ECTA warns against regulatory holidays

and calls on Council's sense of duty to promote competition in electronic communications

Brussels, 26 September 2017. With the Access part of the consolidated Presidency text scheduled for final discussion in a Working Party on the 27th of September, the negotiations on the European Electronic Communications Code are coming to an end in the Council. That cannot mean that competition finds its end as well.

In fact, ECTA believes that parts of the current Council proposal fail to preserve existing and future competition and hence harm investment incentives and innovation to the detriment of end users.

ECTA is most concerned about the weakening of the market analysis and significant market power part of the Code, through choices made on regulatory treatment of new network elements in **Article 74** and on the obligations of price control and cost accounting obligations in **Article 72**.

Article 74 – A *carte blanche* for regulatory holidays

While ECTA welcomes the idea of promoting co-investment models, the article itself is ill-designed as it is based on the wrong assumption that deregulation to the detriment of competition would lead to more investments. This neglects the widely established fact that competition has been and remains the key driver for investment. Hence the Article should be deleted or significantly amended.

In ECTA's view, the proposal threatens to seriously weaken the regulatory regime targeting operators with significant market power (SMP) and hence endangers competition in broadband markets. Firstly, the Presidency text is a *carte blanche* for regulatory holidays, **as the simple existence of an offer by the dominant operator suffices to open a dangerous backdoor for full deregulation for at least 7 years.**

Secondly, safeguards concerning asset ownership of newly built VHC infrastructures are needed to protect co-investors, which can only be assured by a full ownership to all co-investors.

Thirdly, access seekers are prevented from technological progression by receiving only the speed and conditions before the deployment. The Council failed to address this shortcoming already present in the Commission's legislative proposal.

Finally, the article is clearly focusing on the consumer mass market to the strong detriment of niche players and the business market (B2B). The latter is already suffering from a lack of competition. SMEs are the end users most in need of access to competitive very high capacity-enabled services in order to be able to develop, innovate and create jobs in all sectors of economic life. However, the text doesn't provide operators serving the B2B market, who lack economies of density, with the ability to enter in co-investment agreements. It also does not enable those who remain outside the co-investment to be sustainable competitors.

Article 72 – Unrestricted telecom price inflation

From an end user point of view, ECTA's second major concern is Article 72 on price control. Indeed, the text presents the non-discrimination remedy and the price control remedy as mutually exclusive, although both have proven to be complementary. Furthermore, wholesale price control obligations remain essential to enable differentiated strategic positioning on the market and maintain sufficient competitive price pressure on retail markets.

The SMP regime and the need for a fully-fledged toolbox

ECTA believes that the current pro-competitive safeguards (i.e. the SMP regime) must not be weakened in any way and that the National Regulatory Authorities have to remain able to use a range of tools and remedies to address market failures.

ECTA therefore calls on the Council's sense of duty to promote the internal market and a competitive Digital Single Market for electronic communications by abandoning the idea of regulatory holidays, keeping competition alive and ensuring that regulators have all the tools they need to ensure competitive market outcomes.

See also ECTA's press release of 18 May 2017 "ECTA welcomes BEREC position papers on the draft European Electronic Communications Code".

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ECTA members are united in their belief that competition is the best driver of efficient investments and the greatest enabler of innovation, choice and benefits for citizens and businesses, as well as for the European economy overall. This is the key message that ECTA and its members promote in the discussions about the proposed European Electronic Communications Code.

To learn more about ECTA's first analysis of the draft Code, please click here.
To learn more about ECTA's position on the draft report of the European Parliament's Committee on Industry, Research and Energy (ITRE) on the proposed Code, please click here.

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Follow ECTA's latest views and activities on the Code and other subjects at: *@twECTA*

ECTA, the European Competitive Telecommunications Association (www.ectaportal.com), is the pan-European pro-competitive trade association that represents more than 100 of the leading challenger telecoms operators across Europe. For nearly two decades, ECTA has been supporting the regulatory and commercial interests of telecoms operators, ISPs & equipment manufacturers in pursuit of a fair regulatory environment that allows all electronic communications providers to compete on level terms. Our members have been and are the leading innovators in Internet services, broadband, business communications, entertainment and mobile.