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EEA EFTA Position

on the

Public Consultation on the Review of

EU Regulatory Framework for Electronic Communications

Networks and Services

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COVER SHEET		
Public consultation on the review of		
EU regulatory framework for electronic communications network and services		
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A. General comments

In this section, respondents are invited to express below their general comments on the Review of the EU Regulatory Framework for electronic communications networks and services.

The EEA EFTA States generally agree with the scope of the proposed changes of the regulatory framework for electronic communications networks and services although the Commission's proposals are broad and far-reaching, even radical in some cases in the setting of a review.

However, assuming that the proposed changes become *acquis* for the EEA EFTA States, they will create challenges for the EEA EFTA States with regard to the procedural mechanisms that are to apply within the EFTA pillar and for which specific solutions must be found.

B. Position on proposed changes

The Commission Staff Working Document accompanying the Communication from the Commission on the Review of the EU Regulatory Framework for electronic communications networks and services summarises the changes being proposed.

In this section, respondents are invited to give comments on these specific proposals

Respondents are requested to express very clearly their position on proposed changes. Please *limit your response to no more than one page per item.*

1. New approach to spectrum management

Generally, the EEA EFTA States welcome the initiative taken by the Commission regarding a more market-based approach to spectrum management and can concur with some of their proposals. The EEA EFTA States invite the Commission to adopt clear and realistic principles of spectrum management which should include the following:

- The nature of the radio spectrum is and must remain an administered public good.
- It must be recognised that a market based approach will not always lead to effective, functional use of spectrum.
- Because of existing frequency plans and factors like the need to manage the risk of harmful interference the new approach to spectrum management should be implemented through a step by step procedure of liberalising one frequency band or class of bands at a time.
- Due weight has to be given to mechanisms whose remit extends beyond the EEA notably CEPT at regional level and the ITU for global coordination;
- The new regime must take fully into account the principle of subsidiarity, so that the departures from national sovereignty (the basis for administration of the radio spectrum resource internationally) are objectively justified and proportionate for the attainment of explicit spectrum management goals.
- In accordance with subsidiarity, it is important in particular to recognize that optimal solutions must take account of national, geographical, topological, demographic and usage characteristics and so will necessarily vary from country to country. The public authorities concerned therefore will always need flexibility to apply authorisation schemes that best promote the objectives of spectrum management in such respects.
- In addition, it should be recognized that the NRA is the first point of reference for making adjustments to spectrum resource management regimes to take account of technological developments, to effect international coordination, and to ensure that public policy requirements are fulfilled, including those set at EEA level.

Furthermore, the EEA EFTA States would like to draw the Commission's attention to Liechtenstein's unique position, in that Switzerland – other than in the area of numbering and addressing – provides Liechtenstein with significant administrative assistance as regards spectrum management. The Government of Liechtenstein wishes for practical reasons to continue these arrangements in the interest of efficient and cost-effective frequency administration for the benefit of spectrum users. This aspect should therefore be taken into account.

Finally, the Commission should avoid reference to “licensing”. What is in reality being referred to are individual assignments (with accompanying usage conditions) of frequencies under a general authorisation regime in accordance with the Authorisation Directive.

1.1 Introduce freedom to use any technology in a spectrum band (technology neutrality)

The EEA EFTA States support this approach as a matter of principle. However, certain frequency bands will in the future continue to have to be allocated to specific services for technical reasons and because of the need for international coordination, such as in the case of satellite services. Certain bands must also receive special protection for scientific and other purposes. Such cases should be explicit exceptions to the Commission’s currently broadly expressed approach.

With regard to the exceptions to the rule of technology neutrality the Commission is invited to further substantiate the limited number of legitimate general-interest objectives to which the Staff Working Paper refers under point 3.1, second paragraph.

1.2 Introduce freedom to use spectrum to offer any electronic communications service (service neutrality)

The EEA EFTA States support the introduction of the principle of service neutrality in the use of spectrum.

We also strongly support the Commission’s approach regarding exceptions to service neutrality and the objectives mentioned under point 3.2., second paragraph. Public administrative control over spectrum usage must in particular be maintained where specific public interests objectives – such as safety of life – are at stake. The EEA EFTA States are in this regard also of the opinion that, should this proposal be implemented, it is very important to *safeguard sufficiently public interest objectives such as broadcasting and public mobile telephony*. For these reasons exceptions to service neutrality will have to be recognized, as will also be the case with certain internationally coordinated frequencies until their renegotiation.

