

**External legal analysis confirms [ecta's](#) warning that the Draft Recommendation on the regulatory promotion of Gigabit Connectivity violates the provisions and principles in the European Electronic Communications Code.**

Brussels, 28 April 2023, [ecta](#), the [european competitive telecommunications association](#) commissioned international law firm Jones Day to provide a legal analysis of the Draft Recommendation on the regulatory promotion of Gigabit connectivity released by the European Commission on 23 February 2023.

Jones Day concluded that, besides procedural issues, the current version of the Draft Recommendation infringes the provisions and principles in the European Electronic Communications Code (EECC), in that it:

- restricts the discretionary powers of NRAs to impose price control obligations, in favour of wholesale price flexibility for SMP operators,
- restricts the discretionary powers of NRAs in deciding to impose other remedies than access to civil engineering infrastructure, in a way which provides a higher priority to access to civil engineering infrastructure over other remedies compared to what is foreseen by Art. 72 and Art. 73 of the EECC,
- encourages the non-imposition of regulated wholesale price control obligations in low-populated areas, and
- promotes wholesale price increases in the context of copper switch-off.

In view of the above and taking into account the wide variety of situations regarding VHCN development and competition in the EU Member States and the extensive experience of NRAs with ex-ante regulation, [ecta](#) calls on the Commission to consider repealing the 2010 NGA and 2013 NDCM Recommendations and withdrawing the Draft Recommendation.

Commenting [ecta's](#) call on the Commission, Director General Luc Hindryckx explains:


*"The EECC has determined the framework, and the experience of the NRAs is suitable and sufficient to address the objectively different situations existing within the different Member States. It is therefore no longer necessary to issue a Recommendation."*

[The full legal analysis is available here.](#)

\* \* \*

[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 continuously promote.

For further information on the contents of this press release and [ecta's](#) positions, please contact:  
**Luc Hindryckx**, Director General, +32 472 35 06 54

Follow [ecta's](#) latest views and activities:  [@twECTA](#)

**ecta, the european competitive telecommunications association** ([www.ectaportal.com](http://www.ectaportal.com)), represents those alternative operators who, relying on the pro-competitive EU legal framework that has created a free market for electronic communications, have helped overcome national monopolies to give EU citizens, businesses and public administrations quality and choice at affordable prices. ecta represents at large those operators who are driving the development of an accessible Gigabit society, who represent significant investments in fixed, mobile and fixed wireless access networks that qualify as Very High Capacity Networks and who demonstrate unique innovation capabilities.