



Rules of Engagement

European Commission publishes its long awaited telecom reform package

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A previous UK Prime Minister once remarked that a week was a long time in politics. By this reckoning, this summer has been an absolute lifetime. But while the geo-political machinations of the ongoing Brexit debate have dominated the headlines, Brussels day to day business has continued. Yesterday saw the publication of the Commission’s long-awaited telecom review. It has been a huge undertaking, representing the recasting of four previously separate directives into one. Hence the document is big – really big.

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It carries considerable weight and expectation. The Digital Single Market is a key pillar of the Juncker administration and one area that the EU institutions can show genuine leadership, setting a future framework for the European industry, driving innovation, investment and competition to the benefit of every European business and consumer. At a time when the European project itself has wavered, it matters.

There has also been substantial speculation which we have previously reported on. This snapshot provides an overview but principally seeks to understand what is next, what the priorities are, the challenges and red lines and the pathway forward.

Where is the Commission going?

The Commission feels the current telecom framework has worked well in promoting competition and delivering choice for end-users; but the emergence of new providers and changes in consumer preferences for data-driven services means adjustments are vital to enable further development of innovative new services.

Therefore the Commission has a preference for fiber over copper – cost effective, capable of delivering faster broadband speeds and, crucially, future-proof.

Private investment is seen as the way forward. To encourage this, companies will be offered preferential treatment as an incentive to invest in fiber via a mixture of deregulation, increased access to networks, and the promise of creating a level-playing field for all players providing similar services – the much-trumpeted “same service, same rules” principle.

In line with expectations?

Given the number of leaks and public pronouncements emanating from the Commission, its overall ambitions have been widely reported. Today's document doesn't deliver too many surprises. That's not to say it will be warmly embraced by all sectors, however. Battle lines may already have been drawn, but all parties are aware of the importance of progress and the need to seek common ground and compromise.

Who wins, who loses?

In many respects the Commission has done its homework. The consultation process was extensive. The views of a broad range of interested parties have been acknowledged and addressed. There is no one solution. There are no clear winners in all this. That said, there are no clear losers, either. The objective however is to strike a balance between business and consumers to ensure Europe remains innovative, competitive and connected.

Incumbents will be gratified by the Commission's decision to bring new players into the regulatory scope; but disappointed that, in trying to open up access to networks to encourage investment, they risk losing their grip on infrastructure they currently enjoy – particularly given the preference for fiber over copper.

New players will be subject to regulation – and thus requirements and burdens – that they had previously managed to escape. The silver lining for them is that the EC decided against blanket coverage, looking to target

only those services it felt were offering equivalent services to traditional operators.

Member States will be unimpressed with Commission proposals to harmonise Spectrum; many of them zealously guard this and won't give it up easily. But companies who develop new, innovative services will be encouraged that the Commission is looking to ensure a coordinated approach to Spectrum; this should enable them to look to offer innovative services on an EU-wide scale.

Regulators – particularly BEREC (The Body of European Regulators for Electronic Communications) – come out of all of this with a very much beefed-up role, with the ability to monitor the market and decide whether regulatory intervention is necessary. Services that are currently unregulated will be glancing nervously in BEREC's direction, hoping to escape its watchful eye.

What's next?

In his annual State of the Union speech, which was also given yesterday, President Juncker was bullish about the need to adapt the framework so it attracts investments in connectivity to provide universal wireless access and 5G coverage. Vice President Ansip and Commissioner Oettinger also heralded a new dawn in their subsequent joint press conference in Strasbourg. And little wonder - Juncker spoke of this helping to create up to 3 million new jobs.

At a time when the EU is looking for good news, will it actually deliver? The Commission is hoping for a final political agreement by 2018 – but how feasible is this?

Given the way the adoption date shifted before yesterday's date was finally agreed upon, one could be forgiven for thinking it would assume prime importance. But given we are well into the Slovak presidency, there will be little time to delve into the detail, especially when it is fighting for attention amongst all the other DSM initiatives (AVMSD, content portability, copyright, etc.) and at a time when issues such as Brexit, immigration and security concerns are demanding increasingly more time of key policymakers.

And the European Parliament is unable to act until it receives the documents in French and German – so far only English has been used. Only then can it look to appoint lead committees and rapporteurs; one might expect ITRE to lead as previously, IMCO and LIBE will also take an interest. And herein lies another surprise – given the new framework unites previously disparate pieces of

legislation, it means there are fewer rapporteur roles up for grabs.

Then there are the sticking points and where compromises will be sought. For Member States, this is spectrum; they are wary of losing proceeds from auctions, even though the Commission has offered assurances all it is interested in is aligning timings. Politically this is a hot issue.

In aiming to provide universal broadband access, the Commission is looking to enable Member States to take steps to deliver this; there is no one-size-fits-all approach – Member States will be able to adapt to their individual circumstances. Will companies be sufficiently incentivised to get involved?

Another concern must be whether new players will accept being subject to new requirements – after all, they had resisted telco calls for ‘*same service, same rules*’. Yet given the targeted nature of the Commission’s proposals – there is a feeling new players have got off lightly, and will find little support among Member States or the institutions should they seek to push back.

Competition concerns?

The Commission wants to aid competition in two ways. Firstly, by opening up markets to new players (via simplified access); secondly, preventing end-user lock-in, caused by network effects and bundling of services.

For the former, the Commission hopes that larger firms will agree to improve both the networks and open them up to new players; for the latter, the EC proposes interoperability and portability of common communication features.

But is the Commission projecting an inconsistent message? The approach of Commissioner Vestager and her high profile team at DG COMP in relation to a number of recent mergers, acquisitions and joint ventures within the sector suggests so.

Traditional fixed line and mobile operators trumpet the need for scale to aid investment and bemoan the challenges they face in achieving it. While consolidation has come under intense scrutiny, convergence between other providers – the rise of the quad play operators – has appeared a much smoother route to take.

...And what about Brexit?

The UK’s decision to exit the EU will naturally impact upon the telecom sector. The UK is a major market and influential player; Ofcom, the regulatory body, is held in high regard and the UK is one of the more digital-friendly Member States.

To date, the UK has been supportive of most of the provisions – and was particularly opposed to sector specific regulation on new players (as called for by France and Germany, amongst others). Will Brexit see a swing towards a more protectionist agenda? Will the process itself slow as the Bloc determines a new way forward? No one knows and we won’t know for a while yet. In the meantime the business of policy making continues and while Brexit could well mean Brexit, much of what is finally implemented in the telecom review may still be relevant and even adopted in the UK.

Conclusion

In taking its time and exploring the telecom sector inch-by-inch, the Commission has not taken the easy option and simply applied regulation to all players. For this, the Commission deserves credit - for recognising that targeted regulation and deregulation is a better bet to encourage investment and competition in order to develop innovative new services.

The danger for the EU is that companies looking to invest – particularly from outside the EU – may decide to put on hold their plans because of the uncertainty caused the Brexit and Commissioner Vestager’s pro-active stance. If that is the case, then we are all likely to lose out. Fingers crossed that the Commission can work through this.

What we can be sure of is that we are unlikely to see another *Connected Continent*, the 2013 initiative that fell short of expectations. Juncker and his team have invested considerable political capital to develop this package. The consensus around the need for change will also drive business to be pragmatic in deciding those areas it wants to challenge.

Publication closes the consultation phase and we now shift into the formal political process of committees, debates and amendments which will shape the future of Europe’s telecom landscape. The next two years are crucial. It is imperative that those with any vested interests remain vigilant and fully engaged.

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