



Brussels, 11.9.2013
COM(2013) 634 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

on the Telecommunications Single Market

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

on the Telecommunications Single Market

1. POLITICAL AND ECONOMIC CONTEXT

Substantial progress towards a European single market for telecoms is essential for Europe's strategic interests, and economic progress; for the telecoms sector itself; and for citizens who are frustrated that they do not have full and fair access to telecoms services such as internet and mobile services.

The importance of reliable and fast access to the internet will increase with the prevalence of cloud computing. This requires the availability of high quality networks, which can only be provided by a healthy telecoms sector, making this a strategic interest for Europe.

Similarly Europe's strategic interest is served by having its own capacity to deliver secure cloud computing services to citizens and by retaining significant telecoms equipment production capacity. Both depend on a dynamic telecommunication sector willing to invest in 4G mobile and high-speed fixed access networks.

The overwhelming majority of citizens, business, government and entrepreneurs are increasingly dependent on telecoms connectivity. Today in Europe, however, they are subject to something of a lottery when it comes to access to these services, despite 26 years of progress in reforming Europe's national telecoms markets and creating the foundation for a telecoms single market.

The internet economy itself occupies an increasing share of GDP, while effective connectivity and internet innovations are now essential for productivity growth in all economic sectors — from healthcare, to energy, to public services. Fixing the telecoms sector is therefore no longer about this one sector (which makes up just 9% of Europe's digital economy), but about supporting the sustainable development of all sectors.

A further significant step forward in the development of the telecoms single market would provide a much-needed boost to the economy, by helping promote new sources of economic growth (such as the app economy, which has generated 794,000 new jobs – nearly half as software developers – since 2008), drive innovation, create new and sustainable jobs, and restore Europe's competitiveness.

It is with this in mind that the European Council of March 2013 asked the Commission to present concrete measures to establish the single market in information and telecommunications technology as early as possible. Today's proposals address that commitment by the Commission.

The electronic communications sector operates at a global scale, with the web (and the services that trade on it) going beyond the EU's borders. It is important that the present initiatives be seen in the context of developments elsewhere; and that electronic communications and digital services delivery be given due attention in specific sectoral agreements or in trade and investment negotiations with our main partners.

2. 26 YEARS OF TELECOMS REGULATORY REFORM

In just over a generation, thanks to the EU legal framework, Europe's telecommunications landscape has liberalised from static public service monopolies to a dynamic and competitive sector. Starting from the 1980s, successive packages of European legislation have unbundled networks, promoted competition and choice, capped the cost of mobile roaming, given consumers important new rights, and encouraged convergent and coherent application of the common framework.

Moreover, the application of EU competition law has been instrumental in ensuring that markets operate competitively, bringing lower prices and better quality of service to consumers throughout the EU.

These changes in EU telecoms legislation have sought to adapt to the breakthrough shifts in ICT: first mobile telephony, and then the Internet. Today, the telecommunications sector is the backbone of digital products and services which have the potential to support all aspects of our lives, and drive Europe's economic recovery.

The EU's efforts to promote a sound regulatory environment and to support competition have long underpinned changes in the sector. With breakthroughs like the GSM and UMTS standards, the EU created the terrain for Europe and its industrial players to lead the world. Over time, liberalisation has brought competition, fairer prices and real choices to citizens and businesses within national markets. As markets become more competitive, European and global, the regulatory framework needs to evolve as well.

The existing regulatory framework, put forward by the Commission in 2007 and focused on strengthening European oversight and consistency of national market regulation, has served its objectives well. However, more recently, and looking beyond Europe's borders, strong operators in the USA, Japan and South Korea have invested heavily in providing fast broadband connections (fixed and wireless). In such a global context, it is important that Europe does not fall behind. Also, a changing economic and technological climate and the impact of the economic and financial crisis have led to fast and accelerating changes in the global telecoms sector, including significant restructuring. And new demands and new applications for data-driven services are strengthening the single market imperative, as a strong position of the European ICT sector (especially telecoms), and broadband coverage, in comparison to other countries, are key for the competitiveness of the European economy. This is felt particularly at this moment in time when Europe is seeking new ways to grow out of the crisis.

The telecoms sector should prosper by enabling the whole economy to prosper; it is unsustainable that it seeks to prosper by frustrating the connectivity needs of the wider economy, with business models that thrive on scarcity rather than plenty. Therefore decisive action is needed now to allow a restructuring of the sector, to avoid being confronted by its inevitable further decline. Maintaining the status quo is not an option.

3. BARRIERS TO THE SINGLE MARKET

The European Commission is determined to maintain and further expand the benefits of telecommunications for business and citizens. But despite all the progress made so far, the sector continues to face a range of obstacles, barriers and challenges which together mean that

the full benefit of the single market is far from realised. A recent study showed that, if the internal market for electronic communications were completed, the EU's gross domestic product (GDP) could grow by up to 110 billion euros a year.¹

Overall, the telecoms sector still bears the legacy of former, national monopolies, largely operating on national lines. Some large telecommunications companies are present in several Member States; but none is present in all. For the most part mobile operators have merely a national footprint; for many fixed operators it is even more localised. Those who do operate in several Member States must work under separate rules, according to the sometimes diverging requirements and remedies of different regulators, and needing distinct authorisations in each Member State. In addition, often operators active across several Member States do not behave as truly European operators, and appear content to run their activities separately in each Member State. The market includes over one thousand fixed operators, and several hundred mobile operators, which, despite often belonging in larger groups, operate on a national basis. At the same time the sector is increasingly global in nature and depends on scale to be profitable.

