
ecta response to the exploratory consultation by the European Commission on
“the future of the electronic communications sector and its infrastructure”

12 May 2023

1. Introductory remarks

1. **ecta**, the **European competitive telecommunications association**,¹ welcomes the opportunity to provide feedback on the European Commission’s exploratory consultation launched on 23 February 2023 on *the future of the electronic communications sector and its infrastructure* (hereinafter “The questionnaire” or “exploratory consultation”).
2. **ecta** 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 (hereinafter “VHCN”) and who demonstrate unique innovation capabilities.
3. **ecta** welcomes the Commission’s initiative and considers it a timely moment for reflection on the future of the electronic communications sector. In addition, **ecta** considers this consultation an opportunity to create clarity, once and for all, on the relation between the political objectives of the European Union through the Digital Compass 2030² and core principles such as the promotion of competition and end-users welfare which are enshrined in the EU Treaties and in the European Electronic Communications Code (EECC) which hereinafter **ecta** will refer to as “the EU Model”. The EU Model has enabled healthy and balanced progress by EU Member States, even though with different speeds, where VHCN deployment has been accompanied by innovative, diverse, affordable and inclusive VHCN offers for EU citizens and businesses.
4. There are no doubts: the extremely ambitious connectivity objectives set by the European Union through the Digital Compass 2030 and the lessons learned during the Covid-19 pandemic on the crucial role of reliable, performing and ubiquitous VHCNs for European citizens, businesses and economy, compel the telecoms sector to further increase the pace of VHCN deployment. In many EU Member States (hereinafter “MS”) VHCN coverage³ is already important. In terms of connectivity objectives, deployment and availability is only one side of the coin; VHCN take-up by users is the other side of the coin. According to OECD data referring to mid-2022⁴, numerous EU MS and EEA countries outperform other OECD economies in terms of FttB/H adoption. Many European countries are notably well ahead of the US and Canada, which are countries with no or very limited wholesale access regulation, high levels of market concentration and low levels of consumer welfare. The policies advocated by European incumbent telecommunications operators as best practices for VHCN investment have produced poor outcomes when considering adoption and

¹ <https://www.ectaportal.com/about-ecta>

² All European households covered by a Gigabit network, with all populated areas covered by 5G.

³ According to the latest data released by the FTTH Council Europe on 19 April 2023, available [here](#), 6 Member States (Latvia, Portugal, Spain, Bulgaria, Sweden) have FTTH coverage superior to 84%, 11 Member States have FTTH coverage superior to 74% and 21 Member States out of 27 have FTTH coverage superior to 50%.

⁴ Available [here](#). The most advanced countries in terms of fibre adoption include EU Member States (such as Spain, Sweden, Lithuania, Latvia, Portugal, Finland, Luxembourg, France, Slovenia, Denmark, Estonia, Slovak Republic, Poland, Hungary) and EEA countries (Iceland, Norway).

affordability. In relation to the VHCN deployment with respect to the EU connectivity objectives, studies performed or commissioned by public institutions such as the European Commission, indicate that the European connectivity targets cannot be reached through private funding alone, and public funding from the EU and MSs' national funds will be needed to support Gigabit-capable connectivity, especially in rural areas. However, [ecta](#) clearly notes that the investment needs which were estimated during previous years⁵ (superior to 500 billion Euros in 2016), have been progressively and significantly reduced in time. The Commission's estimate is now reduced to 174 billion Euros, citing the forthcoming study "Investment and funding needs for the Digital Decade targets"⁶. This has been mostly achieved thanks to private investments coming from the operators. It is a striking fact that alternative operators played the biggest role in VHCN deployment in terms of investment intensity, as shown by a study commissioned by the incumbent operators' association ETNO⁷. Moreover, in terms of investment timing, the alternative operators have started first to invest in FTTH and reached greater volumes than the incumbents⁸. This has been possible thanks to virtuous competition dynamics that have been enabled by the EU Regulatory Framework. When it comes to the investment need not addressed by private investments, the European Recovery and Resilience Programme (ERRP), worth 672.5 billion Euros, provides that each MS dedicates at least 20% of expenditure to digital area, which alone amounts circa to 135 billion Euros. [ecta](#) therefore expects the state aid grants to become increasingly important and disseminated across European MSs in time, as a result of the combination of VHCN connectivity needs and the availability of significant ERFP funds. This will support to a great extent the closing of the gap between the private investments forecast and the total investment needed to reach the Digital Compass 2030 connectivity objectives.

