



EUROPEAN COMMISSION

*Brussels, 17.2.2014
C(2014) 1020 final*

Dear President,

The Commission would like to thank the Kamra tad-Deputati for its Reasoned Opinion concerning the Connected Continent Regulation {COM(2013) 627 final}.

The global economy is evolving towards an Internet economy, and Information and Communication Technology (ICT) should be fully recognised as a source of smart, sustainable and inclusive growth. A single market for electronic communications, where the freedom to provide electronic communications networks and services to every customer in the Union and the right of each end-user to choose the best offer available on the market is ensured and is not hindered by the fragmentation of markets along national borders, should promote competition, investment and innovation in new and enhanced networks and services. The benefits arising from a single market for electronic communications should extend to the wider digital ecosystem.

The Commission appreciates that the Kamra tad-Deputati shares the Commission's vision that the Union needs a strong, dynamic and competitive single market for electronic communications and agrees that the European regulatory framework needs to promote competition, investment and innovation, as this will lead to greater benefits for both consumers and the economy. The Commission also welcomes the Kamra tad-Deputati's recognition that there may be room for greater coordination between the countries and their respective regulators for the good of the single telecom market and in the interest of more effective implementation of the regulatory framework.

The Commission takes good note also of the concerns expressed by the Kamra tad-Deputati.

In general, the current regulatory framework has not been able to fully deliver its objective to establish a single market for electronic communications, with markets still fragmented along national borders and obstacles to cross-border provision and possibility to acquire electronic communications. Measures at EU level are needed to remove specified internal market barriers, and shall limit themselves to what is necessary to achieve the objectives identified.

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With regard to the specific concerns raised in the Reasoned Opinion, the Commission would like to stress that the proposal seeks to achieve the right balance between the need to ensure regulatory consistency and the respect of national competences in accordance with the subsidiarity principle. Member States will remain fully responsible for regulating operators' networks and service provision within their territory. While some targeted measures concern the way national competences are exercised, they only aim at ensuring coordinated regulatory approaches in accordance with EU law, but they do not shift the final authority of the Member States to regulate the provision of electronic communications services and networks. The principle of subsidiarity is respected as EU intervention is limited to cases where coordinated regulatory approaches in accordance with EU law are needed to ensure the freedom to provide electronic communications services across the EU as well as the possibility of end-users to access electronic communications services of their choice wherever they are provided in the Union, without cross-border restrictions or unjustified additional costs, on the basis of a high level of protection. At the same time, the EU measures foreseen will not limit the national margin of policy assessment more than is necessary to achieve Single Market goals.

The full harmonisation which is envisaged in respect of sector-specific end-user protection rules is in line with a broader tendency in EU consumer protection in recent years. It is pitched at a high level of protection in order to respect as much as possible the choices of Member States which have up to now chosen to go beyond the minimum or facultative provisions of the Universal Service Directive. And the overall gains in both end-user protection and alignment of business conditions for operators justify such a harmonising step.

With specific regard to the Commission veto power, the Malta Communications Authority will remain fully responsible for fact finding and market analysis and identifying remedies, also innovative ones, while the Commission only proposes a power to control legal compatibility of remedies imposed on European operators before those remedies are implemented. That guarantees predictability and legal certainty on the one hand, while on the other it complies with the proportionality and subsidiarity principle given that the identified problem (the potential lack of consistency of remedies) is especially problematic for companies operating in more than one Member State and could be a potential barrier for further expansion and investments of companies within the EU footprint. Therefore, with a view to minimise the regulatory intervention needed to achieve the intended objective, this power applies on multi-country operators and is similar to that already applicable now in the context of the identification of relevant markets and significant market power.

The Commission takes note of the Kamra tad-Deputati's concerns that the impact assessment is not based on objective evidence supporting the need for intervention at EU level. However, it would like to point out that the analysis enshrined in the impact assessment shows that fragmentation is hindering the market from delivering a better outcome than the present one. While it is not intended to make a comprehensive state of play of the sector in the impact assessment, it has to be noted that, if the EU market has today certain strengths (pricing and general quality/price ratio), it is not sure these are sustainable in the long run by an industry which is not healthy.

With regard to the Kamra tad-Deputati's concerns on the proposed spectrum coordination, the Commission stresses that delays in granting spectrum licenses have already led to an important fragmentation of the European mobile market. This situation has a negative impact on mobile equipment manufacturers operating in the EU market and has reduced the offer of new generation terminals for European consumers. A new approach on the coordination of licenses across Europe is therefore absolutely necessary. Moreover, the notification on licensing conditions proposed by the Commission, to be exercised together with the other national competent authorities, is intended to be based on a peer review mechanism that will enable to comment on the draft assignment process to ensure that it will not lead to a breach of common principles and that no barrier is created to the internal market, but does not limit the scope of responsibilities of Member States for authorisations of rights of use of spectrum.

