



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2016)

Opinion

Title

DG CNECT – Reform of the electronic communications network and services

(resubmitted version of xxx July 2016)*

(A) Context

The electronic communications sector and its regulatory framework (dating back to 2002) have significantly evolved over the last years, necessitating a review. The 2002 framework consisted of (i) sector-specific economic regulation based on the principles of EU competition law, and (ii) rules safeguarding end-user interests. It aimed at promoting competition via regulated access to incumbents' networks and market entry as a means to make markets contestable and to maximise consumer benefits. In 2009, the EU legislative framework was revised but the general competition objectives were maintained.

Since then, the sector has further developed and its role in the online economy has grown. Consumers and businesses are increasingly relying on data and internet access services instead of traditional telephone services. The Commission announced a review of the telecoms regulatory framework in its Digital Single Market (DSM) Strategy for which a REFIT evaluation including a fitness check has been conducted to provide the evidence-base. The impact assessment report establishes that a revised framework should aim to ensure that the existing pro-competitive framework leads to ubiquitous unconstrained connectivity as the basis for a DSM. This entails the introduction of a new Very High Capacity (VHC) connectivity as prime objective that will complement the existing objectives on competition, internal market and end-user interests.

(B) Overall opinion: POSITIVE

The Board gives a positive opinion, with a recommendation to further improve the report in a number of key aspects.

The revised report has generally been adjusted in line with the Board's recommendations. Against the background of the considerable scope and complexity of the review exercise, the presentation of the report has substantially improved. The evaluation results have been better integrated and the intervention logic has been more clearly explained. The objectives have been clarified in relation to connectivity and the single market. In addition, these objectives have been put into perspective by setting out the key conditions (e.g. investment needs) required for their full achievement. Stakeholder views have been included throughout the revised report and Member States' positions with regard to spectrum management have been clarified. The REFIT dimension has been substantially strengthened. Additional

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

information has been provided regarding the suboptimal pace of investment, the considerable investment needs as well as the methodological assumptions made to calculate the impacts.

However, further improvements are recommended on a number of issues:

(1) The link with the European Gigabit Society Strategy and the 5G Action plan should be further clarified.

(2) The REFIT dimension of the preferred options should be further elaborated, notably with respect to the impacts on the costs of using spectrum, the compliance costs for OTTs deriving from the new privacy and security obligations, the overall compliance costs for operators linked to the new consumer protection rules, the costs of removing the current sectorial sharing mechanisms and the possible costs related to the obligation of providing affordable broadband.

(3) More details should be provided regarding the potential sources of private and public (including EU) funding that could be mobilised to meet the identified investment needs.

(4) The importance for the effectiveness of the preferred options of meeting the considerable underlying investments needs should be further underlined in the main text, as well as the related lack of financing assurances at this stage and the resulting limitations in the outcome-potential of the envisaged improvements in the regulatory framework.

The lead DG shall ensure that these recommendations are duly taken into account in the report prior to launching the inter-service consultation.

(C) Main recommendations for improvements

(1) Policy context: Even though some limited information has been provided regarding the European Gigabit Society Strategy in section 3.1, more information on this strategy as well as on the 5G Action Plan is needed in the introduction as well as in section 3.4 to clearly establish their links to the present initiative.

(2) REFIT: Drawing on the evaluation results, section 1.2.3.1 outlines a more complete and convincing picture of the potential administrative burden reduction and simplification. In addition, a new section 4.9.3 has been added providing a synthetic overview of the REFIT potential of the preferred options including an analysis on the removal of redundant consumer protection legislation. However, the REFIT dimension of the preferred options should be further elaborated. While genuine efforts of quantification have been undertaken, these remain uneven and the report does not deliver key figures on regulatory costs associated with a number of important measures. For instance, although the reduction of administrative costs linked to the new spectrum management is quantified, the impact of the envisaged measures on the cost of using spectrum is not assessed. Similarly, there is no proper assessment of the compliance costs for OTTs associated with the new privacy and security obligations, or of the net compliance costs for operators linked to the new consumer protection rules (reduction stemming from the removal of redundant rules versus increases linked to new rules on net neutrality). Similarly, no orders of magnitude are provided for the implications for public finances of the envisaged new universal service provisions, like the cost of removing the current sectorial sharing mechanisms and the possible costs of the obligation to provide affordable broadband.

(3) Investment and financing: Drawing on the evaluation results, the new section 1.2.1.1 provides a number of reasons for the sub-optimal pace of investment in infrastructure pointing both an endogenous (regulatory reasons) and exogenous factors (macroeconomic causes). This is further elaborated in annex 14 adding information on the considerable

investment needs (more than 92 bn EUR) associated with the high connectivity scenario. However, more detailed information regarding the potential sources of funding necessary to meet those investment needs should be provided and the current lack of sufficient financing assurances should be acknowledged.

(4) Impact methodology: More information on the external assumptions regarding investment developments have been included in annex 5 and the reference to the results in the main text has been qualified. While the impact methodology focuses on the macroeconomic dimension highlighting potentially significant impacts of the preferred options on growth and economic activity, the report should be more explicit, in the main text, about the fact that these positive impacts are conditional upon the realisation of substantial underlying investments (by the operators in networks), as assumed in the macroeconomic scenarios (see annexes 5 and 14), and that, at this stage, existing conditions do not guarantee that the high connectivity investments needs will be met. Moreover, the package also assumes additional investments which are not quantified: the spectrum scenario assumes 5G coverage of 70% in 2021, against 8.3% in the baseline, but the private investment related to this deployment is not included in the model. The potential impact of the preferred options should therefore be further qualified by acknowledging that the envisaged improvements in the regulatory framework would not be sufficient to ensure, on their own, the expected outcomes.

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

(D) Procedure and presentation:

Taking into account the considerable scope and complexity of the review exercise, the presentation of the report has substantially improved including through the addition of new tables and figures, references to the evaluation, references to stakeholder views more generally, the reorganisation and re-editing of the text at several instances and the efforts to complete the glossary in annex 16. However, with a view to providing a more accessible information base to policy-makers, more efforts should be undertaken to further improve the overall clarity and transparency of the language. In this context, the glossary should still be complemented with definitions of the concepts that are not self-explanatory.

(E) RSB scrutiny process

Reference number	2015/CNECT/007
External expertise used	No
Date of RSB meeting	Written procedure (an earlier version of this report was discussed by the RSB on 5 July 2016 for which an opinion was issued on 7 July 2016)