KPN

Some remarks on proposal for Regulation on DSM (draft 7 July 2013)

- Article 1: objectives should include 'the promotion of investment, innovation and competitiveness of the European telecom sector' (rather than mainly 'competition').
- Chapter 1 – EU Passport.
  - Throughout the text (including preamble), it is not sufficiently clear whether the EU Passport is an option for which companies can apply (which we understand to be the case) or an obligatory notification if the conditions are fulfilled (which would be too strict). The texts should be explicit on this.
  - We understand that the Home NRA is responsible for supervision on (non-)compliance, even for events in host countries (art. 5 par 1). Non-discriminatory application of sanctions is required to prevent a non-level playing field in host countries. Art. 7 seems to relate this to the home country rather than to the host country where the market effects are incurred.
- European access products. It should be made explicit that these access products are not to be applied in addition to current remedies, but rather intended to harmonise and simplify current access obligations. When SMP is ascertained, these EU harmonised access products should by default be mandated to replace existing deviating obligations (also include in amendments via article 28).
- Article 17, par 3, is effectively tariff regulation rather than 'non-discrimination' and therefore should only be applied where SMP is found. Currently in most markets fully competitive and in those cases tariff regulation is violating basic principles of EU law.
- Art. 20 - Netneutrality. It is important to note that the obligations in par 2 are not restricted to 'internet access', but to electronic communications services (including 'managed services'), which is different from e.g. Dutch legislation. Therefore par. 1 cannot be missed (otherwise many services, including IPTV, IPVoice, e-Health) would be impossible. Important to clarify vis-à-vis political opposition: current discussions seem like a "dialogue de sourds" – probably intentional on one part of that dialogue.
- Art. 20 par.2:
  - Under c 'prior customer consent' is not possible. In the Netherlands this has been investigated by ACM, which recognises the need for network settings rather than customer specific settings to be effective. ACM thereby accepts implicit consent as a necessity to avoid frustration of spam fighting. Since all operators will try to fight spam no customer can refuse its consent, and therefore this is an improper restriction.
  - Under d: today especially in mobile networks congestion management is an absolute and 'fulltime' requirement to have any dataservices of sufficient quality, maybe becoming more important in fixed also. *Absolutely required to delete 'exceptional' congestion*.
- Articles 21-24 – Understandably strict, since full harmonisation. National additions are and should be eliminated. However, some provisions unduly complicated in operational impact and disproportionate in operational costs in relation to market developments:
  - 21-5: exclude for 'unlimited' services for fixed monthly fees that are coming up (voice as well as data), which avoid bill shocks in itself
  - 23-3: current `12 months' creates no competitive barriers, delete 6 months
  - 23-5: Should be 'discrepancy between *contracted* and actual speeds'. General advertisements can only address theoretical speeds, contracts can include actual available speeds/speed ranges on a certain location.
  - 24-5: credit transfer disproportionately complicated. If any, repayment would be sufficient.
  - 24-7b: e-mail forwarding has been investigated by Dutch ministry: no need, especially since webmail (gmail, Hotmail, etc) sets market standards whereby completion solves the problem.