

Contribution of Orange  
to the public consultation of Digital services:  
Same rules provides for growth in Europe

March 20, 2015

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## Introductory remarks

Orange agrees with the overall conclusion of the report; that common rules will provide for growth in Europe. As such, Orange has decided to respond and provide comments to the Swedish Government on the recommendations of the published report in order to underline the belief in the necessity of a future European regulatory framework to ensure growth and economic sustainability to the benefit of consumers and businesses alike.

Overall, Orange supports the report's conclusion that the connection between service and infrastructure is becoming increasingly disintegrated, due to the local nature of infrastructure and the global nature of digital services, and that this necessitates a regulatory re-think along the lines of "same services should be regulated in the same way". In this regard, sector specific rules in relation to consumer protection should be removed and replaced by general harmonised consumer protection rules across the EU.

Concerning network infrastructures; the prevalent situation today is competition, whereas when the framework was designed, the market was in a state of monopoly. Hence the review should be the occasion to start dismantling the transitory instrument of asymmetric network regulation through market analysis by restricting its scope to wireline access infrastructure<sup>1</sup> and promoting symmetric regulation. A symmetric approach should be used as a standard for wireline infrastructure access regulation because; a) it supports a fair and unbiased competition between rivals in infrastructures without regulatory distortions, and b) it legally secures access to fixed infrastructures in case of duopoly. Where, notably, legacy copper infrastructures stays dominant, it may be relevant to make use of complementary asymmetric remedies. Interconnection can be more efficiently and rationally regulated through symmetric instrument than under the current SMP regime.

Another important area of discussion is the issue of frequency allocation. There is growing need for Member States to be aligned in the frequency allocation and management process, and our industry would benefit positively from common EU-rules and closer international cooperation in the frequency management process.

Finally, Orange believes that the framework objectives should be deeply reconsidered in line with the challenges of Europe of today and tomorrow with investment and European competitiveness being priority goals, and an efficient level of competition to meet these ends.

In the following, Orange provides detailed comments to the recommendations of the report, and remains at your disposal for further enquiries into our positions.

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<sup>1</sup> The terminology "wireline" is used to limit the scope for symmetric regulation to strictly fixed networks. In contrast, fixed services could also be delivered over wireless access infrastructures, and in such case, there would be no economic bottleneck

## **1. Infrastructure is local – digital services are global**

Orange increasingly sees the need to introduce a regulatory separation between infrastructures, such as mobile and fixed networks that provides connectivity to the internet, and that of the services running on top of the infrastructures, and as such Orange agrees with the report's conclusion that the connection between the internet access service, and the digital services running on top of the internet access service is becoming increasingly disintegrated, due to the local nature of the infrastructure and the global nature of digital services.

By separating the internet access service itself from the notion of digital services, targeted measures can be defined and implemented according to local needs on the infrastructure part, whilst the digital services can be developed according to EU-wide needs. This would accommodate a level playing field in the regulation of services provided by EU-based providers as well as global providers.

Where build-out of national infrastructures necessitates public funding or co-financing, it should be taken into account that public-funding should neither pre-empt, distort nor reduce private investments.

## **2. Internet and broadband – secured infrastructure**

Orange supports an obligation to undertake risk and vulnerability assessments and put in place plans for the handling of potential risks and attacks on our infrastructure.

However, when it is proposed that information derived from actual breakdowns should be shared externally, it needs to be carefully assessed which type of information is fit for public transparency and what should be dealt with in confidence between providers and the competent authorities.

It should be emphasized that network operators are not alone in operating critical digital infrastructures, and to avoid a too unilateral focus, security issues should be addressed through horizontal legal instruments covering all undertakings operating critical digital infrastructures.

## **3. Service neutrality and regulatory symmetry**

The report's recommendation that same services must be regulated in the same manner, no matter which technology is used, Orange believes, is a very strong point of the report.

Services running on top of the internet access service, such as voice, text-messages, email services and VoIP should be regulated in the same manner no matter whether the remuneration happens in a monetary value or non-monetary value such as funding through advertisement and data collection of consumers' online activities.

In relation to critical services, such as emergency calls to PSAPs, ETSI-standards have already been developed for i.e. the exchange of location information for emergency calls covering fixed, mobile, VoIP and OTTs, whereby mobile operators may transfer location information to the OTT-players thereby enabling OTT-players to provide emergency services to their customers in line with traditional providers.