5. Many statements contained in the background chapter of the questionnaire indicate that the Commission's desire to explore the world-wide technological and business developments in order to establish whether institutional action is needed from the EU to allow the operators investing to exploit the full potential of those technologies and to compete with non-EU companies.
6. Furthermore, questions on several crucial topics are raised which include: i) fairness for consumers by exploring, inter alia: a) whether the current Universal service fund scope could be extended and, b) if the caps foreseen for the Intra-EU communications should be kept/evolved or be lifted (these are currently set to expire on 14 May 2024 by law), ii) whether there are barriers to the single European market, and, if yes, how the Commission can tackle those barriers, and iii) the debate on fair contribution by digital players to the EU 2030 digital decade objectives which has taken a prominent place in the Brussels arena in the past 12 months. For these reasons, [ecta](#) recognizes the utmost relevance of this exploratory consultation.
7. The position that the Commission will take, based on the inputs submitted in this consultation, and the decisions that the Commission may take⁹, depending on their content, will substantially impact, negatively or positively, not only the development of very high capacity connectivity and the exploitation of the full potential of the new technologies by private undertakings, but also the

⁵ See [here](#) the Analysis Mason study Commissioned by the DG Connect in 2016, which estimated that €360 billion is needed to bring fibre-to-the-premises broadband to all European households, €200 billion in 5G radio access networks and €100 billion for low-latency proximity data centres.

⁶ See page 4 of the questionnaire.

⁷ Available [here](#), the Study shows the cumulative per capita investment in Europe in FTTH networks by alternative operators is higher than that of incumbent operators (see figure 3.8 on Cumulative FTTH per capita ETNO and others 2015-2021)

⁸ According to the latest data released by the FTTH Council on 19 April 2023, available [here](#), in EU 39 by September 2022 56% of FTTH/B Homes Passed belong to alternative operators, 39 % to the incumbents and 5% to the municipalities/utilities.

⁹ The Commission states that "*Pursuant to Better Regulation rules, an exploratory consultation is preliminary in nature, and targets that may provide insights to determine if any problems exists and could be addressed by EU action, or sketch the potential scope of a genuinely new policy*"

competition dynamics in EU electronic communications markets and the European citizens' and businesses' welfare overall. That is why **ecta** welcomes and appreciates the emphasis of the Commission on this consultation being "exploratory". In this context, **ecta** is willing to constructively work and collaborate with the Commission by participating to any future public consultations, in particular on full final draft texts, in case the Commission deems institutional actions needed on any of the issues raised in each section.

8. In the following parts of this response, from paragraph 9 to 27, **ecta** puts forward its key considerations on each of the 4 sections addressed by the exploratory consultation.

2. Key ecta considerations

9. **ecta** agrees with the Commission when it states that: "*digital technologies play an increasingly prominent role in social, economic, and political life worldwide, Europe's digitalisation is essential for its prosperity, as long as it is human-centric and respects our common EU values and the rights, dignity and integrity of the individual.*" **ecta** strongly believes that a diversified electronic communications sector allowing a variety of market participants (large and small) to offer a diversity of services and products is a prerequisite to unleash the innovation potential resulting from the digitization of the EU economy. This is all the more necessary to meet the needs of businesses and public administrations. Indeed, history has proven that the fear for cannibalisation of existing business models seriously impedes well vested companies from innovating. The current technology companies were all founded comparatively recently by an entrepreneur, and none is the result of a well-established company. Several major alternative operators represented by **ecta** were also founded by individual entrepreneurs, seizing the opportunities created by the opening of the EU telecommunications market to competition.
10. **ecta** is aware that many of the new technologies that the questionnaire mentions can potentially and significantly foster the EU economy, innovation patterns in multiple sectors by a virtuous spill over effects, accelerate the path to EU digital leadership and sovereignty and could greatly contribute to reach EU environmental sustainability objectives. **ecta** recognizes that those technologies could only flourish and provide their full potential on very high capacity, resilient, sustainable and future proof infrastructures.
11. **ecta** recalls that when it comes to infrastructure, the EU model has been a great success. With respect to other non-EU OECD countries (i.e. US and Canada), the EU model resulted in much better outcomes, both in terms of VHCN deployment as regards VHCN take-up. The EU model ensures to EU consumers and businesses affordable, inclusive and innovative VHCN service offers by multiple operators, among them, many **ecta** members. Some of those **ecta** members have been and remain front runners, in terms of both investment and the adoption of new technologies and business models, making profitable business across Europe and bringing innovation to the market by relying on those technologies.¹⁰
12. The merit based competition in Europe, ensured through **a correct and proportionate ex ante regulation** with principles enshrined in the EECC, and **imposed only where needed** (i.e. on the undertakings that hold significant market power in the relevant markets, meticulously defined by the National Regulatory Authorities - NRAs, often by defining geographic markets/remedies) **has**