1.3 Coordinated introduction of trading in rights of use

The EEA EFTA States support trading of frequencies provided that the following conditions are met:

- Individual assignments of frequencies must be of limited duration in order to achieve a fair allocation of this public good over time and to facilitate market entry especially that of green fielders;
- Low barriers of entry for all market players to access to frequencies in terms of administrative and usage fees should be ensured, for example and, where appropriate, by administrative pricing;
- In general, assignment of frequencies does not produce property rights and therefore cannot form the basis of financial claims against the public authority making the assignment. However, authorities which regain frequencies before the duration of an assignment has expired should pay fair compensation. In other cases, no compensation should be such as where the authorities withdraw and/or re-allocate a frequency from a spectrum user who has failed to comply with the usage conditions under which the frequency was allocated or where the duration of the assignment has ended;
- Where public interest objectives are at stake (for instance GSM, UMTS, and for broadcasting, research and defence purposes) the spectrum should continue to be subject to more restrictive conditions such as requiring consent of the public authority concerned;
- All other transfers should, for information purposes, be subject to a notification requirement to the public authority concerned.

In countries which do not suffer from a spectrum shortage, trading can lead to artificially creating a demand where there is in fact none through applying a market approach dogmatically. The EEA EFTA States therefore recommend leaving it to the Member States where there is no spectrum shortage to decide whether or not they would want to apply the trading regime.

1.4 Establish transparent and participative procedures for allocation

The EEA EFTA States concur with the Commission's proposals. The principle of transparency should not, however, be allowed to become an obstacle to frequency auctions where the NRA may accept that bid contents and the identity of bidders are not to be disclosed.

1.5 Introduce a procedure for coordinated spectrum management at EU level (comments related to specific options identified in the Impact Assessment can also be made in section C.2. "Radio spectrum" of this template)

The decision mechanisms the Commission foresees may make perfect sense in the EU pillar, but would exacerbate already existing problems related to comitology decision shaping from the point of view of the EFTA pillar. Thus while we agree that the implementation of the new approach described would require new decision mechanisms that yield binding results for all EU Member States, complementary means need to be found so that the EEA EFTA States are assured the transparency and participation that must be the counterpart to giving away national competence in this area. Only in this way can radio spectrum management be reformed on a Community level *and* for the benefit of individual service providers and end users within the *full* EEA area. There can in other words be no question of the EEA EFTA States abandoning national competence in this area without first securing adequate participation in the decision making process driven by the Commission. A specific dialogue is not only mandatory in this regard but the Commission to needs to acknowledge this in making its proposals and in applying its powers including within comitology procedures.

2. Streamlining market reviews

2.1 Relaxing notification requirements for the Article 7 procedures

As it has been stated in previous inputs, the EEA EFTA States have found the Art. 7. procedures to be time and resource consuming for all parties involved. The burden they impose on small States, where administrations and operators have limited resources compared to the nature of the exercise, seems to us disproportionate. In further streamlining the procedures the EEA EFTA States see an opportunity for the Commission to apply "better regulation" procedure in this field.

Such streamlining should recognize that the "one size fits all" requirements for market analysis under the current framework are excessive and unnecessarily bureaucratic for national markets in small States since these are generally characterized by strikingly definite market relationships, where clear blue water separates the position of the dominant player from any others. "Blue water" in this sense means that the dominance of a player is immediately obvious to the NRA on the basis of available information in relation to a market having a very small size and simple structure. In such markets simplified standards of analysis and procedures should be allowed.

In the light of the above the EEA EFTA States welcome further "streamlining" that removes disproportionate and burdensome procedures.

Referring to the possibility for Commission to mandate a full notification process in exceptional circumstances, clear criteria, or at least some guidelines, need to be established on what the exceptional circumstances might be, unless the NRAs would prefer to submit a full notification because they do not want to risk repeating the process after having submitted minimum information.

2.2 Rationalising the market review procedures in a single instrument

The EEA EFTA States support the aim to simplify the procedures. But for the moment we do not see sufficient justification for such a major change as suggested by the Commission. Instead, a better monitoring based on the existing rules is needed.

2.3 Introduce minimum standard for notifications

The EEA EFTA States do not object to the Commission's proposal that would require NRAs to include, in their notifications reference to all three aspects of the Article 7 market review mechanism. However the streamlining according to the "blue water" approach proposed above should be taken into account.

2.4 Require re-notifications after vetoes within a given deadline

3. Consolidating the internal market

3.1 Commission to review the timeliness and effectiveness of remedies

The EEA EFTA States oppose to the Commission's proposal to acquire veto powers with regard to remedies. We consider such powers to be excessive with respect to the principle of subsidiarity, notably on the grounds that

- 1) the NRA is best placed to take effective action in first instance and
- 2) the system for coordination and cooperation among the Commission and NRAs already provided for in the current framework is sufficient, if applied fully and on the basis of full participation by the EEA EFTA States, to meet the Commission's practical concerns.

