Introduction

VATM, the Association of Telecommunications and Value-Added Providers presenting the interests of about 120 pro-competitive companies active in the German market, would like to point out several important aspects which the competitors in the telecommunications market consider essential to strength consumer benefits.

VATM believes that the proposed regulation regarding the single market would result in substantial changes to the current legal framework for electronic communication which has recently been transferred into national law - a revision at this time is premature since it has not yet been possible to analyze the results and efficiency of the legal framework. Moreover, the reasons cited by the Commission for a hasty introduction have been disproved in many ways. Europe does not fall behind the US in terms of broadband expansion and use[1] nor is the European market more fragmented than the US-American market[2]. There are therefore no reasons whatsoever to hastily take radical. With respect to choosing a regulation as the legal form and with respect to implementing the latest telecoms package in the Member States, it is premature and ignores the results still to be delivered. **Overall, the question arises of the validity of previously made statements and the reliability of recently adopted regulations of the European Commission and the European Parliament:**

- As the proposal of the European Commission is inconsistent in many respects, the results are uncertain. The regulation will change existing directives (e.g. the recently introduced Directive 2011/83/EU of 25 October 2011 on consumer rights, directive 2002/22/EC on universal service and users' rights regulation, regulation 531/2012 on roaming on public mobile communications networks within the Union). We also would constitute a breach of the principle of subsidiarity.
- DG CNECT obviously takes the view, that within the context of the revision of the EU market recommendation markets 1 and 2, which have been subject to ex-ante regulation so far[3] as market dominance was determined on both markets[4], should not

[1] ITU on 21 September 2013: European countries are world leaders both in fixed broadband penetration and actual Internet usage. All countries in the top 10 for fixed broadband penetration are European except for Korea (ranking 5). Germany is the 9th in the world. The US is only the 20th, Japan is 21st and China is 55th! http://www.itu.int/net/pressoffice/press_releases/2013/36.aspx#.Ukw6W4anolR.Even when it comes to fibre coverage (FTTC + FTTH) Europe is slightly ahead of the US. The EU has approximately 38%, whilst the US 34% fibre coverage.

[2] The large number of operators in the European market is described as 'market fragmentation' and as a factor withholding the development of the European market compared to the US for instance, which has only a few operators for the whole continent. As a matter of fact there are more than 1000 registered carriers in the US as well but most of them are regional and local operators whilst there are only a few operating across the whole US. This is not entirely dissimilar to the European market where the four main European mobile operators together hold a market share exceeding 60% but many national markets and regions have operators who do not belong to the large groups. Scale of the large operators in the US is similar to scale of the large European groups in terms of number of subscribers. T-Mobile Group 150 million subscribers; AT&T Wireless 107 million.

[3] https://ec.europa.eu/digital-agenda/news-redirect/12285

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further be ex-ante regulated and therefore were not taken into further consideration. Hence the draft send to interservice consultation foresees that non-physical products should in principle be able to replace local loop unbundling and sub-loop unbundling in an NGA context. Thus DG CNECT already anticipates the content of regulatory orders without awaiting the vote of the European Parliament on articles 17, 18 and 21.

- Furthermore, there was no public consultation held by the European Commission on this important and complex legislative proposal that would have allowed all stakeholders – industry, National Regulatory Authorities, end users, SMEs or large businesses, academics etc. – to share and discuss their views on a publicly available policy proposal and would have provided the Commission with comprehensive analysis and suggestions from a wide range of perspectives.

In VATM's view a proper analysis of the complex proposals is mandatory. VATM therefore encourages the European Parliament to push the European Commission to withdraw the proposal. The European Commission is called to perform a comprehensive evaluation and shall submit a report with appropriate proposals for a directive to the European Parliament and the Council in order to allow sufficient time for the co-legislators to analyse and debate the proposals properly.

Regarding specific regulations:

- **Decreasing the influence of the European Commission (Article 32 and Article 35):** The goal of the EU Commission to simultaneously make changes to other directives and regulations as part of the proposed regulation has to be assessed very skeptically in the VATM's view. For instance, in the future it should be made possible (Article 35) to permit under certain circumstances a veto decision of the Commission within the context of the Article 7 procedure although this had been opposed by the EU Parliament during the discussions regarding the EU review. We also think, that implementing acts are not an appropriate format to implement rules and BEREC is much better placed than the Commission.

