



Liberty Global is the largest international cable company with operations in 14 countries. We connect people to the digital world and enable them to discover and experience its endless possibilities. Our market-leading triple-play services are provided through next-generation networks and innovative technology platforms that connect approximately 25 million customers subscribing to over 47 million television, broadband internet and telephony services.

Liberty Global's consumer brands include Virgin Media, UPC, Unitymedia, Kabel BW, Telenet and VTR. Our operations also include Chellomedia, our content division, Liberty Global Business Services, a commercial division and Liberty Global Ventures, our investment fund.

Summary

Liberty Global in general welcomes the Commission's telecoms single market proposals, in particular those introducing the concept of the EU passport and those providing for two sided pricing on between content and network operators in the context of net neutrality. Both measures significantly contribute to the completion of the a single market for electronic communications, an ambition close to the heart of Liberty Global.

We also offer our comments and suggestions to the two new wholesale access products the Commission introduces, and how these can be conditioned and streamlined so ensure long term infrastructure investment and competition.

However, we have specific concerns on the envisaged roaming provisions and notably how their implementation - in combination with the collective roaming agreements - compromises long term competition provided by MVNOs.

We also offer some suggestions on the users rights provisions, specifically on consumer information and transparency and contract duration.

EU Passport

We support the idea of a single authorisation procedure for electronic communications networks as services as well as the principle of equal treatment of such providers by the competent national regulatory authorities of different Member States in objectively equivalent situations. As such the EU passport truly underlines the single market objective and supports

the business model of Liberty Global with its proven record of investing in multiple European territories.

However, we believe the draft should more clearly set out the inter-relationship between the competences of the home Member State NRA and host NRA.

In particular, we would highlight a lack of clarity as to the requirements for market analyses and whether an electronic communications provider will be subject to market analysis in the host Member State for all jurisdictions it operates, or whether there will still be a role for the home Member State.

As regards consumer issues in principle we support the proposals that these should be addressed by the host NRA where the service is delivered. However, in keeping with our observations on potential jurisdictional issues arising in connection with market analysis obligations, we believe the EU passport concept is a complex mechanism that will demand a high level of cooperation and coordination between NRAs.

Nonetheless we welcome the Commission's efforts to simplify the regulatory obligations and jurisdictional requirements faced by multi territory operators.

In this respect we believe that the rights attributed to end users in article 17(1), '*prohibiting restrictions by public authorities on undertakings established in another Member State*', should be added to the EU passport chapter. Ensuring that the country of origin principle is enforced as an 'obligation' by NRAs and not only a right conferred upon end users, is an important additional element to add.

Roaming

We question the need for, and appropriateness of, collective roaming agreements, to enable internalisation of wholesale roaming costs and to gradually introduce roaming services at domestic price levels. We believe that, as currently drafted, an asymmetry of regulation is created, which would critically damage MVNOs' business cases and will render an uneven playing field between MNOs and MVNOs.

As an investor in full MVNO platforms in 6 Member States, we believe that the planned and existing measures – taken together – will make it harder to realise the Digital Agenda objective of reducing to zero the differences between roaming and national telecoms tariffs. The effect of the proposals will be to restrict MVNO operators - a significant source of competition - ability to offer bundled retail offers of domestic and roaming services, as they will be (i) unable to participate in the envisaged collective roaming agreements, and (ii) are likely to be the only players subject to the intrusive decoupling obligations contained in the Roaming Regulation, from which MNOs would be allowed to evade.

Decoupling

The EU Roaming III Regulation of June 2012 requires operators to make available facilities and/or services to another provider (an alternative roaming provider or 'ARP') to enable that provider to provide regulated roaming services to roaming customers. This must be implemented by July 1 2014, should be free of charge for the customers, and the operator must be required to inform customers about the ARP choices available in the market.

Currently, our MVNO platforms are planning for the implementation of this obligation, despite an absence of evidence (including through our stakeholder discussions in the BEREC/DG CNECT decoupling implementation Steering Committee) of a viable market for ARPs emerging.

The Commission's draft TSM proposals entail a strong disincentive for ARPs to attempt to enter the market, since they will not be able to access the customer base of those (MNOs) that are part of collective roaming agreements.

In practice, the obligation of decoupling in favour of ARPs would not represent a positive business case for MVNOs, as substantial CAPEX would need to be matched by on-going OPEX.

In addition, the tariffs we could request from 3rd party ARPs would be based on a regulated wholesale roaming charge from an MNO, and represent a no margin business case for our MVNO platforms. In response to BEREC public consultations, the European Association of Full MVNOs (EAFM), of which we are a member, has described this (alongside other elements, notably the exclusion of MVNOs from the opportunity to provide local break-out to inbound roamers) as a 'lose-lose situation'.

