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COMMUNICATION FROM THE COMMISSION

**The results of the public consultation on the 1999 Communications Review and
Orientations for the new Regulatory Framework**

EXECUTIVE SUMMARY

This Communication reports to the Council, the European Parliament, the Economic and Social Committee, the Committee of Regions and the public at large on the consultation associated with the Communication on the 1999 Communications Review, and draws conclusions with regard to the content of its forthcoming proposals for the new regulatory framework.

The Lisbon European Council has highlighted the potential for growth, competitiveness and job creation of the shift to a digital, knowledge-based economy. In particular, it has emphasised the importance for Europe's businesses and citizens of access to an inexpensive, world-class communications infrastructure and a wide range of services.

The Communication on the 1999 Communications Review drew attention to the central role played by the communications sector in the economic, social and cultural life of the EU. It highlighted the dynamism of technological and market change in the sector, illustrated by the technological convergence of the telecommunications, media and information technology sectors, and the emergence of the Internet. It reviewed the current regulatory framework for the telecommunications sector, and made a series of policy proposals for a new framework to cover all communications infrastructure and associated services. These proposals covered eight key areas of regulatory policy: licensing and authorisations; access and interconnection; management of radio spectrum; universal service; user and consumer rights; numbering, naming and addressing; specific competition issues; and institutional issues.

Interested parties were invited to comment on the proposals by 15 February 2000. The Commission received over 200 responses, representing a wide range of interests.

The consultation

The consultation highlighted broad agreement in respect of some policy proposals, and differing views in respect of others. **In particular a large majority of respondents were in favour of the following proposals:**

- **maintaining sector specific ex-ante regulation in parallel with competition rules**, with ex-ante rules being rolled back where the objectives are met by the market;
- **establishing in Community legislation those regulatory objectives and principles detailed in the Communication to guide national regulatory authorities (NRAs) in their decision-making at national level;**
- **covering all communications infrastructure and associated services in the scope of the new framework, while ensuring it can take account of the continuing links between transmission and content;**
- **introducing institutional mechanisms to achieve greater harmonisation of regulation in Member States**, while allowing flexibility, for example via provision for self regulation alongside binding legal measures; there was no support for a European Regulatory Authority;
- **extending the use of general authorisations for the provision of communications services and networks**, while ensuring appropriate mechanisms are put in place to manage the use of frequencies, numbers and rights of way;

- **ensuring efficient management of radio spectrum, and establishing a group on radio spectrum policy;**
- **maintaining the current scope of universal service, while ensuring that its scope can be extended where appropriate to keep pace with market and technological developments;**
- **ensuring the availability of local loop unbundling in all Member States;** respondents supported the Commission's short term intention to use Recommendations and its powers under competition rules of the Treaty to encourage local loop unbundling throughout the EU and called for this action to be reinforced by introducing a legal obligation in the new framework;
- **maintaining the current framework for standardisation** (industry-led voluntary standardisation with the possibility to make standards mandatory in the public interest);
- **updating the current Telecoms Data Protection directive;**
- **withdrawing the leased lines Directive once there is adequate competitive supply of leased lines for all users;**
- **setting out rules for defining markets dynamically when considering obligations for access and interconnection;**
- **providing for strong and independent NRAs,** with effective co-operation arrangements with national competition authorities and the Commission.

Areas where there were differing views were as follows:

- **in what areas specific authorisations continued to be justified:** some governments wanted to maintain specific authorisations (requiring prior approval) for rights of way and to have specific rights and obligations for network operators investing in infrastructure;
- **licence fees for funding NRAs:** market players were in favour of funding NRAs out of general taxation; NRAs argued that funding via licence fees helped to guarantee independence from government;
- **spectrum valuation and secondary trading:** market players, users and governments were divided over the use of auctions and the possibility to allow for secondary trading of spectrum;
- the proposal to introduce **two thresholds for asymmetric obligations in respect of access and interconnection – Significant Market Power (SMP) and dominance:** (some argued for SMP as the threshold for ex-ante obligations, some argued for dominance);
- **guidelines for affordability of universal service:** many doubted the value of guidelines, arguing this was essentially determined by national conditions;
- **users' facilities and quality of service:** network operators were generally against obligations to provide facilities like **caller location for emergency calls, per call tariff transparency;** and against **NRA intervention on quality of service issues;** consumer and user representative organisations and regulators were generally in favour;
- **number portability for mobile users:** the majority of mobile operators were against such an obligation, but some mobile operators argued in favour; users, fixed network operators and some NRAs were in favour of these facilities.
- **institutional arrangements:** while a large majority were in favour of the proposed new Communications Committee and High Level Communications Group, many sought

clarification of their respective roles; some Governments argued existing structures were sufficient.

Conclusions for the new regulatory framework

The new regulatory framework will be composed of a framework directive, together with four specific directives covering licensing and authorisations, access and interconnection, universal service consumers' and users' rights, and telecoms data protection. The key considerations on which the Commission will base its preparation of these proposals are as follows:

- incorporating the **principles and objectives** set out in the Review Communication, as appropriate, in the new framework, and require national regulators to follow them in their decision-making at national level;
- covering all communications infrastructure and associated services in the **scope** of the new framework, while making appropriate provision for the links between transmission and content;
- moving to an **authorisations** system based on the use of general authorisations to authorise all communications networks and services; specific rights of use would be granted for spectrum and numbering resources;
- **modifying the notion of Significant Market Power** to base it on the concept of dominant position, calculated in a manner consistent with competition law practice.
- introducing an obligation on undertakings with significant market power to provide unbundled access to their copper local loops;
- establishing **dynamic procedure for defining markets** where ex ante regulation remains essential; defining the obligations NRAs can impose on SMP operators in respect of **access and interconnection**, with strong co-ordination procedures at European level to safeguard the single market;
- **maintaining existing obligations for conditional access systems**, with a review procedure to consider whether such obligations should be relaxed or possibly extended to other gateways (such as Application Program Interfaces and Electronic Programme Guides), on the basis of an analysis of the market;
- ensuring **user and consumer rights** and maintaining current scope of **universal service**, while introducing procedures to review and update its scope as appropriate in the light of technological and market development and the objective of social inclusion;
- introducing **obligation on mobile operators to offer number portability** to users;
- allowing Member States to introduce secondary trading of radio spectrum, subject to appropriate safeguards at Community level;
- introducing access to **caller location information for calls to emergency services** (including calls to the European emergency number, <112>);
- **updating existing Telecoms Data Protection directive** to ensure that data protection rules in the communications sector are technologically neutral and robust.

Next steps

The Commission will issue five proposals for directives in June 2000. The Lisbon European Council called for these proposals to be adopted as soon as possible in the course of 2001.

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1. INTRODUCTION

The Commission's Communication on the 1999 Communications Review¹ builds on the achievements of the liberalisation of telecommunications and the regulatory framework established to oversee competition and other public interest objectives. The aims of the proposed changes to the present regulatory framework were fivefold: to promote more effective competition; to react to technological and market developments; to remove unnecessary regulation and simplify associated administrative procedures; to strengthen the internal market; and to protect consumers.

The communications sector plays a key role in the economic, social and cultural life of the EU. New communications services and in particular the development of the Internet are revolutionising the way people communicate, and the way we do business. This revolution has been driven by the technological convergence of telecommunications, media and information technology sectors, and the policy of liberalisation and harmonisation at EU level has accelerated this phenomenon.

In this context, it is vital that any regulatory framework for the communications sector sustains and drives forward these developments. Experience so far has demonstrated that the regulatory framework can best do this by facilitating the development of effective and vigorous competition at all levels of the market, while at the same time defining and safeguarding key public interests. The existing regulatory framework for telecommunications has achieved this balance, but its very success in unleashing competition and innovation means a new framework is now required.

This Communication does not set out a specific regulatory framework for the Internet. But it does aim to facilitate vigorous competition and innovation in the networks and services which make up the Internet, and over which the new knowledge economy is going to be delivered.

