

Open letter to the EU telecommunications ministers and to the Spanish Presidency of the Council of the EU ahead of the informal meeting in León on 23 and 24 October 2023

“The European model, deeply rooted in a pro-competitive EU ex-ante legal framework for electronic communications, has consistently proven its success. It delivers indisputable benefits to EU citizens, companies and administrations which rely on connectivity every day. There is no justification to dismantle or alter the existing regulatory paradigm in the electronic communications sector.”

Brussels, 20 October 2023

Dear Minister responsible for Electronic Communications,
Dear Permanent Representative,

ecta, the [european competitive telecommunications association](#) represents those competitive telecommunications 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.

We and our member companies wish to express our concerns and observations regarding the upcoming León meeting and the narrative that is being proposed by the Presidency of the Council of the European Union.

For over 20 years, we have actively engaged in positively contributing to the creation of an investment, competition, and consumer friendly environment for the electronic communications sector. During this time, we have witnessed firsthand how competition, driven by our member companies, within the realm of electronic communications has played an instrumental role in developing very high-capacity infrastructure¹, fostering innovation and deployment of leading-edge technology, enabling greater choices, and

¹ For example, alongside its 2016 legislative proposal for a new European Electronic Communications Code, the European Commission released a study by Analysys Mason entitled "Costing the New Potential Connectivity Needs," estimating the investments needed for full fibre and 5G coverage in the EU at €502 billion (for the same targets, a BCG study entitled "Building the Gigabit Society: An Inclusive Path Towards Its Realization" for the association of former monopolists estimated it at €660 billion). The WIK study entitled "Investment and funding needs for the Digital Decade connectivity targets" for the European Commission, released on 12 July 2023, i.e. halfway between 2016 and 2030, re-estimates the investment needs at €174 billion for the same targets, **demonstrating that the EU framework delivered well on investment.**

delivering significant advantages to businesses, government entities, and European citizens.

Furthermore, the remarkable success stories of several [ecta](#) members, individuals who believed in the promise of the European regulatory framework, invested at their own risk, and drove innovation, stand as a testament to the positive impact of this framework on entrepreneurship in Europe. These accomplishments are a source of pride and serve as an inspiration for future generations of entrepreneurs.

National Regulatory Authorities apply the 2018 European Electronic Communications Code, recently transposed into national law in several Member States, notably through conducting market analyses as outlined in Title II. Unfortunately, **in all Member States, they continue to identify market failures that necessitate appropriate regulatory intervention.** It is essential to recognize that the Significant Market Power framework naturally self-extinguishes as competition develops. In cases where a relevant market is not deemed susceptible to ex-ante regulation or where no Significant Market Power is identified in a defined market, the European Electronic Communications Code explicitly prohibits the imposition of regulatory measures. Therefore, **there is no necessity to dismantle or alter the existing regulatory paradigm in the electronic communications sector or to artificially disrupt this process.**

The diversity that characterizes the electronic communications sector, encompassing the participation of both larger and smaller market players, is paramount to unleashing the full potential of innovation within the context of the digital transformation of the European Union's economy. This diversity is essential for ensuring that the ever-evolving needs of businesses and public administrations are met.

The European model, deeply rooted in a pro-competitive EU legal framework for electronic communications, has consistently proven its effectiveness through the application of key principles, including wholesale access to civil engineering infrastructure and networks where necessary, transparency, non-discrimination, price regulation, accounting separation. The EU framework's guiding principles have consistently delivered tangible benefits to Europeans, fostering an environment of innovation, choice, and prosperity for businesses, government entities, and the broader economy.

As we contemplate the future of the electronic communications sector, it is vital to recognize that connectivity remains the cornerstone of the Digital Single Market. However, there is a looming risk that this foundation may be eroded by a narrative advocating deregulation without due consideration of continued existence of Significant Market Power. **A paradigm shift, which would promote the emergence of a very limited number of bigger players, the "happy few," issued from the biggest former monopolists while neglecting the importance of effective and sustainable competition, runs counter to the well-established competition law principle according to which entities with Significant Market Power also bear a special responsibility to not distort competition.** Consequently, it could also be considered to unjustifiably violate the fundamental principles of proportionality and certainty.

We and our members, place our trust and confidence in the European Commission and, specifically, in Commissioner Breton. We strongly urge the Commission to emphasize the strengths of the European Model and its pivotal role in safeguarding EU digital sovereignty. If a future "Digital Networks Act" is to see the light of day, **we call for a renewed focus on merit-based competition within Europe, facilitated through ex-ante regulation of operators with Significant Market Power, guided by the principles enshrined in the European Electronic Communications Code** and applied judiciously, only when necessary. The definition of markets susceptible to ex-ante regulation and the identification of Significant Market Power should remain a meticulous process conducted by the National Regulatory Authorities (NRAs).

We emphasize that many of the existing and new objectives of the digital decade can be reached through a resolute application of the European Electronic Communications Code. Furthermore, **the European Electronic Communications Code remains essential for the realization of the internal market, not only for alternative operators but also for former monopolists when operating outside their home country.**

This approach is indispensable in ensuring that the European Model continues to deliver positive outcomes for citizens, businesses, and public administrations. The disruption of the Significant Market Power model would irreparably damage all stakeholders of the ecosystem, be they operators or users of connectivity. It is worth noting that the EU Model has consistently yielded far superior results in terms of deploying very high-capacity infrastructure and ensuring the adoption of affordable offers by European businesses and consumers when compared to, for instance, the United States, where significant competitive deficits persist, leading to limited choices and high retail prices.

In conclusion, we wish to underscore the immense value that the European Model has brought to our industry and the broader European economy. We trust in your wisdom and foresight to preserve and enhance these advantages in the pursuit of digital sovereignty for the European Union.

Thank you for your attention, and we look forward to continuing our collaborative efforts in shaping the future of electronic communications in Europe.

Yours sincerely,

Luc Hindryckx
Director General, [ecta](#)