- **European virtual access products (Article 17 and Article 18):** The European Commission proposes in Chapter 3, Section 2 of the draft SMR to define virtual access products. In amendment 100 of draft Report the Rapporteur proposes to delete the harmonisation of such products due to the criticism regarding the fit-for-purposeness of the products and the incompatibility of the approach chosen with the regulatory framework. In general, **VATM would like to point out that activities of the European Commission for European standardization of wholesale products to replace an**

[4] https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Market_overview_25_february_2013.pdf

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unbundled local loop (ULL) are the wrong way and that national unbundling obligations must not be suspended. We therefore reject a standardization of bit stream wholesale products as a replacement for an ULL. The access to unbundled and bundled high-quality and competitive (wholesale) products is a key factor for safeguarding competition! Access to a local loop is an essential prerequisite for competitors so that they can offer customers a connection with up to 50 Mbit/s using mostly their own VDSL infrastructure or, going forward, up to 100 Mbit/s using their own VDSL vectoring infrastructure. In view of the high cost of fiber optics-based connectivity to the customer, VDSL will probably remain the technology of choice in rural areas for a long time. The approach sought by the Commission to reduce the wholesale product rules in the network area to an EU-wide bit stream would not only destroy all ULL-based business models, but would stop broadband expansion particularly in thinly populated areas.

Harmonization of wholesale products may be helpful for business customers if it enables customers to offer their products across Europe. **Harmonization in the private customer sector is also helpful for some market participants if it helps to improve the wholesale conditions in terms of best-practice approaches.** Quality is a key factor when it comes to harmonization. It has to be designed so that each member state will actually be able to provide competitive offerings and quality is not limited by incumbent's offering. This is imperative if European companies are to benefit from an improved single market in telecommunications. In private customer sector competitors can profit from quality increase by identifying and implementing best practice so far this does not lead to discrimination to incumbent. **Therefore BEREC should set up specifications in guidelines for business wholesale access products and without prejudice to the imposition of physical access obligations**. In this context we support the proposed deletion of ANNEX I (Amendment 152 of the rapporteur).

- **Elimination of restrictions and discrimination (Article 21): We fully agree with the proposed deletion**. The alignment of international and domestic prices without any regard for the wholesale prices and self-costs are harmful to competition and to successful business models to the detriment of consumers. In the VATM's opinion, such a market intervention is therefore not justified, nor is it consistent with the services actually performed for the customer. **Voice-over-IP, Call-by-Call / Pre-selection, calling cards, and a large number of operators ensure intense competition for domestic and international calls. The same is true of mobile communications regarding the offerings of service providers and MVNOs versus the rates of the four network operators**. The proposal of the European Commission would remove Call-by-Call und Pre-selection and thereby the corrective effect against excessive retail prices which is successful in Germany and other countries and would replace them with the most stringent regulatory instrument, i.e. the setting of retail prices. **On the other hand, within the context of the current revision of the EU market recommendation, the EU**

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Commission calls Market 1 and Market 2 into question and wants to forego regulation here, although a study performed by the Commission only a few months ago confirmed the almost complete lack of competition in nearly all member states. Accordingly, the planned measures of the Commission appear completely inconsistent and politically motivated. Cutting these markets would remove Call-by-Call und Pre-selection and thereby the corrective effect against excessive retail prices which is successful in Germany and would replace them with the most stringent regulatory instrument, i.e. the setting of retail prices. VATM would therefore appeal also ITRE members to impose also in future Call-by-Call und Pre-selection by the incumbent. In general, instead of preventing - politically motivated - the levying of retail fees despite the undisputed provision of services and corresponding previous price setting by the Commission, one should therefore first wait for the effects of the expansion of access rights (decoupling) within the context of the Roaming III regulation and ensure access to the wholesale inputs which are granted within the context of Roaming III today. This would offer a real opportunity for the formation of competitive prices."

- **We believe, there is further room for improvement of the definitions within the subject of net neutrality (especially in Article 23.5).** One key definition will be "specialised services" and there are already differing opinions of what this would encompass. It will need to remain flexible to accommodate changes in technology and market requirements over time. Provisions on traffic management should allow operators to use reasonable measures to manage congestion and optimise traffic beyond what is needed for "temporary or exceptional" traffic management. Congestion management and optimisation deliver benefits above and beyond what is needed for exceptional and temporary traffic issues, providing a better service to the consumer, keeping costs down, and managing a limited resource.

- **Transparency and publication of information (Article 25):** As most of the information mentioned are already published by providers or are not possible to deliver. Providing actually available speed for mobile networks is not possible. Download and upload speeds will vary due to factors beyond the control of mobile operators, such as weather, number of users in a cell, the antenna strength of the handset, physical distance to the base stations and buildings. We also rate the Commission's proposals in this area in violation of existing requirements from the EU directives. In this context, special mention should be made of the Universal Service Directive and the Directive 2011/83/EU of 25 October 2011 on consumer rights. It is also necessary to take into consideration, that the amount and type of information would overwhelm the end user. **We therefore propose to follow the IMCO rapporteur deleing article 25.**

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- **Information requirements for contracts (Article 26):** It is not necessary and also inconsistent to modify rules recently introduced by the Directive 2011/83/EU of 25 October 2011 on consumer rights and the directive of Universal service and users' rights (being currently implemented). If consumer rights in the TC area would again be changed, **the question of the validity of previously made statements and the reliability of recently adopted regulations of the European Commission and the European Parliament would rise again.** In the VATM's view, the requirements regarding consumer protection regulations under European law are regulated in a balanced manner in the Universal Service Directive and the Directive on consumer rights. It would require a complete revision of the Telecommunications Act and other laws which have been adapted to the new EU legal framework at considerable cost. This complicates even more the EU rules which are complex for consumers and companies to begin with and creates innumerable new regulations and derogations. The individual examples listed below are definitely not final against the background of the system break described above. They show by way of example that top-down regulation from Brussels in the area of telecommunication customer protection which goes beyond the existing mechanisms is counterproductive and undermines, rather than strengthens, consumer protection.