The Communication took as its starting point the results of the convergence consultation and in particular one of its key messages that there should be a more horizontal approach to regulation with homogenous treatment of all transport network infrastructure and associated services, irrespective of the types of services carried. The Communication proposed that the future regulatory framework should cover all communications infrastructure and associated services, whereas services carried over that infrastructure, e.g. broadcasting services, or Information Society services would be outside its scope. This proposal was therefore based on the distinction between the regulation of transmission and the regulation of content.² It set out the objectives and principles that would underlie the new framework. Finally it made a number of policy proposals in eight areas: licensing and authorisations; access and interconnection; management of radio spectrum; universal service; user and consumer rights; numbering, naming and addressing; specific competition issues; and institutional issues.

Recognising that the policy issues at stake are vital for Europe, the Commission sought the views of interested parties on the policy positions proposed in the Communication over a three month period running up to 15 February 2000.

¹ Towards a new Framework for Electronic Communications Infrastructure and associated services: The 1999 Communications Review COM (1999) 539 final

² See Commission Communication on the principles and guidelines for the Community's audiovisual policy in the digital age, COM (1999) 657 final, section 3(2)

2. THE RESULTS OF THE PUBLIC CONSULTATION

More than 200 responses were received, from a wide range of interests, from inside and outside the EU. A list of respondents can be found in the Annex to this Communication³. In addition, over 550 people attended a two-day public Hearing held by the Commission on 25 and 26 January 2000.

This section summarises the responses received to the policy proposals set out in the 1999 Communications Review.

2.1. Objectives, principles, design and scope of the new regulatory framework

2.1.1. Regulatory objectives and principles

There was general agreement on the appropriateness of the objectives and principles set out in the Communication. It was considered that requiring regulators to take account of these objectives and principles in their day-to-day actions would contribute to more consistency of decision-making across Member States, with consequent benefits for the single market. There was broad support for setting out the objectives and principles explicitly in Community legislation, although there was some concern that the objectives and principles were too general to be of use in testing the validity of decisions by national regulators.

Many telecoms operators felt that since the proposed regulatory principles could conflict with one another, there was a need to give clear guidance to regulators as to the order of importance of these principles. Many of these argued that the principle of minimum necessary legislation should be the overriding principle.

One principle on which there was broad agreement was that regulation should aim to be technologically neutral. There was general agreement that equivalent services should be regulated in an equivalent (although not necessarily identical) manner. Thus communications services using Internet Protocol (IP)-based networks should for example be treated in the same way as the same services carried over cable TV networks. But many commentators (in particular telecoms operators) were concerned that technological neutrality could be used as a tool for increasing regulation, extending regulation from one market into others not previously regulated, with the risk of creating disincentives to invest.

2.1.2. Design of the regulatory framework

There was a broad consensus in favour of the Communication's intention to introduce more flexibility into the regulatory framework by increased use of instruments such as Recommendations and industry self-regulation (e.g. codes of conduct). It was felt however that such measures were unlikely to be effective unless they were based firmly within a legal framework which gave all stakeholders means of redress should the solutions reached not be satisfactory. There was also general agreement that such non-binding measures would not be appropriate to deal with all issues. In particular, where there were issues related to market power, such measures could not be expected to be effective.

Many respondents felt it was important to separate Recommendations, which were non-binding on Member States but often resulted in binding measures at national level, from

³ The comments can be found on the Commission's ISPO website, at <http://www.ispo.cec.be/infosoc/telecompolicy/review99/comments/comments.html>

industry codes of conduct, which by their nature were not legally binding. There was also some concern expressed that the increased use of such measures could have the effect of bypassing parliamentary scrutiny of regulation in the sector, and calls for procedures to ensure that the European Parliament was kept informed of developments.

2.1.3. Scope of the regulatory framework

There was a broad consensus that the new regulatory framework should cover all communications infrastructure and associated services, building on the conclusions of the convergence consultation⁴. It was generally felt that this would help to make the new regulatory framework more robust and capable of dealing with the challenges of rapidly developing markets and technology.

Many commentators, in particular broadcasting interests, stressed that any new framework should recognise the continuing links between transmission and content, and in particular that some services (e.g. Electronic Programme Guides - EPGs) raised issues that would need to be addressed in the framework of content regulation.

Some commentators identified problems with the working definitions adopted in the Communication, in particular in relation to “associated services” at the margin of the transmission/content division.

2.2. Licensing and authorisations

2.2.1. Increased use of general authorisations

Almost without exception, operators, manufacturers, users and public authorities supported increasing the use of general authorisations. There were differing views however on what circumstances justified the use of specific authorisations. The overwhelming majority of commentators agreed that general authorisations were the most appropriate tool for authorising the provision of services. A large majority was also in favour of using general authorisations for fixed networks, although a few regulatory authorities, and certain operators who already had licences, argued that specific authorisations were necessary for the operation of fixed network infrastructure.

The majority of operators and manufacturers argued that specific authorisations were justified for the use of radio spectrum (although satellite operators took the view that it was only where frequency bands were not harmonised that specific authorisations were necessary). Some operators and manufacturers were less convinced that specific authorisations were justified for the use of numbering resources, arguing that as long as numbering plans were properly managed, there was no scarcity and thus no justification for specific authorisations.

Governments and telecoms regulators were strongly in favour of retaining specific authorisations for frequency and numbering resources, which they considered necessary to ensure the efficient use of these resources. Some also argued that specific authorisations were necessary to govern the granting of rights of way, because of the need for proper oversight of these rights. Certain operators were also concerned that without a specific authorisation to demonstrate to local authorities that they had rights of way, their ability to roll out their

⁴ Commission Communication on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation – Results of the Public Consultation on the Green Paper COM(97) 623

networks would be constrained. Certain operators, in particular cable operators considered that the administrative requirements currently imposed by some local authorities were too burdensome, and argued that such requirements should at least be transparent not discriminate between incumbents and new entrants.

The proposal to separate service and spectrum authorisations found broad support, in particular with telecoms operators, who were strongly in favour of regulators being obliged to identify those licensing conditions applicable to each authorisation and separating them accordingly. Comments from terrestrial broadcasters and their regulators were somewhat less favourable, questioning whether such separation was feasible in practice.

2.2.2. Fees and charges

Telecoms operators were generally critical of the current regime governing fees charged for licences by National Regulatory Authorities (NRAs). The criticisms focused mainly on a lack of transparency in the system, arguing that there was little or no way in which an operator could judge whether the fee being charged truly reflected administrative costs. There was general support for the proposal to limit such fees to “justified and relevant” administrative costs, as well as for the proposal to issue Commission guidelines on fee levels and benchmarking. Some operators went further, arguing that such charges acted as a tax on the telecoms sector, and calling for the activities of NRAs to be funded out of general taxation.

Most national authorities felt that levying charges from the sector was necessary to ensure that NRAs had sufficient resources to carry out their tasks effectively. But they sympathised with the need to improve transparency and were prepared to consider proposals to that end. Regulators and governments were divided on the need for Commission guidelines. Some were supportive, recognising the lack of harmonisation under the current regime. Others were prepared to consider recommendations on best practice for elements to be included in fees, but felt recommendations on benchmarking went too far.

Some NRAs also raised the question of how sufficient funding could be secured in the context of a general move towards the use of general authorisations.

2.2.3. Harmonisation/simplification of licence conditions

There was general support from users, operators and national authorities for increased harmonisation of licence conditions across the EU. Operators argued that the current variation across the EU was harmful to the development of a true single market.

2.2.4. Internet

The majority of respondents, including regulators and most operators, argued that the Internet should be regulated as a communications network like any other. There was however a minority of operators who considered that the Internet should not be regulated at all.

2.3. Access and interconnection

The majority of respondents were in favour of continuing ex ante rules to safeguard the development of competition, at least in the short term. They supported the Commission’s general principle that regulation should be reduced as competition increased. But they were not convinced in all cases that the detailed proposals made by the Commission were ideal.

