning of *Magill* and *IMS Health*. (690)

Under objective justification shall be investigated after refuting the fear that the lessor's products might be cloned if the lessor's incentives to innovate might be balanced by the positive impact of that obligation on innovation in the industry as a whole. (710.) The burden of proof is on the lessor concerning the negative impact on own incentives to invest.

3.1.4. Indirect harm on customers

The Court referred in its decision to the *Hoffmann-La Roche* v *Commission*[48] according to which Article 82 EC covers not only practices which may prejudice consumers directly but also those which indirectly prejudice them by impairing an effective competitive structure. The Court notes, that Microsoft retained by its refusal discouraged its competitors from developing and marketing work group server operating systems with innovative features, to the prejudice, notably, of consumers (653.)

3.2. The necessity of transitory exemption period regarding tangible products

The performance of investors has long been safeguarded by the intellectual property laws that grant temporary legal monopolies to the owners. In contrast with this, competition

law just now begins to develop an identical safeguard mechanism in case of tangible products.

There seem to be significant differences between infrastructure deployed in competitive and non-competitive market structure. The Commission highlighted in its recent decision[49] on price squeeze of Telefónica that the particular circumstances of that case fundamentally differ from those in *Oscar Bronner*[50] because the network investments were undertaken in a context where Telefónica was benefiting from special or exclusive rights.[51] In the *Bronner*, the infrastructure (distribution network) was deployed in competitive environment. However, it is not clear if the test for competition enforcement how applicable on tangible product deployed in competitive environment since the European Court of Justice (ECJ) did not concerned on it namely the distribution network did not regarded as indispensable facility to publish newsletters. Thus, if the Commission said in its *Telefónica* decision that *Bronner* was not applicable (302.), it remained unclear which factors were irrelevant.

The protection of investments shall be entitled to networks deployed in competitive environment. The DG Competition's Discussion Paper emphasizes that such networks are regarded as deployed in competitive environment, which more likely to be present when it is likely that the investments that have led to the existence of the indispensable input would have been made even if the investor had known that it would have a duty to supply. This could be the case if the input is indispensable only because the owner enjoys or has enjoyed until recently special or exclusive rights."[52] These arguments are mirrored in Commission's *Telefónica* decision according to which "Telefónica's infrastructure is to a large extent the fruit of investments that were undertaken well before the advent of broadband in Spain and that thus bore no relation to the provision of broadband services (but for the provision of traditional fixed telephony services). (304) In other words, prior knowledge of the duty to supply did manifestly not affect Telefónica's decision to upgrade its network. (306.)" According to *Motta*, it is not irrelevant if a company obtains the facility by virtue of own investment or without taking any risks since e.g. it gains exclusive user rights on public developed facility.

The form of protection shall be temporary exemption from any competition enforcement which is almost identical to legal monopoly under intellectual property right. Accordingly, DG Competition's Discussion Paper emphasizes that "in order to maintain incentives to invest and innovate, the dominant firm must not be unduly restricted in the exploitation of valuable results of the investment. For these reasons the dominant firm should normally be free to seek compensation for successful projects that is sufficient to maintain investment incentives, taking the risk of failed projects into account. To achieve such compensation, it may be necessary for the dominant firm to exclude others from access to the input for a certain period of time."[53] This approach is not derived from case law because it does not concern the protection of investments in tangible products.

The company, which deployed infrastructure under competitive conditions, namely it is not totally or partially fruit of special or exclusive rights shall enjoy temporary exemption from competition enforcement. However, during this period such company should give access to its infrastructure under same conditions as in case of intellectual property right because there is no reason to maintain the differences related to competition enforcement regarding tangible and intellectual property.[54] Otherwise, ECJ in *Bronner* did not exclude the applicability of test on intellectual property for tangible product (41.). Accordingly, during this exclusivity period the company deployed its infrastructure under competitive environment shall grant access if the seeker supplied new services. The Commission may also come to such conclusion in its Access Notice[55] that the company may abuse its dominant position if by its actions it prevents the emergence of a new product or service. It shall be interpreted only for the period of exemption.

If a company's infrastructure is not entitled to be protected because it was deployed under period of exclusive or special rights then it is not granted any access holiday. Moreover, [56] the threshold of competition intervention shall be lower in that case in connection which the Hungarian Competition Authority's (GVH) view is that in contentious cases, contested practice shall be generally deemed as unreasonably restrict competition, rather than it considered competitive. This is because "in the competitive process, the same instruments of competition (such as lowering prices) can be used to both restrict and enhance it. Consequently, it is in practice difficult to distinguish between vigorous competition and restrictions of competition. There is thus a risk that the GVH will inadvertently deem a practice to be anticompetitive, when it is actually competitive, and *vice versa*. (2.45.) Therefore, whenever there is doubt as to whether a particular practice or market process unreasonably restricts competition or is just a manifestation of fierce competition, the GVH tends to consider it a competitive practice. This is an application of the principle of minimum necessary intervention. (2.46.) However, this approach does not hold in the context of market liberalization process. (2.47.)"

The test elaborated in *Bronner* by ECJ is applicable irrespectively whether the infrastructure is deployed in a competitive or a non-competitive market because the test contains only the basic elements (indispensability, absence of objective justification, eliminate all competition) of the competition enforcement on practices where the network constitutes the essential upstream input. However, this test shall be extended with the "new" character of services provided by newcomers during the temporary exemption from competition intervention. Therefore, SMP concept built only on dominant position without any requirement of "new" character of services provided by newcomers could be considered as proportional.

4. Conclusions

The regulatory framework takes into account investments in the form of emerging markets and proper wholesale access pricing by encouragement the deployment of new infrastructures. In contrast, competition law is less concerned with these objectives because explicit test for protection of investments has not been developed yet. Moreover, it can be seen an effort to develop a transitory exemption from competition law enforcement in case of tangible products, as regards intangible product the intrusion of competition law enforcement can be observed into the area of intellectual property that is protected by the transitional exclusivity rights.

The exclusivity granted by the intellectual property right constitutes a compromise between the public interest in safeguard of effective competition and the incentives to invest. In other words, the intellectual property right recognizes the performance of investors as granted exclusive right over the result of its innovation. However, in the European competition law practice it was demonstrated that this exclusivity was unjustified in several cases (e.g. program lists, brick structure). This is because the competition law is the single tools in the hand of the Community concerning the intellectual property right. The core message of *Microsoft* case is that in the sectors characterized by high-tech innovation where is not possible to develop totally new rather than competitive products with significant costs, there is an interest in maintaining of competitive structure of the whole market

compared to the incentives of individual investments. However, the long-lasting and stable resolution could be only adopted in frame of intellectual property right.
There is no reason to maintain the differentiated approach concerning tangible and intellectual property in competition law enforcement because these two forms of property are equivalent from constitutional right point of view. Accordingly, an investor which deploys infrastructure under competitive environment, namely when the investment is not totally or partially fruit of special or exclusive rights should enjoy temporary exemption from competition law enforcement. However, during this time period the access to such type of networks could be provided under the same conditions as in case of intellectual property.

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