- **Control of consumption (Article 27): We propose to follow the IMCO rapporteur to delete the article for voice services.** It is not necessary to implement consumption control mechanisms especially for voice services, as those services are increasingly offered on an unlimited basis within a bundle or which are substituted by VoIP or other services. In total, there are plenty propositions on the market to fulfil the customer's wishes regarding cost-control, such as prepaid offers in the mobile sector which deliver the same services characteristics and quality of service levels as post-paid services, but with the advantage of full cost control by the end-user. Also, cost-control apps are available to the customer or already build-in into mobile phones (i.e, it is a standard feature in Android). Furthermore, Article 27 takes not into account specific national circumstances (e.g. prior price announcement when using Call-by-Call in Germany) and do not differentiate insufficient various services.

- **Contract termination (Article 28):** Switching levels in telecommunications are already amongst the highest of any sector in the economy. **The Commission has not explained why telecommunications should be treated differently, and more onerously, compared to other sectors.** Extended contracts provide consumers with lower upfront prices, especially in relation to handset costs, which need to be balanced against the advantages of being able to easily change provider at a later date. Consumers can also choose from a variety of post-paid and prepaid contracts with different durations, including many with no commitment at all.

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Despite improvements by the Rapporteur on several provisions a major specific concern remains in relation to changes to terms and conditions. Any change, **even if beneficial to customers, gives rise to a right to terminate the contract under the Rapporteur's draft changes**. It should be clarified that consumers' right to terminate a contract as a result of a change to the terms only applies where the change is not beneficial. Moreover there is no obvious reason for this substantial interference with the freedom of contract. This contradicts the regulation in Article 28 (1) sentence 1 which provides for contracts with a term of up to 24 months – in agreement with the other EU consumer laws. This provision would in fact be rescinded again by Article 28 (2). Moreover, consumers are protected sufficiently by the option of entering into contracts with a maximum term of 12 months. The option of an implied contract extension is in effect removed by Article 28 (3) because the contract is supposed to be converted to a contract with an unlimited term if the consumer remains silent. It is not apparent, that, of all things, the implied contract extension, which may last no more than one year anyhow, is supposed to be a hindrance to switching providers.

- **EU-Roaming (Article 37):** In the more recent past, the EU Commission explicitly emphasized that it would continue to markedly lower the EU roaming fees. This contradicts the promise made two years ago that the adapted roaming rules were to create regulatory certainty until 2022. Instead of preventing - politically motivated - the levying of retail fees despite the undisputed provision of services and corresponding previous price setting by the Commission, one should therefore first wait for the effects of the expansion of access rights (decoupling) within the context of the Roaming III regulation and ensure access to the wholesale inputs which are granted within the context of Roaming III today. This would offer a real opportunity for the formation of competitive prices. Unpredictable political interference in market pricing instead of incentives to promote competition are disruptive to the markets and additional investments in infrastructures. The planned "phasing out" of roaming is also in conflict with the decoupling obligation of the Roaming III regulation. This obligation is currently being implemented in the industry at immense cost. If the fees would really be lowered in the coming year or even the "roam-like-home" approach would be enforced, this would mean that every network operator would have invested tens of millions of euros for decoupling, but there would at the same time be no demand for decoupling. It means that the "roam-like-home" approach cannibalizes the decoupling instrument.

  In this sense, VATM support the Rapporteurs idea of keeping the roaming III until 2016 and to continue charging for incoming calls. Nevertheless VATM likes to clarify that the proposal of rapporteur to abolish of retail surcharges doesn't mean zero difference between roaming and domestic tariffs.