However, if such a right of veto were introduced, the EEA EFTA States must, in the interest of homogeneity of the single European market and for purposes of visibility in decision shaping, be granted the right to participate in the corresponding comitology procedures that would undoubtedly be necessary to accompany such an extension of Commission powers.

3.2 Making the appeals mechanism more effective

The EFTA EEA States agree with the intention that decisions on remedies should not be held up in the court system. We would however need more information on what is meant by the exception of “irreparable harm”.

3.3 Common approach to authorisation of services with pan-European or internal market dimension

The EEA/EFTA States welcome the Commission’s initiative in making it easier to offer pan-European services. In this regard the EEA EFTA States support EEA-wide exchange of experience and development of best practices for assignment methods and definitions of spectrum use. This is best ensured by working on the basis of the voluntary cooperation in the Radio Spectrum Policy Group and in the Radio Spectrum Committee.

The EEA EFTA States are, however, not in favour of mandatory use of restrictive or exclusive radio service definitions, authorisation definitions or assignment methods.

3.4 Amend Article 5 of the Access Directive: non-Significant Market Power access and interconnection

The EEA EFTA States would like to keep Article 5(1) of the Access Directive thus allowing NRAs to impose remedies on undertakings without Significant Market Power (SMP) where this is essential in order to ensure adequate access and interconnection, and the interoperability of services (i.e. end-to-end connectivity) in a way that promotes efficiency, serves sustainable competition, and gives the maximum benefit to end-users.

Experience, particularly in Norway, has shown that this power has been necessary to maintain end-to-end connectivity. The EEA EFTA States therefore strongly object to the proposal that NRAs should submit a request to the Commission (the EFTA Surveillance Authority) for the authorisation to impose an obligation on a non-SMP undertaking. If the NRA recognises the need for such an obligation, the decision may have to be imposed immediately and so without enough time to consult with the Commission (or the EFTA Surveillance Authority in the case of the EEA EFTA States). In the experience of the EEA EFTA States the use of this article has been limited and they see no risk of over-regulation or a fragmentation of the Internal Market due to the continued existence of this article. It will hence be sufficient, and improve transparency and consistency, for guidelines to be established on precisely which kind of circumstances will justify use of these safeguard powers.

However if the Commission still propose such a limitation of national competence, the EFTA/EEA States urge the Commission to include a similar safeguard clause as in the exiting Framework Directive Article 7 no 6.

3.5 Introduce a procedure for Member States to agree common set requirements related to networks or services

The EEA EFTA States have no objections provided that they can participate fully in the procedures as observers (see General comments on decision-shaping, above). A mechanism to establish a common set of functional and technical requirements at EU-

level will require NRAs to cooperate more closely on technical issues in order to arrive at common positions with respect to the relevant standardization bodies. Existing fora such as ETSI OCG ECN&S (“Operational Coordination Group – Electronic Communications Networks and Services Directives”) should be strengthened. In addition, dedicated “task forces” or project teams between NRAs on specific issues should be set up when needed in order to provide coordinated input to standardization bodies.

3.6 Broadening the scope of technical implementing measures taken by the Commission on numbering aspects

The EEA EFTA States support the proposal enabling the Commission to take harmonisation measures on numbering thus broadening the scope of technical implementing measures. A committee approach would be needed in these cases.

However, in light of the experience with the failed ETNS (European Telephony Numbering Space), and the difficulties of harmonising numbering in general, such a decision requires very careful consideration beforehand. Criteria are needed as to when harmonization in this area will be justified, bearing in mind the potentially onerous impact on users if numbering plans are to be changed. This includes, among other things, considering which numbering classes are suitable for harmonisation and if there is sufficient market demand for the services. Furthermore, technical and interconnection related problems have to be addressed in such an assessment.

3.7 Amend Article 28 of the Universal Service Directive on non-geographic numbers

The EEA EFTA States concur with the Commission’s proposal, although this is one example of where an EEA measure will require much higher costs to implement from operators in small States relative to larger ones.

Further thought might be needed with regard to practical challenges for the NRAs such as billing.

3.8 Improving enforcement mechanisms under the framework

The EEA EFTA States agree with the Commission’s assessment and strongly support the proposals to improve the enforcement mechanisms.

3.9 Strengthen the obligation on Member States to review and justify ‘must carry’ rules

3.10 Adapting the regulatory framework to cover telecommunications terminal equipment, ensuring constancy with the R&TTE Directive

In sub-section 5.10 the document addresses the fact that not all types of terminal equipment are treated according to the same rules. The EEA EFTA States consider it is necessary to examine changes to the existing regulations. However, a relaxation of the requirement to publish network interface specifications may be premature. The EEA EFTA States therefore suggest that the current regime for interface specifications publication is evaluated as a first step.

Any relaxation of the publication requirements should contain clear criteria under which the relaxation will apply. These are currently too vague.

