



**Michael A. Bartholomew**  
Director

Brussels, 15 January 2010

**Re: ETNO contribution to “EU 2020 Strategy” consultation**

Dear Sir or Madam,

ETNO welcomes the opportunity to contribute to the European Commission’s consultation on its “EU 2020 Strategy,” designed as the successor to the current “Lisbon Strategy.” We believe that the private sector – and in particular, the leading investors in critical electronic communications networks – should be considered members of the ‘partnership for progress’ for the 2020 vision.

Information and communications technologies (ICT) will play a key role in Europe’s ability to move forward into the future. Deployed efficiently and effectively, ICT can help to reduce carbon usage and promote sustainability, support better delivery of public services to all Europeans, create jobs and equip Europe’s workforce for the 21st century economy and enhance Europe’s ability to compete in the global marketplace.

State-of-the-art e-communications infrastructure is the key enabler for ICT-driven growth, productivity gains and job creation. As the leading investors in electronic communications networks and services, ETNO is appealing to the new Commission for urgent public policy action:

- The roll-out of next generation access networks (NGA), delivering high-speed broadband via wireline, wireless, satellite and mobile technologies, are estimated to create around one million new jobs in Europe and spur broadband-related economic activity to an amount exceeding €50 billion (in the period 2006-2015)<sup>i</sup>. NGA will lead to a plethora of innovative services, (from distance learning to cloud computing), efficiency gains and the creation of new web-based industries. To provide European citizens and businesses with high-speed broadband will require investments of more than €300 billion. ETNO calls upon the European Commission to create the right regulatory conditions for large-scale private investment in high-speed broadband networks across Europe by building upon the revised EU framework for electronic communications which makes incentives for investments in NGA a priority. This spirit must clearly be reflected in all legal instruments implementing the new e-communications directives;
- Public authorities can play an important role in supporting the roll-out of e-communications networks, for example, by reducing the costs of investing in civil works for local fibre networks and by providing much-needed spectrum to serve European citizens with high-speed mobile broadband services. Public financing of new fibre broadband networks can be a useful supplementary instrument for unserved areas but must not be detrimental to private investment by market players, which best

ensures an efficient development of Europe's high-speed broadband communications infrastructure.

ETNO also calls upon the Commission to formulate a public policy strategy that embeds ICT squarely in EU efforts to confront climate change. ETNO, for example, supports the Commission's "Recommendation of 9.10.2009 on mobilising Information and Communications Technologies to facilitate the transition to an energy-efficient, low-carbon community" (C(2009) 7604 final).

For our fuller response to this consultation, we refer the Commission to the following ETNO documents:

- ETNO's "Seville Summit CEO Declaration," 30 October 2009 [annexed];
- "ETNO Reflection Document in reply to the public consultation on post-2010 - Priorities for new strategy for European information society (2010-2015)" (RD309, 9 October 2009) [annexed];
- ETNO "Reflection Document in reply to the EC 'Creative Content Online' consultation," (RD315, 5 January 2010) [annexed];
- ETNO co-authored "Industry Partnership Contribution to the Spanish Presidency Digital Europe Strategy," (forthcoming) [to be forwarded on 18 January 2010 when issued].

Thank you in advance for giving this response your full consideration.

Sincerely,



Michael Bartholomew  
Director

Encl.

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<sup>i</sup> MICUS, "The impact of broadband on growth and productivity," report for the European Commission, Sept. 2008.

## ETNO Reflection Document in reply to the EC “Creative Content Online” consultation



January 2010

### Executive Summary

- ETNO welcomes the EU initiative to launch a consultation on the joint DG Info and Markt “Reflection Document on Creative Content in a European Digital Single Market: Challenges for the future”. We particularly support the approach taken by the document, namely;
  - Putting the Consumer at the heart of the debate
  - Recognizing that the basis for any discussion must be the differences between various categories of protected works.
  - Recognizing the fact that the problem of illicit file-sharing is complex and must be addressed by a multitude of measures.
- ETNO’s comments focus on how best to achieve a real and future-oriented single digital market for Europe.
- **A discussion on the opportunities and barriers to the European Digital Single Market to foster the growth of creative content online is essential.** Consumers want to use new broadband-based services to access content, any time, anywhere, using any device. In turn, new media platforms are offering tremendous opportunities for the distribution of legitimate content or other information society services. Whilst consumer demand for online content is growing at extraordinary speed, there are still obstacles preventing the development of the European online content market, such as the lack of EU-wide and multi-territory licensing arrangements.
- **The Information Society in general is built upon the ability to share content and to interactively develop ideas and facts**

**online.** In a rapidly-changing area characterised by multiple uncertainties, it is important to ensure that all barriers that inhibit the creation of new legal content services are lifted. Since the “digital economy” has become a key priority it is important to ensure consistency with existing policy initiatives - including those where other Commission departments are involved.

