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UNICE POSITION ON REVIEW OF EU ELECTRONIC COMMUNICATIONS LEGISLATION (THE “2006 REVIEW”)

UNICE welcomes the possibility to comment on the Commissions Communication on the EU regulatory framework for electronic communications legislation (the “2006 Review”). This Review should constitute a centrepiece in the Commission’s measures to safeguard and enhance the competitiveness of the European ICT industry.

Electronic Communications in the Context of the Internal Market

UNICE sees the Internal Market as a cornerstone of Europe’s prosperity and one of its greatest achievements. At the same time action is still needed as the Internal Market remains incomplete and is, to some extent, even threatened.

Within the Internal Market, telecoms liberalisation has been a major success, but inadequate enforcement and widely diverging application of the rules are preventing the full benefits from being achieved.

UNICE has identified some key concepts for the renewed Internal Market Strategy in general, and its approach to the 2006 Review of electronic communications legislation follows these principles, which include:

- **Completion of the Internal Market**, because the integration of European markets has lost momentum.
- **Enforcement** of existing rules and a stronger focus on Member States’ responsibilities
- **Efficiency**, for instance through the limitation of harmonisation to essential requirements and an ambitious and broad programme on better regulation.

Harmonisation should be based on the requirement to resolve discrepancies among different national regulations.

Background to the 2006 Review

Telecommunications, as part of the ICT sector, makes a major contribution to overall productivity and economic growth. It is therefore a key input to the competitiveness of European business and the wider economy. The regulatory framework has a significant influence on the nature of the services available to business, affecting such matters as choice of supply, quality and price, and it has a direct impact on key investment decisions by operators and manufacturers.

Overall Approach

The electronic communications sector is undergoing unprecedented challenges globally, which innovative firms require accelerated capacity to meet. UNICE stresses that Europe needs to maintain a competitive edge in relation to other economic regions such as Asia or the USA, precisely in the area of electronic communication services, which drive productivity and innovation in modern economies. The EU telecoms framework will have to meet these challenges and should be used to make the ICT sector able to deliver on the promise of the Lisbon Agenda.

Europe's businesses require access to modern communications networks and services which offer the bandwidth, quality, resilience and innovative qualities to underpin competitiveness. Network operators need incentives to invest in high-speed networks and services, in a market place where demand is uncertain. Users and consumers more generally are looking for new and innovative services which operate seamlessly across technical devices and platforms. A competitive market will drive innovation, investment and consumer benefit.

The needs of all will be best met in an environment of increasing choice and open competition. This should be characterised by a transition away from the need for detailed consumer regulation such as retail price controls as competition becomes more effective – the more regulation can be concentrated on the genuine bottlenecks, the quicker can be the move to a more open commercial model, in line with the original aim of the Telecoms Framework to relax regulation as the transition to competition evolves. A global level playing field is also necessary so that Europe is able to compete on equal terms with its international trading partners.

Relevant Markets

While UNICE does not take a view on the specifics of market definition, we welcome the proposals to give a spur to de-regulating retail markets as these become competitive. UNICE also sees the necessity of keeping the important wholesale markets (which govern the terms of competitive access in important areas) within the framework. This must still allow deregulation of all markets when justified by competition.

Spectrum Policy

UNICE welcomes the Commission proposals in favour of an increasingly liberalised and flexible market-based approach to spectrum. The market is best placed to make decisions optimising the use of spectrum provided sufficient safeguards exist to prevent unacceptable interference. Europe's businesses will benefit from the availability and choice of innovative wireless communication and broadcast services, with sufficient competition between distribution channels.

The EU needs to ensure a policy framework which supports Europe's technology lead and learns from Europe's success in the mobile sector. This policy should enable NRAs to have the scope to deal with local conditions and legacy issues appropriately,

enabling new services, and recognising the substantial investments already made by existing operators. No additional institutional layer should be implemented. New structures only make sense if they bring about concrete positive effects to those concerned.

An Internal Market for Electronic Communications

UNICE has identified completion of the overall Internal Market as a key strategic goal for Europe. Currently, inadequate enforcement, and widely diverging application of the rules, can prevent the full benefits of the Internal Market from being achieved in electronic communications. Market Reviews are often delayed; the resulting regulatory remedies are applied inconsistently across Member States; and the application of national appeals procedures in some cases in some Member States has the effect of inhibiting decisions by national regulators.

