Electronic communications and associated services: 1999 review of the regulatory framework

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PURPOSE: to launch a review of EU regulation in telecommunications and to put forward the main elements for a new framework for communications infrastructure and associated services. CONTENT: The provisions of the current telecoms regulatory framework liberalised all telecommunications services and networks from 1 January 1998. This has transformed a sector traditionally characterised by state monopolies into a dynamic industry ready to take full advantage of the global market. However, the process is not complete. The EU telecoms market remains fragmented and is dominated by incumbent operators in all Member States, notwithstanding the rapid development of competition, as illustrated by falling tariffs and a growing number of operators. The Review provides the opportunity to re-assess existing regulation, to ensure that it reinforces the development of competition and consumer choice, and to continue to safeguard objectives of general interest. The new framework will be a central building block of the EU policy with respect to Information Society for the years to come. However, it cannot be seen in isolation. Community policies have to combine the establishment of an effective regulatory framework with concrete actions to promote the emergence of an inclusive Information Society. The Community intends to play an important role in this process by introducing focused initiatives, such as the e-Europe initiative. The main elements of the Commission's policy proposals for a new regulatory framework to cover all communications infrastructure and associated services are presented. With these proposals the Commission seeks to build on the successes of the current regime and ensure that regulation at EU level continues to encourage the development of a competitive single market and benefits the EU citizen. Safeguarding Community interests in international negotiations is also an important objective for the Commission and Member States, in particular the forthcoming WTO negotiations where further liberalisation of telecoms in other countries will be vital to ensure that electronic commerce and the Internet can develop at a global level. The Commission's document states that five generally accepted principles should underpin the new regulatory framework. Future regulation should: 1) be based on clearly defined policy objectives; 2) be the minimum necessary to meet those objectives; 3) further enhance legal certainty in a dynamic market; 4) aim to be technologically neutral; 5) be enforced as closely as practicable to the activities being regulated. Currently, different rules apply to the regulation of different communications infrastructure and associated services. But convergence means the same services can be carried over any transmission network, whether fixed or mobile, telecommunications or cable TV, satellite or terrestrial. The new framework would cover all communications infrastructure and associated services so that equivalent rules apply to these networks. In practice, this means the new framework would apply to: telecommunications networks(fixed or mobile), satellite networks, cable TV networks, and terrestrial broadcast networks, as well as to facilities such as Application Program Interfaces, which control access to services. This has important consequences. For example, national regulators would apply the same licensing principles (of transparency, non-discrimination, proportionality and objectivity) when licensing all communications infrastructure and associated services. It should be noted that where such associated services are l;inked to services for the provision of content, there may be a need for additional rules concerning that provision of content. These rules would, of course, be withour prejudice to regulatory obligations (whether EU or national) which apply to the content of broadcasting services or other information society services. The new framework would continue to treat Internet transmission services in the same way as other transmission services (i.e. no Internet-specific measures are envisaged for the moment). As regards licensing and authorisations, the current framework allows Member States to insist on the use of individual licences (which are specific to an individual operator and require the operator to seek an explicit authorisation from a regulator before it can begin operating. This degree of control on market entry creates administrative barriers which may be dis-proportionate, and has contributed to large variations in licence regimes in the EU. The new framework would require operators providing communications services to be licensed using general authorisations (i.e. no requirement for explicit

authorisation by a regulator before providing services). Specific authorisations would remain necessary for the use of radio spectrum and numbering resources. This deregulated, harmonised framework would reduce the current variation in licence regimes for telecoms across the EU, which is holding back innovation, competition and the provision of pan-European services. The new framework would establish common principles for regulation of access and interconnection across all communications infrastructures (ensuring new entrants can compete effectively). A Spectrum Policy Expert Group will be established at Community level to ensure that political and not just technical considerations drive Community policy in this area. Ensuring affordable access for all to communications services necessary for participation in the Information Society remains a key priority for the Commission. In addition to funding public access from State budgets (e.g. for schools and libraries), Member States will retain the option of establishing the financing schemes for universal service (compensation of the universal service provider via contributions from its competitors), although the type of services funded by such schemes would have to be carefully assessed. The Commission therefore proposes to maintain at this stage the current definition and scope of universal service. urgent action is required to increase competition in the local loop (the term used to describe the line between the local exchange and the subscriber's premises). The Commission willuse Recommendations, and, in specific cases, the competition rules of the Treaty to encourage local loop unbundling. Inconsistent application of certain provisions of telecoms legislation is hindering the development of effective competition and the deployment of pan-European services. The Commission is not persuaded that a regulatory body at EU level would currently add sufficient value to justify the likely costs and therefore does not propose the establishment of a European Regulatory Authority for communications services at this stage. However, it states that cooperation between the Commission and national regulators must urgently be improved.