



**Summary of the GSMA response to the public consultation on
the evaluation and the review of the regulatory framework for electronic
communications networks and services
December 2015**

Introduction

Telecommunications markets have changed beyond recognition since the current set of rules was passed into law. Today's markets are much broader in scope as technologies and services converge. To satisfy their communications needs, consumers can now select from a wide choice of service propositions, technologies and providers, many from adjacent industries. The GSMA's newly published Mobile Economy Europe 2015 report¹ explores the profound socio-economic changes brought about by the rapid spread of mobile connectivity and the digital services it enables.

Now is the time to establish a new set of rules that addresses this new paradigm through clear, long-term thinking. The region needs a forward-looking and holistic policy and regulatory framework that further strengthens Europe as a preferred location for investment and innovation, while ensuring European citizens benefit from consistent protection across similar services. Moreover, greater policy harmonisation, particularly with respect to spectrum, could improve the quality, reach and adoption of mobile broadband services and support the EU's Digital Single Market objectives.²

With the right policy and regulatory framework, Europe could, once again, be at the forefront of technological innovation worldwide. This is certainly a big task, to be undertaken through dialogue between policy makers, industry and stakeholders. The GSMA welcomes the Commission's efforts in pressing ahead with the modernisation of regulation in the sector and is pleased to contribute to the Commission's deliberations by submitting its response to the related public consultation.

As the GSMA represents specifically the mobile industry, the following comments focus on issues concerning mobile networks.

The overall functioning of the current regulatory framework

Although the existing EU telecoms regulatory framework has had some positive impacts, it no longer reflects the market situation. Neither the existing telecoms framework, competition policy nor audiovisual policy are flexible enough to effectively account for the new realities of the digital value chain.

¹ <http://www.gsmamobileeconomy.com/europe/>

² For more information, please see new research conducted by the management consultancy Arthur D Little and the GSMA: [Socio-economic benefits of greater spectrum policy harmonisation in the EU](#)

While the existing telecoms framework has increased pan-EU harmonisation in specific areas, the application of the directives at national level in the areas of consumer protection and data protection, in particular, remains highly fragmented to the detriment of European customers and businesses. Beyond harmonisation of rules applied to operators, consumer protection standards across the digital market are fragmented. Consumer cannot rely on equal standards, not even when using substitutable services.

Partly as a result of the framework, consumers and businesses have benefited from competition in EU markets, which has increased choice and transparency, lowered prices and bolstered consumer rights. However, the framework has put short-term efficiency and consumer benefits ahead of investment and innovation, the enduring health of Europe's digital economy and the long-term interests of consumers.

The framework has also had negative consequences for European operators. It has made decision-making processes long and complex, increasing technical, marketing, sales, and IT costs. This has led to a loss of agility, reducing operators' ability to react to market developments. It has also impacted how innovation is valued, integrated and rewarded within telecoms organisations.

Review of the objectives of the regulatory framework

The current regulatory objectives are open to broad interpretation and provide no guidance on priorities. There is a need for a thorough assessment of the vision and of the regulatory objectives being pursued, followed by an analysis of how best to achieve those objectives.

The first objective should be to enhance the European economy and foster EU competitiveness at global level through the development of the Digital Single Market. By boosting private investment in new networks and expanding connectivity, a true Digital Single Market will bring broad economic benefits and needs to be enshrined in European policy.

At the same time, a rebalancing is required. Legislators and regulators need to place a higher priority on incentives for investment and innovation. As one of the most important factors impacting investment, regulation needs to ensure there is a business case for deploying new infrastructure and services, while upholding competition.

The EU should look to secure harmonised, moderate and balanced market conditions. In general, telecoms regulation should become less prescriptive and less intrusive and it should no longer be used to artificially shape markets. Regulatory interventions need to be proportionate, with a consumer-centric view and designed to solve specific problems in a much more targeted manner: simplification should be a key goal.

Network access regulation

Access regulation should be reduced so it applies only to enduring bottlenecks. Mobile access regulation should, therefore, be excluded from the scope of any ex ante regulation. Moreover, the review should avoid introducing further uncertainties for operators and investors in mobile markets. In particular, it should discard BEREC's concept of a novel "oligopoly regime", as this would require a subjective, and thus unpredictable, determination of whether a mobile market is functioning in consumers' interest.

Spectrum management and wireless connectivity

The current legislative framework in Europe works well, especially concerning the harmonisation and implementation of the technical spectrum conditions. However, there is need for better coordination

on spectrum management policy in the EU to encourage investment throughout the continent. For example, a single instrument, covering all spectrum users and policy would be more efficient. In addition, legislators should ensure the structural changes of the revised framework provide more predictability, consistency, certainty on spectrum policy.