- **ETNO Members are actively playing their part in the continuous development of new and innovative business models.** Indeed the aim of any initiative must be to meet customer demand for price-worthy, secure and user-friendly services - to develop new attractive business models.

## Comments

### Consumer access

We welcome proposals to raise consumer’s confidence in the online business. It is essential to ensure further clarity and simplicity for the users’ rights. The current situation does not provide consumers with clear and easily available information on users’ rights. Often available information is conflicting, user rights for use of content vary from site to site and depend on the terminal, software etc. Further clarity is also needed for copyright exceptions (“fair use”) which differ from country to country. In other words consumers need more clarity and simplicity.

### Harmonisation of EU copyright

The notion of a long-term fully harmonised EU Copyright is complex. On the one hand both rightsholders, users and ETNO members would benefit from an easier and swifter licensing system facilitating the development of innovative cross-border services. On the other hand it is a fact that any harmonisation of copyright, traditionally, has led to more stringent protection and enforcement measures. Would harmonisation measures inevitably lead to stricter copyright? It is important to firmly define and agree upon the aims of harmonisation, before looking into details.

In addition, whilst discussions on further harmonisation of copyright in the EU are useful, it will be a lengthy exercise. There is also a need for urgent measures to be considered particularly regarding licensing and collecting society.

## **Licensing/Collective society**

Current procedures for rights clearance can be time consuming and expensive. As a result, the growth and availability of new Internet-based content services in the EU - such as web-casting or on-demand downloads - are not as widespread as they are in the US. Rights holders and consumers alike would benefit from the availability of additional distribution channels, and consumers would ultimately benefit from lower prices that would result from more effective competition among collecting societies.

For effective rights clearance in the European Information Society it is important that rights can be cleared for many or all countries within the EU in an effective and simple way, such as through one contract i.e. a "one stop shop". Each collecting society should be able to grant multi-territorial licenses on the basis of improved reciprocal agreements between the collecting societies. Against this background ETNO supports the promotion of competition between collecting societies on the market for rights management and further transparency. Furthermore, regulation for multi-territory licensing should be harmonised for all types of content, not only for music.

The creation of an online database of copyrights would contribute to streamlined and effective licensing.

ETNO believes that any and all type of business models would benefit from multi-territory licenses. In our view the most efficient way of fostering multi-territory music rights licensing in the area of audiovisual works would be to grant pan-European licences on the basis of improved reciprocal agreements between the collecting societies.

With regard to individually-managed rights, the potential for anticompetitive practices by owners of premium content remains a concern for ETNO Members - though these concerns are generally less acute than previously. In any case, action to deal with these concerns is a matter for competition law rather than new sector-specific policy initiatives.

With regard to the question of rights clearance, ETNO agrees that current procedures are often overly-complicated and lengthy. We encourage the Commission to explore further options, such as an on-line database of rights, to simplify existing rules.

## **Levies**

ETNO welcomes the Commission's reflection on the logic behind the use of levies to compensate illegal downloading. Our members are

important facilitators and distributors of digital content, through a variety of channels and commercial offers. ETNO recognises the importance of rights holders to be properly compensated, but believes that the system of copyright levies is outdated and not suited to the European Information Society. Copyright levies were introduced in Europe on analogue media, and in some countries also on reproduction equipment, during the 1980's to compensate right holders for certain excessive copying that was done for private use.

Remuneration should be, as far as possible, directly directed towards the usage and the relevant users rather than on all users through levies.

ETNO would welcome support for more transparent, technical protection measures which empowers users to decide on what basis they access content, and allow rights holders corresponding compensation.

### **Copyright infringements**

ETNO believes that the current framework delivers the right balance between rightsholders and ISP's. The Reflection Document is based upon the need for a reformed balance between rightsholders and users. Efficient Intellectual Property enforcement is necessary, but it is equally important that policies to combat IPR infringement should not penalise those involved in the legitimate distribution, creation or consumption of content to the detriment of general public support for copyright. The protection of intellectual property rights could already be enhanced if the existing legal framework would be applied properly and proportionally by Member States, stakeholders and the respective authorities. The amalgamation of serious crime and illegal downloading in the debate has not been helpful neither generally nor in re-establishing respect for copyright.

The debate regarding illegal activities on the Internet frequently focuses on copyright. Positions are often very strong. ETNO wishes to emphasize that the best way to counteract illegal file-sharing of copyrighted material is through the availability of accessible, secure and price-worthy legitimate content to meet consumer demand. In the area of copyright infringement, there is also a need for adapting court-based procedures to situations created by new technology. Access to such procedures needs to be made quicker and cheaper.

Advertising campaigns or sponsoring events provide additional tools to promote the distribution of legal content online. Awareness campaigns could highlight the importance of intellectual property as an economic good and object of cultural value.

Another prerequisite to increase legal offer of content in the European Union would be the harmonisation of existing national rules, for example dealing with private copyright exemption, compensation for

private copying or, as already mentioned above, on a practicable licensing regime. These should be the major aspects to be discussed at European level.