¹⁰ For instance, Fastweb, in Italy, is active in cloud, network virtualization and network slicing, Iliad, in France, is active in cloud through Scaleway, Eurofiber provides cloud connectivity in Belgium, France and the Netherlands. Transatel uses innovative technologies such as cloud services, network slicing, network sharing, AI in offering cellular connectivity worldwide. Colt offers across Europe cloud connectivity, edge computer, software defined networking and network function virtualization.

been key in ensuring the positive outcomes of the EU model for consumers, businesses and public administrations.

13. **ecta** acknowledges that the Commission is now conducting important evaluations, that may lead to future actions regarding multiple strategic topics, which are addressed in different sections of the questionnaire. **ecta** therefore kindly recalls that the core principles on which Europe has built its successful economic model and welfare should not be sacrificed for emulating the policies of non-EU countries (US and Canada) often advocated by the European ex-monopolist operators as a best practice for VHCN investments. In those non-EU countries, citizens and businesses suffer from a lack of affordable and inclusive offers due to high prices resulting from tightly oligopolistic market structures and absence of effective ex-ante wholesale regulation. French economist, Thomas Philippon, author of the book “The Great Reversal: How America Gave Up on Free Markets” estimates that the lack of competition in the US “has deprived American workers of \$1.25 trillion of income”¹¹. In the same way, David Wessel, senior fellow in economic studies at the Brookings Institution and director of the Hutchins Center on Fiscal and Monetary Policy, explains in an article published in Harvard Business Review¹²: “Another signal of declining competitive pressure is firms’ ability to increase profits without much investment; in competitive markets, companies are driven to invest more to stay ahead of their rivals.”
14. In order to ensure an outcome that is fully consistent with substantial (a healthy and efficient environment where European undertakings could continue to invest, innovate and ensure the inclusive offers by relying on new technologies) and procedural *sine qua non* European principles enshrined in EU Treaties and related legislation, **ecta** considers of utmost importance that the Commission makes sure that:
- The European Model is preserved, because the economic bottlenecks, concentrated in fixed access networks and in scarce spectrum resources will remain in the future and will not be overcome by any technological advance.
 - Any action, if deemed necessary by the Commission, does not go against the core principles of the EU Treaty (inter alia, merit based competition and social inclusion) and remains faithful to the principles that characterize the European Union, that is to say, the full application of liberal market economy rules, with regulatory corrections where justified, with particular attention to the citizens and businesses welfare.
 - Any legislative proposal or institutional plan/action is subject to a fully-fledged public consultation on a draft text and to a fully-fledged impact assessment with the involvement of the Regulatory Scrutiny Board.

Section 1 - Technological and market developments: impacts on future networks and business models for electronic communications

15. The current state of market evolution towards innovative technologies such as network virtualization, open networks/network disaggregation and cloud RAN, edge cloud, network slicing, low orbit satellite communications, artificial intelligence (hereinafter “AI”) just to name a few, and new business models focusing on network delayering such as, for example, wholesale only companies, not vertically integrated towercos, represents a set of natural evolutions of the electronic communications sector, which is diverse and has in its DNA both network, product and

¹¹ <https://www.promarket.org/2019/12/09/the-lack-of-competition-has-deprived-american-workers-of-1-25-trillion-of-income/>

¹² <https://hbr.org/2018/03/is-lack-of-competition-strangling-the-u-s-economy>

service based innovation, and constant advances in technology, processes and business models. In this context, new technological leaps, such as Open RAN, will have long-lasting ramifications on the electronic communications sector. However, the opportunities offered by such technologies can only unleash their full potential if many ECS providers are represented across electronic communications markets. This is why the European Model should be preserved not least to ensure that the EU's aspirations to become a world leader in innovation in digital sectors becomes a market reality, thereby contributing to its digital sovereignty.