UNICE therefore believes changes are necessary to achieve its vision of an Internal Market which is completed, based on more effective enforcement and improved efficiency.

Improved efficiency - Streamlining the “Market Review” process

UNICE believes one of the concepts underpinning the Internal Market should be improved efficiency, through, for instance, the limitation of harmonisation to the essential requirement of resolving discrepancies among different national regulations, and an ambitious and broad programme on better regulation.

The current system of market reviews, based on national and EU-level consultation has played a positive role in promoting competition around Europe. At the same time, UNICE supports moves to simplify and streamline the market review process and thus reduce bureaucracy within the sector. Removal of unnecessary bureaucratic steps should help lower the regulatory burden and give a positive impulse to regulators and regulated alike. However, the quality of market analysis should not suffer from any streamlined procedure. This is in line with principles of better regulation.

Effective Enforcement - Single Market Consolidation

The current system has not delivered a true internal market, with businesses facing different regulatory approaches in different countries, and UNICE approves the Commission proposal for more action in this area, based on the principles of better regulation and subsidiarity. National Regulators (NRAs) are closest to the market and ultimately should be best placed to make regulatory decisions, but UNICE recognises that NRAs are not always able to deliver the necessary level of consistency and certainty.

The Commission has proposed a ‘Euro-regulator’ as one option for addressing this issue. UNICE does not support this idea: an additional layer of policy or decision-making on top of the existing institutional arrangements is unnecessary and is unlikely to gain acceptance from stakeholders.

The existing European Regulators Group (ERG) is an appropriate forum to consider the inconsistencies of the current approach, and UNICE supports the work currently being done within the ERG in looking at more effective harmonisation. At the same time, the ERG is likely to have limited scope to require changes of behaviour by its own members.

UNICE would not wish to see increased bureaucracy and does not see a justification for an unlimited extension of the Commission veto to cover all aspects of the regulatory remedies which are currently subject to notification. The most detailed market analysis can be done more thoroughly at national level. However, a selective extension, based on the Commission's right to prior notification and approval could be an effective solution in the context of the simplified/reduced notification procedure being proposed. Such an extension of Commission power would have to be part of the overall checks and balances in which the ERG should also have a more prominent role than at present, and with the possibility of greater use of the existing 'Communications Committee'.

To complete action on more effective enforcement, action is needed on appeal procedures. The right of appeal is a fundamental right which companies should retain. Whereas some Member States offer sufficient measures for preliminary injunctions, in other Member States, in some circumstances the use of appeals can delay application of regulatory decisions, and can create uncertainty for market players. In those cases, action on appeal procedures could contribute to a more effective enforcement.

UNICE also notes the suggestion made by DG Competition that a "Sector Enquiry" might be undertaken during 2007.

Other Issues

Consumers' and Users' rights

UNICE agrees with the Commission's decision so far not to extend the scope of Universal Service and we will comment in more detail as part of the planned Green Paper consultation in 2007. UNICE believes that the current concept of Universal Service is increasingly overtaken by the changes in the market, and that ever-increasing competition and choice make the focus on PSTN and payphones less relevant. Governments should fund public policy commitments from public spending and not distort the market.

As far as access to broadband is concerned, UNICE notes the increasing demand from SMEs for higher bandwidth.

Security

UNICE supports measures aimed at increasing business user confidence in the integrity and security of networks. At the same time, it is not clear that there are in fact market failures of the kind which would justify action beyond self-regulation or codes of conduct. Security is a key competitive element of differentiation in the market and

shares the aim of enhancing security as a means for increasing customers' confidence in electronic communications. The current regulatory measures and contributions of the companies provide for a high standard of security. Any proposed measures must be implemented in a manner which is proportionate and subject to proper impact and cost-benefit analysis.

The Commission should clarify further the proposed requirement for providers to notify NRAs when an interruption in the supply of a service occurs. The emphasis should be placed on measures that encourage the raising of industry standards in data management rather than the introduction of requirements leading to additional financial and logistical demands on firms, particularly SMEs.
