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INTUG

**INTUG Comments on the ITRE Rapporteur's Report
on the EC legislative proposal for a European
Electronic Communications Code**

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About INTUG

INTUG (the International Telecommunications Users Group) is a global association, which has represented business users of communications services since 1974.

With members and contacts in five continents, INTUG uses its reach to actively promote professional customers' interests in communications services at the international level.

For more information, please access INTUG's web site at www.intug.org

INTUG is pleased to provide these comments on the ITRE Rapporteur's draft Report on the EC legislative proposal for a European Electronic Communications Code, provided in the sequence of proposed regulation. In the interests of conciseness, comments are not provided on every recital or article, and only the most important issues for business users of services have been included.

Summary

INTUG's aim is to bring down all barriers that private companies and public institutions face when introducing their digital strategy with new and innovative on-line processes, to enhance investment in improved communications technologies, and to ensure open access and connectivity to enable a fully inclusive and connected information society.

INTUG supports the general thrust of the European Commission's proposals for revisions to the Framework Directive and associated legislation and regulation, and also supports some of ITRE's proposed amendments, whilst preferring retention of the original text in some cases. INTUG has also noted the comments of BEREC on the EC legislative proposal, and the comments made by ETNO and ECTA publicly.

INTUG supports a stronger role for BEREC and for RSPG (in order to achieve more efficient and harmonised use of spectrum), and believes that the new regulations must ensure that ex-ante regulation is not removed prematurely. Operators with significant market power in the fixed or mobile markets (and in some cases in both as the trend towards integrated operators continues) must be required to provide true equivalence of input to sustain competition in the services market.

INTUG believes that greater passive and active infrastructure sharing will foster ubiquitous very high capacity services, including those with symmetric capacity. This should change the legacy model of companies in the industry, shifting emphasis more towards competition in added value and creation of consumer welfare and away from competition on lower value commodities.

INTUG believes that greater economic wealth is likely to be generated overall by avoiding wasteful duplication of both passive and active infrastructure, which may arise from too much investment in infrastructure competition. This is especially true for the roll out of 5G, which will be so important for the EU economy.

Specific Comments

Recital 13

Whilst “technology neutrality” can be considered wise to avoid pressure to “pick winners”, there is a risk that condoning continued investment in “fibre-equivalent” technologies, based on copper, will delay investment in roll out of the currently proven actual fibre technology, which is necessary for delivering the required quality of future services.

Delivery of a fully enabled Gigabit society requires real fibre, not fibre-equivalent.

Recital 23

Regulation must not be confined to downstream speed, as symmetric services require much higher upstream speeds, which have been notably overlooked in existing regulation.

Recital 60 and 61

INTUG agrees with ITRE that forecasts and plans should not determine intervention, as these are not fact or evidence based, and have been historically unreliable and optimistic.

Recitals 67 and 68

INTUG agrees with ITRE that RSPG should be given greater power, including for dispute resolution, and should be established within the Directive.

Recital 95

Spectrum licence fees, especially those determined by auction, have been excessively and disproportionately high, imposing permanent cost burdens on customers and deterring new entrants. Fees should be based on optimal value creation and efficient operator cost.

Recital 103

INTUG supports the Commission and opposes the ITRE amendment from “ubiquitous connectivity” to “maximum coverage”. Achievement of the benefits available from a truly Digital Single Market requires 100% connectivity, especially for services in the public sector, where outdated and costly legacy processes can only be eliminated with full coverage.

INTUG also strongly supports the Commission, and opposes ITRE’s amendment excluding cross-border services and applications, which are an essential element of building an EU Digital Single Market. Online cross border trade is currently suppressed significantly by the absence of such services leading to missed economic opportunities.

Recital 142

INTUG supports the Commission and opposes ITRE’s deletion of this Recital, as sharing of passive and active infrastructure is a vital element of optimizing efficient investment in the creation of a Gigabit society.

Recitals 152 and 153

INTUG supports the Commission and strongly opposes the ITRE Rapporteur’s draft Report’s deletion of these Recitals, which provide a vital mechanism for the sustaining of competition in transnational business services, where subnational deregulation has already severely damaged competition.

Recital 162

INTUG agrees with ITRE that whilst the extension of the standard market review period from 3 to 5 years is justified, dynamic markets will still require the shorter period.

Recital 183

INTUG supports the Commission and opposes ITRE's deletion of this Recital, as caps are the only effective way of preventing market exploitation by an effective cartel, as was seen for many years with wholesale rates for International Roaming Charges. Furthermore, termination rates for voice services remain far too high, as do charges for exchange line rental, when operational marginal costs are near zero. As network capacities continue to increase, and voice traffic volumes continue to shrink as a proportion to imperceptible levels, justification for making any charge at all for voice traffic must become questionable.

Recital 190

INTUG supports the Commission and opposes ITRE's amendment suggesting that wholesale and retail activities can be effectively independent within an Operator.