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In addition to previous comments we also would like to propose the following amendments concerning proposed changes of the framework directive (**Recital 39, Article 32, 35),** the harmonization of rights of end-users **(Articles 21, 23, 24, 25, 28, 29),** relating the proposed facilitations for changing the provider **(Article 30).**

Amendment 1
Recital 39

Text proposed by the Commission	*proposed amendment*
It is to be expected that intensified competition in a single market will lead to a reduction over time in sector-specific regulation based on market analysis. ***Indeed, one of the results of completing the Single Market should be a greater tendency towards effective competition on relevant markets, with ex post application of competition law increasingly being seen as sufficient to ensure market functioning***. In order to ensure legal clarity and predictability of regulatory approaches across borders, clear and binding criteria should be provided on how to assess whether a given market still justifies the imposition of *ex-ante* regulatory obligations, by reference to the durability of bottlenecks and the prospects of competition, in particular infrastructure-based competition, and the conditions of competition at retail level on parameters such as price, choice and quality, which are ultimately what is relevant to end users and to the global competitiveness of the EU economy. This should underpin successive reviews of the list of markets susceptible to *ex ante* regulation ***and help national regulators to focus their efforts where competition is not yet effective and to do so in a convergent manner. The establishment of a true single market for electronic communications may in addition affect the geographical scope of***	***The dynamic market growth would not have been possible without competition. Successful competition would not have been possible without regulatory requirements. of essential wholesale products.*** In order to ensure legal clarity and predictability of regulatory approaches across borders, clear and binding criteria should be provided on how to assess whether a given market still justifies the imposition of *ex-ante* regulatory obligations, by reference to the durability of bottlenecks and the prospects of competition, in particular infrastructure-based competition, and the conditions of competition at retail level on parameters such as price, choice and quality, which are ultimately what is relevant to end users and to the global competitiveness of the EU economy. This should underpin successive reviews of the list of markets susceptible to *ex ante* regulation. ***Therefore the new recommendation must take into account the current market situation and therefore revised regularly on such basis. A reduction of markets on the basis of political considerations is not appropriate way of creating growth and investment. A new recommendation also has to take into account that ex-post application of competition law is not sufficient, as cartel offices do not have the know-how and ressources to surveil telecommunication***

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markets, for the purposes of both sector-specific regulation based on competition principles and the application of competition law itself.	***markets.*** The **aim is to ensure sustainable competition within the Internal market without imposing sector-specific regulation** on the basis of market analyses. The future market recommendation should take into account the current market situation and therefore revised **regularly on such basis. A reduction of markets on the basis of political considerations is not appropriate w**ay of creating growth and investment.

Justification

The need of regulation should only be based on the result of the three criteria test and not based on a political decision.

Amendment 2
Article 17

Text proposed by the Commission *proposed amendment*

'Article 17 – European virtual broadband access product 1. ***The provision of a virtual broadband access product imposed in accordance*** with Article 8 and 12 of Directive 2002/19/EC shall ***be considered as the provision of a European virtual broadband access product if it is supplied in accordance with the minimum parameters listed in one of the Offers set out in Annex I and cumulatively meets the following substantive requirements:*** ***(a) ability to be offered as a high quality product anywhere in the Union;*** ***(b) maximum degree of network and service interoperability and non-discriminatory network management between operators consistently with network topology;***	'Article 17 – European virtual broadband access product **Where undertakings are found to have SMP in a defined relevant market in accordance with Article 16 of Directive 2002/21/EC and where access obligations are** imposed in accordance with Article 8 and 12 of Directive 2002/19/EC**, they** shall **offer wholesale access products for business customers to enable for harmonized offers and in the private customer sector to meet best practice without discrimination in terms of incumbent, meeting at least the specifications set out by BEREC and without prejudice to the imposition of physical access obligations.**

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(c) capacity to serve end-users on competitive terms; ***(d) cost-effectiveness, taking into account the capacity to be implemented on existing and newly built networks and to co-exist with other access products that may be provided on the same network infrastructure;*** ***(e) operational effectiveness, in particular in respect of limiting to the extent possible implementation obstacles and deployment costs for virtual broadband access providers and virtual broadband access seekers;*** ***(f) respect of the rules on protection of privacy, personal data, security and integrity of networks and transparency in conformity with Union law.*** ***2. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 in order to adapt Annex I in light of market and technological developments, so as to continue to meet the substantive requirements listed in paragraph 1.***	

Justification

The availability of harmonised wholesale access products might be helpful for business customers if it enables customers to offer their products across Europe. Activities of the European Commission for European standardization of wholesale products to replace an unbundled local loop (ULL) are the wrong way – under no circumstances national unbundling obligations should not be suspended as the access to unbundled and bundled high-quality and competitive (wholesale) products is a key factor for safeguarding competition and broadband expansion particularly in thinly populated areas (e.g. by VDSL or VDSL vectoring). Harmonization in the private customer sector is also helpful for some market participants if it helps to improve the wholesale conditions in terms of best-practice approaches. However, care has to be taken that harmonization does not result in discrimination in terms of the incumbent. A situation where only one improved, but also more expensive input product will be available in a country resulting in discrimination by the incumbent must be avoided at all cost.