## **SEVILLE SUMMIT CEO DECLARATION 30 October 2009**

We met in Seville today to consider our industry's contribution to the vision for the European Union (EU) in 2020.

Electronic (e-) communications are of utmost importance in all sectors of the economy as our society is increasingly underpinned by digital and broadband technologies. E-communications are key enablers for growth, productivity and job creation. The roll-out of next generation access networks (NGA), delivering high-speed broadband via wireline, wireless, satellite and mobile technologies, could create around one million jobs in Europe and spur broadband-related economic activity to an amount exceeding €850 billion (in the period 2006-2015). NGA will lead to a plethora of innovative services (from distance learning to cloud computing), efficiency gains and the creation of new web-based industries. E-communications are also a key enabler for reducing carbon emissions and improving energy efficiency across all sectors of the economy -- a priority EU policy objective. We will be able to achieve the ambitious climate change objectives that the EU has set for 2020, only if the untapped potential of information and communication technologies (ICT) is exploited.

“The digital economy can lift Europe out of the crisis,” proclaimed the European Commission in a recent report. We believe that it can not only address the crisis but can drive the EU onto a new growth curve and the achievement of socio-economic objectives. At this critical juncture for our industry, ETNO members call for a spirit of co-operation between governments and industry similar to that which led to the success of mobile in the 1990s.

As the main investors in e-communications networks and services, we recognise that a state-of-the-art infrastructure is essential for the EU to become the leading ‘Information Society’ and to safeguard its broader international competitiveness. In the past, we have been at the forefront of innovation as leaders in the deployment of mobile networks and broadband Internet access. We are making significant investments in NGA -- the critical infrastructure for the European economy. We are proactively working with public authorities to avert a new ‘digital divide.’ We are engaging in partnerships with rights-holders to develop legal offers for digital content, applications and services. We conduct research and development in technology and service platforms, enabling the launch of innovative consumer and business services (e.g., e-health, e-learning and e-government). We are establishing partnerships with major energy-using sectors

to improve energy performance through the use of energy-efficient systems which also apply to our own sector.

The above activities require significant capital investments, operational expenditures and long-term commitments by our companies. We already have a proven track record of re-investing our profits within the communications sector. Today our companies form the bedrock of a credible and responsible leadership in the global ICT industry. The new wave of investment upon which we are embarking requires a commercial environment, public policies and regulation which are conducive to private sector investment, while maintaining a competitive market for consumers and business users.

Policy makers should build upon the forthcoming revised EU framework for electronic communications which emphasises incentives for investments in NGA as a priority. This spirit must clearly be reflected in all legal instruments implementing the new directives at both EU and national levels to effectively speed up NGA deployment across Europe. The current proposals of the European Commission for the regulation of NGAs clearly need to be revised to deliver on the promise of fostering investment in new high-speed broadband networks. Policy makers should also promote the use of e-communications to drive broadband penetration and to reduce carbon emissions, such as the implementation of smart ICT-enabled infrastructures (from energy grids to traffic management), 'digital literacy' campaigns and tax incentives for end-users. We remain committed to acting as strategic 'thought partners' with policy makers and legislators in their future policy agendas which both incentivise the supply of and stimulate the demand for NGA and related services.

The EU's e-communications infrastructure is a vital element for society and the economy as a whole and, as such, can contribute to Europe's economic recovery. Corporate leaders as well as policy-makers and politicians both have to take their responsibility. Our companies are committed to sustainable investment for a competitive, green 'Knowledge Society.' We call upon the others key stakeholders to join us in this challenging commitment.

Ben Verwaayen  
CEO of Alcatel



Mustafa Akdogan  
CEO of Albtelecom



Nedžad Resibegović  
General Manager of  
BH Telecom



Didier Bellens  
CEO of Belgacom



Ian Livingston  
CEO of BT plc



Photis Savvides  
CEO of Cyprus  
Telecommunications  
Authority



René Obermann  
CEO of Deutsche  
Telekom



Paul Donovan  
CEO of eircom



Valdur Laid  
CEO of Elion



Mattila Veli-Matti  
CEO of Elisa



Joseph Glod  
Deputy Director  
General



Carl-Henric  
Svanberg  
CEO of Ericsson



Didier Lombard  
CEO of France  
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David Kay  
CEO of GO plc.