16. In addition, not all of those technologies and business models should be seen as future, forward-looking developments. As a matter of fact, some of those technologies, namely network virtualization, edge cloud, network disaggregation and cloud RAN are already a market reality in many EU Member States, and notably in the networks of [ecta](#) member companies. [ecta](#) expects that in future many of those technologies, starting from cloudification/virtualization, will be used more extensively and will provide the operators with significant business synergies, cost savings and sustainability efficiencies¹³. In any case they entail important investments from alternative operators.
17. Several [ecta](#) members have entered/are entering and others will soon enter the markets for cloud services and/or the connectivity to cloud platforms¹⁴. Some are already offering novel technologies in B2B market environments, such as software defined networks (“SDNs”), private networks, edge cloud, SAAS and IAAS services and IoT services. In fact, several [ecta](#) members are the frontrunners in embracing those technologies and doing profitable business by leveraging on them.
18. [ecta](#) notes that other technologies mentioned in the questionnaire are in the early stages of development and will require operators to further invest accordingly. AI technology as applied to electronic communications is at an early stage of deployment, and it is yet to flourish and provide its full potential. In the same vein, technologies such as network slicing are in an initial phase of deployment. Operators will soon implement and use them to a much greater extent. This will create a spill over effect to many other industries (either by commercial B2B or wholesale access agreements with verticals) thanks to the wider spread of standalone 5G technologies. The presence of VHC networks and 5G Stand-Alone (and beyond) networks is key for exploiting the full potential of AI technology. It is therefore important to underline that, irrespectively from the different state of development of those technologies, all mentioned technologies, for their existence and diffusion, *sine qua non*, need to rely on very high capacity networks and 5G stand-alone networks. Therefore, access to infrastructures by the different parties will remain key in order to have the multiple spill-over effects in the electronic communications sector and for multiple industries that will rely on and benefit from those technologies.
19. The fixed and mobile electronic communications markets, while presenting some different patterns¹⁵ are both characterized by structural bottlenecks which impede the development of sustainable competition and consumer benefits. For fixed networks, access to the civil engineering

¹³ See the CapGemini Study on the cloudification of the networks, available [here](#), clearly argues that: i. Overall, the 31% of telco network capacity (globally, across 4G/5G networks) that is entirely serviced by cloud-based platforms today is expected to grow to 46% in the next five years (at a CAGR of 8%), ii. Telco cloud offers significant business (Telcos expect to optimize network Total Cost of Ownership by 13% and sustainability benefits) (Telco cloud is expected to reduce telco GHG emissions by 5%)

¹⁴ For, instance, Fastweb in Italy is active in cloud markets. Iliad, in France, is active in cloud through Scaleway, Eurofiber provides cloud connectivity in Belgium, France and the Netherlands.

¹⁵ Historically, in across Europe, in each Member State, 3 or more mobile networks, all with national coverage, have been deployed while the fixed very high capacity networks (mainly FTTB/H, except by the incumbent operator which is the ex-monopolist of the Member State, generally have not been deployed by multiple players with a national coverage but instead due to the very high cost of deploying civil infrastructure, especially digging costs, they have been concentrated on some areas/ regions of the Member State.

infrastructure and physical access to bottleneck network elements remains key, requiring ex-ante regulation in many circumstances. In fact, civil engineering works require huge investments and deploying fibre in ducts requires significant investments, and the duplication of a network covering a large part of the territory does not seem realistic, according to experiences in the EU except in few cases. Therefore, in many cases, appropriate wholesale passive (i.e., access to local loop) and active network access will still be needed, subject to a proportioned and justified assessment by the NRAs. In the same vein, for mobile and fixed wireless networks, spectrum which is the basic and key underlying input, is, and will remain, a scarce resource whose efficient and balanced distribution amongst operators as well as efficient and effective use remains a key issue.