One of the key structural changes needed in the review of the framework is for granting spectrum usage rights. The general authorisation scheme can help with new and emerging technologies; however, exclusive spectrum rights have proven to be more beneficial to consumers and lead to more efficient use by the industry. As the spectrum assignment process determines the selection of players in each market and the price, greater coordination and harmonisation of methods for granting those rights across the EU would encourage players to invest across Member States and rollout pan-European networks. Such changes could take the form of EU guiding principles as well as best practice of selection and award methods.

Assignment conditions require greater coordination and harmonisation as well, especially around the common elements of those conditions across Member States. The framework should ensure that procedures in the EU for spectrum awards are objective, transparent, and non-discriminatory in their treatment of all operators, both existing and new ones. Spectrum pricing should be market driven and levying excessive spectrum fees through awards should be avoided as it dampens the ability of the industry to invest in critical infrastructure and innovate. In particular, licenses should be no less than 20 years with a strong presumption of renewal and usage conditions should enhance flexibility for spectrum trading, infrastructure sharing as well as spectrum pooling.

Regulation for communications services

The consumer protection rules contained in the telecom sector-specific legislation have granted a high level of protection for end-users. But this vertical legislation is only one part of the EU consumer *acquis* - it only applies to traditional operators, while new players offering functionally substitutable services are required to comply with different and usually lighter rules. This has resulted in different standards in consumer protection, depending on the technology being used to provide a service.

For example, most of the existing horizontal consumer protection rules, such as transparency obligations, cost control requirements and rights of contract withdrawal, are only applied to products and services sold for a monetary fee. However, many Internet services are funded by advertising and/or the commercial exploitation of user data. When using such services, the consumer doesn't have the same level of protection as they would in the case of a monetary transaction. The legal framework needs to be amended to ensure consumers are protected irrespective of the service provider's business model and technology.

Moreover, the existing definition of electronic communications services (ECS) is now obsolete, as it doesn't encompass services that are substitutes of each other in the eyes of consumers. A new more holistic approach is required to enable legislation to keep pace with technological developments.

Consistent, effective and future-proof consumer protection standards need to be applied to all digital products and services. Inter alia, products and services should meet consumers' expectations, be delivered on fair and transparent terms, privacy should be protected and consumers should have a right of redress. These protections need to be consistently applied to all services, irrespective of the kind of provider, technology or its geographic location. The value of these protections for consumers also needs to be proportional to the costs for market players. The review should take the opportunity to move, in

general, all consumer protection, privacy and security requirements for digital services, including those with a communications element to a framework based on horizontal laws that apply across sectors. However, the specific characteristics of some services, such as Internet access or those using numbering resources, may still justify the use of specific rules, supplementing horizontal rules.

The European Commission should closely align the review of the e-commerce consumer protection rules, which is supposed to fill the gaps in the EU horizontal acquis, with the other consumer rights. The result should not be the automatic extension of the current sector specific regulation to other service providers. Instead, the Commission should reassess all those obligations in light of the required establishment of a light touch and effective horizontal law.

The universal service regime

Existing universal service obligations have led to a high level of fragmentation across Member States. Designed at the time of telecoms market liberalisation, the universal service regime has become obsolete, as the market is now delivering almost all of the regime's objectives. Appointing one or more operator(s) to deliver specific services is not consistent with a competition-based model. Moreover, in countries where a sectorial fund has been implemented, there have been numerous litigations and financial transfers between competing operators raise questions about competition fairness.

The framework review should, therefore, eliminate those obligations and mechanisms that are no longer relevant. If the concept of universal service or public interest goals remains in the regulatory framework, funding should be sourced from the public budget (as it benefits society as a whole), rather than from the telecoms sector.

Evaluation of the institutional set up and governance structure

The review should lead to a substantial reduction in the complexity of the institutional and governance structure, reflecting the simultaneous streamlining and simplification of the regulatory framework. The institutional and governance structure should be in line with the broader reliance on horizontal rules, rather than sector-specific regulation, ensuring it is both technology-neutral and future proof.

The current institutional framework between the EU and CEPT for technical harmonisation works well. However, the institutional framework should be improved through enhancing mainly the role of the Radio Spectrum Policy Group to enforce the harmonisation of spectrum award procedures and licensing conditions. Such changes should be coupled with an increased dialogue with stakeholders and involvement of the industry throughout the delivery process of the RSPG's work.

About the GSMA

The GSMA represents the interests of mobile operators worldwide, uniting nearly 800 operators with more than 250 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organisations in adjacent industry sectors. The GSMA also produces industry-leading events such as Mobile World Congress, Mobile World Congress Shanghai and the Mobile 360 Series conferences.

For more information, please visit the GSMA corporate website at www.gsma.com. Follow the GSMA on Twitter: @GSMA.