

Danish Non-Paper on the Review of the Electronic Communications Regulatory Framework

The electronic communications regulatory framework should be adapted to better support the roll-out of high-speed broadband in the EU while at the same time continuing to promote competitive prices and innovative services to the benefit of European businesses and consumers.

The Danish Government welcomes the Commission's Digital Single Market Strategy and shares the view that a strong, competitive and dynamic telecoms sector is a prerequisite for a well-functioning Digital Single Market. In fact, resilient, high-speed networks that provide businesses and consumers with ubiquitous connectivity are no longer just limited to being the foundation for the so-called "digital economy" but rather something that underpins basically all sectors of a modern economy. In other words, making sure Europe has a fit-for-purpose electronic communications regulatory framework is vital for the European economy going forward.

Much has changed since the last framework review in 2009. Connectivity has become ever more important to businesses and consumers alike and providers of electronic communications services are faced with growing competition from service providers using the Internet to deliver communications services. Taken as a whole, the current framework has proven both resilient and, to a large degree, successful in promoting broadband rollout, competitive prices and innovative services. In this sense, the regulatory objectives of the Framework – promoting effective and sustainable competition and efficient investment, contributing to the development of the single market and promoting the interest of EU citizens – remain valid and appropriate. However, the results vary across the EU and the review should take due note of what lessons can be learned from Member States where the current framework has proven successful in generating a high level of investment from the private sector in digital infrastructure. This should provide a good starting point for making the necessary changes to the framework while also recognizing that a significant part of the current framework structure can still be useful going forward. One such part are the important roles played by independent national regulatory authorities (NRAs) and BEREC in ensuring a harmonized European approach to telecoms regulation, while also taking differing national circumstances into account. The NRAs and BEREC should continue to be trusted with these roles.

The objective of the review should be to **support the roll-out of high-speed broadband** in the EU and to continue to **promote competitive prices and innovative services** to the benefit of European businesses and consumers. Promoting efficient competition and stable, predictable regulatory conditions for providers of electronic communication will spur investment in digital infrastructure and should, thus, be at the heart of an up-dated framework. At the same time, it is necessary to make sure that the rules are clear and comprehensible. Where possible without being to the detriment of competition or consumer protection, the review should also look to **remove unnecessary regulation and regulatory burdens** placed on providers of electronic communications and national regulatory authorities.

The Danish Government looks forward to playing an active and constructive role in making the electronic communications regulatory framework fit for the future.

SMP regulation

As stated above, Denmark believes that the main focus of the regulatory framework should continue to be ensuring competition and setting stable conditions thus promoting the necessary investments in digital infrastructure.

In Denmark the incumbent telecoms operator continues to have a high market share in the broadband and cable TV markets and also plays an important role in the roll-out of high-capacity networks. However, high-capacity fiber networks (FTTH) are also rolled out by regional electricity utilities as well as by local cable TV-providers etc. These providers are not subject to the same access obligations as the incumbent.

The regulatory tools in the present framework are primarily aimed at regulating wholesale access to the network of a single owner of one national network. The current tools are not necessarily the right ones in a situation where a number of actors have local dominance in different geographical areas. Few households will have access to more than one high-capacity network. Households not connected to the incumbent's network are, thus, limited in their choice of internet service provider.

- The Commission should consider whether the current ex-ante SMP-regulation should be adapted to also allow NRAs a more flexible approach to imposing symmetrical obligations of access to high-capacity infrastructure where it is deemed necessary.

Governance

NRAs and BEREC have played key roles in ensuring a harmonized European approach to telecoms regulation, while also taking differing national circumstances into account. Denmark believes that the national regulatory authorities should continue to play an important part in the day-to-day regulation, as they are closest to and have the deepest knowledge of the national market conditions. Further institutional harmonisation runs the risk that Member States might be hindered from solving market problems in their respective countries while potentially undermining the principle of independence and connection to and understanding of local markets. Institutional independence of NRAs (the BEREC members) should continue to be guaranteed by the framework. However, as it stands today various supervision obligations under the framework can nationally be the responsibility of non-BEREC members. While BEREC members need to stay independent, BEREC would benefit from opening up its work to experts from other relevant national authorities. This would also allow BEREC to respond to an ever more complex and convergent sector.

- While generally preserving the current institutional setup within BEREC and keeping BEREC members' institutional independence, the Commission should look at the possibility of opening up the work done in BEREC to other relevant national authorities (non-BEREC members) vested with supervision obligations under the framework.

Universal service

Access to electronic communication is crucial in today's society, and universal service continues to play a role ensuring access to basic services for all. However, a number of services mentioned in the present Universal Service Directive are outdated and have been replaced by new means of communications such as mobile phones and e-mail. There is no need to maintain the provisions on payphones and telefax.

- The Commission should evaluate which obligations in the Universal Service Directive are no longer needed and thus can be removed without hurting end-users.

It should be up to the Member States to evaluate the needs, availability and funding mechanisms and thus to decide whether a universal service obligation is the right tool to ensure access to broadband.

- The Commission should evaluate the current provisions on broadband in the Universal Service Directive and consider whether they need to be updated.

End-user rights

Denmark believes that there should be a continued focus on ensuring transparency for consumers allowing them to make rational choices, and thus strengthen competition. In general, Denmark is satisfied with the present level of consumer protection in the framework.

