

## **INTUG Position Statement on the European Commission's proposals following review of the European Telecommunications Framework.**

### **Introduction**

The International Telecommunications Users Group (INTUG) was established in 1974 to ensure that the voice of business telecommunications users was heard, wherever regulation was discussed. It is an independent association, consisting mainly of national and multinational user groups around the world, each representing many business users. Despite major differences between the requirements of residential domestic users and international businesses, the latter are an often overlooked, but vital group of user stakeholders.

### **Background**

INTUG has consulted its user groups within the EU to establish their own members' views on the European Commission proposals. This position statement summarises the collective position. It is vital that the European Parliament takes into account the views of all user stakeholders, including multinational businesses and small to medium enterprises (SMEs), to ensure that the regulatory framework enables seamless services, and encourages effective competition within all Member States, and across the EU.

INTUG is acutely conscious of the powerful vested interests, which actively seek to protect national positions, and/or the domination of certain markets. Some of these arguments focus on the risk to employment and investment by the incumbents, but these overlook the job creation opportunities, not just in the rest of the ICT economy, but in all industries using telecommunications.

The predominant arguments favour greater competition, and argue strongly for the rights of all operators to obtain equal access to bottleneck resources. Despite counter claims that the introduction of functional separation in the UK has had a negative impact, the overwhelming evidence suggests a significant economic benefit has been generated through a step change improvement in the availability of broadband services to businesses of all sizes.

The incumbents sense an opportunity now to turn the clock back on recent regulatory progress, by foreclosing competition, via investment in their own next generation networks and access, linked to the re-establishment of previous privileged regulatory status. This will suppress innovation and reduce, or even eliminate, service choice for business customers.

INTUG has no such bias, is concerned only with the need to create a single market, and is therefore neutral in a competitive as well as a political sense. The European Commission's proposals, based on economic modelling using empirical evidence, have been shown to benefit overall EU economic welfare.

## **Executive Summary**

INTUG welcomes the European Commission's proposals for revision of the European Regulatory Framework for Telecommunications.

Whilst applauding the EU's progress in the last decade towards an open and competitive telecommunications market, the business users which INTUG represent are still unable to obtain the seamless services within all Member States, or across the EU, that they need to support efficient ICT investment.

It is generally accepted that there is no single market in telecommunications in the EU, nor is there any prospect of one under current arrangements. There is a fragmented market of 27 independent and inconsistent jigsaw pieces, upon which industries and businesses have to build their ICT environments.

Effective interworking of IT applications throughout the extended supply chain of business partnerships in different company sites therefore all too often requires some form of dedicated "private" network, since neither the public Internet nor ISP offerings provide adequate access, quality and reliability.

Regulation has failed to ensure non-discriminatory availability of wholesale inputs from incumbent operators, which must be used when such networks cover multiple Member States. As a result, supply of pan-European business services is unnecessarily slow and expensive and, in some cases, simply impossible. Competition in the supply of such services is non-existent. The problem applies equally to fixed and mobile services, and is made worse by the increasing needs of business to use fixed/mobile converged services.

This highly unsatisfactory situation is seriously handicapping the attempts of EU businesses to boost their productivity by re-engineering business processes and restructuring operations fully throughout Europe. Many potential benefits associated with the EU Single Market are therefore denied them, and consequently European competitiveness is being damaged.

It may be thought by some that the advent of next generation networks and access services provides an ideal opportunity for solving these problems. Regrettably, there is a serious risk of the reverse happening. It is feared that, unless the right regulatory framework is established, with adequate power structures for enforcement, the progress made in establishing competition in some markets will be foreclosed by monopolies in bottleneck infrastructure.

This is why INTUG welcomes the proposed regulatory reforms and urges their full adoption by the European Parliament. They are needed to create a market in which there is competitive provision of pan-EU communication services in fixed and mobile. This must be based on providing more effective remedies, ensuring their application through streamlining of appeals procedures, and creating consistency of regulation and greater harmonisation of services.

INTUG believes the proposals are interdependent, with each element of the recommendations necessary for the desired outcome. INTUG believes that strengthening of the proposals in some areas, for example by reducing the conditions required to justify functional separation, could be of benefit.

It would also be wholly inappropriate to limit the application of functional separation to legacy networks, since it is via the next generation access infrastructure that there is the greatest threat to effective competition.

The open and competitive availability of high speed, high quality resilient broadband access services throughout the EU - not just in city business districts and major metropolitan areas - will contribute significantly to the achievement of the Lisbon i2010 goals. It will enable businesses to operate more energy-efficiently, and facilitate a more inclusive world in which all European citizens can participate fully in the global information society.

INTUG therefore urges the European Parliament to approve the European Commission's proposals for future EU telecommunications regulation.