Amendment 3
Article 18

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Text proposed by the Commission	*proposed amendment*
Regulatory conditions related to European virtual broadband access product ***1-7***	Regulatory conditions related to European virtual broadband access product ***delete*** **BEREC should set up specifications in guidelines for business and private customer sector wholesale access products and without prejudice to the imposition of physical access obligations**

Justification

The availability of harmonised and improved wholesale access products might be helpful for business customers and also for some market participants serving private sector customers if it enables customers to offer their products across Europe. However it must be taken into account that a replacement of national unbundling obligations by a virtual broadband access product is not serving the goal of fostering competition and innovation (see above).

Amendment 4
Article 21

Text proposed by the Commission	*proposed amendment*
1. The freedom of end-users to use public electronic communications networks or publicly available electronic communications services provided by an undertaking established in another Member State shall not be restricted by public authorities. 2. Providers of electronic communications to the public shall not apply any discriminatory requirements or conditions of access or use to end-users based on the end-user's nationality or place of residence unless such differences are objectively justified.	***Delete***

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3. Providers of electronic communications to the public shall not apply tariffs for intra-Union communications terminating in another Member State which are higher, unless objectively justified: a) as regards fixed communications, than tariffs for domestic long-distance communications; b) as regards mobile communications, than the euro-tariffs for regulated voice and SMS roaming communications, respectively, established in Regulation (EC) No 531/2012	

Justification

There is no justification to regulate a retail competitive market The alignment of international and domestic prices without any regard for the service provider's input and self-costs are harmful to competition and to successful business models to the detriment of consumers. Voice-over-IP, Call-by-Call / Pre-selection, calling cards, and a large number of operators ensure intense competition for domestic and international calls. The proposal of the European Commission would remove successful correctives like Call-by-Call und Pre-selection and thereby the corrective effect against excessive retail prices which is successful in Germany and other countries and would replace them with the most stringent regulatory instrument, i.e. the setting of retail prices. The same is true for competition in mobile communications regarding the offerings of service providers and MVNOs versus the rates of network operators.

Amendment 5
Article 23 – paragraph 1

Text proposed by the Commission	*proposed amendment*
End-users shall be free to access and distribute information and content, run applications and use services of their choice via their internet access service. End-users shall be free to enter into agreements on data volumes ***and*** speeds with providers of internet access services	End-users shall be free to access and distribute information and content, run applications and use services of their choice via their internet access service. End-users shall be free to enter into agreements on data volumes**,** speeds ***and general performance characteristics*** with

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and, in accordance with any such agreements ***relative to data volumes,*** to avail of any offers by providers of internet content, applications and services.	providers of internet access services and, in accordance with any such agreements to avail of any offers by providers of internet content, applications and services

Justification

The debate around net neutrality and managed services is multi-faceted. On the one hand, it affects the situation of consumers and their access to contents and services on the internet. Still most of the discussion has failed so far to focus on future services which will be indispensable for the economy and, not least, for the impending shift to Industry 4.0. Setting of data volume and speeds the only characteristics subject to differentiation in internet access services reduces customer choice and limits opportunities for new business models such as internet access service with an enhanced best effort.

Amendment 6
Article 23 – paragraph 2

Text proposed by the Commission	*proposed amendment*
End-users shall also be free to agree with either providers of electronic communications to the public or with providers of content, applications and services on the provision of specialised services with an enhanced quality of service. ***In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair in a recurring or continuous manner the general quality of internet***	End-users shall also be free to agree with either providers of electronic communications to the public or with providers of content, applications and services on the provision of specialised services with an enhanced quality of service. **Where such agreements are concluded with the provider of internet access, that provider shall ensure that the enhanced quality service does not impair the general quality of internet access, except as may be necessary taking into account the state of the art and technology deployed, in order to ensure the delivery of the enhanced quality service**

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access services.	

Justification

The general quality of the internet access should not be impaired by the specialised services which should in practice improve the overall quality of service, by driving more investment.

Amendment 7
Article 23 – paragraph 3

Text proposed by the Commission	*proposed amendment*
This Article is without prejudice to Union or national legislation related to the lawfulness of the information, content, application or services transmitted	***Delete***

Justification

Should be covered under Article 23.5

Amendment 8
Article 23 – paragraph 4

Text proposed by the Commission	*proposed amendment*
The exercise of the freedoms provided for in paragraphs 1 and 2 shall be facilitated by the provision of complete information in accordance with Article 25(1), Article 26 (2), and Article 27 (1) and (2	***End-users shall be provided with complete information in accordance with Article 20(2), Article 21(3) and Article 21a of Directive 2002/22/EC,***

Justification
Information requirements already in place under Directive 2002/22/EC