2.3.1. Access to infrastructure

The issue of access by service providers to the networks and facilities owned by operators elicited the majority of comments from respondents to the consultation. There was general agreement that the issue was a key one for the future framework, as the development of broadband platforms opened up opportunities for a wide variety of services to be provided on these platforms. There was less consensus on how the new framework should deal with the issue.

The Communication proposed that regulatory obligations would vary as a function of market power. Where an operator was ‘dominant’ they would have an obligation to meet all reasonable requests for access, at cost-oriented prices and on a non-discriminatory basis. Where an operator had ‘significant market power’ (SMP), there would be an obligation to negotiate access, with reserve powers for regulators to intervene where there were disputes. The vast majority of commentators could accept the principle of regulated access to infrastructure where there were issues of incumbency to be addressed. Thus there was a broad consensus in favour of unbundling the incumbent’s copper local access networks . It was argued that there were unlikely to be widely available alternative infrastructure to the local access network of the incumbent telecoms operator in most geographical areas in the short to medium term.

The issue of access to other infrastructure was more controversial. Mobile operators argued that the mobile market was competitive, and therefore that there was no market failure which would justify the imposition of regulated access for service providers. They pointed to the fact that commercial agreements were already being reached with service providers in some countries. They emphasised the level of investment made by mobile operators in rolling out networks and argued that regulated access would undermine these investments.

Service providers⁵ contested this point, arguing that the level of return mobile operators were currently making on their investment was more than enough to make a reasonable profit for a service provider and network operator. Users also supported mandated access to mobile networks in certain circumstances, arguing that the current market structure was nationally focused, with inflated international roaming charges. Mobile operators were refusing to conclude virtual private network deals with business customers, and forcing them to pay the high roaming fees. The entry of service providers could be a way of breaking down this inefficient structure.

Cable operators were concerned at the possibility of open access rules being applied to their networks, arguing that this could harm the incentive to invest in their networks. The cable industry could not survive on a “transport only” basis, but needed commercial freedom to package services, and control over associated services like conditional access systems.

There was criticism of the introduction of two thresholds for regulation both from industry and regulatory authorities, arguing it was confusing and hard to justify. Network operators tended to favour using a threshold based on the competition law concept of dominance to impose any regulatory obligations, arguing that it was only at this threshold that there was demonstrated market failure to justify ex ante regulatory obligations. Service providers, as well as most regulatory authorities, favoured the use of the existing threshold of significant market power (SMP), arguing that a threshold of dominance would not be sufficient to

⁵ Service providers are understood here as operators who do not have a network of their own.

safeguard competition in many markets. Broadcasting interests generally preferred further evolution and strengthening of access on “fair, reasonable and non-discriminatory terms”.

There was also much criticism of the proposal to impose an obligation to negotiate access on SMP operators. New entrants argued in favour of maintaining an obligation to provide access, and considered an obligation to negotiate would not be taken seriously by operators with SMP, and therefore be ineffective. Others – including cable operators - argued that the prospect of regulatory intervention where negotiations broke down meant that an obligation to negotiate access would in practice have the same effect as an obligation to provide access, since service providers would not negotiate seriously, but wait for the regulator to impose a price.

2.3.2. Carrier selection and pre-selection for mobile

There was no consensus on the proposal to mandate carrier selection on mobile operators with SMP. Operators were divided. Mobile and incumbent fixed operators were generally opposed to such an obligation, arguing it was not justified given the extent of competition in the mobile market. Users and new entrant operators were generally in favour, in many cases arguing that the obligation for carrier selection and pre-selection should be imposed on all mobile operators, not only those with SMP. Similarly, some regulators were in favour of imposing this obligation, while others thought it was premature to do so.

Several regulators argued that carrier-selection and pre-selection were forms of access, and thus that these issues should be dealt with in the proposed access framework. Some also questioned the distinction drawn in the Communication between carrier selection and pre-selection.

2.3.3. Interconnection

There was broad consensus that primary interconnectivity rules of the current regulatory framework remained valid in the new framework and thus that the obligation and right of all parties to negotiate interconnection, as well as regulatory powers of dispute resolution should be maintained. There was also agreement among most commentators that the pre-definition of markets for interconnection was unlikely to be durable in the long term and therefore that more specific market definition was necessary (e.g. originating traffic, transit traffic, and terminating traffic).

Opinions were divided on the extent to which asymmetric obligations in respect of interconnection remained necessary. Some incumbents argued that the incentives to interconnect were the same for all market players, and therefore equivalent obligations should apply to all. New entrants and regulatory authorities disagreed, arguing that the incentives, especially in call termination, remained fundamentally different because of the ubiquity of the incumbent’s network.

As with the access discussion, there was disagreement over the criteria for applying cost-orientation and non-discrimination obligations to operators with market power. Regulators and new entrants generally argued in favour of retaining an obligation to provide interconnection at cost-oriented prices for all SMP operators. Incumbents and other larger operators supported the proposal to impose such obligation only on operators who were dominant on the relevant market.

2.3.4. *Local Loop Unbundling*

The overwhelming majority of operators and manufacturers, user and consumer interests and regulatory authorities were in favour of including an obligation in the new regulatory framework on incumbent fixed network operators to unbundle their copper local access network, to drive forward the development of broadband Internet services in Europe. The Commission's Recommendation⁶ on this issue also found broad support. Some commentators however stressed the importance of ensuring that the implementation of local loop unbundling did not have the effect of discouraging investment in alternative local access infrastructure.

2.3.5. *Access to broadcast infrastructure and must carry rules*

Broadcasters saw a need to maintain the obligations in the TV Standards Directive⁷ for all suppliers of conditional access services to grant access on fair, reasonable and non-discriminatory terms. Many owners of such infrastructure also supported such an obligation. Some, particularly public broadcasters, also argued that this obligation should be extended to other facilities associated with access to end-users, such as Application Program Interfaces (APIs) and Electronic Programme Guides (EPGs).

Public broadcasters were also concerned that the proposals on access could constrain their ability to gain access for their content to suitable infrastructure at a reasonable price. They argued that if they were forced to pay large sums, this would have implications for their ability to invest in content.

Public broadcasters and consumer groups argued that there remained a need for 'must-carry' rules for certain public interest content in a digital environment. Indeed, such rules became much less onerous in a digital world, because of the reduction in scarcity of transmission capacity. Regulators and operators agreed that a continuation of 'must-carry' rules would be appropriate. But many cable operators considered that 'must-carry' needed to be reassessed, and in particular stressed the need for such rules to be justified, proportionate and subject to appropriate remuneration.

2.3.6. *Interoperability and standardisation*

There was broad support for the Commission's proposal to build on the current arrangements for industry-led standardisation in telecoms, and to extend such rules to cover all communications infrastructure and associated services (including digital television) in order to develop proportionate means of ensuring interoperability. Several broadcasting organisations noted that global developments would need to be taken into account in digital television standardisation. Public broadcasters, consumer interests and regulators all argued in favour of increased interoperability, but without agreeing how best to achieve it. Proposals included declaration of key interfaces under non-disclosure agreements, imposition of the common interface, and accelerated or compulsory use of the Multimedia Home Platform (an open architecture for multimedia information including digital television, developed by the Digital Video Broadcasting (DVB) Group).

⁶ Commission Recommendation on Unbundled Access to the Local Loop COM

⁷ Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals (OJ L 281/51, 23.11.95 "the TV Standards Directive").

2.3.7. *Costing and pricing of interconnection and access*

There was broad support for the Commission's intention to use Recommendations to specify specific pricing methodologies that could apply to particular situations. But some commentators disagreed with the Commission's assumption that different pricing methodologies might be appropriate in different situations. They argued that long run average incremental cost (LRAIC) should be the base methodology for setting regulated prices in all cases.