In addition, the EEA EFTA States consider that the network operator's obligation to connect should be acknowledged in the electronic communications framework.

4. Strengthening Consumer Protection and User Rights

4.1 Improve the transparency and publication of information for end-users

The benefit and needs of end users is central to the regulatory framework for electronic communication. The EEA EFTA States hence appreciate the Commissions proposals to strengthen the end users rights.

However, emerging service markets should be excluded from imposing minimal service requirements until they are sufficiently established.

The EEA EFTA States suggest considering to implement a voluntary system which could include comparative price information on display.

4.2 Strengthen the obligation for network operators to pass caller location information to emergency authorities

The EEA EFTA States support the Commission's suggestion.

4.3 Separate the provision of access to public communications networks from the provision of telephone services

The EEA EFTA States support the Commission's suggestion.

4.4 Remove provisions on universal directories and directory inquiry services from the scope of universal service

The EEA EFTA States support the idea to publish a Green Paper in 2007 on the scope of the universal service, which should also consider the universal directory and inquiry services field. In addition, special attention must be paid to data security and bundling of information.

4.5 Adapt ‘telephone service’ specific’ provisions to technology and market developments

In the view of the EEA EFTA States it is of specific importance to consider the needs of elderly and disabled users when achieving the balance between horizontal rights, sector specific regulation and specific requirements. To secure that disabled users are granted sufficient possibilities to participate in the Community on the same basis as others, it should in their opinion be considered to entitle disabled end users to solutions for mobile communication which are not being met by the market.

However, emerging service markets should be excluded from imposing minimal service requirements until they are sufficiently established.

4.6 Update the provisions on number portability to ensure transfer of all relevant data

4.7 Ensure that regulators can impose minimum quality of service requirements

4.8 Strengthen the right of disabled users to access to emergency services via the number ‘112’

4.9 Introduce a Community mechanism to address eAccessibility issues

The EEA EFTA States support the Commissions proposal to create a mechanism to enhance eAccessibility by establishing a group of member states, associations of the eCommunication industry and disabled users to address problems related to eAccessibility.

In our view it is of specific importance to consider the needs of elderly and disabled users when achieving the balance between horizontal rights, sector specific regulation and specific requirements. To secure that disabled users are granted sufficient possibilities to participate in the Community on the same basis as others, it should in our opinion be considered to entitle disabled end users to solutions for mobile communication which are not being met by the market.

Having said this special care should be taken as how to define “proven needs”. As elsewhere, there is a risk that measures in this area may lead to a burden on operators in small States that is disproportionate. A qualification should therefore be made as to economic and technical feasibility.

5. Improving Security

5.1 Oblige operators to take security measures, and grant powers for NRAs to determine and monitor technical implementation

The EEA EFTA States welcome the suggestions made. They agree that there is a need to protect businesses and users. It is of vital importance that network operation is sustainable under extraordinary circumstances.

However, the EEA EFTA States await more detailed proposals from the Commission on this issue before making fuller comment.

5.2 Require notification of security breaches by network operators and ISPs

5.3 Future-proof network integrity requirements

6. Better regulation: Removing outdated provisions

6.1 Delete the minimum set of leased lines

The EEA EFTA States agree to the Commission's proposal to delete the minimum set of leased lines.

6.2 Withdrawal of Article 27(2) of the Universal Service Directive on ETNS

The EEA EFTA States agree with the Commission's proposal.

6.3 Repeal of Regulation 2887/2000 on unbundled access to the local loop

The EEA EFTA States agree with the repeal Regulation 2887/2000.

6.4(a) Delete Annex I of the Framework Directive

The EEA EFTA States agree with the Commission's proposal.

6.4(b) Delete Article 27 of the Framework Directive

The EEA EFTA States agree with the Commission's proposal.

6.4(c) Delete Article 5(4) of the Access and Interconnection Directive

The EEA EFTA States agree with the Commission's proposal.

C. Comments to the Impact Assessment Report

The Impact Assessment Report accompanying the Communication on the functioning of the Regulatory Framework for electronic communications network and services identifies some broader policy issues - other than those listed in the above Section B.

In this section respondents are invited to clearly express their position on these policy options -. *Please keep you response to one page per item.*

1. Investment and growth

2. Radio Spectrum

3. Regulatory models and the Internal market

4. Market review procedures

5. Consumer protection and universal service

6. Security

7. Other areas

D. Other comments

Respondents wishing to address any additional issues/topics in relation with the Review of the EU Regulatory Framework for electronic communications networks and services are invited to express their views below.

Please keep responses short and concise.

The EEA EFTA States suggest better coordination between the provisions of the Authorisation- and of the Framework Directive, ideally the fusion of the two directives into one.