ETNO Reflection Document in reply to the public consultation on post-i2010 - Priorities for new strategy for European information society (2010-2015)

October 2009

Executive Summary

The information and communications technology (ICT) sector is key to the development of the overall economy of the EU, and its role is gaining increasingly importance in accelerating Europe's recovery from the crisis. This is mainly due to the positive contribution brought by fixed and mobile broadband technologies to many sectors of the economy in terms of efficiency growth. Moreover, the widespread availability of broadband technologies and of advanced ICTs will largely contribute to reaching the objective of a sustainable low carbon economy, thanks to the positive impact in terms of reducing energy consumption and emissions. Next-generation broadband networks will have positive benefits for consumers, businesses and society in general and investments in such technologies should be the top priority in the Commission's digital agenda for the years to come. Next-generation broadband represents a core infrastructure, which will be increasingly integrated in the daily life of all citizens. ETNO therefore welcomes the fact that the consultation places NGA investments at the top of the priorities for building the future knowledge-based society. ETNO believes that investments for the deployment of very high speed broadband networks should in principle be built by private entities unless conditions for state aid apply.

Introduction

ETNO welcomes the opportunity to express its views in this public consultation on the post i-2010 - Priorities for new strategy for European information society (2010-2015). This consultation will assist the European Commission in formulating a sound strategy for the development of the Information Society within the European Union (EU), allowing market players to invest in the infrastructures and services which will benefit both consumers and business.

The information and communications technology (ICT) sector is key to the development of the overall economy of the EU, and its role is gaining increasingly importance in accelerating Europe's recovery form the crisis. This is mainly due to the positive contribution brought by fixed and mobile broadband technologies to many sectors of the economy in terms of efficiency growth.

ETNO believes that the fast deployment of next generation networks must remain a priority goal for the European Commission when considering any policy issue or support actions for the future of the sector. Next generation broadband access will make it possible for citizens, business and public administrations to benefit from innovation in services, growing efficiency and reduced costs.

As a general remark on the consultation, ETNO would like to point out that the proposed 'tick-list' approach does not appear to be the most appropriate for soliciting industry's input and other key stakeholders directly interested in the future policy making process for the Information Society. Although the format of the questionnaire allows tackling a broad set of issues, it does not reflect the necessary complex balancing of aims and objectives that are required for a strong policy vision for the European digital sector. In addition, in some cases the policy options/choices proposed are not properly defined while other essential elements are missing from the questionnaire altogether.

ETNO therefore will contribute to this public consultation both through the compilation of the questionnaire and by means of specific contributions – reported here below - related to single areas identified by the Commission.

Against this background, we welcome the Commission's efforts to develop, in close cooperation with stakeholders, a comprehensive and ambitious digital strategy for Europe.

Chapter 1: ICT for a Growth and jobs agenda

Telecommunications became one of the leading engines of economic growth and increases in productivity in the 1990s, fuelling activity and trade in all sectors, from manufacturing to the provision of financial services.

Already back in 2005, the European Council[1] noted that European productivity lagged behind that of the United States. The primary cause was the poor take up of ICT by European business in general. Information and communication technologies are a powerful driver of growth and employment. A study released at that time showed that a quarter of EU GDP growth and 40% of productivity growth were due to ICT[2].

Differences in economic performance between industrialised countries are largely explained by the level of ICT investment, research and use as well as by the competitiveness of electronic communications services and media industries.

In the current economic crisis, policymakers around the globe are looking again to the ICT sector to be a driver of productivity and growth. Policymakers are increasingly focusing on transforming the 'digital divide' into 'digital opportunities.'

Next-generation broadband networks will have positive benefits for consumers, businesses and society in general. Next-generation broadband represents a core infrastructure, which will be increasingly integrated in the daily life of all citizens.

High-speed broadband networks will have a direct impact on their ability to telework or operate their own businesses from home, interact with friends and family, receive high-quality entertainment, engage with their government, and manage their family's health and household activities. They will directly contribute to solving some of the key challenges for our societies, such as an ageing population and climate change.

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[1] Conclusions of 2005 Spring European Council.
[2] European Commission, COM(2005) 229 final, 1 June 2005.

Chapter 2: ICT for a sustainable "low carbon" economy

ETNO welcomes the recently-issued (9 October 2009) Commission Recommendation on mobilising ICTs to facilitate the transition to an energy-efficient, low-carbon community. ETNO calls upon the Commission to formulate a broader policy framework that embeds ICTs squarely in EU efforts to confront climate change.

For many years, ETNO member companies realised the dramatic impact of climate change on society and the global economy. It calls for a responsible approach that would bring about opportunities for the ICT sector to contribute to the overall effort of combating its causes of climate change.

The ETNO vision is clearly outlined in its "Sustainability Charter"[3] launched in 2004. Member company signatories' commitment to sustainable development is realised by:

- a sustainable provision of products and services with significant environmental, social and economic benefits;

- a determined effort to integrate our business activities with environmental, social, and economic responsibilities — minimising, where practicable, any negative impact these activities may generate.

