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SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

EEA EFTA Comments on the proposal for a Regulation of the European Parliament and of the Council Establishing the European Electronic Communications Market Authority¹

EXECUTIVE SUMMARY

Although some adjustments to the regulatory regime may be necessary, today's regulatory framework is essentially sound. Solutions for further European harmonisation should be found within the existing framework, avoiding new bureaucratic regimes. The proposal to establish a European Electronic Market Authority (EECMA) is a fundamental change to the existing framework. Together with a substantial transfer of decision making power from the Member States to the Commission, this proposal reaches far beyond adjustments to enhance the efficiency of the existing framework and, in the opinion of the EEA EFTA States, it is opposed to the idea of better regulation.

The EEA EFTA States view the creation of a new authority to be unnecessary, ineffective and too costly. Instead they support the idea of an enhanced European Regulators Group.

If a centralised Authority were to be created, in order to ensure the good functioning of the common market for electronic communication networks and services, it would be necessary for the independent regulators from the EEA EFTA States to fully participate in its work so as to respect the requirements for a harmonised functioning of the common market.

¹ This paper refers to the Commission's Proposal for a Regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority (COM(2007) 699 rev 2). Where necessary, the paper refers also to the Commission's Proposal for a Directive amending Directives 2002/21/EC (Framework Directive), 2002/19/EC (Access Directive) and 2002/20/EC (Authorisation Directive).

I. General considerations

1. It is the view of the EEA EFTA States that the existing regulatory framework provides the tools to allow for future efficient investment and innovation. Further regulatory amendments should therefore only be introduced in order to reduce the regulatory costs and administrative burdens.

2. The EEA EFTA States see the need for enhanced cooperation at the European level regarding market analyses and remedies, and acknowledge the work done by the Commission in this respect. However one should aim at finding appropriate European solutions within today's framework which are consonant with the principle of subsidiarity and avoid new bureaucratic regimes.

3. With the proposal to establish the European Electronic Communications Market Authority, the Commission seeks to introduce a fundamental change to the existing framework. Implying a substantial transfer of decision making power from the NRAs to the Commission, this proposal reaches well beyond a review's adjustment which should be aimed at rendering the existing framework more efficient and promoting better regulation.

4. In the view of the EEA EFTA States the Commission has not presented in a convincing manner failures of the current system that are serious enough to justify the set-up of a new Authority, in particular with reference to the principle of subsidiarity. In this context, the EEA EFTA States also question the cost-effectiveness of such an authority as claimed by the Commission in its impact assessment.²

II. Alternative Structure

5. Provided that the Authority's main function is to give advice to the Commission without any formal decision making power involved, most of the tasks could very well be exercised by another body, for instance, an enhanced ERG. The EEA EFTA States therefore do not agree with the analysis of the Commission that *only* a European Authority, in the form in which it is presented in the regulatory drafts, can achieve enhanced cooperation. To the extent that closer cooperation and harmonisation with regard to electronic communications networks and services were to result in any transfer of competence from national authorities, in the case of the EEA EFTA States this would be subject to compliance with EEA Agreement. It should be noted in this connection that the EEA EFTA States all have special conditions in the markets concerned, whether topographic or demographic or those of a very small market. It is the view of the EEA EFTA States that national conditions must always be sufficiently taken into account when applying the regulatory framework. The EEA EFTA States believe that the NRAs have the greatest competence with respect to assessing national conditions.

² SEC(2007) 1472, p. 81.

III. Considerations in the event that the EECMA is established

6. If the European Parliament and the Council were to follow the proposal of the Commission to establish the EECMA, the following points would need to be addressed with regard to the EEA EFTA States.

a. Advisory role of the Authority where competence is transferred to the Commission.

7. The EEA EFTA States cannot agree to the extension of Commission competence to the extent that measures might be adopted without the possibility for them to be involved in some adequate form in the decision shaping process. This is not in line with the EEA Agreement which insists on the EEA EFTA States contributing to the realisation and harmonised application of the single market. This is already of concern to the EEA EFTA States under the current framework with regard to the advisory role of the Communications Committee.

b. Assistance of the Authority regarding enhanced veto power of the Commission and market analysis

8. The EEA EFTA States oppose extension of veto powers to remedies which should only be imposed by the national regulatory authorities. It is they who know the specificities of the national markets.

c. Spectrum issues (Art. 8 – 10)

9. The proposal does not take into account the fact that “one size does not fit all” in this area. The Commission proposes that EECMA should take over tasks which are presently within the scope of CEPT.³ It is questionable whether spectrum issues are appropriate tasks for EECMA, whereas departure from the CEPT system might mean that neighbouring third countries could face problems in accomplishing necessary international frequency coordination. It should also be noted that Article 6, paragraphs 1-4 of the Radio Spectrum Decision do not apply to EEA EFTA States.

10. If spectrum tasks were to be transferred to EECMA, it would be in the mutual interest of the Member States of the EU and of EEA EFTA to monitor developments regarding radio spectrum in third countries and in international organisations, which may have implications for the implementation of this Regulation (cf. Decision No 676/2002/EC (Radio Spectrum Decision) Article 6, paragraph 1).

³ European Conference of Postal and Telecommunications Administrations.

d. Assistance of the EFTA Surveillance Authority

11. Taking into account the two-pillar system of the EEA Agreement, it would be essential that the Authority also informs and gives technical advice to the EFTA Surveillance Authority (ESA) and/or the EEA EFTA States in the same manner as the Commission and/or the Member States.

IV. Network and information security (Art. 14)

12. The EEA EFTA States wish to reiterate that they are indeed full members of ENISA, except for the right to vote. They contribute to the work of ENISA both financially and by active representation in the various subgroups. If ENISA were to be substituted by the EECMA, this will have implications for the EEA EFTA participation, which need to be adequately taken into account in any succession arrangements. The EEA EFTA States assume that the good cooperation in ENISA will continue, and that includes within the framework of the EECMA.

V. Third country provision (Art. 53)

13. The wording of Article 53 of the proposed Regulation indicates that the EEA EFTA States may participate in the work of the Authority, but specific arrangements will have to be worked out to define the extent of participation and cooperation.

14. In principle, the EEA EFTA States should be able to take part on an equal footing with the EU Member States in such an Authority. As regards the Board of Regulators, the EEA EFTA regulatory authorities should, equally, be granted full participation, since this will be imperative for the good and harmonised functioning of the common market.

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