The lack of a single market also shows itself distinctly in pricing. For example the cost of calling another EU country, or of using a mobile device in another EU country, is often much higher than domestic rates, owing to voice and data roaming charges and "international" (intra-EU) call rates. Such charges are seen as unfair by many citizens, and also constitute a practical impediment to exercising single market freedoms.

Furthermore, consumers are likely to feel more confident to take up offers from operators established in other Member States, if they know that they can rely on the same set of rules: for example rules on transparency, contractual terms, facilitating "switching" of operators, and rules to prevent the blocking or throttling of online services, as part of measures to ensure access to the open internet. Dispersed national efforts to safeguard consumer rights may be a cause for further single market fragmentation.

Meanwhile differences in the timing, the conditions and the costs of procedures for acquiring spectrum chill investment, and make it hard to develop integrated wireless networks between countries. More timely and predictable spectrum availability would allow more widespread and affordable broadband connections in Europe, but remains too often locked into regulatory structures at national level.

And divergent regulation of fixed networks often means overregulation, or regulatory uncertainty and unpredictability, making it hard to plan investment in fast, "next generation" broadband networks.

With more harmonisation within the Single Market, Europeans would benefit from more extensive fast broadband coverage, and more innovative new digital services. These fast telecommunications networks are also essential inputs for many other sectors, public and private. A strong and dynamic telecoms sector is essential if Europe is to exploit new innovations such as cloud computing, new tools that use "big data", connected cars, smart manufacturing, the Internet of Things, smart cities, modernised public administrations, e-Health, e-Education, and so on. As such, high-speed networks could become the foundation of a thriving European digital ecosystem.

¹ Ecorys, TU Delft et al., *Steps Towards a Truly Internal Market for e-Communications*, 2013.

In short, the sector suffers from fragmentation along national borders; a lack of regulatory consistency and predictability across the Union; unfairly high prices for specific services; and a lack of investment. Addressing these problems is essential to ensuring European jobs, productivity and growth. A competitive telecoms single market would help resolve such problems.

4. TOWARDS A SINGLE MARKET IN TELECOMMUNICATIONS

A genuine single market in telecommunications means a market where:

- Consumers can obtain services from any EU operator, without discrimination, regardless of where they are based;
- Operators are able to competitively offer services outside of their home Member State, and market to consumers based throughout the EU;
- Excessive charges for intra-EU calls, or when using a mobile elsewhere in the EU, are removed.

This is the end goal towards which the European Commission has for some time been working, resulting in the regulatory framework of today. It ultimately implies the gradual removal of national barriers to cross-border competition, including different national sector regulations, different national consumer laws relating to telecommunications contracts, and different national conditions for allocating and assigning spectrum. It also implies a framework that is more consistent, stable, legally certain, competitive, with a greater degree of harmonisation, and more conducive to investment: ensuring more choice, faster broadband, and better cross border services.

The Commission remains of the view that a genuine single market in line with this vision will require a single EU regulator responsible for interpreting and implementing a harmonised legal framework. It would also require a single system for imposing regulatory remedies, and possible further harmonisation of spectrum allocation and assignment.

It is clear however that the process of building a single market in telecoms – as in other sectors – is a gradual process depending just as much on the behaviour of market participants as on the intervention of regulators.

The proposals put forward today represent an important intermediate step towards that ultimate goal of a fully integrated single market by addressing some of the barriers whose removal can help ensure the sector plays its full part in the urgent quest for growth. The approach is grounded in the existing telecommunications framework and focuses on the cross-border issues faced by operators and consumers, and tackling obstacles to investment. This approach involves identifying specific changes to the current framework, as intermediate steps that jointly create a "tipping point" to allow the market to evolve towards a pan-European single market.

In practice, this involves:

- addressing some of the divergences of interpretation between national regulators, increasing cooperation among them and continuity in governance, and strengthening the Commission's role;

- addressing the problems consumers face in a fragmented European market by introducing certain common consumer standards; removing charges for incoming calls while roaming, as well as unjustified surcharges for intra-EU calls; incentivising the market conditions that can lead to a rapid phasing out of roaming charges in Europe altogether; and introducing new, common consumer protections, including to safeguard access to the open internet;
- Offering new business opportunities to the telecom sector, making it less complex to invest in networks and provide and guarantee services across borders; and harmonising essential technical "inputs" (e.g. spectrum for wireless networks, access to networks for fixed broadband);
- Strengthening the European dimension of the current system of national regulators. The Commission proposes as an intermediate step to strengthen the role of the Chair of the Body of European Regulators (BEREC), creating a 3-year full time post, to ensure more strategic planning and greater continuity.