Ivica Mudrinic  
CEO of Hrvatski  
Telekom



Ad Scheepbouwer  
CEO of KPN



Juris Gulbis  
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Christopher  
Mattheisen  
CEO of Magyar  
Telekom



Nikolai Beckers  
CEO of Makedonski  
Telekom



Rajeev Suri  
CEO of Nokia  
Siemens Networks



Panagis Vourloumis  
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Zeinal Bava  
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Dan Marius  
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Bjarnason  
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Carsten Schloter  
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Miroslav Majoros  
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Telekom



Franco Bernabè  
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Italia



Oliver Gerstgrasser  
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Cesar Alierta  
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O2  
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Hannes Ametsreiter  
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Jon Fredrik Baksaas  
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Lars Nyberg  
President and CEO  
of TeliaSonera  
Group



Arunas Siksta  
CEO of TEO



Paul Doany  
CEO of Turk  
Telekom



Mladen Pejkovic  
CEO of VIPnet



Bernard Moscheni  
CEO of VIVACOM



## ETNO Reflection Document in reply to the public consultation on post-i2010 - Priorities for new strategy for European information society (2010-2015)



October 2009

### Executive Summary

The information and communications technology (ICT) sector is key to the development of the overall economy of the EU, and its role is gaining increasingly importance in accelerating Europe's recovery from the crisis. This is mainly due to the positive contribution brought by fixed and mobile broadband technologies to many sectors of the economy in terms of efficiency growth. Moreover, the widespread availability of broadband technologies and of advanced ICTs will largely contribute to reaching the objective of a sustainable low carbon economy, thanks to the positive impact in terms of reducing energy consumption and emissions. Next-generation broadband networks will have positive benefits for consumers, businesses and society in general and investments in such technologies should be the top priority in the Commission's digital agenda for the years to come. Next-generation broadband represents a core infrastructure, which will be increasingly integrated in the daily life of all citizens. ETNO therefore welcomes the fact that the consultation places NGA investments at the top of the priorities for building the future knowledge-based society. ETNO believes that investments for the deployment of very high speed broadband networks should in principle be built by private entities unless conditions for state aid apply.

## Introduction

ETNO welcomes the opportunity to express its views in this public consultation on the post i-2010 - Priorities for new strategy for European information society (2010-2015). This consultation will assist the European Commission in formulating a sound strategy for the development of the Information Society within the European Union (EU), allowing market players to invest in the infrastructures and services which will benefit both consumers and business.

The information and communications technology (ICT) sector is key to the development of the overall economy of the EU, and its role is gaining increasingly importance in accelerating Europe's recovery from the crisis. This is mainly due to the positive contribution brought by fixed and mobile broadband technologies to many sectors of the economy in terms of efficiency growth.

ETNO believes that the fast deployment of next generation networks must remain a priority goal for the European Commission when considering any policy issue or support actions for the future of the sector. Next generation broadband access will make it possible for citizens, business and public administrations to benefit from innovation in services, growing efficiency and reduced costs.

As a general remark on the consultation, ETNO would like to point out that the proposed 'tick-list' approach does not appear to be the most appropriate for soliciting industry's input and other key stakeholders directly interested in the future policy making process for the Information Society. Although the format of the questionnaire allows tackling a broad set of issues, it does not reflect the necessary complex balancing of aims and objectives that are required for a strong policy vision for the European digital sector. In addition, in some cases the policy options/choices proposed are not properly defined while other essential elements are missing from the questionnaire altogether.

ETNO therefore will contribute to this public consultation both through the compilation of the questionnaire and by means of specific contributions – reported here below - related to single areas identified by the Commission.

Against this background, we welcome the Commission's efforts to develop, in close cooperation with stakeholders, a comprehensive and ambitious digital strategy for Europe.

## Chapter 1: ICT for a Growth and jobs agenda

Telecommunications became one of the leading engines of economic growth and increases in productivity in the 1990s, fuelling activity and trade in all sectors, from manufacturing to the provision of financial services.

Already back in 2005, the European Council<sup>1</sup> noted that European productivity lagged behind that of the United States. The primary cause was the poor take up of ICT by European business in general. Information and communication technologies are a powerful driver of growth and employment. A study released at that time showed that a quarter of EU GDP growth and 40% of productivity growth were due to ICT<sup>2</sup>.

Differences in economic performance between industrialised countries are largely explained by the level of ICT investment, research and use as well as by the competitiveness of electronic communications services and media industries.

In the current economic crisis, policymakers around the globe are looking again to the ICT sector to be a driver of productivity and growth. Policymakers are increasingly focusing on transforming the 'digital divide' into 'digital opportunities.'

Next-generation broadband networks will have positive benefits for consumers, businesses and society in general. Next-generation broadband represents a core infrastructure, which will be increasingly integrated in the daily life of all citizens.

High-speed broadband networks will have a direct impact on their ability to telework or operate their own businesses from home, interact with friends and family, receive high-quality entertainment, engage with their government, and manage their family's health and household activities. They will directly contribute to solving some of the key challenges for our societies, such as an ageing population and climate change.

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<sup>1</sup> Conclusions of 2005 Spring European Council.

<sup>2</sup> European Commission, COM(2005) 229 final, 1 June 2005.

