

Public Hearing
Committee on the Internal Market and Consumer Protection

European Electronic Communications Code - boosting consumer confidence,
connectivity and innovation?

Affordable basic broadband for all - new approach to Universal Service Obligation

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Issues at stake

1. Flexibility to the scope of universal service (US)
2. Definition of the functional internet access service
3. Affordability and availability
4. Financing
5. Miscellaneous

1. Flexibility of the scope

- At the EU level – modernised scope: voice communications + functional internet access service
- At the national level – in addition: flexibility to keep the old US scope (i.e. pay phones, directories and directory enquiry services) „to support a gradual transition“ (Recital 214 EECC)

Advantages: acknowledgement of different levels of development of electronic communications in MS, possibility of transition

Problems: criteria missing for demonstration of „need“ at the national level and for discontinuation of old services

Risks: more discrepancy among MS, higher financial burden on MS with less developed electronic communications

2. Definition of the functional internet access service

- Based on the ability to support access to and use of a „ minimum set of basic services that reflect the services used by the majority of end users“.
- To be defined at the MS level (Recital 197 EECC)

Advantages: flexibility at the MS level, bottom-up approach reflecting what end users really want

Problems: criteria for the definition of basic services are not sufficiently clear (e.g. type of majority, common methodology)

Risks: potentially difficult to implement and apply by MS, discrepancy

3. Affordability and availability

- Distinction between
 - a) Affordable service to uncommercial end-users (Art. 80 EECC)
 - b) Available service to uncommercial areas (Art. 81 EECC)

Advantages: recognition of the diverse nature of the problems

Problems: different problems cannot necessarily be solved with the same instrument, US instrument is ineffective for infrastructure deployment, flaws in the design of both the affordability and availability measures; legal conundrum for undertaking in relation to uncommercial users in uncommercial areas

Risks:

- a) Affordability measures not effective enough (too much discretion for MS), difficult to implement (unclear terminology, lack of clear designation mechanism) and not consistent (right to contract only for voice telephony, not for functional internet access)
- b) Availability measures unlikely to work

A) Affordability measures

- Conditions:
 - „Monitoring retail prices in relation to national prices and national end-user income“ (Art. 80 EECC)
 - Prices are not affordable for low-income or special social needs end-users
- Member States' actions:
 - „may require“ undertakings to offer special tariff options or packages
 - „shall ensure“ that entitled users have a right to contract and are protected from unwarranted disconnection of service (seems to work only for voice telephony?)
 - „may ensure“ that support is provided for basic services at least at a fixed location

Problems: too much MS discretion, impossible to apply to end-users, unclear terminology (special social needs), lack of designation mechanism, legal entitlement only for voice telephony

B) Availability measures

Arts. 81 and 22 EEC

- Conditions:
 - Market failure and failure of „other public policy tools“
- Member States' actions:
 - Determine the most efficient and appropriate approach
 - Impose obligation on undertaking(s) „to meet all reasonable requests“ for accessing basic services“
 - Special designation procedure
 - Main criterion: cost-effectiveness
 - Financing of net cost via public budget in case of unfair burden

Guidelines on State aid in broadband

- Market failure („white area“)
- Determine the most effective approach and cooperation scheme
- Sign a contract as a result of a selection procedure (with certain obligatory terms)
- Special selection procedure
- Main criterion: most economically advantageous offer
- Financing via direct grant, soft loans, tax rebates etc

Problems: Not aligned with affordability measure, no entitlements for end-users, purely at MS discretion, questionable effectiveness due to lack of attractiveness for private company by comparison to State aid (more restrictive conditions)

4. Financing

- Financing of the US provision only from public budget
- **Advantages:** fairness as a large number of different market actors benefits from basic broadband, less competitive distortion between ECS and OTT providers, easy realisation, less administration
- **Problems:** political (i.e. make MS agree to it)
- **Risks:** political (i.e. MS won't agree and the possibility of sectoral funding remains)

5. Miscellaneous

- Get the terminology straight: US Art. 79-86 EECC refer to „end-users“, not to „consumers“ for both affordability and availability.
 - According to Art. 2 EECC:
 - „user“ means a legal entity or natural person using or requesting a publicly available ECS;
 - „end-user“ means a user not providing public communications networks or publicly available ECS;
 - „consumer“ means any natural person who uses or requests a publicly available ECS for purposes which are outside his or her trade, business, craft or profession.

Problems/ Risks: US impossible to apply, MS won't agree to it

- The designation mechanism in affordability cases is not clear
- Solve the problem of entitlement to US

Thank you very much for your
attention!