

Provisional proposals for the revision of the telecoms framework

1. Network access

In order to respond to the objective of the DSM strategy to incentivise investment in high speed broadband networks and to the overall ambition to enhance connectivity while taking into account the competition concerns expressed most notably by access seekers and the regulatory community, we propose a set of measures which, on the one hand, provide necessary safeguards for competition but which at the same time aim at enhancing roll-out of very high speed networks and (where feasible) competing infrastructures.

Competition safeguards

Regulation based on competition law principles and the market power test (SMP) remains the starting point for future regulation. This will ensure that the focus of regulation rests on addressing market failures and will thus minimise the risk of over-regulation. However, to respond to the call for simplification and to the observation that in circumstances in which the strictly non-replicable network assets are not necessarily controlled by the incumbent operators we propose two clearly framed clarifications to the current SMP regime.

First, unbundled access to the copper local loop would be regulated on a cost-oriented basis provided that there is no clear evidence of evolution of market structures towards effective competition within the market review period (as extended by the Review), thus creating a rebuttable presumption. The starting point would be that, as observed over the 15 years of the framework to date, the copper local loop may continue to constitute a legacy bottleneck which is unlikely to be replicated by anyone. It cannot be excluded that it remains a necessary access point for access seekers which could not be effectively substituted in the short term, albeit its importance will certainly decrease over the next decade when the end-user demand shifts towards higher speeds. It goes without saying that our proposal would require regulators to reverse any rebuttable presumption in favour of cost-oriented copper unbundling in case their market analysis shows that the legacy access is on a forward-looking basis subject to a competitive check by other infrastructures, which may be cable, alternative fibre or wireless (e.g. Romanian scenario). In any event, simplified regulation of access to the copper loop does not exclude either a lighter touch on remedies where appropriate (e.g. if acceptable long-term commercial access deals are concluded), or the phasing out of the copper network with appropriate transition periods.

Secondly, we propose to clarify and develop further the legal regime on symmetric access to non-replicable assets (irrespective of presence or absence of SMP). NRAs would be able to impose symmetrical obligations on those parts of the network that are a clear natural monopoly, including on non-SMP operators. The scope of such symmetrical obligations would usually be limited to in-house wiring or civil engineering, but in less dense areas it could include other limited parts of the access network close to the end user (i.e. the first concentration point in the network), provided the regulator provides clear evidence that infrastructure competition cannot be expected over the (extended) review period. Given that we would encourage such approach going beyond the currently predominant and more restricted SMP approach, it is important that a common European practice is adopted. Therefore, the use of symmetrical obligations should be subject to a strict replicability test, and a requirement to notify to the Commission and BEREC under Article 7 FD, including the possibility of a conjoint veto.

Simplified regulation of access to the copper loop and facilitating symmetrical access may be also interpreted as responses to the demand by regulators to address inefficient oligopolistic markets with new regulatory tools. We do not propose to add a new concept of market power to the framework alongside the SMP concept (linked to single or collective dominance). It is thus far not clear on what economic grounds such an additional concept could be identified, as the merger-specific concept of unilateral effects arising from a change in market structure is not adequate. However, by simplifying legacy access and facilitating alternative infrastructure roll-out through symmetric access, as outlined above, we provide additional safeguards for access seekers in cases where it may be unclear whether SMP can be established over a considerable period of time, thus leading to enhanced regulatory predictability.

While access to the legacy copper network can provide necessary minimum safeguards for access seekers, we also continue to ensure that access seekers can compete in the high-speed broadband retail markets while providing the right incentives to invest in high speed networks. In this regard, we propose to provide greater legal certainty by codifying in legislation the main principles of the recommendation on consistent non-discrimination obligations and costing methodologies (NDCR). The recommendation guarantees access to next generation access networks but allows flexible pricing for NGA-based access products provided that necessary competition safeguards (i.e. guaranteed non-discriminatory access and the presence of retail price constraints) are in place, , as well as subject a pro-investment economic replicability test. It also sets out a costing methodology for copper access which incentivises access seekers to invest in NGA networks. The recommendation is positively perceived by the investor community in particular. Only a few regulators have implemented the Recommendation fully, although many have adopted regulatory approaches that partially deregulate NGA access, often with fewer safeguards. Codification of the less far-reaching price flexibility foreseen in this Recommendation should therefore allow the Commission to "call the bluff" of NRAs.

