

SPECIFIC COMMENTS ON UNIVERSAL SERVICE, ROAMING AND THE TELECOMS REVIEW

Annex to the letter to the Telecommunications Council of 27 November 2008

1. TELECOMS FRAMEWORK REVIEW

BUSINESSEUROPE has previously set out its views on the telecoms framework review in its position of 28 February 2008 (attached). However, in the light of the position taken by the European Parliament on 24 September, we would like to highlight some further points relevant to the discussions.

- **ePrivacy and security**

The views of the European Data Protection Supervisor (EDPS) in relation to defining whether or not IP addresses constitute personal data are in line with the current legal status. BUSINESSEUROPE therefore does not see a need for change.

In relation to the idea of security breach notification, BUSINESSEUROPE agrees with the view of the European Parliament which seeks to define better what may constitute a security breach and how a notification may become necessary. BUSINESSEUROPE asks policy-makers to minimise administrative burden that could arise from this new provision. E-Communications Service Providers in Europe are making strenuous efforts to deal with security issues in cooperation with each other and suppliers and those efforts could be undermined by overly prescriptive regulation. It is our opinion that it would be more beneficial for security aspects in the Review to be more about security objectives rather than about specific technologies or solutions.

- **Copyright and access to contents**

BUSINESSEUROPE wishes to emphasise that the Universal Services Directive should not include references of new contractual obligations in relation to copyright. The inclusion of copyright/intellectual property right is not proportionate and cannot be justified in this sector-specific telecoms legislation. Various initiatives at Member State and EU level seek to elaborate possible solutions, including stimulation of new and innovative business models (as the European Commission Platform on Creative Content Online). Therefore BUSINESSEUROPE considers that currently there should be no new obligations on telecoms operators.

- **Quality of service and net neutrality**

BUSINESSEUROPE wants to highlight that there is no need to create a fresh layer of regulation on top of existing ex-ante regulation of telecoms. In a competitive market quality of service is, along with price, a determining factor and should not be subject to regulation of a general nature, beyond the requirement for transparency that enables users to choose their service provider. The current competitive pressure upon telecoms operators is already sufficient to disqualify those operators who do not offer consumers a sufficient level in the quality of the service provided. On this basis the current framework is already sufficient. Within this competitive framework, it is legitimate for operators and service providers to make differentiated service offerings and to carry out traffic management activities.

BUSINESSEUROPE is concerned that the current proposals risk limiting innovation and investment in quality of service in new networks.

- **Transparency and information**

BUSINESSEUROPE subscribes to the general principle aimed at guaranteeing improved transparency to final consumers. However, we believe that measures related to information on applicable prices and tariffs should not be introduced at EU level, as the European legislator is not best placed to evaluate situations that vary significantly from country to country.

- **Portability**

BUSINESSEUROPE agrees upon the importance of ensuring that all subscribers can retain their number independently of the undertaking providing the service and that a number must be transferred and reactivated within the shortest possible timeframe. However, telecoms operators currently estimate that the foreseen period of one working day is not currently feasible, bearing in mind the necessary technical steps involved in the required procedure.

As mentioned above, the BUSINESSEUROPE's position at annex contains a more detailed assessment of the particulars of the package.

- **Confusion between B2C and B2B framework**

The current proposals envisage the possibility of extending the application of provisions on contracts derived from consumer law also to other end-users, such as micro-enterprises and SMEs. BUSINESSEUROPE recalls the need to maintain a strict distinction.

Consumer protection rules and provisions governing relationships between traders are governed by a very different logic, the former being specifically related to the pursuit of a balance between enterprises and consumers, and the latter based upon freedom of

contract. BUSINESSEUROPE therefore stresses the need to maintain a distinction between B2C and B2B rules and keep their application separate, in line with their underlying rationale.

- **Extension of scope to private networks**

Private and public networks are essentially different from each other, both in terms of user expectation and with regard to their relationship with the provider. In this context, BUSINESSEUROPE underlines the risk of extending to private networks the scope of the legislation applicable to public networks. This would simply create an extraordinary burden on enterprises and providers without leading to any evident benefit in terms of enhanced protection.