20. The European Electronic Communications Code (EECC) addresses the restrictive practices that can come from the parties holding ownership and bottleneck control over essential and non-replicable network infrastructure. The EECC is structured notably around the concept of designating, only where justified by a fully-fledged analysis and on an evidence basis by NRAs, specific network operators as holding Significant Market Power, which must mandatorily be addressed by specific regulatory obligations placed on them. Naturally in case the NRAs find that there are no competition problems in the relevant markets or the three-criteria test¹⁶ is not met, then the market is not regulated, or the existing regulation is lifted. In the same vein, the EECC provides the Member States with the fundamental principles regarding the radio spectrum, including its management, authorization of the use of radio spectrum, its rights of use and the crucial topic of the assignment procedures of such spectrum. That being stated, **ecta** is not aware of any technological progress that will lift the significant digging costs underlying the deployment of VHCN (i.e. FTTB/FTTH or backhaul densification for 5G)¹⁷ networks and is also not aware of any technological invention that would solve the problem of spectrum scarcity. Therefore, the EECC, which was adopted at the end of 2018 and came into force at the end of 2020, will need to continue to play a key role in ensuring effective access to the very high-capacity networks and ensuring an efficient and balanced assignment and efficient and effective use of spectrum resources.

Section 2 - Fairness for consumers

21. **ecta** agrees with the description provided by the Commission on the affordability of electronic communications. EU consumers and businesses benefit from wide availability and affordability, as it emerges clearly from the recent studies by the Commission. **ecta** considers this a great success of the EU Model, not matched by other OECD economies¹⁸. Considering this success as an explanation for an alleged lack of VHCN investments (quod non) is inappropriate and unfair, especially given that many **ecta** members show strong investments to revenue ratios¹⁹.
22. In relation to the question on retail broadband price trends until 2030, **ecta** invites the Commission to exercise caution. Even though the last months have seen a steady increase in energy costs and increasing inflation trend in Europe due to the highly problematic world conjuncture as well as the

¹⁶ The three criteria test is met if the market meets all of the following criteria: (i) high and non-transitory barriers to entry, (ii) a structure that does not tend towards effective competition and (iii) competition law alone is insufficient to adequately address the identified market failures.

¹⁷ Technical innovations experimented in digging activities (mini/no-dig techniques) allowed for some reductions in installation costs. However, such costs still remain particularly significant.

¹⁸ The European Commission Study on the Fixed and Mobile BB prices in the EU as of October 2021, when comparing the EU with most important non-EU countries which are OECD economies, clearly states that *"The comparison of EU27 prices with prices in selected non-European countries in 2021 yielded the following picture: The EU27 has the lowest prices for Triple Play offers among all speed categories compared to Japan, South Korea, the USA, Norway, Iceland and the United Kingdom. Prices for bundles in all speed baskets are lower in the EU27 than in Japan, the USA, Norway, Iceland and the United Kingdom"*. (**ecta** emphasis added).

¹⁹ **ecta** members: Fastweb Italy, has a Capex/revenue ratio of 25%, while Iliad had a Capex/Revenue ratio of 30% in 2021. Finally, Eurofiber had a Capex/Revenue ratio of 63% in 2021.

wholesale price increases for accessing the SMP operators' networks, the prospective increases depend on multiple variables such as the inflation trend, energy price trends, the wholesale prices, the discretionary power of the regulators to act on their national market, etc. Most of all, they depend on whether operators, including the challenger operators, intend to, or are forced to, or are willing/capable to apply retail price increases²⁰. That is how a market works. Therefore, retail price increases should not be taken for granted. Finally, **ecta** would like to point out that current market conditions indicate a counter tendency with respect to the energy price increases and inflation trend. As a matter of fact, the ECB has targeted an inflation rate of 2% over the medium term and predicts a negative energy inflation trend in the second half of 2023²¹ thus, identifying promising and decreasing trends.