## Chapter 2: ICT for a sustainable “low carbon” economy

ETNO welcomes the recently-issued (9 October 2009) Commission Recommendation on mobilising ICTs to facilitate the transition to an energy-efficient, low-carbon community. ETNO calls upon the Commission to formulate a broader policy framework that embeds ICTs squarely in EU efforts to confront climate change.

For many years, ETNO member companies realised the dramatic impact of climate change on society and the global economy. It calls for a responsible approach that would bring about opportunities for the ICT sector to contribute to the overall effort of combating its causes of climate change.

The ETNO vision is clearly outlined in its “Sustainability Charter”<sup>3</sup> launched in 2004. Member company signatories’ commitment to sustainable development is realised by:

- a sustainable provision of products and services with significant environmental, social and economic benefits;
- a determined effort to integrate our business activities with environmental, social, and economic responsibilities — minimising, where practicable, any negative impact these activities may generate.

ETNO’s commitment to leading the transition to a sustainable low-carbon economy was highlighted first in the project “Saving the Climate @ the speed of light” developed with the World Wildlife Federation as both partners shared the same objective, i.e., using technology to improve people’s quality of life. The basic aim of the project was to raise awareness about ICT’s potential in reducing green-house gas (GHG) emissions, provide policy makers with facts and figures to help them shape the EU sustainability strategy and launch a roadmap with reasonable and reachable quantitative objectives. The report challenges other industry sectors and society to take advantage of ICT products and services to improve their efficiency and reduce their own footprint. The project and its associated roadmap did not reach its targets until recently, when the European Commission began looking to ICT as an important contributor in achieving energy efficiency gains.

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[http://www.etno.be/Portals/34/ETNO%20Documents/Sustainability/2008%20Energy%20Report\\_final.pdf](http://www.etno.be/Portals/34/ETNO%20Documents/Sustainability/2008%20Energy%20Report_final.pdf)

Both - GeSI's "SMART 2020 Enabling the low carbon economy in the information age" by the Climate Group on behalf of the Global e-Sustainability Initiative (of which ETNO is a founding and active member) and ETNO's "Saving the climate @ the speed of light" reports' conclusions and suggestions - have been largely used and referred to by the Commission's DG INFSO's Ad Hoc Working Group on ICT and Energy Efficiency. The Ad Hoc Group's final reports sheds some light on ICT's role in sectors where energy efficiency is imperative, but concludes that a shift in the overall behavioural paradigm is needed through a structural change where new ways of operating, living, working, learning and travelling become prevalent.

The report concludes that ICT could enable emissions reductions of 7.8Gt CO<sub>2</sub> by 2020 or 15% of business as usual emissions from other sectors. These savings are five times larger than the total expected emissions from the entire ICT industry. In addition to these reductions, potential energy savings can be achieved from ICT's capacity to enable dematerialisation – replacing high carbon physical products and services with virtual low carbon equivalents.

The SMART 2020 study, which is global in focus, indicates that using technology to dematerialise the way we live, work and operate across public and private sectors could deliver a reduction of 500 MtCO<sub>2</sub> in 2020 – the equivalent of the total ICT footprint in 2002.

The ICT sector is sometimes criticised for increasing energy demands caused by increased use of products and services and network enhancements. In 2007, analyst Gartner released the statistic that the ICT sector was responsible for 2% of global carbon emissions and in 2009 PCs and associated peripherals contributed approximately 31% of worldwide information and ICT energy use.

Whilst ETNO generally agrees that the sector should be the first to "walk the talk" by using its own potential to increase its energy efficiency and reduce its own energy consumption and emissions, the Association believes that notwithstanding significant strides made in carbon accounting and access to data, the extreme complexity and variety of business models within the ICT sector, supply chains and products themselves, and the absence of a commonly agreed European methodology makes it extremely difficult to systematically measure, quantify and verify progress towards the targets agreed in the Climate and Energy Package. Nevertheless, most of ETNO's member companies have long since set energy consumption and emission reduction targets, they are continuously investigating new technologies and solutions, looking at and sharing best practices and raising awareness among their company, customers and society. The

activity of the ETNO's Energy Task Force is specifically focussed on such activities.

As SMART 2020 points out, "The ICT sector can't act in isolation if it is to seize its opportunity to tackle climate change. It will need the help of governments and other industries. Smart implementation of ICTs will require policy support including standards implementation, secure communication of information within and between sectors and financing for research and pilot projects."

The actions that in ETNO's opinion are needed to drive the transition to a low carbon economy are the following:

- Promoting and demonstrating the effectiveness and advantages of behavioural changes in favour of sustainable alternatives where ICT is the enabler;
- Promoting cross-sectoral knowledge transfers to enable development and application of ICT solutions and favour the implementation of the technology;
- Applying "smart" ICT solutions to global infrastructure and industry;
- Creating a regulatory context that would allow the creation of the proper market mechanisms exploring financial incentives and developing performance-based instead of technology-based policies;
- Encouraging standards bodies to include considerations for energy consumption in technical standards from the beginning of their development;
- Developing a sector specific energy consumption/GHG emission measurement and accounting methodology;
- Developing sustainable procurement strategies, in particular in the public sector;
- Investing in and stimulating the use of renewable energy, creating the appropriate political and economic conditions to ensure it is widely available at reasonable prices.