2.4. **Management of scarce resources**

2.4.1. *Radio spectrum policy*

All stressed the importance of radio spectrum to the communications sector. All recognised the need to balance the competing needs of commercial and non-commercial usage of spectrum. Industry and user groups agreed with the Commission's proposal to establish a group on radio spectrum policy to ensure that a pan-European approach to radio spectrum policy across all sectors relevant to Community policies. There was strong support for greater harmonisation of spectrum usage across the EU, using the technical expertise, where appropriate, of existing bodies such as CEPT to achieve this.

These issues were addressed in the Communication summarising the results of the consultation on the spectrum Green Paper⁸, and the forthcoming proposal for a Decision on radio spectrum policy will include the establishment of the group on radio spectrum policy, and measures to improve harmonisation of spectrum usage. The Communication underlined the need for action at Community level to achieve a harmonised and balanced approach on the use of radio spectrum in particular in the areas of communications, broadcasting, transport, research and protection of human health, in order to ensure such use respects internal market principles, and to protect Community interests at international level.

2.4.2. *Spectrum valuation: administrative pricing and auctions*

As the Review Communication recalled, the current licensing framework permits Member States to use auctions and administrative pricing as a means to encourage the efficient use of scarce resources, including radio spectrum. The Communication proposed to maintain this option for Member States, but not to make it mandatory. Although the Review Communication emphasised that there were different measures available to Member States with regard to spectrum valuation, respondents concentrated almost exclusively on auctions.

As was clear in the consultation on the Radio Spectrum Green Paper⁹, there are differing views among all interested parties as to the desirability of auctions. The majority of industry commentators expressed themselves against the use of auctions. They claimed that auctions had various disadvantages; for example that auctions increased prices for end-users; acted as a disincentive to investment; and harmed European industry vis à vis its global competitors, especially in the mobile sector. User representatives were generally opposed to auctions, as were broadcaster interests, whose main concerns related to the capacity of broadcasters to

⁸ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *The Next Steps in Radio Spectrum Policy – results of the public consultation on the Green Paper*, COM(1999)538.

⁹ *Green Paper on Radio Spectrum Policy in the Context of European Community Policies such as Telecommunications, Broadcasting, Transport and R&D*, COM(1998) 596, 09.12.98.

maintain investment in content if auctions were imposed on them. Telecoms operators were concerned that auctions would be applied to their sector but not to competing ones.

On the other hand, other industry commentators were in favour of auctions. Some argued that auctions were the fairest way of deciding between competing bids for spectrum. They also argued that auctioning encouraged efficient use of spectrum, as long as they were properly designed to avoid speculation and hoarding.

Regulators and governmental authorities were also divided on the merits of auctions. But all argued that individual Member States had the right to decide on the basis of subsidiarity what assignment mechanisms were appropriate in its particular territory.

Whatever the assignment mechanism chosen, a large majority of industry respondents argued in favour of ring-fencing revenues from spectrum charges for the purpose of increasing spectrum efficiency.

2.4.3. Secondary trading

As with spectrum valuation, secondary trading of spectrum divided the industry. A larger proportion of commentators was in favour of secondary trading, especially where spectrum had been auctioned, and where there was proper regulatory supervision of transactions with safeguards against speculation and anti-competitive concentration. Broadcasting interests were generally opposed to such a policy.

Regulatory authorities took broadly the same line as with spectrum valuation. Although views as to the merits of secondary trading differed between Member States, there was broad support for allowing regulators to choose whether to permit secondary trading of spectrum in certain bands. But many stressed the need for any such system to take place only with monitoring by the regulator. Governments still had a duty to ensure that the radio spectrum was properly and efficiently managed.

2.4.4. Pan-European harmonisation of spectrum licensing/assignment

There was some support from industry for greater harmonisation of licensing and assignment mechanisms across the EU, particularly from the satellite sector for which national licensing is seen as an unnecessarily burdensome and time consuming exercise which runs counter to the economic and technical model of satellite communications. Member States, on the other hand, were generally opposed, arguing that spectrum assignment was a matter of national competence.

2.5. Universal service

2.5.1. Scope

Operators, almost without exception, and many regulators and Member States supported the Commission's proposal to maintain the current scope of universal service. Some operators even favoured reducing the scope of services included under a universal service obligation. But many also recognised that the concept had to keep pace with market and technological developments, and thus that it should be flexible and capable of amendment in the future. Nonetheless, many operators warned that an obligation for periodic review should not become a *de facto* extension.

Users and regulatory authorities argued strongly that universal service was an essential tool in order to combat social exclusion. They also agreed that at this stage, there was no need to extend the scope, and supported the proposal to establish criteria for periodic review.

There were very few services proposed by respondents as immediate candidates for inclusion in the scope of universal service in the new framework. Consumer organisations called for extension of the scope to include email and web addresses for all. One regulator suggested that consideration should be given to including mobile telephony in the scope of universal service for certain disadvantaged groups, e.g. disabled. But the vast majority of commentators agreed with the Commission's analysis that at this stage it would be counter-productive to include broadband access within the scope.

2.5.2. Financing

Telecoms operators were generally opposed to the use of sectoral financing schemes for universal service. They argued that where regulators imposed obligations for political/social reasons, any such activity should be financed from general taxation rather than via contributions from operators. There was broad support for other means, such as public tendering procedures and pay-or-play, because such methods were seen as intrinsically fairer.

Regulators and national governments argued that Member States should continue to have the option of introducing financing schemes, particularly in the light of impending enlargement to central and eastern European countries. Some argued that individual countries should be able to impose universal service obligations according to national conditions.

2.5.3. Affordability

Views were divided on the proposal to define guidelines on affordability at European level. Some operators and Member States felt that such a proposal was impractical, because the criteria on which affordability depends are essentially defined at national level. So any such European guidelines would be meaningless, and possibly dangerous. Others felt that an attempt to define affordability at European level would be helpful in ensuring that all European citizens had access to truly affordable communications services. One candidate country drew attention to the particular problems faced by countries from central and eastern Europe in seeking to ensure affordability.

2.6. User and consumer rights

2.6.1. Protection of personal data and privacy

The majority of commentators agreed that a technological update of the Telecoms Data Protection Directive¹⁰ was useful.

Nevertheless, some commentators, particularly those representing industry interests, felt that since there was already horizontal legislation in this field (i.e. the general data protection

¹⁰ Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector . (OJ L 24, 30.1.98, p1 "the Telecoms Data Protection Directive")

directive¹¹), sectoral legislation was superfluous. Some suggested that a sector code for communications under the general directive would be a more flexible instrument than the existing sector-specific directive.

Others, particularly regulators, agreed with the Commission that the current Telecoms Data Protection directive was in need of amendment, in particular to clarify those areas of the directive which have caused problems for Member States in implementation.

2.6.2. European Emergency Call Number (<112>)

Member States, regulators and consumer groups were in favour of a requirement for caller location for emergency calls (including to the European Emergency Number) being imposed from 1 January 2003.

Many network operators raised concerns about the imposition of such a requirement. In particular, some questioned whether the timescale for implementation was realistic. Some pointed to the danger of regulating in this area when operators were already preparing to introduce such a capability. Others argued that such an obligation would be costly, and would have important limitations. There were also calls for some form of pan-European co-ordination among industry players on its implementation. There was general agreement among operators that any such obligation imposed in the public interest should be funded from the state budget.

2.6.3. Complaint handling and dispute resolution

There was general support for ensuring that users and consumers had access to simple, inexpensive complaint handling and dispute resolution procedures, and that the basic principles of such schemes should be set out at European level. User and consumer interests were broadly in favour of the Commission's proposal to give the High Level Communications Group powers to resolve cross-border disputes. Regulatory authorities were less convinced, arguing instead that bilateral agreements between NRAs would be more appropriate. Some Member States were also concerned at giving quasi-judicial powers to an advisory body.