23. Regarding the role of the current universal service regime and its future evolution, **ecta** firmly believes that there is no need to keep the current regime in place, let alone to extend the current regime to turn it into a dedicated (EU-wide or national) fund(s) for connectivity. **ecta** has argued above that the EU Regulatory Framework allowed affordable, inclusive and innovative offers across Europe, even though with different nuances in different Member States. Already in 2016, a Study for the Commission²² affirms: *"In the last decade, there have been 31 withdrawals of a universal service obligation in relation to an entire component of the universal service in a Member State, meaning that Member States now rely entirely on the market to supply these components. Looking at trends over time, 26 of the withdrawals took place after December 2010. This suggests that regulators are increasingly confident that the market meets universal service provision requirements without the need for a designated universal service provider"*. Even the more now, under the current market conditions, **ecta** considers that the universal service regime should be limited to finance the access for users with particular social needs, with low incomes and with disabilities. Furthermore, the funding should come solely from public funds instead of the industry contribution mechanism chosen so far by several Member States.
24. When it comes to the extension of the regime to perhaps support VHCN connectivity, **ecta** considers (EU-wide or national) fund(s) unnecessary and inappropriate. First of all, the best way to ensure affordable and equitable Internet access for all is to ensure competition. Therefore, strong, and efficient SMP regulation remains essential. Ensuring and safeguarding competition is characterised by speedy and transparent market regulation procedures, in conjunction with corresponding participation rights for competitors to the regulation process. Second, this kind of extension would be redundant, taking into account that future connectivity needs, coverage and protection of users with particular needs can be achieved through other means, such as private investments and in case of market failure, State aids or specific coverage projects (i.e. Italy Piano 5G (mobile) or 1G (fixed)) as well as social vouchers that now are explicitly foreseen by the Commission's recently renewed State Aid Guidelines. In fact, a significant amount of public funds are being released within the European Recovery and Resilience Programme (see in particular para. 4 for details). **ecta** expects the state aid grants to become increasingly important and disseminated across European MSs in time, as a result of the combination of VHCN connectivity needs and the availability of significant ERFP funds and to support to a great extent the connectivity by reaching the rural/disadvantaged areas of Europe.

²⁰ Obviously, would the Commission adopt the draft Gigabit Connectivity Recommendation in its current form then, retail prices increases will be inevitable.

²¹ ECB forecasts, available [here](#). In particular it is stated that *"the baseline projection sees headline inflation declining from 10.0% in the fourth quarter of 2022 to 2.8% in the fourth quarter of 2023, then hovering around 3.0% in 2024, before falling to the ECB's inflation target of 2.0% only in the third quarter of 2025"*.

²² Review of the scope of Universal Service, A study prepared for the European Commission DG Communications Networks, Content & Technology by: Tech4i2 Limited Time.lex BV CVBA Acreo Genesis Media GmbH, available [here](#)

25. Finally, regarding the question on the retail price caps on intra-EU communications (i.e. EUR 0.19 per minute for calls and EUR 0.06 per SMS message both including VAT) which are set to expire on 14 May 2024, **ecta** puts forward the following evidence based considerations. According to the recently released BEREC findings²³ covering data for April 2021 – March 2022, retail prices for regulated Intra-EU communications were on average: i) +/- 3c/min **for fixed calls**, i.e. **more than 6 times lower than the cap** of 19c/min; ii) +/- 6c/min **for mobile calls**, i.e. **nearly 3 times lower than the cap** of 19c/min; iii) for sms, +/- 4c/sms, i.e. **well below the cap** of 6c/sms. Additionally, markets evolve towards bundled offers (in both fixed and mobile markets) including flat rates for Intra-EU calls and sms. According to the 2018 BEREC report on Intra-EU calls²⁴, in 10 Member States more than 50% of the total Intra-EU minutes originating in fixed networks were included in bundled offers, whereas, in 4 Member States more than 30% of the total Intra-EU minutes originating from mobile networks were part of the bundled offers. It is very likely that if BEREC were to update data on bundling, these percentages would be even greater today. **ecta** underlines that the competition provided by challenger operators is the essential explanatory factor for the fact that real-world retail prices are far below the caps. **ecta** members actively use lower prices for Intra-EU calls, and the inclusion of Intra-EU calls in unlimited bundles, as a way to attract customers. In addition, both BEREC and individual NRAs have recognized the growing role and increasingly substitutive effect of internet-based services, enabling calls (incl. video calls) and messaging (incl. richer messaging in terms of functionality)²⁵. It is worth noting that the EECC explicitly recognised the impact/relevance of internet-based services on electronic communication markets by introducing the category of number-independent interpersonal communications services and submitting these services to a certain set of “telco-like” regulatory obligations. The consumers in all EU Member States make very extensive use of internet-based services. **ecta** thus is strongly of the view that any further intervention on retail prices for Intra-EU communications cannot be justified on valid grounds. The Regulation should therefore logically expire as scheduled on 14 May 2024. As a second order position, **ecta** considers that, if unavoidable, the Regulation could be left in place, but in that case it should left unchanged.

