



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2013)

Opinion

Title DG CNECT - Impact Assessment on Measures to complete the European single market for Electronic communication services

(draft version of 26 June 2013)*

(A) Context

The EU's single market has given consumers competition and choice, helped businesses innovate and invest. In electronic communications, Europe liberalized the sector and over time fostered more harmonization among national markets and better and more competitive services for consumers. However, as a first step to reap the benefits of a broader digital single market, Europe needs a genuine single market for electronic communication networks and services, in which operators can freely offer services throughout the EU and consumers can enjoy them wherever they are based. The 2013 Spring European Council conclusions stressed the importance of the digital single market for growth and noted the Commission's intention to present concrete measures to establish a Single Market for Telecommunications in time for the October European Council. The current report considers policy options to foster the creation of a genuine internal market for electronic communication networks and services.

(B) Overall opinion: NEGATIVE

The report should be significantly improved in a number of important aspects. First, it should provide concrete evidence of market fragmentation and the decline in investment in the European telecoms sector, substantiating to what extent such problems are driven by shortcomings in the regulatory framework and specifying what the concrete gaps actually are, particularly in areas recently reviewed. It should then outline how these problems would evolve in the absence of further EU action and state realistically what this initiative can realistically achieve in terms of a genuine single market, explaining how this initiative interacts with others in this area (e.g. net neutrality, non-discrimination or cost methodologies, roaming III and the regulatory framework). Second, the report should ensure the content of the options is fully aligned with that in the legislative proposal and describe them in further detail clarifying how exactly the proposed options differ from the status quo. The report should also better explain why other alternative options are not considered. Third, the report should include a much deeper analysis of the costs and benefits of the specific measures proposed, including any unintended consequences, as opposed to presenting only a broad analysis of the benefits of the digital economy. For instance, it should assess how the proposals would affect investment

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

incentives and it should discuss the impacts on the structure of the European telecommunications sector, indicating the effects on different categories of market players. It should indicate if particular stakeholders such as Member States or parts of the industry will be disproportionately affected. It should set out more transparently to what extent the proposed options will deliver on the main policy objectives and how they will deal with the totality of problems identified clearly differentiating incremental effects from radical changes. Finally, the report should set out how it complies with the Commission minimum standard on consultation, setting out the different views of key stakeholders on the specific problems, the options and their impacts.

Given the nature of these concerns, the IAB requests DG CNECT to submit a revised version of the IA report on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Improve the problem definition and the rationale for further action. The report should substantiate the market fragmentation problem and decline in investment of the European telecoms sector by providing robust evidence of relevant indicators. It should provide concrete evidence that shows to what extent such problems are driven by shortcomings in the regulatory framework instead of other identified factors (economic crisis, cultural diversity, divergence in wider regulatory issues) and how they affect supply and demand for cross-border services. For instance, how does the current authorisation regime or the lack of fully-coordinated radio spectrum assignments affect cross-border services provision? The report should explain how the list of regulatory shortcomings has been identified, how existing measures deal with the problematic areas and specify further what the concrete gaps are. In particular, it should explain what is motivating further changes in areas recently reviewed (e.g. co-ordination in spectrum assignments). Finally, on the basis of the improved problem definition it should outline how problems would evolve in the absence of further EU action and state realistically what this initiative aims to achieve in terms of a genuine single market. It should explain how this initiative interacts with others in this area (e.g. net neutrality, non-discrimination, cost methodologies and on network sharing) better explaining what is out of scope in this specific proposal.

(2) Better describe the content of the options and ensure they are fully aligned with legislative proposal. The report should ensure the content of the options is fully aligned with that in the legislative proposal and describe them in further detail, particularly implementation plans (including timeframes, governance and enforcement). For instance, how will the right of consumers to resolve disputes on their own country be implemented given that the competency for fully harmonised consumer protection conditions lies with the home NRA? The report should clarify how exactly the proposed options (i) differ from and interact with existing legislation, including for the new spectrum coordination proposals, the European passport and standardised virtual access products other provisions in consumer protection, and (ii) are meant to address the identify problems. Finally it should justify the limited range of options.

(3) More robust and balanced assess of impacts. The report should focus more deeply on the impact of the options and not rely only on a broad assessment of the benefits of the digital economy. In particular, it should provide a more comprehensive, quantified and evidence-based assessment of the direct and indirect impacts stemming explicitly from the specific options, including where possible the risk of unintended consequences. For instance, it should assess how the European passport and the coordination of radio

spectrum would be linked and how they would affect investment incentives and it should discuss the impact of these measures on the structure of the European telecommunications sector indicating the effects on different categories of market players. It should indicate if particular Member States or (industry) stakeholders will be disproportionately affected. It should contain a deeper analysis of the impacts on competition on the relevant markets, including transmission channels and better explain the impacts on consumers (e.g. an explanation of tables/graphs on Consumer Surplus across Member States) and on employment. If evidence does not exist or it is not conclusive, conclusions on the impact of options should be amended accordingly. The report also should set out more transparently to what extent the proposed options will deliver on the main policy objectives and will deal with the totality of problems identified, given the importance of factors beyond this initiative (e.g. economic crisis, cultural and language diversity, divergence in wider regulatory issues). Finally, it should provide further details of plans for monitoring and coordination of NRAs' actions.

(4) Clarify compliance with minimum standard on consultation. The report should set out how the process adopted complies with the Commission minimum standard on consultation. It should clearly indicate the different views of Member States / national regulatory authorities (NRAs) and stakeholders such as, industry players, employee organisations and consumers on the specific problems to be addressed, the range of options considered and their expected impacts, avoiding overly simplistic summaries that may hide critical opinions. When their views are divergent or conflicting, it should explain how their concerns have been taken into account and/or balanced against each other.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation. The report should focus more precisely on the specific problems at hand, avoiding lengthy descriptions of the wider context. It should describe the options in more concrete terms and should use neutral language, avoiding any bias towards the preferred policy option(s) in advance of the analysis.

| (E) IAB scrutiny process | |
|---------------------------------|----------------|
| Reference number | 2013/CNECT/004 |
| External expertise used | No |
| Date of IAB meeting | 17/07/2013 |