



Policy Paper

Cable Europe position paper on the Telecoms Review

Proposal for a Directive establishing the European Communications Code

Executive Summary

Cable Europe welcomes the European Commission's proposals laid out in its review of current telecommunications legislation.

Our member companies believe that the current regulatory framework is generally sound. It has allowed for a robust infrastructure-based competition, in particular by cable operators. The current regime of ex-ante regulation, based on the identification of operators with 'significant market power' (SMP) has been successful to promote competition, investment and delivered the desired level of quality and long term efficiency. **Cable Europe therefore agrees that the "SMP-mechanism" remains the central axis of the proposals. Other concepts such as symmetric or non-SMP based access need more detailed analysis – they should only be applied in rare and clearly defined cases to deal with certain instances of local monopolies, used with the greatest caution and should not replace the role that SMP plays within the regulatory framework and create uncertainty amongst market players and investors.**

Cable Europe member companies have hugely contributed to attaining the 'EU 2020 Digital Agenda targets'. Thanks to massive investments in their networks, cable companies have considerably increased the available network quality and boosted infrastructure competition in those markets where they are present. **Giving connectivity a central place amongst the policy objectives is a positive development, however, this should be done without diluting the technology neutral nature of the regulatory framework.**

As mobile operations, 'fixed – mobile' convergence and investment in mobile infrastructure are gaining importance for our members, **Cable Europe welcomes the planned initiatives to facilitate the roll-out of mobile networks, the proposed 5G action plan and the intention to further harmonise spectrum management within the EU. However, we stress in this context that the coexistence between existing and future users of spectrum needs to be taken into account. Also Cable Europe finds it difficult to see how the proposal on Wi-Fi can contribute to the investment in 5G as this proposal rather undermines market driven investments in new mobile technologies.**

Cable Europe regrets that the momentum created by the review was not used for making fundamental modifications to the 'must carry rules'. **The 'must carry rules' are not only outdated but they also distort the balance of power between different market players, i.e. distributors and broadcasters.**



In many member states an often very complex and overly prescriptive framework of consumer protection rules has been set-up since the liberalisation of the telecommunications sector. This framework has not only often hindered innovation but it has also distorted the balance between traditional operators and Over-the-Top players (OTT players), who are often not subjected to the same rules. **Therefore Cable Europe is happy to see that the Commission proposes a first step regarding the harmonisation of the consumer legislation rules. Nevertheless, cable operators encourage the EU legislators to fully harmonise consumer protection rules and believe that a cost-benefit analysis of the rules proposed remains a necessity.**

Finally, the intention to get rid of obsolete services under the universal services and the shift of the focus to ‘affordability’ instead of ‘availability’ is a positive development.

Market analysis

Since its inception almost two decades ago, regulation based on the SMP concept has allowed for the development of solid electronic communication markets. It has allowed companies to compete and invest and thus bring substantial added value to society. Cable operators are investing heavily in many markets, enabling upgrades and extensions to their networks. Cable operators are successfully challenging incumbent operators and are prepared and willing to realize the Commission’s ambitions for a Gigabit Society in the near future and are already today offering Gigabit service to customers.

Symmetric access is an exception to the SMP mechanism and should as such only be used in a very limited number of well-described situations. Especially when symmetric access is imposed on other network elements than the in-house wiring, the conditions foreseen in the current proposal need to be applied in a very strict manner. A broad and liberal application of the symmetric access tool further disincentives those investments that were already difficult because of the specific circumstances. End result might be that no connectivity at all will be offered by any of the private players in those situations where the symmetric access applies.

Cable Europe supports the proposals that are aimed at increasing regulatory certainty/predictability on the one hand and investments in networks on the other hand. In this context we note the extension of the market review period from three to five years, the measures that aim at incentivising co-investment, the prioritisation of civil engineering remedies and the increased harmonization that will result from the possibility of the Commission to veto in certain circumstances remedies that are proposed by a NRA.

