

Committed to Europe

The European Electronic Communication Code

Orange assessment of review of the telecom framework against expectations

A political agreement between EU law makers has been reached on June 5th 2018 on a new “Telecom Code” reviewing the existing Framework. Here is an assessment of this outcome compared to Orange expectations.

Orange called for a reorientation of **the objectives of regulation**, initially designed to manage transition from monopoly to competition, towards investments in telecommunications networks. In this respect, the inclusion in the Code of a specific regulatory objective of supporting roll-out and adoption of Very High Connectivity Networks is very positive.

Rules concerning **access obligations** imposed on operators holding Significant Market Power have been positively adjusted, but not significantly reoriented as initially supported by Orange.

- They should in practice be generally limited to fixed access infrastructures and to situations with fewer than 3 competitors, although this is not explicit in the text.
- National authorities should allow a limitation of access to new fibre infrastructure to sole competitors which accept to share the risk of investment. Application of and derogation from this principle are subject to strict conditions and to veto by the Commission.
- Symmetric obligations applicable to all infrastructure owners, telcos, cable operators and local infrastructure operators, are now part of the toolbox of the NRA, with flexibility in order to address specific replication issues, subject to veto by the Commission.

On the **allocation of radio frequencies** necessary for mobile services, the proposed Code reinforces binding European rules for Member States, including minimum spectrum license duration. Implementation stays national with a light European oversight. Positive provisions have also been adopted on the facilitation of roll-out of small-cells and on the timing for availability of 5G spectrum.

On the **regulation of communication services**, most obligations protecting end-users are focused on Internet Access Service (IAS) and on services using resources of the public numbering plan, irrespective of the service provider. This corresponds to Orange proposals. Other services such as interpersonal communications services independent of the numbering plan and services consisting in the conveyance of signals are only subject to limited numbers of obligations. However, the Code inappropriately re-introduces regulation on the competitive markets of intra-Europe calls and SMS, by imposing a cap aligned on the 2012 Roaming III caps (19 €/minute and 6€/SMS).

The outcome on **Universal Service Obligations** is more conservative than what Orange had suggested. Whilst the Code rightly focuses the Universal Service objective on the availability and affordability of Internet Access Services rather than on obsolete public payphones or directory services, it still relies on the designation of specific Universal Service providers and maintains the questionable system of a financing supported by the sector. Moreover, the Code opens the door to extension of Universal Service obligations for the provision of affordable mobile services.

The Code and the accompanying Regulation concerning the evolution of BEREC responsibilities and governance do not create a **European regulator**, which Orange was not calling for. Orange favours unified European rules rather than a unified European authority. The Code is a step forward as the full harmonization principle has been adopted for end-users rights, subject to exceptions, and European Commission oversight on access regulation and on spectrum has been reinforced.

Overall, the new Code generally modifies regulation in the right direction, but not as far as it should.

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