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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Non-paper on the Digital Networks Act (DNA) by Czech Republic, Finland, Ireland, Latvia, Luxembourg and Slovenia

Delegations will find attached a Non-Paper on the Digital Networks Act (DNA) by Czech Republic, Finland, Ireland, Latvia, Luxembourg and Slovenia.

Non-Paper: Competitiveness in Connectivity

(Supported by the Czech Republic, Finland, Ireland, Latvia, Luxembourg and Slovenia)

Summary

We welcome the European Commission's work on digital infrastructure to enhance EU's competitiveness. The upcoming Digital Networks Act (DNA) including a revision of the European Electronic Communications Code (EECC) is an opportunity to secure Europe's future competitiveness. It has the potential to form the bedrock of successful investment and deployment of world class 5G and 6G to end users across the Union.

Therefore, it is vital that any proposed legislative changes to the regulatory framework keep end users at the centre. We must encourage measures that will remove barriers to investment and secure our infrastructure to help Europe become a global digital leader and improve our economic security. Measures which aim to have consolidation as a goal may reduce competition with potential negative effects for the consumer. This outcome must be avoided.

Centring Competition and Consumers

Both the Letta and Draghi reports have suggested that the current electronic communications market is fragmented which is causing lack of investment and that **pan-European operators** should be encouraged to reach scale that would allow them to invest in infrastructure. We do not agree with this assessment and have concerns about how this proposal would affect competition and ultimately consumer choice, as smaller operators will suffer, opening the door to unjustified market consolidation. Regulatory certainty and ease of access to markets may be better achieved through more harmonised EU legal requirements and administrative procedures for **authorisation**. While consideration of consumer rights and necessary consumer protections must be central to any measures proposed. However, the proposal should not interfere with the competences and abilities of Member States regarding law enforcement, and their sole responsibility with regard to national security.

On the wider question of innovative technologies and how they interact with **net neutrality**, balance is required to ensure the ruleset does not impede innovation. The proposal in the Letta report suggesting to clarify the situation through guidelines should be welcomed, and BEREC's guidelines could be updated accordingly. However, we must ensure that we balance the need to preserve the non-discrimination protections for Internet traffic that currently exist, with the need to provide a well-defined space for differentiated services to be innovated.

Regarding accelerating **copper switch off** (CSO), a proposed target date for CSO must be cognisant of national circumstances. Many Member States are at different stages of CSO and as such, one date may suit some Member States more than others. We believe that this transition should be primarily operator led, although we will continue to strongly advocate for as early a transition as possible. As well as that strong safeguards should be in place to ensure end users do not incur additional costs such as, for instance, the levying of wholesale or retail price increases as a means of

incentivising switching to fibre. And there should be particular supports provided to safeguard vulnerable users where they have a dependency on legacy copper-based services e.g. personal alarms. We would also agree with the proposal for a derogation mechanism to protect end users with no adequate alternatives in the case of copper switch-off.

Strengthening the Regulatory Framework

It is important that the EU does not fall into the trap of premature removal of important regulation. The proposal to "refocus" the **Universal Service Obligation** in the recent Call for Evidence requires careful consideration. Implicit in this proposal is the relaxation of USO in the context of service "availability", which has been the primary focus of USO since liberalisation. The proposal appears to be underpinned by the idea that across the EU there is now service ubiquity and so an availability component to USO may be no longer necessary. While this is probably a reasonable assumption when it comes to voice services, it is unclear what quality of service ubiquity the Commission deems adequate for the purposes of broadband? We should also be cognisant of the importance of availability of universal service to microenterprises, small enterprises or not-for-profit organisations as well as availability.

Any proposal to **broaden the scope** of the current regulatory framework should be considered with great care and only once a thorough impact assessment has been carried out. We do not object to the principle of **merging legislative instruments**, but note that the provisions referenced above include both Regulations and Directives which have different legal effects in Member States. Careful consideration would need to be given before moving matters currently provided for in the **EECC Directive into a Regulation**. Absent specific details, the precise intent and potential impact of the proposals is not apparent and cannot be commented on further. To assess the proposal specific details are required, particularly if matters of substance are affected or dispensed with in any proposed merger of legislative instruments.

We remain sceptical that the case for removing ***ex-ante*** regulation from the remaining markets has been proven. Many National Regulatory Authorities (NRAs) continue to regulate markets 1 and 2 where there continues to be a significant market power (SMP). This suggests that *ex-ante* removal is premature. Removal of the remaining *ex-ante* regulation would reduce competition in areas without infrastructure competition and poses a risk to investment. It would remove protection of vulnerable end users from monopolistic price increases and make it more difficult to ensure that copper switch off does not give rise to anti-competitive outcomes. While we share the EU Commission's ambition to deregulate markets, it should only be envisaged where supported by robust, market-specific evidence. It is unlikely that many of the objectives set out in the White Paper would be achievable in the presence of unregulated market power.

Access

We note that to date, **symmetric measures** have been available, including in the European Electronic Communications Code (EECC), the Broadband Cost Reduction Directive and more recently, the Gigabit Infrastructure Act (GIA) to accelerate network

rollout by facilitating access to physical infrastructure assets, avoiding unnecessary and inefficient duplication of physical assets, and lessening burdensome administrative procedures for civil works permits and other requirements. However, such symmetric measures are complementary, and do not substitute for, *ex-ante* SMP-based, regulation.

Symmetric measures may remove administrative and other physical or legal obstacles that hinder network rollout; but they do not address market power. Symmetric measures are already required to be considered under the EECC, as part of the "Modified Greenfield Approach" used for market analyses which require a NRA to take into account non-SMP based regulation already applicable in the market subject to the analysis, as well as SMP-based regulation in adjacent or upstream markets.

Stable and Predictable Spectrum

We believe that the current regulatory framework for electronic communications strikes an appropriate balance between harmonisation and providing Member States national competence for **spectrum management**. Member States benefit from the harmonisation of technical standards, equipment, and spectrum availability as provided for in the current framework. This is important for achieving economy of scale benefits that a member state alone would not enjoy.

We do see a need to review the fitness-for-purpose of the **peer review process** against its existing and intended objectives. However, in our view the case for strengthening the peer-review process has not been made. Other than better clarity around timelines/roadmaps and tighter harmonisation of deadlines to assign spectrum, there would not seem to be a strong case for harmonised allocation mechanisms. It would seem to be a stepping stone towards centralised EU-run auctions which would not benefit smaller Member States.

The peer review process has been effective in achieving its objective as set out in Article 35(1) of the EECC, namely to "discuss and exchange views on the draft measures transmitted" and to "facilitate the exchange of experiences and best practices on those draft measures." In addition, the peer review process is not, and should not be, intended to achieve the same/common approach to spectrum authorisation procedures across 27 Member States where the circumstances vary widely across those Member States.

Long spectrum licenses are conducive to investments and ensure predictability for the market. Thus, sufficiently long licences should be the standard. However, this must be accompanied by regular target milestones and stronger 'use it or lose it' provisions or at least demonstrable evidence of optimal use of the spectrum. Longer licences should also be more ambitious in their network build out conditions. For example, in Ireland's most recent Multi-Band Spectrum Award (MBSA II) auction, several significant coverage obligations conditions were attached to the awarding of the licence. Conditions attached to the use of spectrum rights include amongst other things: a minimum quality of service obligation and coverage obligations in certain bands. The licence conditions aim to ensure fair competition, consumer protection,

and coexistence with other radio spectrum users. We strongly believe that this could be a model for other Member States to follow.

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