2.6.4. Tariff transparency

There was broad support for increasing tariff transparency for consumers from all quarters. But there were differences of opinion about how best to achieve this. Operators were generally opposed to regulatory obligations related to per-call tariff transparency. They argued that the nature of competition was such that operators had a direct interest in ensuring that consumers were well informed about the price of the services they offered. They believed that the implementation of per-call tariff information could ossify tariff structures and make tariff innovations harder to implement. But many were prepared to consider self-regulatory solutions to increase transparency.

Regulators and user and consumer interests were concerned to ensure that consumers had accurate and transparent information about tariffs. They called for the various options

¹¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281/31, 23.11.95 "the General Data Protection Directive")

available, including per call tariff information, to be explored further before taking a decision to impose any one technical solution.

2.6.5. Quality of service

Operators argued that in a competitive market, quality of service was not an issue that should concern regulators. Quality was one of the issues on which operators would compete. They disagreed with the Commission's proposal to maintain reserve powers for regulators to intervene.

Regulators argued it was necessary to retain such powers, in order to be able to protect consumers.

2.6.6. Recommended and mandatory services

There was broad support for the proposal to withdraw the Leased Lines directive¹² once there was sufficient competition in their provision. Most agreed that there would be sufficient competition to justify withdrawal by the time the new framework came to be implemented. But some operators were concerned that any decision to withdraw the provisions of the Leased Lines directive should be taken on the basis of an analysis of the degree of competition at the time.

2.7. Numbering, naming and addressing

2.7.1. Number portability for mobile

User and consumer interests were strongly in favour of the imposition of number portability for mobile users. They argued that particularly for business customers, the absence of portability was having the effect of locking in consumers to one particular network. They also argued that number portability was not simply a competition measure, but a "user right".

Regulators were generally also in favour of imposing this obligation. The regulators in those Member States where it had already been implemented argued that it was working effectively.

Many mobile operators (in particular those operators first licensed in their national markets) were opposed to the imposition of an obligation to impose number portability. They argued that number portability was a measure designed to address deficiencies in competition in the fixed market; it should not be imposed on a competitive mobile market. They also argued that the costs of implementation would be very substantial, and disproportionate to the benefit likely to accrue from the measure.

Other mobile operators, most of which were new entrant operating GSM-1800 networks, was however in favour of the imposition of the obligation. In particular, some new entrant operators in Member States where number portability has already been implemented argued that they had benefited from its imposition. They acknowledged that the transitional means of implementation were not ideal, but that with the use of intelligent network platforms, implementation would become easier.

¹² Council Directive of 5 June 1992 on the application of open network provision to leased lines (92/44/EEC; OJ L165/27, 19.06.92), as amended by European Parliament and Council Directive 97/51/EC, (OJ L 295/23, 29.10.97 "the Leased Lines Directive")

2.7.2. Interoperability of national Intelligent Network databases

Several Member States and regulatory authorities echoed the concerns expressed in the Review Communication that insufficient steps were being taken to ensure that national I/N databases for number portability were interoperable. They argued however that at this stage, action should focus on encouraging voluntary interoperability, rather than imposing a regulatory obligation.

2.8. Specific competition issues

2.8.1. Market definition

The current regulatory framework for telecommunications defines specific markets for regulatory purposes in the legislation. The Review Communication took the view that this approach would not be sustainable in any future framework as markets would be evolving ever more quickly. The Commission therefore proposed that national regulators should have responsibility for defining markets for the purposes of ex ante regulation, on the basis of Commission Recommendations.

Most commentators agreed with this approach in principle, although some argued it also created the potential for divergence of regulatory decision-making across the EU. In this context, the importance of Commission Recommendations was emphasised, as well as the need for effective co-operation between NRAs and national competition authorities. Most industry commentators welcomed the Commission's signal that it regarded call origination, transit and termination as separate markets, with differing levels of competition in each. Some new entrants however raised concerns that the new regime would create the potential for leverage by a dominant operator of its market power from one market to related markets.

There were also concerns that NRAs might seek to use market definition as a means of regulating a particular situation, for example, by defining the market very tightly in order to ensure an operator had a large enough market share to justify regulation. Others expressed more general concerns over the methodologies used for market definition.

2.8.2. Significant market power and dominance

There was general agreement that ex ante regulation remained necessary as a proxy for competition in those markets where competition was not firmly established. Some argued that where there was competition in a given market, there was no need for asymmetric obligations to be imposed. However, new entrants were concerned that even where a market was competitive, incumbents might be able to leverage market power from other uncompetitive markets into that competitive one, allowing them to compete unfairly with new entrants.

But most commentators disagreed with the Commission's proposals to introduce two thresholds for regulation. Most argued instead for one, but there was no consensus on which one. Fixed new entrants and most regulators called for the obligations currently applicable to SMP operators to be maintained, arguing that if regulatory obligations such as cost-orientation were imposed only on dominant operators, new entrants would face real difficulties competing with incumbents. They also argued that in markets where there was joint dominance but where no player was dominant on its own, regulators would have no tools to combat that market power. Several commentators raised concerns about the measurement

of market share, pointing out that where it was measured by value, incumbent operators' market share was far lower than where measured by volume.

Supporters of using the concept of dominance as a threshold for ex ante regulatory obligations argued that focusing on dominance was the only way for the new framework truly to reflect its objective of regulating only where necessary. Only where an operators was dominant could ex ante regulation be justified to safeguard competition. They argued that the SMP notion gave regulators too much latitude to intervene unnecessarily in competitive markets.

Broadcasters generally favoured an approach that imposed obligations on all infrastructure providers to offer access on fair, reasonable and non-discriminatory terms.

Some commentators were unhappy with using the term "dominance". They thought that using this concept in ex ante regulation would invite comparisons with competition law and could lead to divergent jurisprudence between competition rules and sector-specific rules. An operator would want to avoid the situation where its position in any future legal disputes in relation to abuse of dominance under competition law would be undermined because of a determination by an NRA that a certain operator was "dominant" for the purposes of the new framework. Such operators would be anxious to challenge their "dominant" status.

2.9. Institutional arrangements

2.9.1. COCOM and HLCG

There was broad support for the Commission's proposal to build on current regulatory structures, rather than to establish a European Regulatory Authority. The Communications Committee (COCOM) and the High Level Communications Group (HLCG) found favour among most commentators, who considered that the proposals would improve consistency of regulatory decision-making across the EU.

There was overwhelming support from industry and user groups for transparency in the workings of the COCOM and the HLCG, with many commentators calling for structured contact or participation of industry and other interested parties in the work.

Regulators were broadly in favour of replacing the current ONP and Licensing Committees with the COCOM. But they were more sceptical about the HLCG. They questioned whether the HLCG would be capable of carrying out the tasks allotted to it in the Communication. Some even questioned the need for such a Group, arguing that the current Independent Regulators Group (IRG) and CEPT/ECTRA¹³ would be capable of carrying out the tasks set for the HLCG.

Some national authorities questioned whether it was appropriate to give an advisory body such as the HLCG responsibility for resolution of cross-border consumer disputes, something which was a judicial task. They argued that this task should either be entrusted to the COCOM, or to bilateral arrangements between regulators.

¹³ The European Committee for Telecommunications Regulatory Affairs of the European Conference of Posts and Telecommunications

2.9.2. National Regulatory Authorities

There was general support for the Review Communication's proposals to strengthen the independence of NRAs and to improve transparency of their decision-making. As has already been mentioned, many commentators called for increased co-operation with competition authorities and with the Commission.

3. CONCLUSIONS FOR THE FUTURE REGULATORY FRAMEWORK

On the basis of its assessment of the responses received in the course of the consultation on the Review Communication, the Commission sets out below its conclusions in respect of the future regulatory framework. This chapter summarises the key considerations on which the Commission will base the preparation of the proposals for directives that will constitute the updated regulatory framework.