Collective roaming agreements

The TSM proposals give rise to the possibility for providers to be exempted from the roaming decoupling obligation to give access to ARPs on the condition that the providers progressively make available retail bundles combining domestic and roaming services, through participation in collective roaming agreements.

We believe that the trigger for the exemption, based on participation in a collective roaming agreement, is likely to be an agreement that would have as its object, the restriction of competition for the provision of mobile services (not only mobile roaming services).

MVNOs are effectively disbarred from participation in these collective roaming agreements as they cannot offer a reciprocal wholesale roaming product to MNOs. This potentially puts MVNOs in a situation where they cannot compete for the retail bundle of domestic and roaming services, against bigger competitors (the MNOs) who can offer this retail bundle at little to no cost through alliance with (eventually 28) different providers.

In contrast, MVNOs would have to purchase wholesale roaming access/resale at the wholesale caps set out in the Roaming Regulation. We note in this regard that the Commissions' latest proposals no longer include a reduction of the wholesale roaming caps beyond those set out in the existing Roaming Regulation

Our recommendations

That the TSM proposals make clear that roaming III implementation of decoupling for alternative roaming providers (ARPs):

- (i) is open to any provider, irrespective of participation in a collective roaming agreement, and

- (ii) excludes MVNOs on grounds they are key vectors of the competition sought by the policy-makers, and represent a disproportionate cost to Full MVNOs compared to hypothetical consumer benefits, and practicality (implementing decoupling is of the greatest technical complexity for full MVNOs).
- (iii) And where excludes MVNOs where they provide retail bundles of domestic and roaming services, subject to the same timeframes for implementation as those proposed for participants in collective roaming agreements

Access Remedies

European Virtual Broadband Access Products

The draft Regulation introduces a European virtual access products (access products at Layer 2 and Layer 3). In order to ensure consistency with the 2009 EU telecoms package, the provisions should be amended to clarify that these wholesale access products are made applicable only to providers with significant market power. We also recommend that their use is conditioned according to the principle of proportionately and used only when appropriate.

ASQ Connectivity Product

We understand the intention of this article is to address the business services connectivity market. We would therefore encourage the Commission to clarify this in the article itself.

We also support the reciprocal nature of the ASQ product, such that a refusal to supply is considered legitimate where the requesting provider cannot offer a comparable offer, as this encourages investment in infrastructure by competitors.

Given the wholesale business connectivity scope of the product, we recommend the Commission make clear that the negotiation between parties for such wholesale offers are commercially negotiated, and that arbitration by NRAs is therefore unnecessary.

The definition of effective competition

We welcome the new principle introduced at recital 17 recognising 'that in the presence of two NGA networks, the market conditions are generally considered competitive enough'.

Conditions for the use of wholesale price control

We also support the changes to article 28(3) which oblige NRAs to take account of a range of relevant competitive constraints including the level of infrastructure competition for NGA fixed and wireless networks and, the effect on prices, choice and quality of access products, when considering the merits of introducing wholesale price control mechanisms, such as cost orientation.

Users Rights

Quality of Service

We support the proposals set out in article 20 which entitles ISPs and content providers to negotiate differing service offers and classes depending on the type of content, application and service being considered and in light of the addressable market it is intended for. We

believe this two-sided market approach offers a long term incentive on both sides of the value chain to innovate and ensure transmission efficiencies, ultimately to the benefit of consumers. This will also generate attendant benefits from competition between connectivity providers.

We also support the proposal in its efforts to identify traffic management practice which would compromise the right of consumers of free access to the internet. However, article 20.2 should be amended so that the general rules is such that all forms of traffic management area considered legitimate unless clear competitive distortions are observed from specific practices. Such an approach would provider operators with an incentive to effectively and proportionately address new and emerging congestion management and network resilience issues.

Transparency and Public Information

We believe it is premature to undertake a full re-cast of the consumer protection obligations. The 2009 framework provisions are still largely being implemented by Member States and more time is needed to assess their effectiveness. We are also concerned that article 21 in particular provides for NRAs to individually assess quality of service parameters, as this would work against the single market and full harmonisation objective of the draft regulation.

Contract termination

We believe there are inconsistencies in article 23 as to the maximum length of consumer contracts. In particular, we have concerns that any obligation that recommends a maximum contract length of 6 months could have a negative consumer effect in terms of retail pricing , as the costs of equipment and handsets cannot often be recouped over such a short contract duration.

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