



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
D(2012)

Opinion

Title **DG CNECT – Impact Assessment on consistent non-discrimination obligations and costing methodologies to enhance the broadband investment environment**

(draft version of 30 October 2012)*

(A) Context

Under the Digital Agenda for Europe, one of the flagship initiatives of the Europe 2020 Strategy, the Commission has made the roll out of high speed internet a key priority. In Europe, network operators have been reluctant to invest large sums in new ultrafast networks due to many factors. Market players are faced with diverging regulatory approaches within and across the telecommunications markets in Europe, in particular with regard to the imposition by national regulatory authorities (NRAs) of non-discrimination and cost oriented price obligations on the legacy copper-based access networks as well as the next-generation access (NGA) networks belonging to dominant telecom operators. This problem was illustrated in the Commission communication of 2010.

(B) Overall assessment

The report should be improved in a number of respects. First, it should better present the policy context, improve the problem definition and explain the underlying causes. The report should also provide robust evidence demonstrating that differences in the application of non-discrimination obligation and cost methodology rules in Member States constitute an important barrier leading to fragmentation of the single market. Secondly, the baseline scenario should be strengthened by providing a fuller assessment of the developments expected from the existing and planned initiatives at EU and Member States level and the expected development in Europe of demand for broadband services. Thirdly, the report should define objectives in 'SMARTer' terms, link them clearly to the identified problems and options that can address them, so that the intended results can be measured by robust progress indicators. Fourthly, the report should provide a more balanced assessment of all relevant costs and benefits of the various options underpinned by robust evidence, differentiated by (groups of) Member States, for instance with respect to expected price changes. Finally, the report should better reflect the views of stakeholders on all key elements, particularly when their views are divergent or conflicting.

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

(C) Main recommendations for improvements

(1) Better present the policy context and improve the problem definition. The report should better present the overall policy context by putting the current situation in the EU and individual Member States in comparison to the US or other more advanced countries informed by key indicators, such as broadband coverage, investments undertaken and (access and retail) prices. The report should also contain an overview of the relevant broadband sector, specifying who the main market players are (wholesale and retail) and how they interact. The report should provide a more comprehensive overview of the regulatory framework, particularly the changes to the role of the Commission following the revision of the Regulatory Framework in 2009. On that basis it should improve the problem definition by presenting a clearer overview of the type and size of the problems at EU and Member States level and by explaining their underlying causes. It should also provide robust evidence demonstrating that differences in the application of non-discrimination obligation and cost methodology rules in Member States constitute an important barrier leading to fragmentation of the single market.

(2) Strengthen the baseline scenario by providing a fuller assessment of the developments expected from the existing and planned initiatives at EU and Member States level (for instance, BEREC's high level regulatory principles on non-discrimination), by explaining how the proposed initiative fits in with them, and by estimating their impact on the Digital Agenda targets. The report should provide an outlook of the development in Europe of demand for broadband services and the implication this may have for investment.

(3) Improve the intervention logic and the option design. The report should define objectives in SMARTer terms, measurable by robust progress indicators and link them clearly to the identified problems and the options that can adequately address them. The report should improve the presentation of the options by providing a more consistent and structured description. It should better detail the content of the refined options and should outline whether options have been discarded at an early stage.

(4) Better assess and compare impacts of options. The report should provide a robust and balanced assessment of all relevant costs and benefits of the various options against the revised baseline scenario underpinned by credible evidence. Different impacts over time (short term versus long term) or across Member States, for instance with respect to prices or investments, should be highlighted. The report should set out the evidence and the assumptions underlining the quantified consumer surplus stemming from a more effectively applied and enforced non-discriminatory remedy across the EU, and the impact on fibre investment. The report should assess how the different options will contribute to the achievement of the revised objectives. Finally, the report should better compare options against the baseline scenario by using the standard criteria of effectiveness, efficiency and coherence, and by presenting the outcomes in tabular form.

(5) Better present stakeholders' views. The report should provide stakeholders' views throughout the report in relation to all key elements of the report, particularly when their views are divergent or conflicting. In these instances, the report should explain how their concerns have been taken into account.

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 provide a more focused and concise analysis of the impacts, in order to keep the length of the report at an accessible level. The report should use neutral language throughout the document. The report should be written in a way that is easily accessible to the non-expert reader. The report would benefit from a glossary of technical terms.

(E) IAB scrutiny process

Reference number	2011/CNECT/018; 2011/CNECT/019
External expertise used	No
Date of IAB meeting	21 November 2012