The orientations set out below fall into 3 categories:

- Orientations based on policy proposals which received broad support in the public consultation. These proposals are maintained by the Commission.
- Orientations based on policy proposals where there were divided views in the public consultation, as described in chapter 2 of this Communication. In all but one area, the Commission has decided to maintain the original proposal. This area is access and interconnection where the Commission has decided not to introduce two thresholds for ex-ante obligations in respect of access and interconnection. Instead, it proposes a new approach in this area, which is described in detail in section 3.3.
- Orientations which were not explicitly proposed in the Review Communication. These are the obligation for significant market power operators to give access to unbundled elements of the local loop and the envisaged possibility for the Commission to challenge and require NRAs to suspend their decisions if it considered they were not justified according to the regulatory framework.

3.1. Horizontal provisions

The Commission will propose that the **objectives** and, where appropriate, the **principles** set out in the Review Communication be incorporated in the new framework and that national regulators should be obliged to base their decisions on them.

The **new framework will cover all communications infrastructure and associated services**, as proposed, and introduce appropriate definitions. Services carried over that infrastructure, e.g. broadcasting services or information society services, are outside its scope. It is therefore based on the distinction between the regulation of transmission and the regulation of content.¹⁴

The Commission considers that an effective way of introducing much-needed flexibility into the new regulatory framework can be via the **increased use of Recommendations and Guidelines**. It recognises the legitimate concerns of stakeholders about transparency, effectiveness, legal certainty and democratic control in respect of such measures.

¹⁴ See footnote 2

The new framework will also set out **rules for management of scarce resources** by NRAs.

In respect of **radio spectrum**, it will make clear that Member States remain free to establish **auctions and other spectrum pricing mechanisms** for assignment of frequency if they consider them necessary to ensure the optimal use of radio spectrum. In order to increase the efficiency and flexibility of the use of radio spectrum, it will also allow – although not mandate – Member States to introduce **secondary trading of radio spectrum**. But appropriate regulatory safeguards will be included in the new regulatory framework, as was foreseen in the Review Communication, in particular to require that transactions take place under the supervision of the national regulatory authority.

In respect of **numbering**, it will maintain current rules for numbering management, making clear that NRAs must be responsible for all numbering resources, including such resources currently controlled by incumbents.

In the case of **Internet naming**, the Commission will ensure that national registries do not discriminate unjustifiably between national applications for domain names and applications from other Member States.

The Commission intends to propose **the establishment of a Communications Committee and High Level Communications Group**. The legislative proposals will clearly specify the tasks attributed to each. The new framework will also ensure that the provisions setting out the **powers and independence of national regulatory authorities** are adequate, and in particular that there is **effective co-operation between NRAs and competition authorities**.

The new framework will distinguish between two types of regulation. Regulation that is primarily designed to manage the transition to competition (e.g. obligations in respect of access to infrastructure) will be imposed on specific undertakings as a function of their market power. Such regulation will be removed as competition increases (and is dealt with in section 3.3). Regulation that is designed to meet general interest objectives (e.g. sector-specific consumer protection rules, primarily dealt with in section 3.4) will remain in place independent of the degree of competition and will be applied to all players in a given market.

3.2. Licensing and Authorisations

On the basis of the overwhelming support expressed in the consultation, the Commission considers that Member States should be obliged to use general authorisations for authorising all communications services and networks. In addition, where justified, specific rights of use will be granted to individual organisations for spectrum or numbering resources. However, where frequency bands have been harmonised and common selection criteria and procedures agreed in CEPT (e.g. for some satellite services), the new framework will ensure that such rights of use of spectrum at national level do not restrict or delay service deployment by imposing additional conditions.

Because rights of way are not specific to an individual organisation, the Commission is not persuaded that specific rights of use are justified for such resources, but it recognises the legitimate concerns of regulators and operators in this respect, and will take these concerns into account in the new authorisation framework.

The Commission believes that these measures will substantially increase the level of harmonisation of authorisation regimes across the EU, as well as remove much unnecessary regulation.

Where specific rights of use are granted, the Commission intends that these will be separate from the general service authorisation. The conditions relating to the general authorisation and to the specific rights of use will be strictly separate as well. The Commission considers that this will go a long way towards making authorisation conditions more transparent to operators. It will specify in legislation a maximum list of conditions that can be attached to authorisations and will ensure this list is restricted to those conditions that are absolutely necessary.

In respect of fees, the Commission considers that the variation across the EU in the level of fees demonstrates that the formulation of the principle¹⁵ governing fee levels in the current framework is inadequate. It will reinforce this principle, while ensuring that the funds raised from the sector are sufficient to cover the cost of the NRAs' activities. It considers that guidelines to benchmark fee levels could be useful in bringing greater consistency to authorisation fees across the EU.

3.3. Access and Interconnection

The new directives will set out the path to move from the current sector-specific regulation in the telecommunications sector to reliance on the competition rules, building on the consensus during the public consultation to reduce sector-specific regulation to those areas where such regulation is indispensable. In the light of comments received however, the Commission considers that its proposal to introduce two thresholds (SMP and dominance) for ex ante regulation is unlikely to be effective.

It considers that a more flexible mechanism than the current SMP concept is required for determining the cases where imposition of ex ante regulation is indispensable, based on an economic market analysis and identification of the real sources of an operator's power in a given market or market segment. This will have the advantage of giving flexibility to national regulators to fit the regulatory framework to its national situation, while maintaining the integrity of the single market through strong co-ordination procedures at European level.

The Commission therefore proposes to modify the concept of significant market power and use it as the underlying concept for imposing ex ante obligations relating to access and interconnection. In particular, the market share threshold of 25% would no longer be part of the definition. Instead, the definition would be based on *the concept of dominant position in particular markets, calculated in a manner consistent with EC competition law practice, as a trigger for the heavier ex ante obligations*, and would cover all aspects including joint dominance and leverage of market power into associated markets.

NRAs would designate undertakings as having SMP where:

- the undertaking has financed infrastructure partly or wholly on the basis of special or exclusive rights which have been abolished, and there are major legal technical or economic barriers to market entry, in particular for construction of network infrastructure; and/or

¹⁵ Set out in Article 6 of Directive 97/13/EC of the European Parliament and the Council on a common framework for general authorisations and individual licences in the field of telecommunications services.

- the undertaking concerned is a vertically-integrated entity and its competitors necessarily require access to some of its facilities to compete with it in a downstream market;

and where both national and EU competition law remedies do not suffice to ensure effective competition and choice in the market concerned.

The types of obligation that could be imposed, either separately or in combination, on an undertaking with significant market power will be exhaustively listed in the new directives. They will cover, *inter alia*:

- non-discrimination and transparency, including accounting separation, in particular to address problems of vertical integration, leverage of market power into associated markets
- pricing of services, including cost orientation, in particular to address areas where competition is not effective in controlling prices
- access to, and use of, unbundled network elements and/or associated facilities, including the provision of specified services needed to ensure interoperability of services, in particular where an operator controls a facility that constitutes an essential input for another service provider.

NRAs would draw up the list of organisations with significant market power for the purposes of implementing the *ex ante* obligations and notify such a list to the Commission, together with the precise obligations imposed, by the date which will be fixed in the directive. Thereafter, determinations of the relevant markets, and of the positions of market players on those markets, would be carried out by NRAs on a regular basis, in order to adapt regulatory obligations. This market assessment would be conducted using the methodology used under competition law and within strictly limited time periods.¹⁶

Such assessment by NRAs should take place in close co-ordination with the national competition authority. Guidelines at European level would facilitate correct application of the competition law principles, to avoid having different market definitions in different Member States, which would be incompatible with the internal market.

In order not to hinder innovation, the new framework would ensure that NRAs do not impose SMP obligations in small newly emerging markets where *de facto* the market leader is likely to have a substantial market share.

Legal certainty would be provided by listing exhaustively the obligations that can be imposed in the directives as well as clear and unambiguous rules for the process by which market power is assessed and obligations are justified. NRAs would be required to act in a transparent manner, and justify their decisions against both the competition case-law and pre-defined guidelines published by the Commission, designed to establish common, objective criteria that minimise the need for discretionary decisions by regulators. As was stated in the

¹⁶ The time periods would be similar to those used in Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings as amended by Council Regulation (EC) No 1310/97 of 30 June 1997.