Finally, in order to enhance competition in the provision on cross-border business services we propose to set-up a mechanism for the definition of harmonised high level technical specifications for certain wholesale access products. We could do this either by using the Commission implementing powers or empower BEREC to adopt technical rules in this regard. Given the likely opposition in particular in the Council for further Commission power the latter option seems preferable as it would also add on to the tasks we envisage for the reinforced BEREC.

Promotion of roll-out of very high speed networks

The codification of the NDCR principles and facilitating symmetric obligations to non-replicable assets themselves should enhance investments in upgraded infrastructures. Further to these measures we envisage additional adjustments which aim at improving the investment environment, with a focus for certain measures on very high performance networks (high speed, capacity and resilience; low latency).

First, we propose to tighten proportionality requirements for regulation by putting the accent on retail competition. We would state explicitly that wholesale access regulation imposed on SMP operators must be related to resolving a competition problem that exists (or would arise absent such regulation) at retail level in terms of competitive supply in terms of price, high quality and choice for end users. The aim is to keep regulation proportional to the objective of ensuring effective competition at retail level and to avoid unnecessary wholesale regulation in the absence of end-user harm. In addition, we intend to develop conditions

under which more weight/space is given for commercial access agreements with necessary ex post dispute resolution safeguards – an area which is, however, open to gaming and where laying down predictable sequencing between commercial and NRA actions will be difficult.

Second, we propose that new high-performance networks of SMP operators remain partially non-regulated for a period reflecting the most acute initial investment return risk, conditional upon good faith, reasonable co-investment offers. (The articulation between periodic review cycles, network deployment to which this provision would relate, and possibly shifting market definitions/SMP findings will pose challenges.) NRAs may decide not to impose wholesale access obligations relating to the full capacity of a new NGA infrastructure (with the exception of civil engineering), provided that it has been deployed following a genuine co-investment offer, including a possibility for smaller players to participate in tranches taking into account their current scale (but not de minimis), and that the new infrastructure brings significant new capabilities to the market in terms of availability, capacity, speeds, other technical characteristics and competition ("*step change*" approach). Contingent on the finding of retail problems and SMP (access to capacity by co-investors may eliminate one or both issues), the regulation of access for mass-market broadband provision would be limited in this initial period in terms of speed and quality to the same performance as the networks were able to offer prior to the new rollout ("access to comparable product"). Moreover we would give more consideration to wholesale commercial agreements, by asking NRAs to take them into account when analysing markets and designing the appropriate remedy.

Thirdly, in the challenging areas, where no individual or co-investment projects have emerged we propose establishing safeguards which protect a potential first mover over a transitional period. Experience has shown that in many cases there are small-scale local initiatives (either private or community-based) interested in rolling out new networks but these initiatives are disincentivised by an overbuild risk, especially when exercised by the incumbent operator. We propose that NRAs should have the power to map broadband investment plans across their national territory. They should be competent, on their own initiative or subject to the appropriate dispute resolution mechanism, to sanction or take any other appropriate action against operators that behave differently from their declared intentions in the mapping process (either build where they said they would not, or not build where they said they would), subject to the possibility for the operator to provide a reasoned justification. This would also reinforce the effectiveness of mapping exercises for State Aid purposes.

We consider also laying down an exception to the general maximum contractual period of 2 years, allowing longer agreements with end-users as a means to support network roll-out through instalment-based contributions to the capital cost of extending the network to specific premises (demand aggregation and capital contribution mechanism). This exception need not be limited to challenge areas, as it simply draws a logical distinction between financing a capital contribution to a network asset of enduring value to the householder and the contractual commitment period for services over such a network (still subject to a maximum of 2 years).

