

## Intellect Position Paper on the:

### 'European Commission Electronic Communications and Services Regulatory Framework Review'

#### 1. Reduced List of Regulated Markets

Intellect supports the reduction of the list of relevant markets and welcomes the emphasis on wholesale markets as opposed to regulation which is directed towards retail prices and pricing models.

The proposed introduction of requirements on providers to provide information on future network or service developments that could have an impact on wholesale services made available to competitors, could have a negative impact on investment plans, as this could force providers to disclose future strategies and loss of first mover advantages.

#### 2. Facility Sharing

Access to ducts and other facilities in the local access networks may be important factors for the roll-out of Next Generation Access networks and closing the Digital Divide. However, Intellect believes facility sharing obligations should be market-driven. Regulatory intervention should only take place in case of market failure and should be objective, transparent and proportionate and should take into account sharing of costs.

Intellect believes that facility sharing requirements should not just focus on facilities of providers of electronic communications, but also encourage sharing of facilities of public and other utilities and municipalities. The proposal to facilitate the coordination of public works by municipal authorities can have a positive impact if this speeds up processes, but this should not lead to undue delays and impact the operators' ability to design their own network topology.

We expect this area to be covered more fully in the forthcoming NGA consultation.

#### 3. Functional Separation

Intellect believes that infrastructure based competition provides the best way forward to ensure sustainable competition, investment and innovation. Intellect has some concerns about the potential impact of mandated functional separation on investment in infrastructures and innovation.

In practice, the experience with functional separation is very limited. Further assessment is necessary of the implications of introducing mandated functional separation on investment and the introduction of new technologies. In very specific markets and under clearly defined conditions, functional separation might have merits as ultimate remedy. Conditions need to be well defined and this should be a remedy of last resort.

#### 4. European Electronic Communications Market Authority and Right of Veto

Intellect agrees with the need to improve the quality and consistency of regulation and for the continued need for cooperation between national regulators and the Commission. However Intellect believes that it is vitally important for any Institutional arrangements to balance coordination and expediency while allowing for subsidiary and not imposing undue complexity, bureaucracy and cost.

From an industry perspective, transparency throughout the policy-making and implementation process is essential, as well as opportunities for involvement by industry.

In the context of the ITU, authority should remain with individual member states, continuing with current arrangements for European harmonisation through CEPT and the EC.

## 5. Spectrum Management

Intellect welcomes the Commission's proposals to increase the efficient use of spectrum by focusing on a more market-led approach. We also welcome the Commission's recognition that harmonized spectrum arrangements and coordinated regulatory conditions are also important for efficient spectrum use and to achieve the economies of scale essential for mass market industries, whilst retaining flexibility to allow service and technology neutrality. At the same time we also highlight the need to take the international context fully into account.

Intellect agrees with the objective to "ensure a co-ordinated approach for the achievement of the single market for equipment and services". We also strongly agree with the recognition in the Commission's proposals that different models for spectrum management need to coexist to promote economical and technical efficiency.

Intellect agrees that deviations from a general principle of technology neutrality should be made only in justified cases. In addition to the exceptions identified in the proposals, exceptions may be justified on the basis of the need for international harmonisation for certain ITU categories of service. For example, in the case of satellite services, there may be potential for interference on a regional or global scale (e.g. protection of receiving satellites from interference originating from the earth). Satellite services, which are inherently trans-national and heavily dependent on the international framework (e.g. bilateral coordination agreements or ITU-RR) have limited frequency bands in the which they may operate and may therefore require an exception from a pure technology and service neutral principle.

Intellect supports proposals to facilitate open and transparent spectrum trading. In principle, requirements regarding consent by NRAs prior to trading spectrum should be reduced as much is possible. However, there may be situations, particularly where change of use is permitted, where it is important to maintain requirements of prior consent, for example where the spectrum in question is used in international border areas or in other cases where change of use might cause harmful interference to other spectrum users.

In situations where formal consent from the NRA is no longer necessary, NRAs should monitor spectrum trading to ensure that trading does not result in a distortion of competition, does not create interference issues, and that license obligations are retained and respected.

It is important that any spectrum trading does not result in a change in the service as identified in the national frequency allocation tables for that radio frequency band if it would result in unacceptable interference to other spectrum users.

