

**TELECOMMUNICATIONS : "1999 REVIEW" PACKAGE
IN SECOND READING**

STATEMENT

UNICE welcomes a number of aspects of the proposed new package. Sector-specific regulation is still necessary to guarantee these goals where markets have not yet reached an effective level of competition.

UNICE supported the original Commission proposals for carefully balancing the need to keep sectoral rules where still needed, while paving the way for de-regulation and a competition law driven approach in future. We also welcomed the Commission's proposal to delegate more powers to National Regulatory Authorities (NRAs) in terms of market analysis and application of regulation, while ensuring appropriate mechanisms to coordinate NRAs decisions, in particular to harmonise the telecom market in Europe. The original Commission proposals (July 2000) offered a balanced approach to meeting these objectives and we continue to urge the European Parliament to support the Commission's original proposals*

Maintaining this balance is essential if the EU is to ensure that investment incentives are not reduced. The potential for extension of regulatory obligations, and to more players, risks reducing the incentive to invest in network infrastructure at a time when market confidence has already been undermined by the effects of the 3G auctions in particular and the more general downturn in world financial markets. The ability of competitive market players to deliver against wider public policy expectations is inevitably constrained by this background.

Lack of certainty

The current proposals could fail to provide regulatory certainty. Despite the existence of Guidelines, businesses and users in many cases will not know how NRAs intend to interpret rules on market analysis, regulatory obligations or how Significant Market Power (SMP) will be defined and applied. The high degree of discretion granted to NRAs may lead to divergent and arbitrary judgements which are not open to effective appeal. As some degree of insurance for industry a full right of appeal is essential (Framework Directive Art.4) on the basis of procedure, substance and merit.

Lack of Single Market consistency

The absence of any effective control mechanism means that NRAs will apply different sets of rules across Member States. The situation may be further complicated by the trend, in the

* see [Common regulatory framework for electronic communications networks and services. Proposal for a directive of the European Parliament and of the Council \[COM \(2000\) 393\]. UNICE comments \(17 November 2000\)](#)

wake of EU competition law reforms, towards varying and inconsistent national jurisprudence on matters of competition law.

There is no obvious benefit to business or users in having to comply with fifteen different sets of rules and about twenty five or twenty seven in the near future, which can only be a barrier to pan-European services, and hence contrary to the aims of the Lisbon Summit. UNICE therefore urges the European Parliament to oppose the Council Common Position on Article 6 of the Framework Directive and support the proposal that the Commission retain the ultimate power to require a Member State to amend or withdraw a proposed measure that would be in contradiction with EU rules.

Risk of over-regulation

Despite the original aims of “light touch regulation”, and the principles expressed in the White paper on Governance, the package as now drafted seems more likely to allow regulation to be extended rather than rolled back.

UNICE welcomes the proposals from Council and Commission which explicitly link the new trigger for regulatory intervention (SMP) with the competition law concept of dominance. We believe however that the concept of “joint dominance” should also be kept as close as possible to competition law practice and jurisprudence, and we are concerned that the inclusion of additional definitions and criteria (Annex II of the Framework Directive) will weaken that link.

The potentially wide application of “joint dominance” could allow the extension of regulation into virtually any market characterised by a relatively small number of operators. UNICE therefore urges the European Parliament to amend Article 13 and Annex II to make clear that there should be no presumption of joint dominance or leverage simply because of certain inherent characteristics of the market, and before a full market analysis has taken place.

Similar concerns apply to the Access and Interconnection Directive. Increased discretion granted to NRAs in application of obligations relating to access could also mean heavier regulation. Rules on network access need to be carefully balanced to reflect the need to stimulate both infrastructure and services competition. The open-ended nature of some of the proposed obligations could undermine the confidence of companies considering investment in infrastructure.

Universal Service Issues

UNICE broadly supports the position taken by Council in relation to the Universal Service and Universal Rights Directive. We welcome the pragmatic approach towards the scope of USO, with the potential for future review. UNICE also supports the need for transparency - there should be a clear obligation on regulators to calculate the net cost of any Universal Service Obligation, and any such cost should be met transparently, via a fund or directly from government.