



**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 14 August 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**

**While the report has been revised to some extent along the lines of the Board's recommendations, it needs further substantial work in a number of important respects. First, it should still strengthen the explanation of the relationship between lack of investment and price variations among Member States on the one hand, and a missing internal market on the other; it should also provide sounder evidence of the extent to which market fragmentation is driven by shortcomings in the current regulatory framework. For example, it should better explain why existing mechanisms to ensure consistent application of the rules are not working (such as the Article 7 procedure and existing spectrum management arrangements). Second, the preferred option should be fully aligned with the details of the final legal proposal and the report should better justify the proposals in terms of the subsidiarity principle, in particular given the proposed increased harmonisation in the area of spectrum policy, authorisations, and standardised EU access products. Third, the report should strengthen the analysis of the costs and benefits of each option, in particular by showing how the proposals would lead to more investment and less cross-country price discrepancies, indicating the effects on different categories of market players or parts of the industry that may be disproportionately**

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\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted  
Commission européenne, B-1049 Bruxelles - Belgium. Office: BERL 6/29. E-mail: [impact-assessment-board@ec.europa.eu](mailto:impact-assessment-board@ec.europa.eu)

**affected. In particular, it should include a more robust assessment of: i) the impact of eliminating charges for incoming roaming calls as well as the surcharge for international calls and indicate any risks of unintended consequences for different categories of operators; ii) the impact of the proposed changes to authorisation fees on the relevant Member States' authorities; iii) the impact of introducing standardised European wholesale access products as regulatory remedies. More generally, the report should set out how the proposed options could realistically deliver on the main policy objectives and how they could address specific problems such as high spectrum fees. Finally, the report should explicitly acknowledge that an open public consultation on the specific measures and their impacts has not been carried out, and make a better attempt to set out the different views of key stakeholders as collected through the identified channels.**

**(C) Main recommendations for improvements:**

**(1) Improve the problem definition and the rationale for further action.** The report should provide concrete evidence of divergence and inconsistency in regulatory approaches or implementation across Member States, as well as data substantiating the decline in investment in the European telecoms sector (setting out differences across Member States and across sub-sectors such as fixed and mobile where relevant). The report should then explain how the list of regulatory shortcomings has been identified, how the current regulatory framework deals with the problem areas and specify further what the concrete gaps are, particularly in those areas recently reviewed (e.g. the framework review and Roaming III). It should still explain the relationship between a lack of investment and price variations among Member States on the one hand and a missing internal market on the other. It should substantiate further how and to what extent such regulatory shortcomings affect supply and demand for cross-border services, distinguishing this from the impact from other factors (economic crisis, cultural diversity, divergence in wider regulatory issues). For instance, why are existing mechanisms to ensure consistent application of the rules not working (such as the Article 7 procedure and existing spectrum management arrangements). It should state realistically what this initiative aims to achieve in terms of a genuine single market, better defining what is considered as out of scope. The report should better justify the proposals in terms of the subsidiarity principle, in particular given the proposed increased harmonisation in the area of spectrum policy, authorisations and standardised EU access products.

**(2) Better describe the content of the options.** The report should describe the content of the options in further detail, including implementation plans (e.g. timeframes, governance and enforcement), and in particular fully align the preferred option with the details of the draft legal proposal e.g. in relation to the Commission's veto power on Member States' draft measures granting or amending individual rights of use of radio spectrum. More generally, the report should further clarify what they entail in practical terms e.g. as for cross-country spectrum coordination, European wholesale inputs, and the Commission's new "greater power" to review the consistency of Significant Market Power remedies. It should better explain how the proposals to ensure harmonisation of licence conditions or the right of consumers to resolve disputes in their own country would be implemented consistently across different Member States. The report should then clarify how exactly the proposed options and key measures differ from and interact with existing legislation, including the new spectrum coordination proposals, the single authorisation, and standardised virtual access products. It should then explain how each proposed measure is meant to contribute to the policy objectives. For instance, how the proposed changes to the Body of European Regulators for Electronic Communications'

(BEREC) governance would contribute to supporting implementation of these specific objectives. Finally, the report should better justify the limited range of options considered.

**(3) Improve the assessment of impacts stemming from the specific options.** While the report has improved the general assessment of the theoretical impact of achieving a full Telecoms Single Market, by presenting sounder quantitative evidence for the expected effects of some specific measures (i.e. eliminating incoming roaming charges and the surcharge for international calls), a more comprehensive assessment of the direct and indirect impacts stemming from the specific options under consideration is still needed. For example, the report should contain a more robust assessment of the claimed economic benefits. It should consider the risk of unintended consequences that may arise (e.g. 'call back' or rebalancing of prices) from such measures, including the elimination of charges for incoming roaming and international calls, as well as from the new possibility to sign collective roaming agreements, taking into account the consequences for different categories of operators and their investments. The report should also be more precise in evaluating the impacts of the envisaged proposals on authorisation fees on the relevant Member States' authorities, as well as any impacts on Member States' budgets arising from spectrum harmonisation, e.g. possible constraints as to the timing of auctions. It should also deepen its assessment of the overall impact on investment incentives, e.g. from the introduction of standard European access products and on the structure of the European telecommunications sector. The report should assess possible costs for market players of implementing the proposed consumer protection and transparency measures, and consider whether the risk of systematic divergence of approaches remains whenever the implementation still lies partly with national regulatory authorities. The report should then set out how the proposed options could realistically deliver on the main policy objectives and how they could address the specifically identified problems (such as high spectrum fees), also in light of the importance of other factors beyond this initiative (e.g. economic crisis, cultural and language diversity, divergence in wider regulatory issues). As many of the key elements of these measures will be decided via implementing or delegated acts, the report should clearly indicate for which of these measures significant impacts will be expected and whether separate impact assessments will be carried out for them.

**(4) Better incorporate stakeholders' views.** The report should better set out how the process adopted complies with the Commission's minimum standards on consultation, outlining up front the reasons why an open public Internet consultation has not been carried out for this initiative. In any case, it should more clearly indicate the different views of stakeholders, on the specific problems to be addressed, the range of options, and the specific measures considered as well as their expected impacts. For instance, the report should clearly set out Member States' concerns about spectrum proposals, incumbent and alternative operators' concerns about roaming agreements or wholesale virtual products, new entrants' concerns about the single EU authorisation, as well as Internet Service Providers' concern about proposals regarding traffic management practices. When their views are divergent or conflicting, it should explain how their concerns have been taken into account and/or balanced against each other. Furthermore, given their key advisory and implementing role, the report should better integrate the views of NRA's.

*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. The Executive Summary Sheet should be reduced to a maximum of two pages. It should describe the options in more concrete, neutral terms, 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	Written procedure. An earlier version of this report was submitted to the IAB in June 2013, for which the Board issued its opinion on 19 July