Amendment 9
Article 23 – paragraph 5

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Text proposed by the Commission	*proposed amendment*
5. Within the limits of any contractually agreed data volumes or speeds for internet access services, providers of internet access services shall not restrict the freedoms provided for in paragraph 1 ***by blocking, slowing down, degrading or discriminating against specific content, applications or services, or specific classes thereof***, except in cases where it is necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent**,** non-discriminatory, proportionate **and necessary** to: a) implement a legislative provision or a court order, or prevent or impede serious crimes; b) preserve the integrity and security of the network, services provided via this network, and the end-users' terminals; c) prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures; ***d) minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.*** Reasonable traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph.	5. Within the limits of any contractually agreed data volumes or speeds for internet access services, providers of internet access services shall not restrict the freedoms provided for in paragraph 1 by discriminating against ***restricting or otherwise interfering with the transmission of internet traffic*** except in cases where it is necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent ***and*** *non-discriminatory****. Reasonable traffic management includes, inter alia the processing of data*** to: a) implement a legislative provision or a court order, or prevent or impede serious crimes; b) preserve the integrity and security of the network, services provided via this network, and the end-users' terminals; c) prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures; Reasonable traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph.

Justification

The new provision introduces strict principles aiming at defining the "reasonable" traffic management practices. Having on top of these principles an exhaustive list of situations where they would apply it would be potentially disproportionate, innovation restrictive and it would not be future proof. Also, to ensure efficient network utilization and optimal end-user experience – also for critical communication e.g. emergency calls – congestion management cannot be limited to exceptional situations. Optimisation of certain traffic may also be necessary – such as video traffic.

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Amendment 10
Article 23 – paragraph 5 (d)

Text proposed by the Commission	*proposed amendment*
d) minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally	d***) prevent or*** minimise the effects of network congestion provided that equivalent types of traffic are treated equally

Justification

In order to provide a good customer experience and robust internet access service, traffic management measures shall be taken to avoid in time traffic congestion or in the worst case to minimize its effects; waiting for congestion to occur would seriously degrade service quality and customer experience while requiring more drastic techniques to solve the traffic congestion.

Amendment 11
Article 24 – paragraph 1

Text proposed by the Commission	*proposed amendment*
National regulatory authorities shall closely monitor and ensure the effective ability of endusers to benefit from the freedoms provided for in Article 23 (1) and (2), compliance with Article 23 (5), and the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology and that are not impaired by specialised services. They shall, in cooperation with other competent national authorities, also monitor the effects of specialised services on cultural diversity and innovation. ***National regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings.***	National regulatory authorities shall closely monitor and ensure the effective ability of endusers to benefit from the freedoms provided for in Article 23 (1) and (2), compliance with Article 23 (5), and the continued availability of non-discriminatory internet access services ***~~at levels of quality that reflect advances in technology and that are not impaired by specialised services~~***. They shall, in cooperation with other competent national authorities, also monitor the effects of specialised services on cultural diversity and innovation***~~.~~ ~~National regulatory authorities shall report on an annual basis to the Commission and BEREC on their~~***

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	~~monitoring and findings~~

Justification

- *The term "advances of technology" is arbitrary and depending on its definition, it might be difficult to assess. Also, depending on its interpretation, this term might demand a forced investment, which would clearly not be in line with COM's market and competition based approach.*
- *The demand that the services are "not impaired by special services" cannot be met technically. Special services cannot be designed in a way that does not affect other services. Special services, and in particular, Quality of Service, are defined technically to possess priority in the case of congestion.Services which are not priorized might experience a temporary delay.*
- *NRAs have sufficient legal basis to cope with NN questions; reporting obligations to EU only creates additional bureaucratic burdens and uncertainty for businesses and consumers.*

Amendment 12
Article 24 – paragraph 3

Text proposed by the Commission	*proposed amendment*
The Commission may adopt implementing acts defining uniform conditions for the implementation of the obligations of national competent authorities under this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33 (2).	***BEREC shall, after consulting stakeholders and in cooperation with*** the Commission***, lay down guidelines*** defining uniform conditions for the implementation of the obligations of national competent authorities under this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33 (2).

Justification

The issue delegated legal acts also warrants a critical view. This ultimately enables the Commission to enforce individual specifications of the regulation without involvement of the European Parliament and thereby considerably strengthens its influence. BEREC has already provided guidelines on this area and is the appropriate body to issue any further guidelines needed.

Amendment 13
Article 25 – paragraph 2

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Text proposed by the Commission	*proposed amendment*
The Commission may adopt implementing acts specifying the methods for measuring the speed of internet access services, the quality of service parameters and the methods for measuring them, and the content, form and manner of the information to be published, including possible quality certification mechanisms. The Commission may take into account the parameters, definitions and measurement methods set out in Annex III of the Directive 2002/22/EC .Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).	***BEREC, after consulting stakeholders and in close cooperation with the Commission, shall lay down general guidelines*** for the methods of measuring the speed of internet access services, the quality of service parameters ***(inter alia average versus advertised speeds; quality as perceived by users),*** and the methods for measuring them, and the content, form and manner of the information to be published, including possible quality certification mechanisms. The Commission may take into account the parameters, definitions and measurement methods set out in Annex III of the Directive 2002/22/EC .Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

Justification

BEREC has already provided guidelines on this area and is the appropriate body to issue any further guidelines needed. Furthermore it is necessary to reflect technical differences for mobile networks – where actual speeds/congestion cannot be measured and will vary depending on different factors, such as number of people in a cell, handset used, etc.