2. EUROPEAN COMMISSION'S COMMUNICATION ON THE SECOND PERIODIC REVIEW OF THE SCOPE OF UNIVERSAL SERVICE

In accordance with Article 15 of the directive 2002/22/EC, the European Commission has published the second periodic review of the scope of universal service. This communication focuses on mobile communications and broadband in order to determine if they fulfil the criteria necessary to be eligible to universal service and need to be included in the scope of universal service.

The Commission specifies that if Member States may mandate additional services extending beyond the minimum set of universal service obligations, those additional services when they are not part of the scope of universal service defined by the European directive shall not be considered as a universal service obligation and the financing associated with them must not be borne by market players.

- **Mobile communications**

The ubiquity and affordability of mobile services is the result of the policy of network-based competition between mobile operators which regulators have pursued.

As the Commission states in its conclusions "the competitive provision of mobile communications in the EU has resulted in consumers already having widespread affordable access to mobile communications". BUSINESSEUROPE therefore strongly supports the conclusion that "the considerations for including mobile communications within the scope of universal service are therefore not fulfilled".

Mobile licence conditions mandated network operators to provide a minimum level of geographic and population coverage. Moreover, intense infrastructure-based competition between network operators has in many cases led operators to roll out networks beyond licence conditions, proving that under the current mobile business model, competition is an efficient means for the provision of wide geographical coverage. In particular when large territories and remote and sparsely populated areas

need to be covered, flexible mechanisms for the roll-out of networks, such as sharing schemes between operators or public funds, have proven useful.

Therefore, BUSINESSEUROPE agrees that there is no justification for extending the current scope of universal service to include mobile communications services.

- **Broadband**

The imposition of universal service obligations on providers should be considered only when the delivery of those basic services considered essential for participation in society and already available to the great majority of citizens would not be profitable and is therefore not provided for by the market.

The Commission highlights that broadband networks now reach a very high coverage in most Member States. However, the threshold of use by a majority of consumers to be eligible to universal service has not yet been achieved. The Commission concludes that although broadband is not yet used by the majority of consumers and is therefore not encompassed by the US, the situation does need to be kept under review.

We support the Commission's conclusion and its attention to avoid a digital divide in the context of Information Society. This is a sensitive issue because of the large discrepancies in geographic coverage and use of broadband by the population across the various Member States.

We also support the wider reflection initiated by the Commission to re-examine the concept of Universal Service and to integrate it in a comprehensive perspective, taking into account all the possible mechanisms to ensure a universal geographic and social access to Internet services.

However, we consider that the most efficient mechanism to achieve fast and wide broadband deployment is private investment resulting from competition. In this context, we invite the Commission to consider the risk that an enlargement of the scope of universal service obligations might hamper competition and be a brake on innovation.

- **No mention of other existing components of universal service**

The Communication does not mention the possibility to withdraw universal service obligations such as directory enquiry services or public pay phones. This issue was raised on the occasion of the first review of the scope in 2005. The possibility to withdraw universal service obligations should be reconsidered, taking into consideration the current competition between directory enquiry services and the decrease of public payphones use due to a generalised use of mobile handsets.

3. ROAMING

Regulatory intervention in telecoms 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.

In this context, BUSINESSEUROPE regards the legally binding caps on roaming tariffs for mobile communication as an inappropriate market intervention. It is in the interest of sustainable development of the telecoms sector and the European economy that, also in the context of the current financial turmoil, available capital and investment incentives are preserved in a core sector of the European Economy.

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. In line with the original aim of the telecoms framework, regulation should relax and move to a more open commercial model as the transition to competition evolves.

Although the EU price caps may allow positive financial impact on the end-consumer at first sight, the suggested regulation contradicts with the principles of competition-oriented markets and puts at risk long-term investment in telecoms infrastructures. So far, the prolongation of the existing regulation on voice-roaming, as well as the proposed SMS and data-roaming regulation would set an unjustified precedent.

BUSINESSEUROPE would support a Commission action focused on achieving an effective framework leading to fair competition and price transparency. This would create the adequate conditions for both consumers and the economy at large to benefit from the advantages of a fully integrated Internal Market.