The Commission's proposals provide the general principles and high level definitions. Intellect believes that the implementation of these principles require:

- Clear definitions of the general principles and the exceptions to these principles
- Clear transitory regimes to provide regulatory certainty essential for a positive investment climate
- Clear procedures and roles of institutions and bodies involved
- Clear and appropriate references to international rules and procedures

The Commission's proposals to increase the efficient use of spectrum are focused on providers of electronic communications services. Intellect believes that spectrum users in all sectors should be stimulated to increase the efficiency of their spectrum use.

## 6. Consumer Protection

Intellect believes that transparency of conditions for end-users is important for the development of a competitive market. Consumer protection requires an approach which balances the expected benefits with the expected costs and administrative burdens.

Intellect supports the Commission's proposals on number portability, although it is important that implementation plans are realistic in terms of technical requirements and costs.

Intellect supports the Commission's proposals to enhance the implementation and availability of access to 112 emergency services, including the proposals requiring the operators to provide caller location information to the authorities dealing with the emergency. At the same time, national authorities must ensure that authorities dealing with the emergency are able to adequately process the location information in compliance with the technology solutions available on the market. The technology by which to provide caller location information should not be mandated.

Intellect generally supports the Commission's proposals on eAccessibility. It is important to ensure that efficient eAccessibility solutions are available. This requires the use of common interface standards to facilitate interoperability and an efficient and effective implementation. It may be sufficient that solutions are available on the market, rather than requiring all providers to offer solutions.

Intellect supports the principle that end-users should be able to access and distribute any lawful content and use any lawful applications and/or services of their choice, within the bandwidth limits and quality of service of their service plans.

Operators should be allowed to offer different band plans with different service levels at different prices and conditions and should be allowed to enable reasonable network management. In order to ensure awareness of available service offerings, it is important that consumers receive meaningful information regarding their service plans.

Intellect believes that a competitive market does not need mandated quality of service requirements. In competitive markets such as mobile communications, the market has provided sufficient choice between providers and service plans, precluding the need for regulatory intervention.

## 7. Security and Integrity

Intellect believes that in the telecommunications industry security and integrity of networks and services are treated very seriously. Existing regulatory requirements regarding network integrity, service continuity and data protection as well as contractual requirements (including liability clauses) with customers require providers of networks and services to maintain high levels of security and integrity. Given the very competitive environment, providers of services cannot afford to lose customers due to security or integrity concerns.

Intellect believes that industry-led self-regulation provides the best approach to guarantee the security and integrity of networks and services. Industry, in close cooperation with authorities, should define industry-wide best practices aimed at protecting critical infrastructures and safeguarding network and information integrity. Given the international nature of the communications market, a harmonized EU and where possible global approach is essential. Security solutions are only as strong as the weakest link. We do believe that educating end-users on improving information security is essential.

Intellect recognises the importance of providing information to end-users of security breaches involving their personal data, but we would suggest that these breach notification requirements should be aimed at serious breaches that lead to serious risk of harm to users and suggest that the proposals by the Commission require further clarification. Also, to avoid exposing vulnerabilities to potential perpetrators, this information should be provided on a "need to know" basis.

## 8. Comments on the Impact Assessment/IA

We comment here on three sections:

- "Key Assumptions/Sensitivities/Risks Assumes market failures associated with the auctioning of spectrum are addressed: first, small bidders who may experience greater difficulties submitting bids for spectrum are able to do so; and second, the award of spectrum is based on the social rather than private economic value generated by particular technologies and uses of spectrum."

Small bidders are of course able to bid, but other things being equal they will be outbid by larger bidders who will have more ready access to funds, or lower borrowing rates (this could be partially addressed by staged payments.)

Auctions used in UK have awarded spectrum to the highest private value, which indeed is not necessarily the same as social value.

- "According to Ofcom's IA, a more efficient and competitive system for managing spectrum may help generate further economic value to society by delivering broader social objectives including: Universal access and improved access to public services
  - Providing services that improve the quality of life (e.g. by promoting a better work/life balance)
  - Providing services that enable people with similar interest to communicate and/or participate in the local community
  - Providing services with educational content
  - Providing services that strengthen cultural identities and promote diversity and understanding of other cultures"

These are surely the kind of outcomes that require intervention rather than market driven policy?

- "According to Ofcom's IA, a European Commission study estimates that a reduction in spectrum management may deliver additional economic benefits in the order of some €8-9 billion every year to the US economy. " [We assume 'US' should read 'EU']

In fact the €8-9 billion (which was itself extrapolated from other UK work) in the study did not take account of any loss (or gain) in consumer surplus. For example spectrum trades will reduce competition in some services, especially in the services with the greatest consumer surplus.

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**Status of this paper: may be subject to further modification.**