Review Communication, it will be important to establish strong co-ordination mechanisms at EU level to ensure that the rules are implemented in a consistent way. One way of achieving this would be for the Commission to have the power to challenge, and if necessary, require NRAs to suspend, the decisions taken if it considered they were not justified according to the regulatory framework. In deciding whether to do so, the Commission would consult the High Level Communications Group, and if necessary, the Communications Committee. This would be without prejudice to the prerogatives of the Commission under the Treaty.

Initially, this process could allow the same obligations that are imposed under the current regulatory framework to be carried forward in a seamless way, insofar as they remained necessary. But NRAs would be obliged regularly to review the need for these obligations to be maintained. Regulation linked to public interest objectives - which is independent of the degree of competition in the market - would of course remain.

Specific regulatory obligations referred to in the Review Communication would for the most part be dealt with in the framework described above. Thus there would be no specific regulatory obligations in Community legislation to impose e.g. **access for service providers to cable TV networks, or to mobile networks**, nor to impose **carrier selection or pre-selection for mobile users** (thus modifying the position set out in the Review Communication with regard to access and interconnection). This would mean that any decision about imposing such access obligations on infrastructure owners would be made in the light of prevailing market conditions, the effectiveness of competition, and the extent of customer choice.¹⁷

In respect of **interconnection**, it is proposed to maintain the existing rights and obligations for all parties to negotiate interconnection, together with regulatory powers of dispute resolution. Any changes to the additional obligations currently applied to SMP operators would be made by means of the process outlined above.

In respect of **conditional access systems (CAS)**, the existing obligations under Directive 95/47/EC for all suppliers of CAS services to provide access on fair, reasonable and non-discriminatory terms would be maintained. Such rules would be subject to review under the procedure outlined above, which could lead to a relaxation of these obligations, or possibly their extension where this was justified on the basis of the market analysis undertaken, e.g. to address issues related to Application Program Interfaces (APIs) or Electronic Programme Guides (EPGs).

In addition to measures currently being undertaken, **an obligation to give access to unbundled elements of the local loop** would be imposed on operators with significant market power on the relevant markets.

3.4. Universal service and other users and consumer rights

The new directive on user and consumer rights and universal service will ensure that **all citizens have affordable access to a universal service and will maintain the current scope of universal service**¹⁸, but introduce an obligation for periodic review of the scope. The

¹⁷ NB: 'must carry' obligations, which also concern access for content to communications infrastructure, are dealt with in section 3.4 of this Communication.

¹⁸ The current scope of universal service as defined in Articles 2 and 3 of the Voice Telephony directive (98/10/EC) includes the provision of voice telephony, fax and voice band data transmission via

proposed directive will set out the process for this review, and the principles and criteria to be applied. But as was stated in the Communication, in considering whether any particular service should be included within the scope of universal service, any review will have to combine a market-based analysis of demand for and availability of the service, with a political assessment of its social and economic desirability, in particular taking into account the objective of fostering social inclusion in the knowledge-based society across Europe.

On the basis of experience with the current framework, the Commission considers that in most cases universal service obligations will not constitute such a burden on the notified universal service operator that financing schemes will be necessary. But it accepts that in some Member States, this could remain the case, especially in the light of accession by countries from central and eastern Europe. The new framework will therefore **maintain the possibility for Member States to establish schemes to compensate the universal service provider where such provision constitutes an unfair burden on the designated operator**. But it will continue to scrutinise such schemes closely to ensure they are justified, transparent and proportionate.

On the question of guidelines on affordability of universal service, the Commission considers that there may be more scope for guidelines for NRAs on how affordability can be assessed than for guidelines on affordability *per se*. The new framework will also ensure that consumers have the necessary information and facilities to manage their expenditure on communications services.

On the question of **leased lines** for business users, the Commission notes the broad support in the consultation for removing the provisions on leased lines once there is adequate competition. It will ensure that provisions remain in respect of leased lines in the new directive, with sunset clauses to allow regulators to no longer impose such requirements where users have sufficient choice in the provision of leased line services.

On the question of **user and consumer rights**, the Commission will ensure the protection of consumers in their dealings with suppliers in the new directive. It will require transparency of information on tariffs and other conditions for using communications services. With regard to introducing an obligation for the provision of **per-call tariff information**, the Commission remains committed to ensuring that consumers have access to accurate and transparent information about the price of individual calls, including the costs incurred by users when on-line, and the new framework will include measures to encourage this. It will also address the special needs of specific social groups, in particular disabled users.

On the question of complaint handling and dispute resolution, the Commission notes the differences in opinion on what the powers and responsibilities of the NRAs and the High Level Communications Group should be. The Commission, however, remains committed to ensuring that consumers have access to simple and inexpensive dispute resolution procedures nationally and cross-border.

In respect of the proposal to introduce a **caller location obligation for emergency services (including <112>)**, the Commission considers that it would be appropriate to introduce a requirement for operators to provide access to appropriate **caller location information for**

modems. Users must have access at a fixed location to international and national calls, as well as emergency services (via national numbers or the European emergency number – 112). The definition also covers the provision of operator assistance, directory services, public pay phones and special facilities for customers with disabilities or with special social needs.

calls to emergency services (including calls to the European emergency number, <112>). Such a measure would be in the consumer interest, and the Commission notes that national regulatory authorities also support such an obligation. It is proposed to set up a working group of all interested parties, including operators and emergency authorities, to deal with the detailed implementation issues, including those associated with privacy.

The Commission, noting the broad support in the consultation for the implementation of **number portability for mobile users**, will introduce proposals to this effect. In this context, it will examine the best solutions available, using new technologies, to facilitate its implementation. The new regulatory framework will ensure that the implementation of number portability for mobile networks does not lead to one single tariff for call termination being imposed upon all mobile operators.

With regard to **‘must carry’ rules**, the Commission accepts that such rules may remain justified in the digital broadcasting environment. Member States will therefore remain able to impose ‘must carry’ obligations on network operators to require them to carry specified radio and television broadcasts. But the Commission considers such rules should be proportionate, and limited to those channels that are charged with the fulfilment of a public service broadcasting remit. Such rules should be applied only in order to achieve specific public interest objectives. In particular, cable operators subject to such rules should receive reasonable remuneration, taking into account the non-profit nature of public service broadcasting, and the value of these broadcast channels to operators.

3.5. Privacy and data protection in the communications sector

The Commission, noting the support in the consultation for updating the telecoms data protection directive, will introduce proposals to ensure that data protection rules in the communications sector are technologically neutral and robust. In this context, it will examine in particular existing terms and definitions of the Directive and the consistency of coverage of old and new telecommunications services with new functionalities embedded in networks or software.

4. NEXT STEPS

The Commission anticipates that the proposals for directives will issue in June this year, and then be forwarded to the Community institutions, with a view to their adoption by the Council and European Parliament. The Commission calls on the Community institutions to make every effort to adopt these proposals as early as possible in 2001, in accordance with the conclusions of the Lisbon European Council, in order to ensure that the European communications sector can continue to thrive.

The Commission notes that it is essential that the impact of the proposed changes to the *acquis communautaire* on countries which are candidates for accession to the EU is fully discussed with them as negotiations progress, in order to ensure that accession is as smooth as possible.

The Commission notes that a new round of GATS and other international negotiations are likely to take place in parallel with Community negotiations on the new framework. It will ensure that the new framework and the results of these negotiations are fully consistent with each other.

