



The Consumer Voice in Europe

Review of the Recommendation on Relevant Markets

Letter sent to Ms Neelie Kroes, Vice-President to the European
Commission

Contact: **Guillermo Beltrà - digital@beuc.eu**

Ref.: BEUC-X-2014-055 – 25/07/2014

Ms. Neelie Kroes
Vice-President
European Commission
BERL 10/226
B-1049 Brussels

Ref.: BEUC-L-2014-226/MGO/cs

Brussels, 25 July, 2014

Dear Vice-President Kroes,

I write on behalf of The European Consumer Organisation (BEUC) to express our grave concerns regarding the review of the Recommendation on Relevant Markets being undertaken by your services.

Telecommunications markets across Europe have advanced greatly over the years, developments mainly enabled by a pro-competitive legislative and policy framework. As such, the Recommendation is fundamental to ensuring competition continues to thrive in these markets to the benefit of consumers: boosting innovation, increasing choice and putting downward pressure on prices.

Therefore, we urge you to make sure that the review of the Recommendation is not rushed through before carefully considering the real effect it will have on competition levels across the markets. We simply cannot afford to take a step backwards.

BEUC cannot agree with the timing of this review. While the co-decision procedure continues with a major reform of the telecommunications framework via the proposed Telecoms Single Market Regulation, we consider it unreasonable to review the Recommendation before achieving a final deal on the provisions of the Regulation as these will surely have an impact on competition in different markets. The review of the Recommendation, if necessary, should follow the adoption of the Regulation.

Ex-ante regulation has proven very efficient in opening up telecommunications markets to increased competition and therefore should be maintained, in particular considering that competition levels are not the same across different Member States. While we agree with all three criteria in the 'three criteria test', we do not consider it a satisfactory backup solution for markets which are not regulated *ex-ante*.

First, this approach is short-sighted regarding consumer aspects, while National Regulatory Authorities (NRAs) should focus on analysing consumer complaints and the capacity with which they can easily access the benefits that developments in the market may be offering. Secondly, as you know well, unfortunately not all National Regulatory Authorities (NRAs) across Europe are sufficiently well resourced to carry out market analyses of the same degree of depth and accuracy as the bigger ones. Therefore it is important to recognise the crucial leadership effect of the Recommendation in sending a policy signal to NRAs as to which markets are to be regulated *ex ante* and which are not.

Like BEREC, we consider the deletion of markets 1 and 2 to be premature and therefore problematic for European consumers. We have highlighted this in our response to the public consultation¹. By deregulating these markets, infrastructure owners will be able to freely set a wholesale telephony price that risks drowning out the competitive pressure of alternative operators.

Furthermore, we are concerned it may put at risk special products such as carrier pre-selection which are used by millions of consumers who do not have the choice to rent their telephone line from a supplier other than the incumbent operator. We do not agree that alternative Voice over IP (VoIP) solutions justify the deletion of these markets as these alternative solutions are only accessible to a small part of EU consumers who have a broadband internet connection and whose broadband connection is not subjected to discriminatory traffic management against VoIP.

Access to infrastructure should always happen at a cost-oriented price to ensure alternative operators can compete with the owners of the infrastructure, in particular within broadband markets. Therefore they can continue putting downward price pressure and improving services as it has occurred in the past. If incumbents are allowed to price access to their infrastructure in an incremental manner, alternative operators will not be able to stimulate markets by increasing data allowances or reducing prices. This would be very detrimental for a society where fixed and mobile data services have become part of the everyday lives of millions of European consumers.

Moreover, we are concerned by the intended equivalence between “virtual unbundling” products and physical unbundling, which has so far allowed alternative operators not only to compete on prices, but also quality and service differentiation. Virtual access, even if very advanced, limits the choice of alternative operators and does not allow them to beat quality of service offered by incumbent operators.

If adopted in its current form, BEUC fears that competition levels in both telephony and broadband markets in Europe may be severely affected.

Therefore we strongly urge you to take into account our concerns and make sure this review will not decrease the level of competition in any way in any telecommunications market across Europe.

Yours sincerely,

Monique Goyens
Director General

¹ BEUC response to European Commission public consultation - <http://www.beuc.eu/publications/2013-00015-01-e.pdf>