Technological neutrality

Different studies illustrate that the presence of cable in a specific area has often boosted network investments by other players. Other advantages of cable are its wide availability in certain areas



(today cable reaches 1 out of 2 households in the EU offering very good quality and high speeds) and the fact that it can relatively fast be upgraded. Also, as a recent study has found, cable-based networks deliver the advertised speeds more reliably than xDSL-based services and even fiber-based networks. Cable Europe therefore asks that the potential and possibilities of cable are taken fully into account by the regulatory framework and national regulators. Cable's role should be emphasized when defining and implementing the objectives on connectivity. Moreover, the definition on 'very high capacity networks' should be broadened.

Spectrum

Spectrum is one of the critical elements that enable electronic communications' operators to deliver their services. As such Cable Europe welcomes the proposals to make sufficient spectrum available and the central role for BEREC in 'the spectrum peer review mechanism' as this will without any doubt contribute to the harmonisation of the spectrum assignment procedures and licence conditions.

The increased certainty that is foreseen by the 25-year minimum license duration period and the clear procedures for the renewal of spectrum licences, are positive.

In the context of spectrum however, sufficient attention needs to be given to avoiding interference. When taking initiatives, the coexistence between existing and future users of spectrum needs to be taken into account.

Must carry rules

Cable Europe believes that must carry provisions should be revised. As the bottleneck justifying must-carry obligation increasingly ceases to exist, we believe that it is worth investigating whether the said rules must be replaced with some that are more adequate to the current situation. The balance of power is shifting dramatically towards broadcasters, who are using their must carry position to enforce distribution agreements at non-commercial rates. As long as the legislator sees must carry rules relevant in order to grant pluralism and cultural diversity, an obligation to must carry should be aligned with an obligation for broadcasters to pay an adequate remuneration for this transport. Today, the must-carry regime does not include an obligation to pay for transport. This has led to the situation that broadcasters refuse to pay for the transmission of their signals via cable networks. A fairer balance between privileged broadcasters and content distributors must be sought.

By inserting in the proposed article 106 of the European Electronic Communications Code, words like 'related' and 'data supporting connected TV services and electronic programme guides', the Commission proposal is even expanding the 'must carry rules' and thus risks to further disturb the market balance between distributors and broadcasters.



Consumer protection rules and universal service

Today there are considerable differences between the member states in terms of consumer protection rules, treatment of different categories of services, regulation of ‘traditional players’ versus ‘OTT players’, the scope and financing of universal service, etc. These differences and the overly prescriptive rules in some member states hinder innovation and distort the balance between the different market players.

In this context Cable Europe very much welcomes the first steps that are taken by the proposal to harmonise the consumer protection rules and to rationalize the universal service.

However, Cable Europe members’ believe that only a full harmonisation of the consumer protection rules is a sufficient guarantee for a complete and balanced framework on consumer protection. Cable operators hope that not too many exceptions will be made to the harmonisation nor that this modification comes down to the strictest consumer protection regime that is today available in the EU being transferred to the new directive and made applicable in the entire Union. A strict cost-benefit analysis is necessary of each consumer protection rule that is proposed. Finally on consumer protection, those rules that remain in the framework after a comprehensive rationalisation should also be made applicable to OTT players.

The current universal service regime was designed to play a role in the transition phase from a monopoly to a liberalized competitive market. Its role in this respect has been outpaced by both technological and market developments. Thanks to investments made, competition among different technologies (fixed, mobile, internet) and innovation for high-quality services, EU citizens can nowadays have access to electronic communications services at affordable price (prices having dropped down over the years).

Cable Europe welcomes the Commission proposal to rationalize the provisions on universal service and to focus on the ‘affordability’ of a basic internet subscription.

On the network mapping obligations that are proposed, Cable Europe stresses that such obligation might put a considerable burden on smaller players (in Eastern Europe for instance there are around 6000 small cable operators. Having to comply with very detailed obligations of network deployment can represent a heavy burden for those parties). Also on network mapping a strict cost-benefit analysis is needed. In this context, one needs to take into account the fact that information regarding network deployment is often of a very sensitive nature. Information on network deployment reveals in most cases a lot about the commercial strategy of the operator. It is unclear how these business secrets will be protected.