



# Policy Statement

## Access Chapter: Electronic Communications Code

Much time and energy has been invested in the negotiations on the Electronic Communications Code. This is the legislation which will underpin Europe's connected future. For its global digital competitiveness it is essential to get the balance right.

Now we are entering the last phase and the access chapter of the Code is on the negotiating table.

Cable Europe calls upon decision makers to be extremely careful in defining the regulatory approach ahead. This is about giving the provider of a service who does not own an end-to-end network the ability to reach customers – via the network of its competitor. Inevitably, this intervention in the market carries far-reaching consequences.

The access chapter will hold the mechanisms which must satisfy twin dynamics: the need to incentivise investments in Gigabit networks, and the need to promote competition.

The twin goals of investment and vibrant competition are fully supported by cable operators, who invest massively in very high capacity networks. In all European markets cable operators are a significant force driving infrastructure competition.

Infrastructure based competition - where companies own their own networks end-to-end - has been recognised by regulators as the most valuable type of competition. It delivers choice to consumers and at the same time urges for efficiency and stimulates innovation and investment cycles.



We strongly believe that the tried and tested 'significant market power (SMP)' regime needs to remain the central pillar of the European regulatory framework allowing companies who do not own a network to compete in the market. This SMP regime has to remain strictly aligned with Union law and the principles of competition law. It gives companies legal certainty to invest.

Departing from the SMP regime should only be considered in exceptional circumstances:

1. The draft article 59.2 (powers of national regulators with regard to symmetric rules) was originally intended as a means to help companies roll-out their networks when wires and cables inside buildings cannot be replicated by a competitor, or in rural areas where it's economically difficult to roll out different networks.

Cable Europe is deeply concerned that the final version of the article will become a market regulation tool which will basically replace the SMP regulatory mechanism without providing the essential safeguards inherent to SMP. This would be a dramatic departure from the current regulatory practice. It can only impact negatively on the future investment decisions of the very companies who are expected to provide the necessary investments in very high capacity networks.

2. The draft article 74 of the Code – as proposed by the European Commission - is a useful addition to the regulatory framework of electronic communications networks. Co-investment models are interesting market developments for reaching the ambitious broadband targets set by the European Commission.



Any regime that promotes co-investment should be closely aligned with the guiding objectives and principles of the Code. This means that the co-investment project should be deployed within a reasonable timeframe included in the market analysis decision. This ensures stimulating investment while the logic of Article 74 remains consistent with the market analysis approach and SMP finding. In the application of this instrument however, care must be taken to strike the right balance. Non-investors should not get the same benefits as investors. This would damage the incentives of potential investors to participate in the co-investment project.

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## **About Cable Europe**

Cable Europe is the trade association that connects leading broadband cable TV operators and their national trade associations throughout the European Union. The regulatory and public policy activities of Cable Europe aim to promote and defend the industry's policies and business interests at European and international level. The European cable industry provides high speed broadband internet, TV services, and telephony to more than 63 million homes in the European Union. [www.cable-europe](http://www.cable-europe).