As concerns may arise that end-users are deprived of choice, in particular in challenging areas where only one network could be rolled out even under favourable conditions, we propose to give additional incentives for operators to deploy wholesale-only models where the business case of the network owner is to sell capacity to as many retail providers as possible. Therefore, alongside the provision for functional and structural separation, we propose to give clarity on the regulatory regime applicable to wholesale-only SMP networks, the aim being to provide a signal of the desirability of such models over vertically integrated

models, in particular their different financial investment profile and likely interest in high capacity networks. This proposal would be accompanied by a strong signal that the regulatory burden is expected to be lower than in the case of a vertically integrated company (for example, general wholesale access on fair, reasonable and non-discriminatory conditions monitored ex-post by NRAs). In addition, in order to provide greater legal certainty to the current mechanism for voluntary functional or structural separation, we would clarify that commitments provided in this context would be market tested (i.e. subject to public consultation) and that NRAs will be empowered to impose them as the ex ante remedies and to monitor proper implementation, in lieu of reviewing ex novo remedies laid down in relevant markets in previous market reviews.

Finally, to facilitate the migration from legacy copper networks to next generation networks, we would require NRAs to monitor network operators' own initiatives for copper switch-off with a view to ensure an adequate process (prior notice, transparency, acceptable comparable access products, etc.) once the intent and readiness by the network owner to switch off the copper network is clearly demonstrated. Moreover, where some alternative operators eventually resist to migrate despite the appropriate conditions for migration being ready (adequate notice, comparable NGA access products), we propose to oblige NRAs to eventually withdraw access obligations relating to the copper network in order to avoid "hold-up".

2. Spectrum

We propose to build our spectrum proposals around the 5G narrative. This resonates politically well in particular in the EP and may also help us with Member States in diverting the debate beyond the pure institutional aspects. The objective is to have spectrum rules fit for 5G success and for supporting efficient investments thereby contributing to overall objective of achieving deployment of high quality networks in all of Europe to meet future needs of citizens and businesses. We would put greater emphasis on consistency for enhancing a more flexible access and use of spectrum, particularly appropriate in the future 5G environment, by way of promoting greater use of general authorisations and of measures such as spectrum sharing, trading and leasing as well as more emphasis on the efficient use of spectrum as a condition of entitlement to exclusive licence protection.

To enhance the EU level co-ordination, contrary to the TSM proposal and acknowledging the strong resistance from Member States, we propose an incremental approach, more stringent than TSM but also more focused: we would tighten up and clarify spectrum related objectives (socio-economic utility and optimal use, specific public policy objectives, rather than revenue maximisation), lay down clear parameters in the framework for assignment and licence review calendars, licence duration, coverage, use-it-or-lose-it, trading, and the most relevant market shaping measures (spectrum caps, reservations, wholesale access conditions), supplemented with additional Commission implementing powers to give further guidance on their application and to make national award procedures and main license conditions subject to a mandatory peer review within RSPG. This approach would entail enhancing the current RSPG and eventually merging the technical/professional and administrative support functions of RSPG under the BEREC Office (see details in section 3.5). In considering spectrum proposals, due political consideration has to be given to the overall context. The broad support we are likely to receive from the EP has to be weighed against the continued resistance from Member States (and from RSPG and BEREC) for more co-ordination and for anything mandatory. While there are signs that some Member States may be more open than

in the past to discuss on common timetables, licence durations and even on the peer review, the proposed measures are also likely to constrain the licence revenues in the future and thus increase the resistance by Member States. Also the on-going judicial battle on competences (aftermath of WRC) does not improve the starting point for negotiation. On the other hand, if the negotiations on the UHF decision are successful this may contribute to a positive momentum for further spectrum discussions.

How to support 5G development?

We propose to promote more license exempt spectrum which meets the flexibility requirements of future 5G networks and Internet of Things (IoT), especially in the higher bands foreseen by WRC-15. To this effect, we would strengthen the applicability of general authorisation as general rule opposed to the exceptional regime of individual licences.