At the end of the negotiations on the 2009 review of the regulatory framework, the Commission made a formal commitment to act in the area of open internet access. Even since then, and certainly since the framework was originally designed, the importance of internet access has grown enormously, to the extent that it has become a key part of economic, social and cultural activity. As such it has also become the central and most valuable service provided by network operators and internet service providers. There are four reasons why action on open internet access is needed now. First, as it stands there are no effective EU-wide guarantees of open access; and there is clear and ample evidence of services being blocked or "throttled" (degraded), harming the interests of consumers and of those content and application providers that face the risk of being blocked. Second, telecoms operators and content and applications providers are developing "specialised services" whose social and economic value depends on guaranteed quality – for IPTV, for eHealth applications such as high-resolution medical imaging, for videoconferencing, for business-critical data-intensive cloud applications. These innovations offer opportunities for new economic activities, but they require a European regulatory framework which provides clear conditions for the development of these services, in conjunction with a thriving internet ecosystem. Third, national regulators do not currently have sufficient powers under the European telecoms framework to intervene to sanction blocking or other unreasonable traffic-management practices, or to maintain the vitality of the open Internet. Fourth, national policy makers are starting to address this issue with a range of divergent approaches, opening a new risk of fragmentation within the single market and a new challenge for integrated network management. The draft Regulation seeks to address these issues in a balanced and effective manner.

5. ADDRESSING INVESTMENT AND COMPETITION

The Recommendation on Costing Methodologies and Non-Discrimination is the second element of this package, which complements the proposed regulation and is intrinsically linked with it. It focuses more directly on investment, and on further harmonisation of costing methodologies. The objective is for Europe to step up its investments in broadband. This objective is essential to maintain global competitiveness, but investment is held back by legal uncertainty, and divergences between regulators. More consistent and predictable regulation and a more stable regulatory environment can be reached by (1) further harmonising the costs that incumbents may charge for giving others access to their copper networks; and (2) ensuring that "access seekers" have truly equivalent access to networks. Where such competitive constraints and non-discrimination are ensured, the prices for "next generation"

products would be determined by the market rather than being regulated; while the prices for access to copper networks would remain broadly stable, and would not artificially undercut those for the networks of the future.

As it stands, inconsistent application of rules creates legal uncertainty for all market players, and barriers to the internal market. Legal certainty is particularly important given that investment in fast broadband networks incurs significant costs, while demand for the end product remains uncertain.

The clarifications provided in the Recommendation will therefore be pivotal to lift uncertainty: incumbent operators and access seekers alike will have clarity on the prices charged for network access.

6. ROADMAP TO THE COMPLETION OF THE SINGLE TELECOMS MARKET IN THE MEDIUM TERM

It is expected that the medium term effects of the proposed legislation will be increased freedom and opportunities for market participants, and a trend towards greater consolidation of the sector. Intensified competition as Europe moves further towards a real single market could be expected to lead, over time, to a reduction in sector-specific regulation based on market analysis. Indeed, one of the results of developing the Single Market should be a greater tendency towards effective competition on relevant markets, with ex post application of competition law increasingly being seen as sufficient to ensure market functioning. Over time, as a genuine single market for electronic communications emerges, the geographical scope of markets will also need to evolve, for the purposes of both sector-specific regulation based on competition principles and the application of competition law itself.

As a further contribution, the Commission will work on a revision of the Recommendation on relevant markets to ensure that, as competition develops, the ex-ante regulatory burden on operators is reduced appropriately.

Further steps will be needed to complete the single telecoms market, notably through a greater coordination of regulatory remedies. To this end, the Commission will take the necessary steps to prepare the ground for the next Commission mandate, both utilising the existing tools provided by the regulatory framework, and by preparing a review of how the existing mechanisms for ensuring regulatory consistency might be further enhanced. This review, which will involve a broad public consultation in due time, should also examine the utility of a single EU telecoms regulator. The review could also address the level playing field between the rules that apply to "over-the-top" online services compared to telecoms services; and emerging issues around convergence between audio-visual and telecommunication services and markets.

7. CONCLUSION

The Commission's vision is for the EU to enjoy a dynamic and competitive telecoms sector. This would feature a number of strong operators, active across several Member States and also outside the EU, alongside a larger number of smaller, more local companies: all of them offering state-of-the-art infrastructure or services. It will provide the infrastructure and services needed for a thriving, open digital economy, boosting European digital growth, jobs and opportunities.

With this set of measures, the Commission reiterates its commitment to the broadband targets of the Digital Agenda for Europe, which could be provided by a mix of operators (incumbent and alternative, fixed-line and wireless), offering a wide and competitive range of choices of high-quality services and content. Such broadband coverage is essential for new online services to gain critical mass: from smart grids and smart cities to universal cloud computing, or the Internet of Things. It would also position Europe in the digital forefront, with the modern digital infrastructure for its citizens to exploit the full potential of the internet, and for its businesses to compete globally.

Given the above context, the Commission calls upon the European Parliament and the Council to examine and adopt the proposed carefully targeted Regulation as a matter of highest political priority.