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EU telecom reform

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Published in:
Olswang Telecoms Update

Publication date:
2009

[Link to publication](#)

Citation for pulished version (HARVARD):
Coppieters 't Wallant, Q 2009, 'EU telecom reform' Olswang Telecoms Update, no. May, pp. 8-9.

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EU telecom reform

In the [October 2008](#) and [January 2009](#) updates we looked in some detail at how the reform of the EU regulatory framework for electronic communications was progressing. Since then, firmly divergent positions of the Council of the European Union, the European Commission and the European Parliament on a range of issues have resulted in tripartite negotiations ("trialogue"). These negotiations aim to ensure the adoption of a final text before the European elections of early June 2009.

To date, the negotiations have led to compromises on almost all the issues of reform. The following points have already been confirmed:

European telecom body - BEREC

There will be a Body of European Regulators for Electronic Communications ("BEREC"), composed of the national regulators and a European Commission representative. It will replace ERG and will advise the Commission, the European Parliament and the Council. It will not be an agency nor have a legal personality and it will act by two-thirds majority of all its members. An autonomous Community body with a legal personality (the "Office") will provide professional and administrative support. The Office will be funded by the Community budget and voluntary national contributions.

No veto power of the Commission over remedies

The Commission will have no veto power over remedies drafted by national regulators. However, national regulators should still take "utmost account" of the opinion of the Commission and, if any, of that of BEREC. If the Commission has "serious doubts" and BEREC shares these "serious doubts", the three should cooperate closely, with the objective of identifying the "most appropriate and effective measure". In short, the Commission will have no veto power over remedies but will have delaying and discussion power.

Functional separation remedy

After much debate the remedy of functional separation (c.f. the creation of Openreach in the UK) will form part of the package, although as an exceptional remedy of last resort.

Infrastructure sharing and risk sharing of next generation networks

National regulators can oblige dominant players to share facilities such as buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, ducts etc. On the other hand, national regulators should also promote investment and innovation in new infrastructure. Specifically, any related access obligation should take "appropriate account" of the risk incurred by the investing undertakings and should allow "cooperative arrangements" between investors and access seeking parties to "diversify the risk".

Anti-piracy rules

The last significant hurdle before the reform is adopted concerns an anti-piracy provision. It provides that no restriction to end-users' freedoms (i.e. internet access) may be imposed without a prior ruling of a judicial authority. This provision was added into the reform by the European Parliament in reaction to a French bill ("loi Hadopi"). This bill allocates the task of suspending internet access of users presumed to be

downloading illegal content, to a non judicial authority. This politically very sensitive issue is currently blocking the reform and could cause it to be postponed until autumn (for a formal conciliation procedure), if the Council of the European Union does not align its position with that of the European Parliament.

Next steps

The next formal step is the Telecommunications Council of the European Union, forecasted for 12 June 2009.

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