ETNO's commitment to leading the transition to a sustainable low-carbon economy was highlighted first in the project "Saving the Climate @ the speed of light" developed with the World Wildlife Federation as both partners shared the same objective, i.e., using technology to improve people's quality of life. The basic aim of the project was to raise awareness about ICT's potential in reducing green-house gas (GHG) emissions, provide policy makers with facts and figures to help them shape the EU sustainability strategy and launch a roadmap with reasonable and reachable quantitative objectives. The report challenges other industry sectors and society to take advantage of ICT products and services to improve their efficiency and reduce their own footprint. The project and its associated roadmap did not reach its targets until recently, when the European Commission began looking to ICT as an important contributor in achieving energy efficiency gains.

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[3]

http://www.etno.be/Portals/34/ETNO%20Documents/Sustainability/2008%20Energy%20Report_final.pdf

Both - GeSI's "SMART 2020 Enabling the low carbon economy in the information age" by the Climate Group on behalf of the Global e-Sustainability Initiative (of which ETNO is a founding and active member) and ETNO's "Saving the climate @ the speed of light" reports' conclusions and suggestions - have been largely used and referred to by the Commission's DG INFSO's Ad Hoc Working Group on ICT and Energy Efficiency. The Ad Hoc Group's final reports sheds some light on ICT's role in sectors where energy efficiency is imperative, but concludes that a shift in the overall behavioural paradigm is needed through a structural change where new ways of operating, living, working, learning and travelling become prevalent.

The report concludes that ICT could enable emissions reductions of 7.8Gt CO_2 by 2020 or 15% of business as usual emissions from other sectors. These savings are five times larger than the total expected emissions from the entire ICT industry. In addition to these reductions, potential energy savings can be achieved from ICT's capacity to enable dematerialisation – replacing high carbon physical products and services with virtual low carbon equivalents.

The SMART 2020 study, which is global in focus, indicates that using technology to dematerialise the way we live, work and operate across public and private sectors could deliver a reduction of 500 $MtCO_2$ in 2020 – the equivalent of the total ICT footprint in 2002.

The ICT sector is sometimes criticised for increasing energy demands caused by increased use of products and services and network enhancements. In 2007, analyst Gartner released the statistic that the ICT sector was responsible for 2% of global carbon emissions and in 2009 PCs and associated peripherals contributed approximately 31% of worldwide information and ICT energy use.

Whilst ETNO generally agrees that the sector should be the first to "walk the talk" by using its own potential to increase its energy efficiency and reduce its own energy consumption and emissions, the Association believes that notwithstanding significant strides made in carbon accounting and access to data, the extreme complexity and variety of business models within the ICT sector, supply chains and products themselves, and the absence of a commonly agreed European methodology makes it extremely difficult to systematically measure, quantify and verify progress towards the targets agreed in the Climate and Energy Package. Nevertheless, most of ETNO's member companies have long since set energy consumption and emission reduction targets, they are continuously investigating new technologies and solutions, looking at and sharing best practices and raising awareness among their company, customers and society. The

activity of the ETNO's Energy Task Force is specifically focussed on such activities.

As SMART 2020 points out, "The ICT sector can't act in isolation if it is to seize its opportunity to tackle climate change. It will need the help of governments and other industries. Smart implementation of ICTs will require policy support including standards implementation, secure communication of information within and between sectors and financing for research and pilot projects."

The actions that in ETNO's opinion are needed to drive the transition to a low carbon economy are the following:

- Promoting and demonstrating the effectiveness and advantages of behavioural changes in favour of sustainable alternatives where ICT is the enabler;

- Promoting cross-sectoral knowledge transfers to enable development and application of ICT solutions and favour the implementation of the technology;

- Applying "smart" ICT solutions to global infrastructure and industry;

- Creating a regulatory context that would allow the creation of the proper market mechanisms exploring financial incentives and developing performance-based instead of technology-based policies;

- Encouraging standards bodies to include considerations for energy consumption in technical standards from the beginning of their development;

- Developing a sector specific energy consumption/GHG emission measurement and accounting methodology;

- Developing sustainable procurement strategies, in particular in the public sector;

- Investing in and stimulating the use of renewable energy, creating the appropriate political and economic conditions to ensure it is widely available at reasonable prices.

Chapter 4: A high-speed and open Internet for all

The chapter raises a number of key policy issues for the ICT sector. ETNO welcomes the fact that the consultation places NGA investments at the top of the priorities for building the future knowledge-based society. Also, the bridging of the 'digital divide'

and challenges in the field of privacy raised in this chapter will be very relevant policy issues in the next five years.

As indicated in the Introduction, we are, concerned that the proposed 'tick-list' approach is not the most appropriate for soliciting the input of stakeholders in the policy-making process -- especially in this chapter, which require a complex balancing of aims and objectives. In some cases the policy options proposed to respondents are moreover not well defined, which may lead to quantitative outcomes which don't reflect the uncertainty underlying the questions.

