



Klima-, Energi- og
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Danish response to the public consultation on the European Commission's White Paper "How to master Europe's digital infrastructure needs?"

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Denmark welcomes the opportunity to comment on the European Commission's White Paper "How to master Europe's digital infrastructure needs?" and appreciate the Commission's aim to identify potential challenges and possible scenarios for public policy measures to further Europe's digital transformation.

Summary of remarks

- It is important to be precise in identifying challenges, and where a challenge has been identified, to carefully assess whether there is justification for new regulatory measures. Proposals for new regulation should be based on thorough, evidence-based impact assessments.
- Europe should continue its technology neutral and market-based approach to regulation and interventions in the field of telecommunications.
- Denmark is concerned that cross-border consolidation can reduce competition in well-functioning markets, and stresses the importance of maintaining healthy competition among operators in the EU.

The electronic communications sector is characterised by rapid change and innovation and in this light, Denmark agrees that it is important to master Europe's digital infrastructure needs, including ensuring secure and resilient infrastructures. In this regard, it is relevant to analyse whether the current regulatory framework is fit to handle the transition in order to address technological and market developments, or if there is a need for new regulatory measures to adapt to and enable Europe's digital transformation. Hence, Denmark welcomes the effort of the Commission.

The Commission has identified a number of challenges in pertinent areas. However, not all of these challenges are clearly described and it is not clear if all identified challenges exist in the Union as a whole as described in the White Paper. While there is no doubt that challenges exist in the telecommunications area, it is important to be precise in identifying them, and where a challenge has been identified, to carefully assess whether there is justification for new regulatory measures.

In addition, the challenges identified by the Commission do not seem to be supported by sufficient evidence in all instances. Hence, the White Paper seems to lack a clear



vision in regards to which direction the sector should go, although thoughts of policy directions facilitating the single market and building scale for market players are prominent. Hence, these thoughts on the single market and building scale will be addressed.

Denmark agrees that there is a need for structural investments to reach the 2030 connectivity targets. Private investments already cover most of the necessary investments needed to reach the target, which is important to bear in mind when discussing the overall investments needed. Otherwise, there is a risk of overestimating the need for state intervention, which could lead to measures that could harm the dynamics in well-functioning markets.

Denmark supports ensuring the best possible conditions to foster the deployment and would like to stress the importance of an evidence-based approach before introducing any new measures. In general, Denmark is of the opinion that:

- Europe needs to maintain a strong focus on transparent and predictable framework conditions that will ensure a strong and well-functioning market for electronic communications with a high level of private investments.
- Europe should continue its technology neutral approach to regulation and interventions in the field of telecommunications.
- Europe should ensure the best possible conditions to foster the deployment of telecom infrastructure. However, framework conditions cannot replace a business case. Investment in deployment of telecommunications infrastructure will only happen if there is a broad demand for services that require such infrastructure.
- Before introducing new legal measures in a quite mature telecom market it must be carefully evaluated if there is a need for such measures. When addressing identified problems, this should be done to ensure innovation, investment and competition to the benefit of end users.

A Digital Single Market

Denmark recognizes that some stakeholders believe that scale can make investment in telecommunications more attractive, but encouraging scale and consolidation implies some trade-offs. Hence, consolidation is not the only way forward. Industrial policy measures that favour large scale cross-border provision of electronic communications networks may work to the detriment of competition, innovation and growth, and ultimately consumers and businesses. Therefore, Denmark is concerned that cross-border consolidation can reduce competition in well-functioning markets. Denmark believes that it is crucial to have players of different sizes, since a competitive market benefits end users, both when it comes to the range of services offered and the prices thereof.

Smaller players may base their business case on deployment in areas that are not attractive to larger players. In the absence of small players, some areas might have



to wait longer for deployment. Hence, cross-border consolidation will not necessarily contribute to reach the 2030-targets. In Denmark, small broadband operators have contributed significantly to the deployment of very high capacity networks and end user benefits, both by deploying broadband in areas that larger operators may not have served as soon or maybe never; and by stirring up focus from larger players to act on deployment of fibre and ensuring price competition. When an operator has a large scale, the operator might likely be able to afford to not invest in marginal business cases. These experiences give rise to worries with regard to further consolidation and increase in scale.