In order to ensure that longer (or indefinite) individual exclusive licences do not prevent flexible and efficient use of spectrum, the licensing model should be adapted to allow for more flexibility in accessing spectrum in view of future needs for 5G and notably in very dense networks. This would entail also a hybrid combination of general authorisation with individual licences. We would also promote a more flexible use of spectrum by facilitating leasing and trading and a more general use of spectrum sharing. As part of these measures we would also include in our proposals the TSM provisions that both EP and (some) Member States supported during TSM negotiations, namely measures to promote the rapid deployment of small cells and those facilitating the sharing of Wi-fi connections.

More predictability to support high quality network roll-out

More predictability of spectrum assignment can stimulate the product ecosystem in Europe. We envisage proposals at different levels in order to enhance predictability. First, we aim at sharpening spectrum related regulatory objectives. The idea is to bring together in a single instrument the spectrum objectives and principles of current Directives and those of RSPP. Member States would be required to take due account of those objectives in their award procedures. In particular, Member States must ensure that the specific objectives of award procedures are clear, set out in advance, in a transparent manner and are consistent and ensured throughout the whole award procedure. The Commission should be empowered to adopt guidelines for award procedures (including calendar - but no request for outright synchronisation -, renewals, license durations and utility-enhancing fees) and for the most relevant conditions attached to spectrum usage rights (market shaping measures such as spectrum caps and reservation, wholesale access or roaming obligations as well as coverage conditions and trading/leasing and sharing conditions). The aim is to provide a framework for more clarity with regard to the calendar and conditions of award procedures and renewals of rights and to promote investments by promoting longer durations and, as a quid pro quo, facilitating more demanding coverage or QoS requirements and even withdrawal of rights where justified (for national security, breach of licence, harmonised change of use of a band and non-payment of fees) to facilitate reallocation of spectrum.

To reinforce a consistent application of spectrum-specific objectives and supporting Commission guidance on awards procedures, we propose that national award procedures, conditions for renewals and main conditions attached to spectrum usage rights are subject to a peer review process within RPSG. RPSG would be obliged to provide an opinion within

national public consultation period (i.e. no delay allegations possible) which the Member States must take utmost account of.

In addition to bringing more consistency in the award procedures and license conditions, we also propose to enhance the mechanism for technical harmonisation of spectrum and cross-border coordination, which are necessary steps before spectrum assignments. As for technical harmonisation, we propose that the office of the enhanced RSPG to be sufficiently equipped so that it could be called upon to perform technical studies as input to preparatory steps needed before the Commission can take binding technical harmonisation decisions. Regarding the co-ordination mechanism between Member States to guarantee an equitable access to spectrum for all and consistent spectrum cross-border coordination outcomes we propose to reintroduce the relevant TSM proposals which were also broadly supported by the EP and several Member States. (TBC whether COM implementing powers are necessary in this context.)

3. Universal service

In considering the regime for the future universal service we have to navigate in an environment where the sector considers the current model outdated and inappropriate to ensure an affordable access to a minimum set services, which no doubt will have to cover access to broadband, and where public authorities call for flexibility to define the minimum set and decide on its financing at national level. We tend to agree with the sector that universal service is not the right tool to ensure broadband deployment, even for very basic speeds. Other policy tools (including state aid, spectrum coverage conditions, incentivising investments by regulatory measures etc) are more appropriate to foster deployment of broadband, and avoid risks of diverting capital to network projects that would undershoot future needs.

We would propose to define basic universal service broadband by way of a basic list of online services usable over the broadband connection, to be further specified by MS in light of capacity needs of specific online services provided at national level. The USO intervention should focus on affordability rather than deployment, so that every end-user is able to have an affordable basic broadband access at a fixed location (with technological neutrality, e.g. calling on satellite or terrestrial wireless as appropriate). While focusing on affordability we would nevertheless enable Member States, in case there are unserved areas, to include availability of basic network connection with functional internet access and telephony services in the scope of universal service using the current system which provides necessary flexibility.

The focus therefore would be on the basic broadband connection which could be limited, when so requested by the end-user, to broadband-enabled telephony services only. With this approach we would remove the old legacy services (public payphones, comprehensive directories and directory enquiry services) from the scope. If Member States want to include these or other additional services in the scope, their inclusion should follow the normal state aid clearance.

Given its wide societal and economic benefits universal service should be financed through general budget and not through sectorial funding as is the case in Member States who have activated universal service funding until now.

