

**COMMISSION PROPOSAL FOR A DIRECTIVE ON ACCESS TO,
AND INTERCONNECTION OF, ELECTRONIC COMMUNICATIONS
NETWORKS AND ASSOCIATED FACILITIES**

UNICE COMMENTS

The regulation of access and interconnection has a major impact on the functioning and competitiveness of Europe's converging communications markets. The success of these sectors depends on the new regulatory regime being able to stimulate competition and foster innovation.

UNICE supports the main proposals that underpin the proposed Access and Interconnection directive. These are:

- ?? existing conditions for regulated access and interconnection should initially be carried over into the new regulatory regime until an assessment has been made as to whether the relevant market is effectively competitive; and
- ?? new conditions for regulated access and interconnection for new forms of access, new networks and/or services must be selected from a proposed menu of obligations. The choice(s) to be made should reflect the type and nature of the identified market distortion that needs to be addressed.

UNICE considers that in both cases, the initial list of product and service markets to be analysed by the National Regulatory Authority (NRA) should incorporate unambiguous timeframes. Furthermore, the markets for which existing regulatory conditions are carried over should be analysed according to the procedures proposed under the new framework. Finally, the proposed analyses should be concluded within 3 months after the adoption of the new framework.

UNICE also supports the stated principles outlined in the directive's Recital under items (4) and (13). These are:

- ?? commercial negotiation should form the basis of access and interconnection agreements, subject to the competition rules of the Treaty;
- ?? the use of ex-ante rules should be limited to those areas where ex-post application of the remedies available under competition law cannot achieve the same results in the same time-scale; (Recital 4)
- ?? in mandating access to network infrastructure NRA's need to balance the rights of infrastructure owners to exploit their infrastructure for their own benefit against the rights of other service providers to access facilities that are essential for the provision of competing services; and
- ?? mandated access that increases competition in the short term should not reduce incentives for competitors to invest in alternative facilities that will secure more competition in the long term. (Recital 13)

Maintaining consistency in stated principles between directives

The effect of the proposed Access and Interconnection directive on the market and the eventual position of the various market players are inextricably linked to the proposals contained in the Framework directive (such as, the initial Decision on relevant product and service markets, the SMP definition, harmonisation procedures, conflict resolution procedures, etc.). UNICE is concerned that there is a risk that the procedures and principles that underpin the Framework directive could lead to outcomes that deviate from the sound principles proclaimed under the Access and Interconnection directive's Recital items (4) and (13). Therefore UNICE emphasises that, where regulation is being imposed in relation to access, the application of the procedures specified in the Framework Directive must pay utmost regard to these principles. UNICE also believes that, in order to preserve the Single Market, obligations relating to access must be applied in a manner which is consistent across the European Union.

Access and "Technology Neutrality"

In line with its comments on the proposed Framework Directive, UNICE endorses the principle of "technology neutrality", but warns that this must be balanced with a respect for competition and a commitment not to seek to extend "old" rules to "new" services. Internet and mobile are examples of sectors with tremendous potential for Europe, both of which have flourished in largely unregulated environments but which could be threatened if subject to the type of access regulation associated with the fixed telecommunications market.

Limiting regulation

UNICE agrees that the regulatory obligations set out in Articles 9 - 13 should form a set of maximum obligations that can be applied to undertakings, in order to avoid over-regulation (as stated in Recital 9). However, the two exceptions to this principle (in Article 8.2), would in practice allow NRAs to go beyond this list of obligations, and apply obligations to any operators. These exceptions would undermine the whole approach of the "Communications Review" regulatory package and should therefore be deleted.

NRA intervention

UNICE is of the opinion that NRA's should not be allowed to intervene in commercial negotiations on their own initiative. The driver for intervention, and the invocation of the relevant NRA power, should at all times be a request by a market player. Where appropriate a NRA should then indicate how they are likely to resolve a conflict.

Access definition

The definition of access should be reviewed so that it is clear and unambiguous. The present definition appears to UNICE too broad and could cause interpretation problems during the transposition time. UNICE therefore suggests reducing the scope of this definition and to focus it on telecom matters.

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UNICE will follow this dossier with close attention and may wish to comment further if developments so require.
