

#NetCompetition Alliance's position on the proposed EU Electronic Communications Code [COM(2016)590]

The [#NetCompetition](#) Alliance is a unique group of stakeholders that brings together Consumer Organisations, Service Providers and Network Operators, Digital Rights Organisations and Online Content Providers. Together, these organisations represent the large majority of EU citizens' interests in broadband. The Alliance is committed to promoting EU policies for the on-going availability and better and affordable internet access, specifically through healthy competition.

Despite some general positive aspects, we have concluded that the proposed Directive to establish a European Electronic Communications Code could severely damage competition within EU broadband markets. It is thanks to the strong pro-competitive safeguards provided by today's EU network access regulation that citizens and businesses have so far had access to top class connectivity at affordable prices.

As recognised by BEREC in its own analysis of the proposed Directive, **"a number of the Commission's proposals appear to start from the premise that investment will be incentivised through the relaxation of regulation** and consequent dulling of competitive dynamics". However, this is **"in conflict with both the Commission's stated beliefs and the evidence of the last 15 years"**, BEREC added.

The Commission's text considers incentivising investments in "Very High Connectivity" networks, notably by introducing conditions that make it harder for National Regulatory Authorities to safeguard competition and by removing pro-competitive rules that have so far seen significant investments in innovation and quality improvements. This approach would amount to the deregulation of Europe's dominant operators. It is therefore worrying to observe that the European Commission seems to have caved into the demands of Europe's largest telecoms operators while deprioritising the competition-oriented regulatory framework that is needed to fulfil consumers' and society's need for choice and affordable connectivity.

Due to the predictable market consolidation that would result from the proposed changes, the Commission itself foresees possible negative impacts on pricing and innovation. The Commission also admits negative effects on smaller entrants that rely on wholesale access rules while providing benefits to incumbent operators. It is therefore difficult to understand why such a deregulatory move was proposed, as even the European Commission realises that it can be dangerous.

Weakening the rules that have enabled and spurred competition in EU broadband access markets and allowing excessive market consolidation would not only significantly impact prices and choice, but it could also lead to the creation of a handful of powerful gatekeepers potentially allowing discrimination or unduly restricting basic freedoms and rights to communicate or access information.

The mere existence of a competitive market does not guarantee that consumers reap all the benefits of competition. A solid consumer protection framework is necessary in the sector to allow consumers to make well-informed choices and to change suppliers when dissatisfied. It is therefore important to make sure the EU Directive guarantees they can easily exercise their rights, in particular with regards to switching suppliers and bundled contracts.

We therefore urge the EU co-legislators to intervene and amend the rules in the proposed European Electronic Communications Code to re-establish and indeed strengthen the current successful pro-competitive approach. In addition, we urge the EU co-legislators to continue to ensure the independence of BEREC in its forthcoming reform.