While measures further facilitating cross-border consolidation may provide players with a better opportunity to reach economies of scale, it may also lead to a European market with few large pan-European players, which would be to the detriment of competition and have negative impact on end users. Therefore, if a need for some measures enabling more consolidation than today is identified, it must be ensured that such increased consolidation is not excessive and will maintain competition at a high level and focus on benefits for end users. Whenever an operator increases in scale, it becomes both more crucial and more challenging to ensure that the operator continues to face healthy competition.

Furthermore, the lack of deployment of advanced infrastructures and services like 5G stand alone may not be a result of the current framework conditions, but instead a lack of broad demand for such technologies and services. Denmark supports ensuring the best possible conditions to foster deployment. However, framework conditions cannot replace a business case. Hence, it should be analysed whether there is an actual demand for services and if so, it should be analysed whether these services can only be delivered by cross-border or even pan-European operators.

The vision of facilitation of cross-border provision of networks and services and the potential of a market with a few large pan-European players contradict other parts of the White Paper where the Commission states that protection of end users', including consumers, interests will continue to carry important weight among the objectives for any measures taken in the future to address the identified challenges, and that the stable bedrock of any future regulation should be the "European Declaration on Digital Rights and Principles for the Digital Decade" of 15 December 2022, according to which people are at the centre of the digital transformation in the EU and all businesses, including SMEs, should benefit from it.

The White Paper seems to lack explicit thoughts of in-market consolidation, and therefore Denmark encourages the Commission to analyse whether some of the identified challenges could be resolved by in-market consolidation¹, or other

¹ Enrico Letta's report states that consideration should be given to the necessity of some level of consolidation within national markets. <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>, pp. 55-56.



measures. In this regard, it could be relevant to reflect upon if there are barriers in general regulation outside the specific regulation of the telecoms sector.

Scope of application

In general, Denmark supports a level playing field for services that are similar. Denmark acknowledges that the electronic communications sector features change and innovation and that it has an impact on the internet ecosystem, including the emergence of new businesses. However, it seems unclear if there is a sufficient convergence between electronic communications networks and cloud that justifies a change of the scope of application of the electronic communications regulatory framework. Therefore, an analysis should be carried out to determine whether a change of scope is necessary. In this regard, it should also be analysed further, whether a change in the scope of application would contribute to achieve the intended aim.

In relation to IP-interconnection, the White Paper indicates that markets for transit and peering and the contractual relationships between market players generally function well. Therefore, before initiating any policy measures to ensure a swift resolution of disputes in relation to transit and peering agreements, it must be demonstrated that there is a problem to be solved. If any measure is proposed, it should be subject to careful assessment, as the market is driven by functioning market dynamics and by cooperative behaviour of market players. In this regard, the analysis could look further into whether this applies to smaller market players as well.

Authorisation

The Commission argues that an application of a single set of rules based on a 'country of origin' principle for core networks and core network services would enable EU core network operators to leverage the full potential of the internal market to reach critical size, take advantage of scale economies, and reduce capital expenditure and operating costs, thus solidifying their financial position, attracting more private investments and ultimately contributing to EU competitiveness. It is not explicitly stated how the system would work in practice, but Denmark is concerned that an application of a single set of rules based on a 'country of origin' principle could pose some challenges regarding Member States' competencies. This approach could also lead to a race to the bottom situation where operators choose to establish their business in the country with the most favourable conditions and thus the lowest level of rights for end users. Such a system may also put end users in a situation where they have to understand and navigate the legislation of another country.

Such rules would further favour the development of a few pan-European operators, which in Denmark's opinion could be detrimental to competition with derivative effects.

Addressing barriers to core network centralisation

In relation to barriers, Denmark recognizes that national rules beyond sector specific electronic communications legislation may impose obligations, which can be seen as barriers to a full integration of the Single Market. However, Denmark does not agree



that it prevents an operator from exploiting economies of scale and does not find that a one-stop-shop measure in regards to a set of conditions and requirements to be consistently applied throughout the network is the right solution. In addition, Denmark finds - in particular in the light of the current situation - that it is essential to keep national competence in regards to security aspects, e.g. security vetting for relevant staff.

Radio spectrum

The Commission states that Europe is lagging behind with regard to roll-out and up-take of 5G networks, principally 5G stand alone, due to a lack of coordination in spectrum assignment between Member States which might also hamper a timely 6G deployment. Differences in award timings and conditions are also identified as causes for the delay leading to sub-optimal network quality and performance to the detriment of consumers and businesses.

