

ecta warns against undermining the European model with the proposed EC Recommendation on the regulatory promotion of Gigabit Connectivity

Brussels, 31 January 2023, **ecta**, the **European competitive telecommunications association** has analysed the leaked text of the proposed EC Recommendation on the regulatory promotion of Gigabit Connectivity, which is currently in interservice consultation within the European Commission. **ecta** is stunned by its content, and **ecta** denounces this text, given:

- i) the absence of a public consultation on a text that appears to be undemocratic in nature, going well beyond the legal instrument that underpins it;
- ii) that it would have a strong adverse impact on the contestability of markets and on investments in Gigabit networks;
- iii) that it would lead to increased prices for consumers and therefore will harm take-up of Gigabit connections (contrary to the 2030 Digital Compass and Path to the Digital Decade¹ set out by the European Commission itself), and will fuel inflation.

The draft proposed EC Recommendation on the regulatory promotion of Gigabit Connectivity overrules in several aspects the European Electronic Communications Code² (EECC), a legislative act approved by the European Parliament and the Council according to a democratic procedure governed by the Treaties. The draft proposed EC Recommendation is therefore undemocratic. Indeed, in no circumstances can a recommendation solely issued by the European Commission depart from what is stipulated in the act providing for its legal basis or impose a forced interpretation thereto. Unfortunately, this is exactly what this draft recommendation is doing, namely departing from the EECC and interpreting it in a way to give more priority to one of its objectives. In the case of the EECC, the objectives are defined in Art 3. The leaked draft Recommendation prioritises specific objectives to the detriment of the others.

The most blatant examples are:

- i) the use of language that the co-legislator did not accept when the EECC was negotiated, to interpret Art 74(1) of the EECC in a way as to force National Regulatory Authorities (NRAs) to lift or relieve wholesale price control obligations on operators with Significant Market Power;
- ii) neutralizing the possibility for NRAs to impose additional regulatory obligations on operators with Significant Market Power pursuant to Art 73 after having imposed remedies under Art 72 despite the fact that the balance in the EECC between Art. 72 and Art. 73 is the result of the co-legislation process;

¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4503

² Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972>

- iii) pushing NRAs towards encouraging operators with Significant Market Power to come forward with proposed voluntary commitments, and accepting such commitments in lieu of imposing regulatory obligations foreseen in the EECC, thus going beyond what is stipulated in Art. 79;
- iv) artificially raising wholesale prices for access to legacy copper networks during their phasing-out period, and wholesale prices to Very High Capacity Networks, without providing any justification.

Overall, the intent of the text appears to revolve entirely around increasing the profitability of the ex-monopoly telecom operators in EU Member States, reversing 25 years of successful liberalization and promotion of competition. Detrimental impacts on competition, on the achievement of the internal market, and on citizens' interests are inevitable, as are detrimental impacts on alternative operators' ability to compete, including the deployment of their own Very High Capacity Networks.

Furthermore, **ecta** questions the impartiality of the process. The study³ commissioned by DG-Connect on regulatory incentives for the deployment of Very High-Capacity Networks in the context of the revision of the Commission's Access Recommendations failed to consider pro-competitive options and, in **ecta**'s opinion, is biased in favour of the SMP operators (in practice essentially the incumbent telecommunication operators). Obviously, it is impossible to reach pro-competitive conclusions when the pro-competitive options have been discarded or ignored prior to the analysis⁴.

ecta recommends therefore to significantly adapt the text of the forthcoming EC Recommendation on the regulatory promotion of Gigabit Connectivity, in order to consider the positive impact of competitor operators on investment and citizens' interests, to avoid fuelling inflation, to respect the will of the co-legislator in the EECC. **ecta** also demands that the European Commission prepares a full impact assessment and submit the adapted text to public consultation.

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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 continuously promote.

*For further information on the contents of this press release and **ecta**'s positions, please contact:*

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³ Study on regulatory incentives for the deployment of very high capacity networks in the context of the revision of the Commission's access recommendations: <https://op.europa.eu/en/publication-detail/-/publication/44c8f4c0-32e6-11ec-bd8e-01aa75ed71a1/language-en>

⁴ A typical example supporting our views is the mention on page 44 of the study: "Adjusting regulation to allow higher revenue for network operators (with a primary focus on SMP operators for the purpose of this study)"

ecta, the european competitive telecommunications association (www.ectportal.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.