## **Chapter 4: A high-speed and open Internet for all**

The chapter raises a number of key policy issues for the ICT sector. ETNO welcomes the fact that the consultation places NGA investments at the top of the priorities for building the future knowledge-based society. Also, the bridging of the 'digital divide'

and challenges in the field of privacy raised in this chapter will be very relevant policy issues in the next five years.

As indicated in the Introduction, we are, concerned that the proposed 'tick-list' approach is not the most appropriate for soliciting the input of stakeholders in the policy-making process -- especially in this chapter, which require a complex balancing of aims and objectives. In some cases the policy options proposed to respondents are moreover not well defined, which may lead to quantitative outcomes which don't reflect the uncertainty underlying the questions.

## **Incentives to invest in fixed and wireless NGA**

ETNO fully supports the objective of a comprehensive policy approach to foster high investment levels in both fixed and mobile NGA. We agree that this is a prerequisite for Europe *"not to lag behind other parts of the world, thus maintaining a solid digital platform for innovation"*

As regards the proposals for fostering NGA investment, some of the items listed in question 4.1 would strongly discourage investment in new networks. This would be the case with intervening in industry structure, increasing access regulation and picking technology winners.

A more targeted and proportionate approach to sector-specific access regulation would, on the other hand, significantly improve investment conditions for NGA. Access obligations for NGA networks, where justified, should be limited to the remaining 'bottleneck' in the market and take into account different situations of competition in different geographies. Pricing flexibility is a key element to support the NGA business case. If price regulation is warranted, NRAs should allow for a fair distribution of risk in the access price. ETNO has presented in detail the requirements for promoting competition and investment in NGA in its recent consultation on a draft NGA Recommendation (ETNO RD307/2009, available at <http://www.etno.be/Default.aspx?tabid=2127>).

ETNO notes that the allocation of spectrum for wireless broadband services can foster investment, for example, in LTE (Long Term Evolution) next generation mobile networks.

Other key prerequisites for NGA investment are missing from the questionnaire, such as the ability to effectively manage IP networks to allow for security, efficiency and innovation in the network (s. below, 'open Internet')

## **The role of public authorities and measures to foster broadband roll-out**

By asking whether the state should “routinely invest in passive networks”, the consultation brings up an important topic – public support for network roll-out – but in a very misleading form. Telecoms networks should in principle be built by private entities except where state aid conditions apply, i.e., limited to so-called “white areas”. As highlighted in a recent speech by Commissioner Kroes (speech 2009/394 of Sept. 17 2009), the telecoms sector is a liberalised sector. This in itself excludes any “routine” state intervention.

Public authorities can play an important role in supporting NGA roll-out by; reducing costs of civil works for NGAs by facilitating access to facilities such as ducts, including those of other networks (water, transport); in certain cases providing duct capacity; and by establishing more attractive rules for deploying networks in the public domain (e.g., rights of way). This would not be equivalent to public “investment in passive infrastructure”, though, which could comprise other elements.

ETNO has given its detailed view on state aid policy for NGA networks in the context of a recent Commission consultation (ETNO RD304, available at <http://www.etno.be/Default.aspx?tabid=2127>).

Other measures to support NGA roll-out can be, for example, a supportive approach to network sharing and co-operations in line with competition law and financial and fiscal incentives to foster the acquisition of ICT equipment and penetration of services (e.g., making the broadband subscriptions eligible for a reduced VAT rate).

## **Internet services growth and the open Internet**

The EU should work towards a sound policy framework for IP broadband networks and the Internet, balancing objectives such as the openness of the Internet, competition between all actors in the value

chain and network and service innovation to the ultimate benefit of citizens.

ETNO supports an open and transparent broadband environment. We note, however, that an actual definition of “openness” is missing from this consultation and the questions related to the development of NGA networks and services are difficult to address without a clearer understanding of what the concept of “openness” encompasses.

In this context, it is regrettable that the consultation appears to start from a misconception of the role of ‘smart’, managed networks. The introduction to chapter 4 talks about the “*development of smart networks as opposed to transparent and open networks*” creating a false opposition. Indicating that smart networks are the opposite of open networks forwards a misunderstanding in the policy debate which will have serious consequences for innovation, investment and consumer welfare.

‘Smart networks’ are not only needed to effectively manage the rapidly increasing data traffic and cope with security and privacy challenges in an IP environment. They also offer ample opportunity for innovation, new and enhanced services and increased economic benefits for society. Any policy framework for the Internet therefore must allow network innovation and promote ‘smart networks’ that enable a rich diversity of tailor-made services and an optimal user experience. Smart networks, those which are secure and efficiently managed, will be an essential element of the Information Society. They will help to increase consumer choice, while preserving the open nature of the Internet.