It is Denmark's assessment that there has been no uniform delay in the EU of the award of 5G pioneer spectrum bands in relation to the deadlines provided in the legislation. According to available information, a majority of Member States have awarded spectrum of the core 5G pioneer bands (700 MHz and 3.5 GHz) within the set time frames. The current regulatory framework includes sufficient remedies for the Commission to enforce compliance with these provisions. Demand side characteristics are at least equally important to consider in relation to 5G take up as is the timing of awards and national award procedures and licence conditions. The fact that 5G until now has not offered notable advantages to end users compared with 4G/LTE has been a decisive factor with regard to operators' unwillingness to make the substantial investments required for a full scale 5G stand alone network deployment. As to overpayments and artificial scarcity in past spectrum auctions Denmark is of the opinion that these claims lack sufficient evidence. Prices in spectrum auctions are the result of supply, including attached licence conditions, and demand in combination with competitive pressure and should reflect the market value of the spectrum in question. Spectrum is awarded on a service and technology neutral basis leaving the choice of future provision of services to the operators' commercial assessments.

With regard to the Commission's envisaged measures to prevent a similar future situation it is Denmark's position that EU level planning of sufficient spectrum for future use cases is sensible to a certain extent. However, caution must be applied in order not to end up in a situation where demand for spectrum and services is overestimated leading to award of spectrum which is going to be underutilised for several years. Strengthening EU level coordination of auction timing is provided for already in the regulatory framework (the EECC). An example where market demand for spectrum set to be made available to the market by a specified date is the 26 GHz band where market demand has been virtually absent in Denmark as in many other Member States. Setting common deadlines for the availability of specific spectrum bands should be based on practical experience or evidence and take into consideration that market circumstances in Member States may vary significantly.



As to the Commission's consideration of a more uniform spectrum authorisation landscape Denmark finds that a prerequisite for efficient awards is well-designed and timely awards with award objectives which allow for taking also national circumstances and specificities into consideration. This includes the market situation, competition and specific interests to be considered, for instance through coverage and usage requirements for licence holders. Market conditions in Member States are not identical. Due to different circumstances different approaches may be needed to achieve the common objectives enshrined in the EU regulatory framework.

European cooperation in the spectrum area is functioning very well, including the work carried out in the CEPT. The cooperation between the Union and the CEPT established in the regulatory framework has since 2002 shown its high value for the EU through the elaborate technical work by the CEPT on the basis of mandates given by the Commission in cooperation with EU Member States. This has provided a solid technical foundation for spectrum harmonisation decisions taken exclusively at EU level. In Denmark's view, it is a strength that the CEPT also includes non-EU countries. This paves the way for harmonisation across the whole of Europe, fostering an even bigger market for the telecoms sector.

Copper switch-off

Denmark welcomes the Commission's focus on environmental sustainability in the digital transformation. However, the need for the establishment of a mandatory roadmap for copper switch-off, including the determination of a particular date for the switch-off is not found relevant. Denmark finds that operators should have the choice to decide when the switch off takes place, also considering the consequences for end users.

Access policy in a full fibre environment

With regard to access regulation, Denmark agrees with the Commission that it could be the right time to analyse whether the future regulation should still be based on ex-ante regulation or replaced by ex-post control with the possible continuation of ex-ante regulation where necessary (the three criteria test) and further to consider the introduction of EU-wide access remedies. However, the decision should be based on a thorough analysis.

Universal service and affordability of digital infrastructure

Although, in the current economic situation, rising inflation may make adequate broadband less affordable to consumers with low income or special social needs, any initiatives to curb this development must carefully consider the potential ramifications of the specific initiative and allow for the different ways of overcoming such challenges in the Member States. Denmark does not subsidise purchases of selected products and services such as broadband access, but prefers to conduct social policy through general transfers of income.



Competition has proven effective in ensuring reasonable prices and, thus, affordability. Maintaining healthy competition in the broadband and mobile markets is therefore also important from a social perspective.

Concluding remarks

Denmark appreciates the Commission's aim to identify potential challenges and possible scenarios for public policy measures to further Europe's digital transformation. However, Denmark has concerns about the underlying vision, including policy initiatives towards cross-border consolidation. Denmark is concerned that the White Paper does not sufficiently address how to balance any potential measures aimed at consolidation with maintaining high levels of healthy competition and safeguarding the interests of end users. Denmark encourages the Commission to look further into alternative, market-based measures, and in general stresses the importance of an evidence-based approach before introducing any new measures.