Amendment 14
Article 28 paragraph 2

Text proposed by the Commission	*proposed amendment*
Consumers, and other end-users unless they have otherwise agreed, shall have the right to terminate a contract with a one-month notice period, where six months or more have elapsed since conclusion of the contract. No compensation shall be due other than for the residual value of	***Delete***

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subsidised equipment bundled with the contract at the moment of the contract conclusion and a pro rata temporis reimbursement for any other promotional advantages marked as such at the moment of the contract conclusion. Any restriction on the usage of terminal equipment on other networks shall be lifted, free of charge, by the provider at the latest upon payment of such compensation	

Justification

Right to terminate after 6 months *- The proposal that a customer signs up to a contract of a given length which is longer than 6 months, and then after 6 months is able to leave it causes a financial uncertainty to. It also ends the possibility of operators to propose significant discounts to loyal customers, resulting in higher prices. The proposal also does not take into account that in the market place, there are more and more offers without commitments on duration for consumers not willing to take them together with different contract terms available. The requirement to specify a price for the handset and also enable a customer to purchase the handset at a reduced price after six months also means that the sale of the handset is likely to constitute a credit arrangement which may lead to a reduction in handset subsidies – which are of real benefit to consumers.*

Amendment 15
Article 28 paragraph 3

Text proposed by the Commission *proposed amendment*

Where the contracts or national law provide for contract periods to be extended tacitly, the provider of electronic communications to the public shall inform the end-user in due time so that the end-user has at least one month to oppose a tacit extension. If the end-user does not oppose, the contract shall be deemed to be a permanent contract which can be terminated by the end-user at any time with **a one-month notice period and without incurring any costs**	***Delete***

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Justification

Article 28, paragraph 3 results in high customer acquisition costs and customer retention costs and will result in weak investment power or an increase of consumer prices. .

Amendment 16
Article 28 paragraph 4

Text proposed by the Commission	*proposed amendment*
End-users shall have the right to terminate their contract without incurring any costs upon notice of changes in the contractual conditions proposed by the provider of electronic communications to the public unless the proposed changes are **exclusively** to the benefit of the end-user. Providers shall give **end-users** adequate notice, not **shorter** than one month, of any such change, and shall inform them at the same time of their right to terminate their contract without incurring any costs if they do not accept the new conditions. Paragraph 2 shall apply *mutatis mutandis*.	***Member States shall ensure that consumers and other*** *end-users so requesting, have the right to terminate their contract without incurring any costs upon receiving notice of changes in the contractual conditions proposed by the provider of electronic communications to the public unless the proposed changes are to the benefit of the end users. Providers shall give* ***consumers*** *adequate notice, not* ***less*** *than one month, of any such change, and shall inform them at the same time of their right to terminate their contract without incurring any costs if they do not accept the new conditions. Paragraph 2 shall apply mutatis mutandis*

Justification

Termination following changes to terms and conditions - The proposed amendment proposes to make it clearer unless the proposed changes are overall of benefit to the end-user.

Amendment 17
Article 28 paragraph 5

Text proposed by the Commission	*proposed amendment*
5***. Any significant and non-temporary discrepancy between the actual***	***delete***

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performance regarding speed or other quality parameters and the performance indicated by the provider of electronic communications to the public in accordance with Article 26 shall be considered as nonconformity of performance for the purpose of determining the end-user's remedies in accordance with national law.	

Justification:

There are still rules within several member states, e.g. in Germany as a part of a self-commitment of the telecommunication industry.

Amendment 18
Article 29

Text proposed by the Commission *proposed amendment*

If a bundle of services offered to consumers comprises at least a connection to an electronic communications network or one electronic communications service, Articles 28 and 30 of this Regulation shall apply to all elements of the bundle	***delete***

Justification

We support the deletion of this article within the Harbour report. Some consumers may choose to have one provider covering all their needs of electronic communications services. It would be disproportionate that a discrepancy on one element would enable the consumer to terminate his whole relationship with the supplier

Amendment 19
Article 30 – paragraph 3

Text proposed by the Commission *proposed amendment*

Porting of numbers and their activation shall be carried out within the shortest possible time. For end-users who have	Porting of numbers and their ***subsequent*** activation shall be carried out within the shortest possible time. For end-users who

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concluded an agreement to port a number to a new provider that number shall be activated within one working day from the conclusion of such agreement. ***Loss of service during the process of porting, if any, shall not exceed one working day***	have concluded an agreement to port a number to a new provider that number shall be activated within one working day from the conclusion of such agreement

Justification

Switching levels in telecommunications are already amongst the highest of any sector in the economy. The Commission has not explained why telecommunications should be treated differently, and more onerously, compared to other sectors. Extended contracts provide consumers with lower upfront prices, especially in relation to handset costs, which need to be balanced against the advantages of being able to easily change provider at a later date. Consumers can also choose from a variety of post-paid and prepaid contracts with different durations, including many with no commitment at all.