Section 3 - Barriers to the Single Market

26. **ecta** deems relevant the considerations provided in the introductory part of section 3 and considers it necessary to provide comments on several of them. **ecta** firstly agrees with the description provided by the Commission on the electronic communications market regulation for fixed markets as the enabler of competition in EU telecoms. However, **ecta** underlines that VHCN infrastructure is costly and telecom infrastructure will remain difficult to duplicate. Furthermore, actual experience shows clearly that there is no rationale to deploy in all EU territories ubiquitous parallel VHC networks (see in particular previous paragraphs 18 and 19). Therefore, the need for ex-ante regulation will remain in future. **ecta**, to such purpose acknowledges that there are parties (especially incumbent operators) that advocate that the regulatory and competition policies adopted by the EU and its Member States are inappropriate, notably in terms of not permitting consolidation, preventing operators from reaching scale and being able to do cross-border take overs. **ecta** fully disagrees with those arguments, for the following reasons:

²³ BEREC's Intra-EU communications Benchmark Report, BoR (22) 130, available [here](#)

²⁴ Available [here](#)

²⁵ The latest illustration of such recognition was made available on 29 November 2022, when the Austrian NRA published the results of a survey (conducted in July 2022), “RTR-Studie zeigt: digitale Kommunikation drängt klassische Kommunikationsdienste nach und nach ins Abseits (29.11.2022)” available [here](#) showing that nearly two-thirds of minutes of voice communication (incl. video) are internet-based, and that 9 out of 10 messages (incl. email) are sent via the internet instead of sms.

- i) The ex-ante regulation and its correct implementation so far has been an engine for the cross-border consolidation and not the other way around. Mobile infrastructure-based competition has emerged prior to the full liberalisation of electronic communications in 1998. Still today there are, in all Member States, more Mobile Network Operators (MNOs) with a (almost) national coverage than fixed network operators owning their infrastructure on a large scale. Over the last decade, convergence has accelerated, and bundled offers have become increasingly important. This has forced mobile centric MNOs to reconsider their strategies to secure their mobile customer basis. They have therefore sought to secure (long term) access to a fixed network (e.g. Orange Belgium getting access to the HFC cable networks thanks to ex-ante regulation of the cable networks)/ Others decided to withdrawn from the market (e.g. Telia Company divesting Yoigo to MasMóvil in Spain in 2016). Therefore, cross border consolidation through the acquisition of MNOs that do not have a large-scale fixed infrastructure (which is the majority of the MNOs) would seriously be hampered should the ex-ante regulation be watered down either by an attempt to review the EECC or should the recent draft Gigabit connectivity Recommendation be adopted without making needed structural changes. Indeed, while access to civil engineering infrastructure is an important remedy to build alternative networks, it does not allow to compete over a sufficiently large part of the country. Therefore, in the absence of appropriate and secured access to passive and active elements of another fixed network, the acquisition business case is highly risky or not viable. Duplicating civil engineering works or deploying fibre in ducts requires huge investments, and networks covering large parts of the territory may not be replicable.
- ii) To date there has been no single case of a cross-border EU merger in telecoms that has been blocked by the European Commission. Evidently, cross-border EU consolidation did not happen on a wider scale because there were not enough economic synergies for the electronic communications operators to opt for it. As regards consolidation at national level, this should be assessed on a case-by-case basis.
- iii) Finally, in relation to considerations put forward by the questionnaire on the mobile and wireless spectrum policies, for the arguments put forward in previous paragraphs (18 and 19) **ecta** considers that whereas spectrum is and will remain a scarce resource (there is no technological revolution to solve this scarcity), appropriate regulation, both by principles and provisions provided by the EECC and by secondary regulation performed by other competent institutions²⁶ and applied by the NRAs will remain key to ensure a fair distribution among the different parties and the effective use of the spectrum when it is assigned. This is all the more important to extract the full potential of the spectrum and allow all sectors of the EU economy to unleash the innovation potential of the technologies that use it. **ecta**, in light of these considerations, encourages all measures, including more structural ones by way of EU law, to ensure a harmonized approach at the European level for the national spectrum assignment procedures, with a view to foster wide mobile and fixed wireless coverage and innovation with the widest investments in 5G and 6G by the bidders (such as the French 5G auction design that is a best practice), as opposed to favouring the highest revenues for Member States (which has many times been the case until today). To such purpose the peer review mechanism foreseen by the EECC on a voluntary basis for the spectrum award proceedings should be rendered more transparent and the Peer Review Forum should necessarily include the active participation of private stakeholders in the meetings that are currently being held behind closed doors between