4. Services

The objective of the revision of sector-specific end-user rights is two-fold. First, in the context of the REFIT we are screening the scope for deregulation either by concluding that market and technological developments have made current rules redundant or that end-user interests are sufficiently addressed by horizontal consumer protection legislation. As part of the REFIT we also aim for lessening regulatory burden by considering the appropriate level of harmonisation (i.e. maximum harmonisation brings significant simplification) and clarifying the scope of beneficiaries of end-user protection rules. Second, in order to close gaps in the protection of end-users and foster an environment of fair competition we aim at addressing the question of a level regulatory playing field between traditional electronic communications services and functionally substitutable communications services provided by online service providers (OTTs). The level playing field may be partly addressed by streamlining the current sector-specific requirements but it is equally important to assess to which extent certain obligations should apply also to OTTs either for reasons of end-user protection or public policy or to safeguard a fair competitive environment.

The above considerations should be seen in the context of the results of the public consultation, where the telco sector broadly called for more reliance on horizontal consumer protection legislation and replacing the current minimum harmonisation approach by full harmonisation, while Member States, regulatory community and consumer organisations still see a need for a strong sector-specific end-user protection based on high-level minimum harmonisation. Some telecoms operators also called to extend the scope of certain end-user rights to OTT services. OTT players claim that the service layer should be largely deregulated and OTT services should not be subjected to any form of ex-ante or sector specific regulation at all, emphasizing however, that in case service regulation would be introduced, it should be based on full harmonisation.

In this context it is important to recognise that the scope for deregulation may be more limited than generally expected and that the EP in particular, lobbied by consumer organisations, is likely to be reluctant to reduce significantly the current sector-specific end-user protection. Extending regulation to OTTs may not receive wide support in particular amongst Member States. Our current assessment is that the level playing field and focused end-user protection is probably best achieved by a targeted mix of deregulation and application of a limited set of sector-specific rules to OTT services as shown below.

What services to include in the scope?

The public consultation showed that sector-specific rules for Internet Access Services are largely accepted, divergences exist rather regarding the exact scope of rights and obligations. Most respondents also accept that the transmission of broadcasting signals should continue to be covered by sector-specific rules (in particular must-carry). Regarding communications services provided (increasingly) over the Internet Access, the large majority of respondents to the public consultation agree that OTT services are interchangeable with traditional ECS as many OTT services are seen and used by consumers as substitutes. Moreover, also the forthcoming "Study on future trends and business models in communications services" (SMART 2013/0019), based on a (non-representative) user survey, also argues that there is evidence for a functional substitutability encompassing traditional ECS and OTT communication services. Hence a future proof-definition should cover any functionally substitutable services used for inter-personal communications, in other words services that enable direct interactive communication between two or a determined number of natural

persons (including those acting on behalf of legal persons, but excluding M2M services) irrespective of the technology used for their provision. The choice of the addressees and the initiation of the communication should be determined by the end-user and the provider should not select or modify the information contained in the communication. The requirement for interactivity contains the possibility to respond and hence excludes broadcasting, websites and uni-directional information services (e.g. Twitter). Services that should fall under a future definition are voice services (incl. VoIP such as e.g. Skype), video calls (e.g. Facetime), text messaging (e.g. SMS, Whatsapp, Facebook messenger), emails (e.g. Gmail). As today content, webhosting, gaming or Facebook would not fall under the new definition. The manner in which multi-functional service bundles are treated (i.e. Messenger within Facebook, online gaming with a voice/messaging interaction function between players) raises new level playing field issues, we would see it as important that providers of substantial functionalities of this type would be brought under the regime solely to the extent relevant for this aspect of the service bundle.