Amendment 20
Article 30 – paragraph 4

Text proposed by the Commission *proposed amendment*

4. The receiving provider of electronic communications to the public shall lead the switching and porting process. End-users shall receive adequate information on switching before and during the switching process, and also immediately after it is concluded. End-users shall not be switched to another provider against their will.	***delete***

Justification

The receiving provider cannot assume sole responsibility for executing the change of providers. Instead special responsibility should be placed not on the receiving, but on the transferring provider because he has to provide the subscriber with the service (again) if the change of providers fails.

Amendment 21

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Article 30 – paragraph 5

Text proposed by the Commission	*proposed amendment*
5. The end-users' contracts with transferring providers of electronic communications to the public shall be terminated automatically after conclusion of the switch. Transferring providers of electronic communications to the public shall refund any remaining credit to the consumers using pre-paid services	***delete***

Justification

It is not possible for providers to refund the remaining pre-paid credit as many of these end-users are not registered customers. Customers are able to spend this balance before they transfer.

Amendment 22
Article 35 – paragraph (2) (a)

Text proposed by the Commission	*proposed amendment*
Article 7a is amended as follows: – (a) in paragraph 1, the first sub-paragraph is replaced by the following: '1. Where an intended measure covered by Article 7 (3) aims at imposing, amending or withdrawing an obligation on an operator in application of Article 16 of this Directive in conjunction with Article 5 and Articles 9 to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive), the Commission may, within the period of one month provided for by Article 7(3) of this Directive, notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single	Article 7a is amended as follows: – (a) in paragraph 1, the first sub-paragraph is replaced by the following: '1. Where an intended measure covered by Article 7 (3) aims at imposing, amending or withdrawing an obligation on an operator in application of Article 16 of this Directive in conjunction with Article 5 and Articles 9 to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive), the Commission may, within the period of one month provided for by Article 7(3) of this Directive, notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single

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market or its serious doubts as to its compatibility with Union law, **taking into account as appropriate any Recommendation adopted pursuant to Article 19 (1) of this Directive concerning the harmonised application of specific provisions of this Directive and the Specific Directives.** In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification.'	market or its serious doubts as to its compatibility with Union law. In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification.'

Justification

Recommendations are not binding on the National Regulatory Authorities and their legal status cannot be enhanced. Deviations from Recommendations should not per se justify the opening of a Phase II or be considered a sufficient ground for considering that the measures proposed by the National Regulatory Authority are incompatible with Community law.

Amendment 23
Article 35 – paragraph (3) (a)

Text proposed by the Commission	*proposed amendment*
Article 15 is amended as follows: *– (a) the following sub-paragraph is inserted between the first and second subparagraphs of paragraph 1:* ***'In assessing whether a given market has characteristics which may justify the imposition of ex-ante regulatory obligations, and therefore has to be included in the Recommendation, the Commission shall have regard in particular to the need for convergent regulation throughout the Union, to the need to promote efficient investment and innovation in the interests of end users and of the global competitiveness of the Union economy,***	***delete***

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and to the relevance of the market concerned, alongside other factors such as existing infrastructure-based competition at retail level, to competition on the prices, choice and quality of products offered to end users. The Commission shall consider all relevant competitive constraints, irrespective of whether the networks, services or applications which impose such constraints are deemed to be electronic communications networks, electronic communications services, or other types of service or application which are comparable from the perspective of the end-user, in order to determine whether, as a general matter in the Union or a significant part thereof, the following three criteria are cumulatively met: ***(a) the presence of high and non-transitory structural, legal or regulatory barriers to entry;*** ***(b) the market structure does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based and other competition behind the barriers to entry;*** ***(c) competition law alone is insufficient to adequately address the identified market failure(s).'***	

Justification

The pre-emption of the effects that the implementation of a 'Single Market' will have on the level of competition in the telecommunications markets and on their geographic scope must be avoided. The move of the "three criteria test" from the Recommendation of Relevant Markets to the Framework Directive and the concomitant modification of the currently applicable test cannot be justified. As BEREC has recognized, the need to explicitly consider the global competitiveness of the EU when deciding whether a market

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should be subject to ex ante regulation in practice means adding a new regulatory objective – the promotion of the global competitiveness of the EU - to the current framework's goals of promoting competition and efficient investment. Such modification could risk regulatory conflict between the framework objectives and introduce new grounds for legal challenge of regulatory decisions, thus increasing legal uncertainty

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