²⁶ Competent Ministries/ National Spectrum Authorities where applicable.

RSPG, NRAs and other competent national authorities. On the same topic, and in relation to the question on the possible added value, risk or cost of implementing a common EU-level licensing/authorization scheme for spectrum use, **ecta** calls on the Commission to exercise great caution. This kind of ‘solutions’ would favour only the 3 or 4 biggest players with a massive presence in the EU and with the necessary scale to win the pan-European award proceedings envisaged by the questionnaire. Specifically, EU-level licensing schemes would unduly disadvantage smaller competitors and new MNO entrants. Contrary to the 3 to 4 biggest players, smaller competitors, latest and new MNO entrants can’t leverage existing large customer bases and do not benefit from deep pockets scale economies, the ability to expand offers across several EU Member States nor to adapt to local market conditions. Thus EU-level licensing schemes would confer a competitive and comparative advantage to large, established providers. **ecta** therefore firmly believes that EU-level licensing schemes would damage competition, innovation and ultimately be to the detriment of EU consumers and businesses. Furthermore, **ecta** is convinced that a stronger EU approach is a sine qua non condition to harmonize the EMF limits. As of today, there is a discrimination between operators in the Member States that correctly adopted the emission limits recommended by the Commission, and those active in Member States imposing very strict values (i.e., Italy, Belgium, Bulgaria) which translates into a detrimental effect on network deployment and on competition. Therefore, in order to promote the Single Market, **ecta** calls on the European institutions to consider a revision of the legislative instrument (by providing for a regulation instead of a recommendation) to end the distortion of the internal market and ensure that operators are not discriminated against.

27. **ecta** notes the statement by the Commission that the case for a full integration of the single market for electronic communications appears to be stronger thanks to the on-going and future developments, such as, Machine to Machine services, internet of things (IoT) deployment, virtualisation of networks, etc. **ecta** underlines that the above mentioned developments are made a market reality by **ecta** members achieving success in the provision of those services especially in B2B markets. To such purpose, **ecta** invites the Commission and all stakeholders to a serious reflection on how from a regulatory point of view the above-mentioned pan-European services provision could be facilitated without leading to a reduction of opportunities for challenger operators to compete on the basis of their own infrastructure, networks and multi-country or cross-border service propositions. Cooperation should be promoted and where there is no willingness from incumbents, imperative measures should be made available to serve those pan-european service providers that are realizing the internal market.
28. Finally, for what concerns question 38 of the Commission on the adequacy of spectrum governance rules, **ecta** emphasises the importance of keeping the current rules. **ecta** believes in multilateralism and the importance of dialogue on the technical issues also with non-EU countries. Therefore, **ecta** endorses preservation and continuity of the current spectrum governance framework. Conversely, **ecta**, in relation to question 39 considers that having a more coordinated EU approach in relation to radio frequency interference in EU Member States from third countries would be beneficial overall.

Section 4- Fair contribution by all digital players

29. With regard to questions on the section covering fair contribution by all digital players, **ecta** respectfully requests the Commission to refer entirely to the **ecta** press release dated 13 September 2022, [available here](#) as it remains valid and up to date.