## **Users’ rights and a ‘European right of access to the Internet’**

We regret that the questionnaire solicits responses on concepts which are not properly defined in the consultation or elsewhere. This is for example the case for the so-called “European right of access to the Internet”. What is needed first is a proper debate on the aim and purposes of these approaches and how they would interact with the legislative framework for the sector.

The proposed right of access to the Internet raises fundamental questions which have to be clarified before detailed questions such as in 4.4 – 4.6 can be answered. The nature of such right is unclear, giving no indication whether it would flow from fundamental rights or whether it would constitute a form of universal service obligation. If

the latter is the case, then the link to universal service obligations under the EU framework, if any, or to other social and regional policies must be clarified.

In any case, the notion to establish “fundamental rights” as a result of this consultation, as the introduction to chapter 4 formulates, is legally and politically very questionable. Fundamental rights cannot be established by secondary EU legislation.

As concerns the proposed new user rights, it should be kept in mind that no user right can be enforced without matching obligations, which have to be proportionate in view of a well-defined public policy goal.

It is a major concern that a concept such as net neutrality, which has far-reaching repercussions for competition and network innovation, is presented as a user right that can seemingly be established ‘for free’.

ETNO agrees that the topic of universal access to the Internet remains a key policy issue. It should be debated in terms of concrete measures to improve access for citizens and find innovative solutions to connect rural and remote areas.

## **Chapter 5: Consolidating the online Single Market**

The Charter of Fundamental Rights of the European Union (art. 8) recognises Data Protection as a Fundamental Right. Trust and confidence is essential. ETNO member companies are continuously working to improve security in their networks and services beyond current regulations. The Telecoms industry fully complies with the strict obligations already established in the current EU rules on Data Protection. ETNO believes that the existing basic principles are still accurate and valid (quality of data, informed consent, right of access to data, rectification and withdrawal, etc.). Against this background, in ETNO’s view, privacy rules need not be reshaped at this stage.

It is important to differentiate between “personal data” (a more objective concept) and “privacy” (a subjective concept). According to the definition of Directive 95/46/CE, “personal data” means information relating to an identified or identifiable natural person (i.e. the data subject) whereas “privacy” is something that can be different from one person to another, or from one culture to another.

The main issue is the need for better implementation at the national level, a more uniform application of data protection rules by Member States for a proper functioning of the Internal Market and appropriate application by operators (data controllers) of these rules, in order to increase confidence in e-business, in particular, from consumers.

The basic principle of “users’ informed consent” to process his/her personal data, already enshrined in current EU legal framework, is therefore a key element to build an online relationship based on trust and confidence. Broadening the concept of personal data or imposing new stricter rules on how to handle personal data could hamper the development of new services.

On the other side, copyright owners are also asking for a revision of data protection rules in order to “better fight against piracy” (copyright owners claim data protection rules have become a barrier to fight piracy as IP addresses are considered personal data). As Data Protection is considered a Fundamental Right, it should not be restricted without a prior judicial decision.

ETNO companies do scrupulously apply the law. Operators are squeezed between strict e-privacy rules and the demand from some sectors to have loose rules to better fight piracy.

## **Chapter 6: Promoting access to creativity at all levels**

The continued transition to digital modes of delivery for content should be based on the principals of competition law, intellectual property rights, copyright and pluralism. The market, as well as the regulatory framework, needs to meet the consumer’s right to privacy, choice, knowledge and cultural diversity.

ETNO supports the goal of digital rights management (DRM) interoperability. Standards, implementation and use of DRMs should be market-driven.

The debate regarding illegal activities on the Internet frequently focuses on copyright. The positions of key stakeholders in this debate are often very polarised. ETNO wants to emphasise that the best way to counteract illegal file-sharing of copyrighted material is through the availability of accessible, secure and price-worthy legitimate content.

In the area of copyright infringement, there is also a need for adapting court-based procedures to situations created by new technology. Access to such procedures needs to be more efficient and effective.

ETNO supports the promotion of competition between collecting societies on the market for rights management. Each collecting society should be able to grant multi-territorial licenses on the basis of improved reciprocal agreements between the collecting societies.

Furthermore, regulation for multi-territory licensing should be harmonised for all types of content, not only for music. It is essential that licensing solutions are adapted to the online environment.

## **Chapter 7: Strengthening EU's role in the international ICT arena**

Over the coming years the Internet will be key for economic and social development. ETNO fully supports the view that European industry has an important part to play in the stability and growth of the Internet, whilst championing the core values of trust, security and privacy, innovation and entrepreneurship, in particular as these are the fundamental requirements that underpin the principles adopted by the European Union.