Streamlining sector-specific rules

The level of harmonisation is probably the most important single determinant of regulatory burden for the sector. The current minimum harmonisation has led to a different level of protection depending on the Member State. Despite the views of the regulatory community, Member States and consumer organisation we believe that it is opportune in light of the DSM narrative to aim for full harmonisation, possibly with very limited openings for national additions as in the Consumer Rights Directive (e.g. maximum contractual duration, as the choices in some MS – 6 months in DA, BE – may seem excessive as an EU-wide norm). This will require setting the bar high for the level of protection in order to rebut the arguments of Member States and consumer organisations that Member States should have the possibility to exceed the minimum level determined by the lowest common denominator. A full harmonisation of end-user rights also ensures that areas which are deregulated at the EU level cannot be re-regulated by way of national legislation, which would otherwise undermine any simplification efforts.

Further to the full harmonisation approach, we envisage lessening the regulatory burden of electronic communications service providers by adapting the scope of beneficiaries to the objectives of the relevant provisions in the universal service directive. The experience and feedback in applying the current framework has shown that the level of protection needed by (larger) business users is not the same as that of individual consumers and small and micro enterprises.

As part of the REFIT screening of the current provisions, we have identified a number of provisions which we may consider abolishing. We aim at leaner provisions on contractual information (Art. 20 USD) and transparency (Art. 21 USD) – possibly limited to IAS only - and would rely on the ADR and ORD for consumer dispute settlements (Art. 34 USD). Moreover, the provision on harmonised numbers (116; Art. 27a USD) could be phased out while allowing continuity for existing numbers/services. In addition, other provisions such as Art. 24 USD (interoperability of digital TV equipment) and Art. 25 USD (telephone directory enquiry services) are potential candidates for deregulation or simplification but still under review because of their complex interaction with other policy areas.

While the overall ambition of the REFIT exercise is to assess which sector-specific rules are still needed, we are also in parallel examining if in certain areas we need to reinforce the current level of end-user protection, in particular related to internet access services. Our TSM

proposals in this respect (e.g. treatment of bundles, consumption control) received a wide support in the EP and were supported also by consumer organisations and by some regulators in the public consultation.

Targeted sector-specific rules for communications services

The appropriate regulatory treatment of communications services, whether provided by the traditional telecoms operators or by OTTs, depends on several factors. If the provision of a service is dependent on the use of a public resource, such as numbers, it is logical that the provision is subject to a number of conditions (e.g. availability of numbering information to some sort of directory resource). Also, if the service provider in its contract with the end-user has committed to a certain level of quality of service, the requirements for that service are generally different from a communications service provided over open internet.

Subject to these caveats, we have identified certain areas where public policy interests may eventually require applying regulatory obligations to all newly defined communications services regardless of the mode of provision. Probably the most significant and beyond the scope of the telecoms review is the requirement for confidentiality of communications which currently applies to electronic communications services only. It is relevant to ask why this requirement should not apply to all communications services. Although the exact confidentiality obligations will be part of the review of the e-privacy directive, the scope of the services subject to such obligations is rather for the telecoms review, for two reasons: first, addressing the level playing field issue, i.e. creating comparable regulatory conditions for all substitutable and competing communications services, requires a common definition to which specific obligations, such as confidentiality duties, can be attached; second, in order to avoid a proliferation of different definitions and concepts it is preferable to elaborate such a definition in the context of the telecoms review, of course in close cooperation with the ePrivacy colleagues.

A second area where we need to think of expanding the scope of current regulation concerns emergency services – on which the Deep dive was, however, not conclusive. Currently providers of electronic communications services providing calls to numbers in national numbering plans are subject to the obligation to provide access to 112. In the future, end-users may use connected devices and OTT communications services, without having access to traditional voice or messaging services. In order to ensure every end-user's access to emergency services, it should therefore be considered to apply certain emergency obligations also to OTT communications services. Although the obligation of routing emergency communication may only be guaranteed by the internet access provider or the provider of electronic communications services using numbers, we may want to consider a possibility for accessing emergency services by any newly defined communications service. In order to make this possible, the newly defined communications services should be subject to certain standardisation requirements, enabling emergency packets to be identified and routed with priority. Such requirements should naturally be subject to proportionality and technical feasibility test.