Denmark believes that end-user rights should be harmonised to as large extent as possible. The rules should be as simple as possible while at the same time ensuring the adequate level of consumer protection. This will make it easier for operators to provide services across borders thereby strengthening the digital single market.

A key aspect of consumer protection is the ability to switch provider if the consumer is not satisfied with the pricing or services offered. Denmark believes that the 1 day porting rule is a key enabler to enhance competition and on top of that Denmark has a 6 months maximum commitment period.

- The Commission should consider whether a general reduction of the maximum commitment period would be beneficial for competition.
- The Commission should consider to what extent the legislation on end-user rights can be substituted with general consumer protection legislation and supervision.

Spectrum

The demand for spectrum will only increase as a result of future technological developments. There will continue to be a need for efficient and effective management of spectrum.

Sufficient and appropriate spectrum should be available to meet the need for spectrum in all relevant sectors in order to support national policy goals also in other areas, i.e. in the areas of transport, environment and climate, governmental use, audio-visual media and Internet of Things.

Denmark has a very good coverage with mobile services. Competition in the mobile market has ensured Danish businesses and consumers low prices and attractive products. Demand for and supply of mobile services varies significantly across the EU, and Denmark believes that allocation of spectrum should be organized to suit the different requirements of the markets in the different Member States.

Spectrum auction design and setting license conditions, including coverage requirements and duration of licenses, should remain a national competence in order to ensure efficient use of spectrum and take national circumstances into consideration.

- If new regulatory measures are considered, the Commission should first consider how more effective spectrum management can be achieved through the use of existing regulatory and Commission powers in the current framework.
- Furthermore, the Commission should consider if an enhanced role for the existing EU Radio Spectrum Policy Group (RSPG) can ensure better coordination and alignment of spectrum auctions between Member States.

Measures to promote investment

The Digital Agenda for Europe sets ambitious goals for broadband roll-out and take-up by 2020. Stable regulatory conditions and predictability in the market are preconditions for the necessary high levels of investment in the high-capacity infrastructure needed.

The current regulatory framework promotes market based investment and rollout of infrastructure. Denmark believes that this is still the right approach, although it may be necessary to supplement it with some form of state initiatives in more sparsely populated areas that supports the market based approach.

- The Commission should evaluate where it is possible to remove unnecessary regulation and regulatory burdens placed on providers of electronic communications and national regulatory authorities without being to the detriment of competition or consumer protection.
- Furthermore, demand stimulation and demand aggregation may greatly enhance the scope of a market based roll-out while not interfering with the working of the market. The Commission should explore these options.
- When looking into how an updated framework can spur private sector investment, the Commission should draw upon the lessons learned from Member States where the current framework has proven successful in generating a high level of private sector investment in digital infrastructure.

High Capacity Broadband

It is a prerequisite for the success of the digital single market that high-capacity infrastructure is available to consumers and businesses across Europe. As previously stated, the roll-out of such infrastructure should be market-driven and technology neutral. However, it should also be recognised that there are local areas where the market will probably not deliver high speed connectivity in the near future without targeted incentives from the public sector. If such incentives are introduced it is important to consider the economic

rationale and vital to strike the right balance between enabling connectivity in these areas and the need to maintain a high level of private sector investments in digital infrastructure without being to the detriment of competition.

Denmark believes that any new broadband targets for Europe should not solely focus on speeds. Denmark prefers a broader (but also more complex) goal which includes a number of aspects such as reliability and latency.

Denmark does not believe that new goals for the take-up of broadband should be set. The public sector has very limited influence over which speeds (and other features) the consumers will actually subscribe to.

The markets for TV/video and electronic communications services are converging. One such example is the bundling of internet access services with TV packages or video services. This leads to a growing need to create better a link between the regulatory framework for electronic communications and EU regulation on audiovisual media services and copyright.

- The Commission should explore how the link between the regulatory framework for electronic communications and EU regulation on audiovisual media services and copyright can be improved.

The competitive environment for providers of electronic communications services has changed since the last framework review in 2009. Providers of electronic communications services are facing increased competitive pressure from service providers using the Internet to deliver communications services. While electronic communications services and services provided over the Internet may look the same to end-users, they are to some degree regulated differently. Any changes to the electronic communications regulatory framework should also take into account the new competitive environment in the digital economy and consequences to the value chain due to OTT (Over-The-Top) providers using existing broadband connections to deliver services. It is recommended that any proposals for adding or removing regulation await the BEREC analysis on the topic.

- The Commission should examine the need to adjust the current framework to better take into account this new competitive situation.

E-privacy

The Danish government believes that there is a need to evaluate and revise the e-Privacy Directive (2002/58/EC) - particular article 5 (3) of the directive on the protection of users in connection with storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user ("cookies"). This provision has proven unnecessarily rigid, difficult to enforce and goes beyond the purpose of the rules. The rules result in unnecessary burdens for businesses, and at the same time lead to solutions, which are an inconvenience to users and ultimately undermine the central protection by consent. Therefore, a review of the e-Privacy Directive is urgent and should be initiated as soon as possible.

- The Commission should initiate the revision of the e-Privacy Directive as soon as possible in order to exempt solutions that do not influence the user's privacy ("Privacy by design") from the requirements to give information and obtain the user's consent.