

Connectivity for a Competitive Digital Single Market

Ten Things that telecoms companies need to know



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The European Commission's package of documents including its Communication – *Connectivity for a Competitive Digital Single Market - Towards a European Gigabit Society* and its *Proposed Directive for establishing the European Electronic Communications Code* were released on 14 September 2016. This briefing highlights the ten most important areas covered in the package, offering a good indication of the direction of travel of the Commission.

1 Gigabit connectivity is the new goal

Forget superfast and ultra-fast broadband, gigabit connectivity is the goal of the future. The Commission's non-binding goal is that every EU citizen will have access to a 100Mbps downlink that is upgradable to gigabit connectivity by 2025. In that context, proposed UK state aid developments which aim for 24Mbps in the UK, and 30Mbps in Scotland look pedestrian in comparison. Even if non-binding, this EU objective, is one that UK politicians may not be sad to leave behind when the UK finally leaves the European Union.

2 Broadband is the new electricity

In its report, the European Commission states that today, internet access is as important for the economy and society, as electricity was for the second industrial revolution. To reflect this importance, the Commission proposes radically reshaping the current universal service obligation including abolishing obligations to provide payphones and directories (although national authorities can still retain these if they wish) and instead focusing on the provision of universal service broadband, and a new focus on affordability for vulnerable people who require broadband services.

3 Public institutions as gigabit hubs

The Commission also outlines its vision that public institutions which act as hubs for people – hospitals,

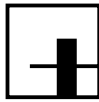
schools, transport hubs, libraries, parks and health centres – should have gigabit connectivity by 2025. Equipping public institutions with Gigabit connectivity would not only allow them to increase productivity but would also allow them to provide free Wi-Fi to visitors. Allowing visitors to experience gigabit connectivity should drive take-up elsewhere. To achieve this vision, the Commission proposes funding interventions for one public centre in each town or community.

4 5G

The final strand of the Commission's vision for a high capacity digital world is that by 2025 all urban areas and all major terrestrial transport paths across the EU will have uninterrupted 5G coverage.

5 Better Coordination of spectrum

In order to expedite the deployment of 5G networks and avoid the failures of the previous 4G rollout across Europe, the Commission proposes far greater harmonisation of spectrum assignments. Part of this involves the telecoms framework providing for minimum 25-year licence duration so that operators in all member states have predictability and the chance to earn a return on their investment in those licences. The proposals also aim to achieve a more consistent process for the granting, amendment and renewal of spectrum licences across the European Union by setting out time frames



and identifying matters which can be taken into account by authorising bodies when granting, renewing or amending licences.

6 Greater recognition of risk and investment

In order to establish the high capacity networks that will achieve the Commission's goals, it proposes a greater focus on risk and investment when imposing access conditions. The Commission is clear, that although the main principles of the existing telecoms framework remain valid, changes must be made in order to allow the framework to provide sufficient incentives for both incumbents and new entrants to make economically viable investments in high capacity networks. The draft recitals and substantive provisions of the Electronic Communications Code therefore reflect the need to take more account of risk and investments and to provide regulatory certainty when setting access conditions and in particular price controls.

7 Wholesale only networks/co-investment

The need to drive new high capacity networks is also recognised in the proposals for dealing with co-investment and wholesale-only networks. Under these, where a wholesale-only network operator has Significant Market Power (SMP), the draft framework limits the access conditions that can be imposed to those requiring services to be provided on fair and reasonable terms and non-discrimination. Dispute resolution provisions may also apply to wholesale-only networks.

8 A new and improved BEREC

Up until now the Body of European Regulators for Electronic Communications (BEREC) has been one of those bodies that has been gainfully plugging away at its tasks but rarely making a splash. The Commission's draft recommendations, if passed will change all that. By revamping BEREC's governance and giving it a raft of new tasks, BEREC will potentially be a force to be reckoned with post these amendments. New tasks assigned to BEREC include:

- Developing the model to assist the Commission in determining the maximum termination rates that can apply across the European Union.
- Formulating the details of the cost model to be applied by NRA's in setting maximum termination rates.

It will also have a role in developing quality of service parameters and measurement methods. BEREC will be in

a position to adopt binding decisions on the identification of transnational markets and have a role in the so called double lock system (of which more below). It will also have a legal personality and a new formal executive. This will prove controversial.

9 Double Lock system

It has always been clear that the Commission dislikes its current restricted role in relation to remedies under the article 7 process. Although it can recommend and cajole, it cannot currently block adoption of a remedy proposed by a national regulatory authority. The proposed double lock system would give the Commission the power to require a national regulator to amend or withdraw a decision on remedies in circumstances where both it and BEREC were in agreement that the proposed remedy was flawed.

10 New definition of Electronic Communications Service (ECS) to deal with issues relating to Over the Top (OTT) and voice services that have arisen from the existing framework

It is proposed that an ECS will cover three different service categories:

1. Internet access services.
2. Interpersonal communications services which will either be number based or number independent.
3. Services consisting wholly or mainly of the transmission of signals, such as transmission services for M2M communications and for broadcasting.

Regulation which is particularly aimed at consumers will apply to internet access services and interpersonal communications services that are number based. Non-number based interpersonal communications services such as *WhatsApp* will be subject to a more limited range of obligations including ones relating to the security of their networks. This is a major change and welcome clarification given the ongoing court disputes e.g. in Belgium and France, although there will still be issues to address as technologies continue to evolve.

For further information or advice on any of the issues discussed in this briefing note, please get in touch with **Gordon Moir** or **AnneMaree McDonough**.