Experience to date indicates that such independence is rarely, if ever, achieved.

Article 2-1-2

INTUG is concerned that ITRE's deletion of this article, coupled with its redefinition of very high capacity networks to incorporate upgrades, preserve the need to promote competition. INTUG wishes to retain the Commission's intent to incentivise deployment of alternative operators. However, the article as written risks obfuscating and delaying the use of fibre, which is needed for accelerated elimination of the legacy copper networks. It is very unwise to suggest or assume that the characteristics of a full end-to-end fibre network can be emulated or matched satisfactorily by a partial solution using other technologies.

Article 16-116b

INTUG agrees with ITRE that administrative charges should be strictly limited for those undertakings present in less than 3 Member States, as there are many instances within the EU where adjacent countries benefit from services covering close neighbours.

Article 22-1-2b

INTUG agrees with ITRE's deletion, since forecasts as opposed to surveys of actual coverage are notoriously inaccurate and overoptimistic. The information required in this Article would create a huge administrative burden, in particular for smaller operators. Most of the time they would be unable to provide information for a 3-year deployment. In addition, fibre deployment may be further hindered by the threat of sanctions in case the roll out has not been announced in the forecast.

Article 22-2

INTUG acknowledges ITRE's concern that the concept of "digital exclusion zones" could run counter to the required principle of ubiquitous connectivity, but this Article must not be allowed to promulgate or sustain monopolies through State Aid.

Article 35-1-1f and 42-1a

INTUG supports the Commission's inclusion of sharing of spectrum and other wireless infrastructure in the scope, and the need to promote effective and efficient use, thus maximizing social and economic utility.

Article 56-2a

INTUG strongly supports ITRE's proposed new paragraph, as a mechanism is needed to ensure that access to public areas is maximised.

Article 59-3

INTUG strongly supports the Commission's text and opposes the ITRE Rapporteur's draft Report's proposed deletion of this vital mechanism which can ensure use of passive and active infrastructure assets for fixed and wireless networks is maximised, thus enabling efficient investment, more rapid coverage, and hence improved service quality, social welfare and economic growth. INTUG supports the justification made by ECTA with regard to this Article. INTUG wishes to also observe that the role of State Funding in achieving the necessary ubiquitous coverage for fixed and wireless connectivity in a Gigabit Society is important. Consideration must be given to the most effective mechanism for allocating such funding, for example through the use of reverse auctions for universal service providers. Care must be taken to avoid methods, which amount to focusing State Aid on incumbents.

Article 64

INTUG strongly supports the Commission's text and opposes ITRE's proposed deletion of this vital mechanism for cross border market analysis. The absence of such a mechanism (until the recent creation of the Relevant Market for business services) has been a major shortcoming of the existing Framework, resulting in the current fragmented patchwork of national islands for fixed and wireless networks. This must not be allowed to continue, and Article 64 provides a route for challenging the current dysfunctional status. The text must be seen as a further option to Relevant Market 4, and not a replacement. Both mechanisms are needed. INTUG urges the emphatic rejection of ITRE's amendment.

Article 72-1-2

INTUG strongly supports the Commission's text, acknowledging how essential it is that end user interests are taken into account, and therefore opposes ITRE's suggestion to delete this text, which seems to be a surprising position for ITRE to take, out of character with its historic desire to include customers in consultation processes. More generally, with reference to Articles 61-74 and 78 (see below), the mechanisms available to NRAs should not be limited by amendments to the Framework, nor their sequence mandated.

Article 73-1-1

INTUG supports the Commission's text regarding maximum termination rates, but also agrees with ITRE that efficient operator costs should be the basis of the calculation.

Whether LRIC or some other cost mechanisms continues to justify any charge for voice services long term remains to be seen, but whilst they are charged, LRIC is supported.

Article 78

INTUG supports the Commission in proposing that migration from legacy infrastructure must be carefully and transparently managed, as there are already examples where action by an incumbent in radically altering its topology and nodal points can damage the position of

competitors, if not made subject to mandatory consultation and agreement on timing. INTUG supports the justification made by ECTA with regard to this Article.

Summary

INTUG's comments above reflect a fairly balanced view between the Commission text and the ITRE Rapporteur's draft Report's proposed amendments. This suggests that a compromise is possible which would come closer to meeting the essential needs of business users of communications services, and achieving full connectivity throughout the European Union. The new code must take greater note of the need to move from an assembly of separate ill-fitting jigsaw pieces into a truly seamless fit-for-purpose picture.

As others have observed, preserving sustainable competition at all levels, and throughout the EU, is a key element of achieving these goals, but this should not be pursued slavishly where gains from efficiency, harmonisation, sharing and aggregation outweigh potential benefits of competition due to the costs associated with inefficient investment duplication.

Nothing in this submission is confidential and the contents can be considered to be in the public domain. It is being made available on the INTUG web site at www.intug.org

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