



Better Regulation for Competitive Electronic Communications

Summary of Key changes to the 2002 Framework Regulations

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The much anticipated review of the 2002 electronic communications regulatory package has been published by the European Commission (see http://ec.europa.eu/information_society/policy/ecomm/tomorrow/index_en.htm). The review comes at a time when, arguably, European citizens are seeing the benefits of competitive markets; particularly in retail voice and broadband services. Significant steps have been taken by regulators in recent years to deregulate retail markets and some wholesale markets. Increasingly competitive communications markets have driven convergence in the battle to secure the broadband consumer.

The Commission proposals attempt to look ahead to the market post 2010 and focus on the promotion of a single market for electronic communications across the European Union. The Commission proposes a more market facing spectrum management regime and the establishment of the European Electronic Communications Market Authority which will replace the more informal European Regulators Group (ERG) to coordinate the activities of national regulators. There are also proposals to simplify the framework by reducing the number of markets recommended for ex-ante intervention and to promote the connected citizen through more emphasis on network security and a more informed e-consumer.

The proposals summarised below will now be debated by the Council of Ministers and the European Parliament with the Commission anticipating agreement on a final package by the end of 2008.

Completing the single market in electronic communications

Strengthen enforcement and independence of national regulators

The commission have previously referred to concerns around the independence of some regulators in the union, particularly in relation to the appointment and dismissal of regulators. The Commission propose to address this with an explicit restriction in the directives on the dismissal of the head of a regulatory authority. The commission also

propose to limit the influence of other public bodies by requesting that regulators, in their day-to-day management of the market, do not take instruction from any third party.

Establish an independent European Electronic Communications Market Authority

A major initiative by the Commission is the proposal to create a new institution, the European Electronic Communications Market Authority (EECMA). The EECMA is envisaged as an institution with an executive director and a board comprising the heads of regulators across the European Union.

The EECMA, like the current European regulators group (ERG) will have as its primary objective the promotion of the internal market. Its role however is broad covering the coordinating activities on market analysis and on spectrum management and coordination. The EECMA will principally assist the Commission and the Commission will be obliged to take utmost account of the advice of the EECMA in some specific circumstances.

Increasing oversight by Commission

The European Commission proposes extending its veto powers from the current veto over decisions on Significant Market Power to decisions related to the remedies proposed by regulators. The Commission have gone further however and propose that they would also oblige regulators to impose certain remedies and conduct specified market analysis, if following the advice of the EECMA, the Commission feel there is a distortion to the internal market.

Simplification of market analysis/Reducing the number of relevant markets

The Commission has proposed that the market analysis process be simplified through a less restrictive notification process and through a drastic reduction in the number of markets the Commission believe should be regulated. The previous recommendation had 18 markets comprising mobile, fixed, broadcasting and spread across retail and wholesale.

The changes in the markets leaves only 7 markets based on fixed and mobile termination markets, wholesale broadband and bottleneck wholesale markets like local loop access and call origination. The implications of such a reduction are the focusing of regulators work programme on wholesale bottlenecks. As the process to define a market outside the recommendation is very difficult for regulators, this change combined with other simplification measures will reduce the workload of regulators on market analysis and will focus regulation on key bottlenecks. This is particularly an issue with Next Generation Networks (NGNs) as the Commission has recognised that deployment of these networks will be crucial to the development of European markets in the next few years and regulators will need more focused regulation on access bottlenecks which will emerge as these networks are rolled out.

Functional Separation

The Commission have proposed a new remedy to the suite of remedies already available to regulators. This remedy will allow regulators to define a separation of the dominant incumbent between its retail and wholesale activities with the aim of forcing equivalence of products and services to competitors and the incumbent's retail arm. The inability of regulators to use existing non-discrimination tools to ensure fair competition has been the driving force behind this remedy.

A key factor in the debate is the success of functional separation in the UK, particularly in relation to broadband rollout. Other European countries have been investigating this remedy, with the Swedish government proposing primary legislation to allow the regulator to impose functional separation and the Italian government supporting functional separation proposed by the Italian regulator, Agcom.

Reform of Spectrum Management

The Commission is proposing to revolutionise the management of radio spectrum through a more market facing management of spectrum which promotes service and technical neutrality in spectrum usage. The proposals create mechanisms to designate certain bands, across the EU, which have the ability to be traded by the rights owner. Regulatory provisions to encourage licence-free spectrum use and to reinforce the coordination of conditions for spectrum authorisation are also proposed.

The Commission also proposes to set up a more efficient and coordinated system for the authorisation of wireless systems with a pan-European potential or with a substantial cross-border dimension. The Commission will allow Member States discretion in terms of spectrum management where spectrum is for general interest objectives like promoting cultural, linguistic services and media pluralism.

Improve information and services for consumers

The Commission are proposing to improve the transparency of information from service providers and proposing to set a time limit of one working day for the 'porting' of a telephone number either on mobile or fixed networks. The Commission are also proposing that regulators will be able to set minimum quality of service standards defined at the EU level.

The commission are also proposing improved facilities for disabled users of electronic communications products and services. The key proposals are to encourage Member States to offer services with e-accessibility as a key requirement.

Improved Privacy and Security

The Commission has published a large range of privacy and security proposals which reflect the increasing use of broadband and the internet across the European Union. The Commission wishes to ensure subscribers are informed if their personal data has been

compromised as a result of a breach of network security. Operators and regulators will have more responsibility with respect to the security and integrity of all electronic communications networks and services. Strengthening implementation and enforcement powers, particularly in the fight against 'spam', for regulators is also a key proposal.

The Commission, by proposing to combine the EECMA authority with the existing security authority, ENISA, are giving security and network integrity a centre stage in review proposals.

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