Portability of numbers and interoperability of services are also requirements which currently apply only to the electronic communications services. As communications services are potentially subject to powerful network effects, which may be reinforced through bundling by platform providers as part of a wider mix of services, the lock-in and network effects risk limiting consumer choice - even if consumers can host more than one such service /app on their smartphones - increasing entry barriers, and thereby reducing competition. These effects

could be partly addressed by facilitating the switch between different communications services and establishing triggering conditions under which their interoperability could be required. Switching could be facilitated through a portability requirement which would cover communications-specific features such as the possibility to port the contacts and the messaging history when switching between providers. It has to be noted that a legal regime for portability and interoperability comes with risks. It may entail additional costs for innovation and small start-ups, especially if generally applicable. Therefore the pro-competitive and end-user empowering effects of portability and interoperability requirements will have to be assessed against these risks taking also into account, to what extent market solutions (e.g. multi-homing) may address the issues at stake.

Security is another area with a lack of level playing field for OTT communications services, on the one hand, and traditional communications services, on the other hand. As a consequence, end-users of OTT messaging services are currently less protected because the security duties applicable to OTT communications services are less strict than for telecoms services. If security is considered as an important value, it should apply in a similar way to all comparable communications services, all the more as OTT communications services do not appear to be considered as digital services under Annex III of the NIS Directive. The application of security provisions also to OTT communications services is confirmed by the public consultation where a large number of respondents (*inter alia* ETNO, ECTA, several incumbents and alternative operators, some MNOs and vendors), suggest that integrity and security obligations should apply to communications services, too.

5. M2M Numbering

In order to facilitate the development of M2M communications we aim at making some targeted proposals to prevent fragmentation of the market for services which are cross-border by their very nature. Given the very limited support in the public consultation for European numbers based on the argument that existing global ITU numbers and extra-territorial use of national numbers are sufficient and appropriate to cope with the M2M demand for numbers, we do not propose to establish a new European M2M numbering range. However, in order to manage the extra-territorial use in a consistent manner, we propose to define M2M-specific number-related regulatory requirements. (N.B some number-related requirements for traditional voice services are not always relevant for M2M, e.g. number portability, price transparency/user friendliness, public directory subscriber information, CLI, access to 112.) Additionally, we consider explicitly allowing (but not obliging) MS to open up the national numbering plans for M2M providers, as opposed to the current limitation to grant numbers only to the providers of electronic communications services – leaving it to regulatory competition, and harmonised minimum conditions for extra-territorial use of numbers, to propagate the practice among NRAs.

6. Institutional set up

Any changes to the current institutional set-up will have to be assessed against the political opportunity costs given the very likely and strong resistance by Member States and regulators for changing the current set up. Therefore we propose to build the narrative on governance on the need to build an efficient system of national regulatory authorities in the digital single market. This would entail strengthening and harmonising competences of individual NRAs, which in some cases are limited to market analysis and dispute resolution without powers in

the area of services, consumer protection or authorisation, for instance. It would also require identification of tasks which genuinely are better addressed at European level¹.

Our starting point for achieving a more effective and efficient institutional framework is to align the current BEREC structure with the common approach on decentralised agencies. This would result in a new body with legal personality, extensive advisory role and certain clearly defined technical decision-making powers. New technical tasks could be developed in fields like extra-territorial numbering for M2M or standardised business products, as well as functions in possible new areas such as online communications services.

In order to achieve both administrative efficiencies but also to benefit from synergies in substantive areas we are exploring the idea of providing administrative and technical expertise support to RSPG from the same competence centre (the current BEREC Office) as serves BEREC. This will have to be done with great care given that spectrum management is exercised in several Member States by ministries or other government agencies as opposed to the national regulatory authorities and that it is not realistic to assume Member States changing their internal spectrum governance structures. Therefore we envisage a model where BEREC and RSPG have a common substantive/technical and administrative support body (office) and a common Managing Director, but that BEREC and RSPG would have two distinct board structures, reflecting different national competence allocations, with the RSPG structure being clearly and formally outside the BEREC / BEREC Office agency structure (though supported by it, as mentioned above):

¹ For example, in the area of regulatory consistency, the national regulatory authorities may be required to withdraw their regulatory proposals if BEREC endorses the Commission's serious doubts. In the area of services, the BEREC could be empowered to develop common quality of service measurement tools for enforcing net neutrality rules.