### **Detailed Comments on Specific Proposals**

#### **1 Powers for NRAs to impose “functional separation” (thereby ensuring that the dominant operator provides equivalent access input products to itself and its competitors) and to require facility sharing**

*INTUG supports these proposals. Functional Separation will be a very useful remedy, as an option available to NRAs where other measures are insufficient to create competition. It has proved effective in the UK in accelerating LLU for broadband and is being adopted by other Member States already in advance of the proposal. It is accepted that this is not necessarily the best option in all cases. But where it is applied, it is essential that the remedy of Functional Separation should be applicable on a technology neutral basis. It is particularly appropriate for new fibre networks.*

*INTUG also believes that sharing of civil engineering facilities such as ducts, poles and building access facilities, can reduce the investments necessary for deploying fibre, and thus can enhance competition in a market, which is vital for provision of business quality symmetric broadband services.*

#### **2 Measures to ensure all NRAs have full political independence from vested interests, and are given effective enforcement powers**

*INTUG supports these proposals. Studies of NRAs' track records in implementation performance, such as the ECTA scorecard, show that only half of NRAs enjoy full independence. The current structure and role of the European Regulators Group has proved to be inadequate in securing implementation of many decisions despite collective agreement.*

### **3 Measures to prevent dominant operators from using the appeals procedure or regulatory holidays to delay implementation of regulations**

*INTUG supports this proposal. Some operators apply systematic use of the appeals procedure to retain the status quo for a lengthy period, which is usually followed by inadequate sanctions or recompense even if the appeal fails. Appeals should only lead to suspension of NRA decisions in very exceptional circumstances.*

*Regulatory holidays are a completely inappropriate measure and almost certainly foreclose any prospect of effective competition by creating a monopoly bottleneck resource and by excluding innovation and choice.*

*INTUG also believes that specific so called sunset clauses cannot be introduced given the extreme uncertainty and immaturity of competition.*

### **4. Establishment of a Body of European Regulators of Telecoms (BERT) building on the European Regulators Group (ERG), extending Commission veto powers to cover NRA remedies, and requiring the Commission to take utmost account of its recommendations**

*INTUG strongly supports this proposal. The current ERG, whilst making some progress, has no effective authority to ensure its members implement its decisions. This has produced wildly inconsistent regulatory positions, for example for Voice over IP and Mobile Termination Rates, and has allowed poor implementation. Continuing unjustifiably inflated levels of MTR have an impact elsewhere, and the supranormal returns achieved by operators from them do significant economic damage. The ERG has been unable to resolve such issues, or to deliver implementation consistency and harmonisation.*

*An extended Commission veto, backed up by a restructured ERG, is the only way forward, and will actually bring forward, rather than delay, the time when sector specific regulation can be removed. INTUG recommends that BERT be completely politically independent, with mechanisms to guarantee this.*

*INTUG accepts that the inclusion of radio spectrum and security within the scope of BERT, whilst a laudable objective when included within the original Market Agency proposal, presents undue complexities of implementation.*

### **5. Allocation of radio spectrum on a technology and service neutral basis with measures to facilitate trading/prevent hoarding of spectrum**

*The current market is fragmented, with most countries believing this damages economies of scale for equipment manufacturers and blocks the provision of pan-EU services. These would be facilitated by the fostering of a Europe-wide mobile virtual network operator (MVNO) market, and a more coherent approach to an enterprise-friendly application of the digital dividend.*

*INTUG notes radio spectrum is not within the remit of all NRAs, and that other bodies created to address the issue have not produced the desired results.*

*INTUG recommends that further study of these key issues be undertaken to identify a solution that balances the concepts of service and technology neutrality with the demands of a single market in telecommunications, the role of NRAs, and the desire for greater harmonisation between Member States.*

*INTUG also urges action on spectrum allocation for digital services to enable more economically effective use of scarce resources in pursuit, and increased possibilities for pan-European wireless services.*

## **6. Co-ordination of telecom security at a European level through the appointment of an EU Data Security Officer**

*INTUG believes that telecommunications security at network, data and application level must be subject to pan-EU processes to ensure the safety and security of EU citizens. It recommends that ENISA be given the full authority to ensure necessary controls are implemented throughout the EU. Security is only as strong as its weakest link, and is dependent on a mixture of architectures and technologies used by different operators.*

*INTUG supports the role of an EU Data Security Officer, but recommends further study of the most practical way of addressing this key problem to ensure a feasible proposal is adopted. This must also preserve the ability of Member State governments to execute their national responsibilities for survivability of their own primary systems and networks.*

## **7. General Authorisation**

*INTUG believes the current EU General Authorisation regime's scope is too wide, leading to overregulation and regulatory inefficiency. The 1998 EU rules for individual public telecom licences were clearer in defining who was required to obtain them. This clarity was lost in the revision leading to the current regime and lowered the threshold for General Authorisation requirement. This forced some businesses, who are not network and/or service providers, and should otherwise be exempt, to obtain authorisation in EU Member States. This has added burden and cost and created unnecessary delay.*

*INTUG recommends this flaw is corrected in the new Regulatory Framework, by limiting the scope in Article 3 of the Authorisation Directive to cover only public communications network providers and/or services. The Review process offers an important opportunity to do this.*

*This document can be downloaded from the INTUG web site at [www.intug.org](http://www.intug.org)  
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