The Commission is confident that the single EU authorisation, while facilitating cross-border market entry, does not affect the competences of any host Member State to define the conditions of operation applicable to every operator (being purely national or European) within its territory in accordance with EU law. The EU-authorized provider, therefore, will be subject to the same jurisdiction as other purely "national" providers as regards the regulation and supervision of its activities and conditions of operation in each concerned Member State, except for the extreme sanctioning measure of the withdrawal/suspension of the general authorisation. The Commission takes note of the Kamra tad-Deputati's concerns that the powers of national regulators would be limited in such a case, but would like to stress that appropriate safeguards for interim measures are ensured for the host Member State.

The Kamra tad-Deputati claims that the proposal weakens the development of a predictable regulatory environment, in particular in light of the amendments to the roaming rules. In contrast, the Commission believes that the proposal builds on the pro-competitive measures introduced in 2012 introducing a new optional regime for operators that are free to either stay with the existing rules, or make use of this additional option, solve the roaming problem for their customers and in this regard actually gain certainty that the strict review clause of 2016 will not affect them.

Regarding the Kamra tad-Deputati's doubts that the proposed implementing and delegated acts are necessary to enhance competitiveness and innovation on the telecom market, on the internal market and for the digital economy, the Commission would like to note that the adoption of delegated acts is limited to amendments to the technical characteristics of the European Virtual Access products listed in the Annexes, and it is therefore needed to ensure consistency with the technological developments. With regard to implementing acts, they are limited to cases where the adoption of more detailed rules is needed to ensure a coordinated approach to the application of the rules provided in the proposal and in other co-decision acts. They are therefore meant either to quickly set the details of obligations implementing the criteria and conditions already defined by the Council and the European Parliament through co-decision, for example through spectrum harmonisation decisions, and adapt them to the specificities of each harmonised band, or to define common technical characteristics, including access products and small wireless access points, or common methods or quality of service parameters in the field of consumer protection.

The Commission understands the Kamra tad-Deputati's concern regarding the effects of the proposal on small operators, but would like to emphasise that its vision is for the EU to enjoy a dynamic and competitive telecom sector with larger operators active across several Member States alongside many smaller, more local companies that may target particular niche markets or who can hold their own because better attuned to local needs. Small operators are typically more affected by administrative burden and market access obstacles because they lack resources to deal with them. For example it is more costly for them to adapt to different consumer protection rules. The new rules will cut bureaucracy through a single authorisation and harmonised consumer rules. This is particularly relevant for smaller operators for whom the current process is a bigger hurdle. Small companies also tend to be more agile and capable of seizing new business opportunities enabled by the proposal than bigger companies.

The market will decide how the sector will develop. There may be some restructuring as is expected when obstacles to the Single Market are removed, but competitive conditions are guaranteed. Competition policy is not changed, and will continue to guard against any consolidation which is harmful to the consumer. Experience in other sectors which were opened to competition in the Single Market is positive (e.g. aviation, energy, certain transport segments) and has enhanced competition and enabled small operators to grow. Reinforced non-discrimination rules and easier market access should enable newcomers to enter the market much more easily.

The Commission takes note of the Kamra tad-Deputati's concerns about the lack of public consultation and the pace of the adoption process. It has engaged extensively with relevant external stakeholders including market players, national regulatory authorities, BEREC and investors in order to assess the state of the market and to determine how to improve conditions for establishing a telecom single market. In this consultation process, which started almost two years ago, broad public events were combined with more targeted consultation to achieve the required breadth and depth of stakeholder inputs, supported by market studies.

In particular, the Commission organised several consultative events attended by stakeholders representing all segments of the industry, consumers and civil society (a public information meeting in Brussels on 17 June 2013, discussion in the Digital Agenda Assembly 2013 and in the Digital Champions' meeting in Dublin on 18-20 June 2013). All discussions have shown a large degree of convergence on the urgent need to overcome the remaining fragmentation of the telecom market, acknowledging the benefits that would flow from this in terms of additional growth. In the current economic situation, Europe can simply no longer afford to forego the enormous potential the single telecom market could bring for growth and jobs.

The Commission hopes that these clarifications address the concerns raised by the Kamra tad-Deputati and looks forward to continuing this political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*