ANNEX

List of respondents

Governments, Regulatory Authorities, and other public authorities

- Belgium

Belgian Institute of Postal Services & Telecommunications (IBPT/BIPT)
Ministère des télécommunications
Vlaamse Gemeenschap
Gouvernement de la Communauté Française de Belgique
Conseil Supérieur de l'Audiovisuel de Wallonie

- Denmark

Government

- Germany

Bundesregierung
Direktorenkonferenz der Landesmedienanstalten in der Bundesrepublik Deutschland DLM
Bundesamtes für Kommunikation (BAKOM)

- Spain

Ministerio de Fomento
Concejal de Comunicación (Ayuntamiento de Gijón)
Gobierno de Canarias

- France

Autorités françaises
Autorité de régulation des télécommunications (ART-Telecom)

- Ireland

Department of Public Enterprise
Irish Competition Authority
Office of the Director of telecommunications Regulation (ODTR)

- Italy

Ministero delle comunicazioni
Autorità per le Garanzie nelle Comunicazioni (Agcom)

- Luxembourg

Government

- Netherlands

Regering
OPTA

- Austria

Federal Ministry for Transport and Research
Telekom-Control

- Portugal

Instituto das Comunicações de Portugal (ICP)

- Finland

Ministry of Transport & Communications
Consumer Ombudsman

- Sweden

Government

- United Kingdom

Government
Office of Telecommunications (OFTEL)
Office of Telecommunications / Consumer Communications for England (OFTEL/CCE)
The Independent Television Commission (ITC)

- Other Governments and public authorities

Article 28 Data Protection Working Party
Hungary: Ministry of Transport, Communications and Water Management
Japanese Government
Liechtenstein Office for Communications
Ministry of Transport and Communications, Norway
United States Government
European Conference of Telecommunications and Posts (CEPT)
Council of Europe, Media Division, Directorate General of Human Rights
Independent Regulators Group (IRG)

Industry Associations

ANIEL

Asociación de Empresas Operadoras y de Servicios de Telecomunicaciones, (ASTEL)

Asociación de Televisión Locales de Andalucía (ACUTEL)

Associação dos Operadores de Telecomunicações (APRITEL)

Association des Télévisions Commerciales

Association Française des Câblo-Opérateurs (AFCO)

Association Française des Opérateurs Privés en Télécommunications (AFOPT)

Association of European Radios (AER)

CEEP

Confederation of Netherlands Industry and Employers (VNO-NCW)

Consumer Electronics Manufacturers Industry Group (EACEM)

Digital Video Broadcasting Ad hoc Regulatory Group (DVB)

ENPA

ETNO European Public Telecommunications Network Operators' Association

EU Committee of the American Chamber of Commerce in Belgium

Euro-ISPA

European Broadcasting Union (EBU/UER)

European Cable Communications Association (ECCA)

European Economic Interest Grouping (ENCIP)

European Information and Communications
Technology Industry Association (EICTA)
European Telecommunications Platform (ETP)
Fachverband Rundfunkempfangs- und
Kabelanlagen e.V (FRK)
Fédération des Entreprises de Belgique (FEB)
Federation of the Electronics Industry FEI
Finnish Newspapers Association
Groupement des Industries de Télécommunications
et d'Electronique professionnelle (GITEP)
GSM Europe
ICRT
Motion Picture Association (MPA)
Satellite Action Plan Regulatory Working Group
Service Providers Interest Group (SPIG)
Société Européenne des Satellites (SES)
Telecommunications Resellers Association (TRA)
UK Operators Group
UNICE
United States Council for International Business
(USCIB)
VECAI (Association of Cable Operators, The
Netherlands)
Verband der Anbieter von Telekommunikations-
und Mehrwertdiensten (VATM)
Verband Privater Rundfunk und
Telekommunikation (VPRT)
Wirtschaftskammer Österreich (WKO)
World Association of Community Radio
Broadcasters (AMARC)
World DAB

Consumer and user bodies

Advisory Committee on Telecommunications for
Disabled and Elderly People (DIEL)
Asociación Española de Usuarios de
Telecomunicaciones, (AUTEL)
Bureau Européen des Unions de Consommateurs
(BEUC)
Confederation of European Computer User
Associations (CECUA)
Consumers Association
Deaf Broadcasting Council
European Association for the Co-ordination of
Consumer Representation in Standardization
(ANEC)
European Committee against unsolicited
commercial e-mail
European Disability Forum (EDF)
Genossenschaft der Werkstätten für Behinderte eG
(GDW)
INTUG - General the International
Telecommunications Users Group
INTUG Europe & EVUA - Mobile the International
Telecommunications Users Group
Mencap
National Consumer Council UK
Royal National Institute for the Blind (RNIB)

Scottish Advisory Committee on
Telecommunications (SACOT)
Telecommunications Action Group (TAG)
Voice of the Listener & Viewer

Market players and other commercial organisations

ALCATEL
ALMA Media Corporation
AMENA Retevision Movil
AOL Europe
ARD & ZDF
BBC
Belgacom
Belgacom Mobile
Bertelsmann Mediasystems
BLU S.p.A.
Bougues Télécom
BT plc
Cable & Wireless
Canal+ (MP)
CASTEL
CODENET
COLT Telecom Group plc
CONCERT
COSMOTE
Covad Communications
CPRM Companhia Portuguesa Rádio Marconi
DEBITEL
Deutsche Telekom
EIRCOM
Empresarios Cable, S.A
Energis Carmelite
E-Plus Mobilfunk GmbH
Esat Digifone
Esat Telecom
Ericsson
EQUANT
Finnet Group
First Telecom plc
France Télécom
GE Capital Europe
Global Crossing
Global Telesystems Inc.
Hughes Network Systems/Spaceway
INFOSTRADA
INTEL Corporation
Irish Multichannel (Dublin)
IS-Production
ITV
KPNRoyal KPN N.V.
LDMI Telecommunications
Level 3
Lucent Technologies
Lyonnaise Câble
Mannesmann
Mannesmann Arcor
Mannesmann Mobilfunk
Maxitel

MCI Worldcom International
Mercantil Empresarios Cable
Microsoft
Mobilix
Mobistar
Motorola
MTV
Nokia
Nortel Networks
NTL
Ocean Communications Ltd
Omnitel Pronto Italia
One-2-One
ONITELCOM
Open TV
OPTIMUS Telecomunicações SA
Orange Personal Communications Services Ltd
OTE
Pacific Gateway Exchange Inc.
Philips
PhoneAbility
Portugal Telecom
Radio Nazionali Associate (RNA)
Radio Teilifís Éireann (RTE)
RETEVISION, Mobil Amena
Reuters Ltd.
RTS Wireless
Sanoma-WSOY Oyj
SBC Communications Inc.
SEC
SEMA Group
Sense Communications International AS
Sonera
SONOFON
ST Microelectronics
Swisscom
TDF
Tele2
Telecel
Telecom Italia
Tele Denmark
Teledesic
Telefonica
Telekom Austria
Telenet
Telenor AS
Telenordia
Telfort
Telewest
Telia AB
Teracom AB
United Pan-European Communications (UPC)
Uni-Telecom Europe
Versatel Telecom
VIAG Interkom GmbH & Co
VIATEL , Inc.
Vodafone AirTouch Group
WIND Telecomunicazioni S.p.A.

Individuals & consultancies

Antelope Consulting
Baker & McKenzie
Mr Francisco Javier Angelina
Mr Frank Pfeifer
Gat & Gav
Mr Michael Barrett
Martineau Johnson
Mr Pierre Larouche
Mr Thomas Stadelmann
Wilkinson Barker Knauer

Research institutions/universities

CTI & DATSA The Center for Tele-Information
(Technical University of Denmark), Lyngby,
Denmark;
and Datsa Belgium
Centre de recherches Informatique et Droit /
Facultes Universitaires Notre-Dame De La Paix De
Namur (CRID/FUNDP)

Other Associations

Arbeitskreis Rundfunkempfangsanlagen
Bundeskammer für Arbeiter und Angestellte
EURIM
Réseaux Services Publiques
Independent Committee for the Supervision of
Standards of Telephone Information Services
(ICSTIS)
Public Utilities Access Forum