The Internet relies on a global network of hundreds of thousands of servers and routers. Without an impartial multi-stakeholder governing scheme, it will be impossible to have a truly global working Internet. Keeping governance as decentralised as possible, while at the same time ensuring that it can respond effectively and efficiently to regional or local needs, is a core necessity. These considerations underline not only the need for widely-accepted global governance, but a sound one as well. The European Union, in consultation and close cooperation with industry, needs to be in the front of discussions and must shape a clear, balanced policy, by respecting the following principles:

- recognition of the effectiveness of current mechanisms and the necessity to build on existing structures, such as IGF or ICANN;
- recognition of the need for enhanced cooperation between governments and all other stakeholders on public policies related to the Internet;
- no government oversight function over Internet governance.

Internet governance requires an open trans-national, multi-stakeholder approach. The public sector and the private sector should be on an equal footing. As a network of networks, Internet policy is flexibly shaped by tens of thousands of autonomous systems, e.g., by all of us. The European Union must promote both within its borders and globally a multi-stakeholder dialogue, as it can help shape policy and raise user and business awareness of the need for engagement and informed choices about the Internet.

The well functioning of the technical coordination and management of the Internet's domain name and addressing systems is a crucial element for the stability and growth of the Internet and hence for Europe's e-communications providers and the global business community. Constructive and proactive European input to support and shape the development of ICANN is important -- in particular, in ensuring wider international accountability and improved multi-stakeholder engagement in consensus-based decision making. The accountability of ICANN to its entire stakeholder community is the cornerstone of its transition to a fully independent and privatised international organisation in its own right for the benefit of global stakeholders. An oversight function of ICANN by a single government or governments only, or an intergovernmental body, would contradict the goal to move ICANN responsibilities to the private sector and would not appropriately take into account all stakeholders. ETNO strongly calls on the EU to ensure that the private-sector led multi-stakeholder model on which ICANN is built is preserved and enforced, as a key factor of Internet's success.

Considering the significant impact of Internet on the world economy as well as on our everyday lives and businesses, ETNO supports in principle the existing ICT and Internet governance structures, but with certain improvements that are necessary. In addition, ETNO believes in a stronger and clearer European representation in international fora, but, at the same time, ETNO considers that the only way forward is that all stakeholders must be involved in the definition and implementation of public policies on an equal footing, in line with the multi-stakeholder principle of the World Summit on Information Society.

## **Market Access for eCommunications Services**

ETNO is of the view that for the strengthening of the European Union's role in the international ICT arena the conditions for investment and the operation of electronic communications services in third country markets are essential elements. These issues can be addressed at multi-lateral, regional and bilateral level in the form of

concrete trade negotiations or through political and regulatory dialogue with the respective authorities and we fully support the European Commission's efforts in this context.

ETNO still would like to use the opportunity of the post i2010 Consultation to restate our key principles expressed already in DG Information Society's "Questionnaire for an EU Strategy for International Co-operation on ICT" of September 2007 (RD 268): <http://www.etno.be/Default.aspx?tabid=1952>

At the core has to be the effective application of the principles on the regulatory framework for the Basic Telecommunications services as outlined in the Reference Paper annexed to the WTO Telecommunications Agreement. In many third countries these rules still lack proper enforcement. However, there are also other crucial aspects to ensure market access in electronic communications:

- Where possible, elimination of all foreign ownership limits on Basic telecom services and value added services. Such limitations remain the single most significant market entry barrier for our sector in many countries;
- Unduly restrictive market access conditions should be removed to facilitate foreign participation in basic and value added Telecoms Services ;
- There should be a transparent and streamlined application and granting processes for all types of licences;
- Rigorous accounting transparency requirements should be applied to services in which the legacy operator retains market dominance;
- Where competition law is in place also the telecommunications sector should be subjected to it;
- Harmonization of regulatory frameworks for electronic communications across specific regions (like Latin America or ASEAN) is desirable in areas such as access regulation, spectrum policy, universal service or license regime.
- National Treatment across the ICT sector would be optimal;
- Promotion of better regulation through open consultations prior to the enactment of new law;
- A general strengthening of transparency, non-discrimination and the rule of law in general should be promoted. Regulatory predictability and legal certainty are a vital pre-condition to stimulate investments in this sector.

Also ETNO sees a need to consider market access issues in converged market segments. Convergence is increasingly blurring the boundaries between telecommunications and audiovisual services. Some European operators may become also content providers in third country markets, such as for mobile TV, IPTV or VOD, developing quadruple play strategies and new and innovative services that are critical for the global competitiveness of the EU industry. In this sense current restrictions on foreign capital for companies not only in the telecommunications sector but also in broadcasting should be reviewed.

Furthermore, we support the idea expressed in section 7.3 to strengthen Information Society representation within the EU delegations across the world. In this context we would like to encourage the Commission's services to take full advantage of our industry's know how in the respective markets and to consult with us when appropriate before visiting those regions. Many ETNO member companies have local representations, who can provide first-hand information about local market conditions and regulatory issues.