Another important element of regulatory symmetry is the need for harmonised consumer protection rules. This is relevant for digital services, but also for eCommerce for which the huge potential has not yet been unleashed due to 28 regulatory regimes in the EU. Member States need to be courageous in aiming for common consumer protection rules instead of protecting national regulation.

#### **4. Access network; Symmetry as the rule**

For the recommendation “a)”, Orange would like to comment that although, it could be desirable for digital services over the internet to be developed independently from the connectivity service, this may not always be possible due to consumer and public interests for which some communications services requires a degree of performance or guarantee, which cannot be fulfilled without some extent of vertical integration. For this reason, as long as providing such services do not distort the provision of access to independently developed services, it should not be a problem for both types of services to function in parallel.

For the second recommendation “b)”, Orange would like to rephrase the recommendation more generally in order to state that if fixed access infrastructure constitutes an economic bottleneck (monopoly or duopoly), this infrastructure should be subject to symmetric access obligations, and possibly complemented, if necessary, by asymmetric remedies with the principle that only one access point shall be mandated per infrastructure and geography. As far as the mobile market is concerned is it not a candidate for regulation anymore, as its market environment has already been recognized as highly competitive.

#### **5. Avoid artificial favouring of public-owned WiFi-networks**

In regards to the proposal on allowing regulatory holidays towards public communication services based on WiFi-networks, Orange finds the conclusions of the analysis to be of a conflicting nature as it on one hand argues for service neutrality and regulatory symmetry between mobile networks and (private-owned) WiFi-networks, but then promotes the opposite for public owned WiFi-networks. Such networks uses license-exempt spectrum with no commitments and no public obligation which constitute a distortion of fair competition.

Orange believes that there should not be any competitive distortion artificially favouring public-owned WiFi-networks over mobile networks neither in terms of public financing, operational and regulatory constraints.

#### **6. Greater degree of coordination needed for spectrum allocation**

Orange would support a greater degree of spectrum harmonisation at international level. The current allocation of frequencies at national level does not reflect the increasing demand at operator level to reach economies of scale when operating mobile networks in multiple member states of the European Union. If greater coordination was facilitated by the European Commission on behalf of Member States in negotiations with the Radios Spectrum Policy Group, European MNOs would be able divert those savings achieved, resulting for instance from reduced interferences between neighbouring countries, towards investments in the digital economy.

The issue of spectrum harmonisation is also relevant in relation to the authorization processes, with more transparency in the rationale considered for the selection criteria and spectrum fees.

Common denominators for licence conditions across the EU should be aimed for, and in the discussions, which have been taking place in regards to the Telecoms Single Market proposal from the European Commission, Orange has found it positive to see a proposal of extending the duration of rights of spectrum use to 25 years; a common ambition to ensure co-existence between existing and new radio spectrum users; the facilitation of deployment of small-area wireless access points in licensed spectrum bands; and the ambition at Commission level to improve the way national Member States establish the mobile spectrum fees.

Such changes should naturally take place with a high degree of transparency and with prior involvement of all stakeholders.

## **7. Interconnection between networks**

On the report's recommendation to do away with the differences between fixed and mobile terminations prices, and in case of disagreement introduce a common termination price equal to fixed termination, Orange believes that the focus is not in compliance with the purpose of the report, i.e. to promote a common set of rules for growth in Europe.

The issue at stake is not price differentiation between fixed and mobile termination prices, but rather the need to find a common price-level for mobile termination rates (MTRs) and for fixed termination rates between Member States in the EU. The interconnection market calls for a true symmetric regulation of termination with a European level of termination rate, notably to avoid unjustified unbalanced financial flows between European countries and between Europe and non-European countries. To complement, some reciprocity rules should be found vis-a-vis non-European countries.

If convergence between fixed and mobile termination rates caps was to be achieved, it should be based on MTR- rather than FTR-levels as; a) there would be no economic justification or legal grounds to impose fixed caps to MTRs as such caps would be below efficient costs, and; b) no retail market would be materially affected if fixed rates were capped at MTR-levels, and it would be disproportionate to impose stricter regulation on the wholesale market, than what is required for retail markets to be competitive.

## **8. Openness and quality**

Orange believes that on the issue of net neutrality, EU Member States should aim for the adoption of a common European Open Internet policy framework that follows a principles-based and future proof approach, which allows operators to actively manage different types of traffic and innovate both on the network and in customer propositions.

The issue of openness and quality is not only an issue related to the telecom sector. With the growth of online services and search engines, which operate on the basis of a two-sided business case there is a need to look at new elements, which can be disruptive to fair and open competition.