

Introduction

VATM, the Association of Telecommunications and Value-Added Providers presenting the interests of about 120 pro-competitive companies active in the German market, already pointed out in its previous opinion from October 2013 and the proposed amendments of 13th December 2013 that the proposed regulation introducing the single market would result in irreversibly damage to the competitors within the telecommunications market.

The paradigm change which the EU Commission is currently pushing forward is shown in particular in a deregulation of wholesale inputs which promotes investments and competition in many respects. Not only must the departure from infrastructure-based competition be considered as an extremely dangerous experiment which impedes investments, it also causes lasting damage since this step is hardly reversible. Once competition has been curtailed, few options are left to revive it. 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.

From competitor's view it will be of utmost importance to keep into mind the following points when considering compromise amendments in preparation of the vote in the ITRE committee and later on in the plenary:

1. Wrong assumptions: Europe is not lagging behind other parts of the world when it comes to broadband penetration. Due to competition, Germany is one of the top countries :

- A careful analyses based on accurate diagnosis is essential to prevent the wrong prescription. The Single Market legislation should focus on the benefits and target clearly identifiable failures.

2. Playing with fire: The European Commission requires NRAs to assess the appropriate and proportionality of imposing EU virtual products instead of any other existing wholesale access products.

- In Germany, for example, nearly 10 million unbundled local loops, more than 25 percent of all fixed network connections are by now managed by competitors. 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. 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. Nevertheless, it should be remembered that activities of the European Commission for European standardization of wholesale products to replace an unbundled TAL are the wrong way and that national unbundling obligations must not be suspended.

3. Betting on the wrong horse: Instead of reducing regulation in favour of European incumbents, the Framework should enforce competition on a pro-competitive market-driven approach:

- As competitors use another investment strategy than Telekom Deutschland and especially investing in rural areas instead of re-connect already supplied cities, it needs pointing out that in the overall economic perspective competitors are therefore important, as they actually deliver a higher contribution to broadband penetration, hence also increase their share in the overall economic growth

4. Question about the validity of previously made statements and the reliability of recently adopted regulations

- With respect to choosing a regulation as the legal form and with respect to implementing the latest telecoms package in the Member States, the current proposal is premature and ignores the results still to be delivered. The same is valid for the proposed changes of key sections of the EU Roaming Regulation which currently has to be implemented by the companies without a sustainable overall concept in evidence. Inconsistency is also given within the context of the revision of the EU market recommendation where the Commission is already anticipating the content of regulatory orders without awaiting the vote of the European Parliament on articles 17, 18 and 21.

To avoid the situation of damaging competition, MEPs rightly tabled amendments rejecting some of the Commission proposals. We therefore would like to take this opportunity to highlight again important aspects, which should be taken into consideration, especially when considering compromise amendments:

VATM explicitly supports:

**Amendment 100
Pilar del Castillo**

**Proposal for a regulation
Chapter 3 – section 2**

Text proposed by the Commission

Amendment

[...]

deleted

VATM shares the justification that these products have met with heavy criticism ranging from that they are not fit for purpose to that they are fundamentally against the

approach of the framework. In this context we would like to point out that activities of the European Commission for European standardization of wholesale products to replace an unbundled local loop (ULL) are the wrong way and that national unbundling obligations must not be suspended. As 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. We therefore reject a standardization of bit stream wholesale products as a replacement for an ULL. However, as said under point 2, a 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).

Amendment 101
Pilar del Castillo

Proposal for a regulation
Article 21 – paragraph 3

Text proposed by the Commission

Amendment

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: ***deleted***

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.

We fully agree with the proposed deletion. We believe, existing corrective mechanism like Voice-over-IP, Call-by-Call / Pre-selection, calling cards etc. 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. Regarding mobile communications one should 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.

Amendment 179 Salvador Sedó i Alabart

Proposal for a regulation Recital 15

(15) It is necessary to ensure that in similar circumstances there is no discrimination in the treatment of any European electronic communications provider by different Member States and that consistent regulatory practices are applied in the single market, in particular as regards measures falling within the scope of Articles 15 or 16 of Directive 2002/21/EC, or Articles 5 or 8 of Directive 2002/19/EC. European electronic communications providers should therefore have a right to equal treatment by the different Member States in objectively equivalent situations in order to enable more integrated multiterritorial operations. ***Furthermore, there should be specific procedures at Union level for the review of draft decisions on remedies within the meaning of Article 7a of Directive 2002/21/EC in such cases, in order to avoid unjustified divergences in obligations applicable to European electronic communications***

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providers in different Member States

VATM supports this amendment. 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. We therefore also very much welcome the proposed deletion of veto powers. In this context we also share deleting the veto extension in **amendments 39 (regarding recital 71) and amendment 121 (regarding article Art. 35 (2) (c))**. Regarding the application of implementing acts we believe that BEREC is much better placed than the European Commission.

VATM also see potential for changes and improvement:

Amendment 578

Lambert van Nistelrooij

Proposal for a regulation

Article 21 a (new)

Text proposed by the Commission

Amendment

Article 21 a

By December 31 2014 BEREC shall adopt a single value for each of fixed and mobile termination rates calculated in accordance with Recommendation C(2009) 3359 final of 7.5.2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU.

By 30 June 2015 all National Regulatory Authorities (NRAs) shall ensure that operators designated by them as having significant market power on the markets for wholesale voice call termination on individual public telephone networks as a result of a market analysis carried out in accordance with Directive 2009/140/EC shall levy the termination rates determined by BEREC in this paragraph.

VATM does not share this view. There is no reason to leave a uniform throughout the EU proven regulatory systematic (Market analyses - three criteria test – imposing of remedies). This would mean bypassing the Commission recommendation on the Regulatory Treatment of Fixed and Mobile

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Termination Rates in the EU. Furthermore a Europe-wide harmonized rate would lead to competitive advantages of smaller member states respectively very dense populated countries. Countries that cover a large geographical area with correspondingly high cost of the network would have competitive disadvantages.

- **Article 23: VATM has recognized the discussion and the vote of IMCO regarding a definition of “specialised services”:** We would like to restate that 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.
- **Article 28: A contract termination after six month is not taking account the fact that switching levels in telecommunications are already amongst the highest of any sector in the economy. There are therefore no reasons to treat telecommunications differently, and more onerously, compared to other sectors.** It should be considered, that 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.
- **EU-Roaming:** 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 of service providers and light MVNOs to the wholesale inputs which are granted by article 3 of the EU-Roaming-Regulation 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. Anyhow, if, despite of our arguments, the Commission should plan the abolition of Roaming charges from 2016 it will be crucial that the operators can set up fair use clauses to prevent fraudulent usage. In this respect, VATM agrees with the corresponding ITRE amendments.

Brussels, 03.02.2014