Incentives to invest in fixed and wireless NGA

ETNO fully supports the objective of a comprehensive policy approach to foster high investment levels in both fixed and mobile NGA. We agree that this is a prerequisite for Europe *"not to lag behind other parts of the world, thus maintaining a solid digital platform for innovation"*

As regards the proposals for fostering NGA investment, some of the items listed in question 4.1 would strongly discourage investment in new networks. This would be the case with intervening in industry structure, increasing access regulation and picking technology winners.

A more targeted and proportionate approach to sector-specific access regulation would, on the other hand, significantly improve investment conditions for NGA. Access obligations for NGA networks, where justified, should be limited to the remaining 'bottleneck' in the market and take into account different situations of competition in different geographies. Pricing flexibility is a key element to support the NGA business case. If price regulation is warranted, NRAs should allow for a fair distribution of risk in the access price. ETNO has presented in detail the requirements for promoting competition and investment in NGA in its recent consultation on a draft NGA Recommendation (ETNO RD307/2009, available at http://www.etno.be/Default.aspx?tabid=2127).

ETNO notes that the allocation of spectrum for wireless broadband services can foster investment, for example, in LTE (Long Term Evolution) next generation mobile networks.

Other key prerequisites for NGA investment are missing from the questionnaire, such as the ability to effectively manage IP networks to allow for security, efficiency and innovation in the network (s. below, 'open Internet')

The role of public authorities and measures to foster broadband roll-out

By asking whether the state should "routinely invest in passive networks", the consultation brings up an important topic – public support for network roll-out – but in a very misleading form. Telecoms networks should in principle be built by private entities except where state aid conditions apply, i.e., limited to so-called "white areas". As highlighted in a recent speech by Commissioner Kroes (speech 2009/394 of Sept. 17 2009), the telecoms sector is a liberalised sector. This in itself excludes any "routine" state intervention.

Public authorities can play an important role in supporting NGA roll-out by; reducing costs of civil works for NGAs by facilitating access to facilities such as ducts, including those of other networks (water, transport); in certain cases providing duct capacity; and by establishing more attractive rules for deploying networks in the public domain (e.g., rights of way). This would not be equivalent to public "investment in passive infrastructure", though, which could comprise other elements.

ETNO has given its detailed view on state aid policy for NGA networks in the context of a recent Commission consultation (ETNO RD304, available at http://www.etno.be/Default.aspx?tabid=2127).

Other measures to support NGA roll-out can be, for example, a supportive approach to network sharing and co-operations in line with competition law and financial and fiscal incentives to foster the acquisition of ICT equipment and penetration of services (e.g., making the broadband subscriptions eligible for a reduced VAT rate).

Internet services growth and the open Internet

The EU should work towards a sound policy framework for IP broadband networks and the Internet, balancing objectives such as the openness of the Internet, competition between all actors in the value

chain and network and service innovation to the ultimate benefit of citizens.

ETNO supports an open and transparent broadband environment. We note, however, that an actual definition of "openness" is missing from this consultation and the questions related to the development of NGA networks and services are difficult to address without a clearer understanding of what the concept of "openness" encompasses.

In this context, it is regrettable that the consultation appears to start from a misconception of the role of 'smart', managed networks. The introduction to chapter 4 talks about the *development of smart networks as opposed to transparent and open networks*" creating a false opposition. Indicating that smart networks are the opposite of open networks forwards a misunderstanding in the policy debate which will have serious consequences for innovation, investment and consumer welfare.

'Smart networks' are not only needed to effectively manage the rapidly increasing data traffic and cope with security and privacy challenges in an IP environment. They also offer ample opportunity for innovation, new and enhanced services and increased economic benefits for society. Any policy framework for the Internet therefore must allow network innovation and promote 'smart networks' that enable a rich diversity of tailor-made services and an optimal user experience. Smart networks, those which are secure and efficiently managed, will be an essential element of the Information Society. They will help to increase consumer choice, while preserving the open nature of the Internet.

Users' rights and a 'European right of access to the Internet'

We regret that the questionnaire solicits responses on concepts which are not properly defined in the consultation or elsewhere. This is for example the case for the so-called "European right of access to the Internet". What is needed first is a proper debate on the aim and purposes of these approaches and how they would interact with the legislative framework for the sector.

The proposed right of access to the Internet raises fundamental questions which have to be clarified before detailed questions such as in 4.4 – 4.6 can be answered. The nature of such right is unclear, giving no indication whether it would flow from fundamental rights or whether it would constitute a form of universal service obligation. If

the latter is the case, then the link to universal service obligations under the EU framework, if any, or to other social and regional policies must be clarified.

In any case, the notion to establish "fundamental rights" as a result of this consultation, as the introduction to chapter 4 formulates, is legally and politically very questionable. Fundamental rights cannot be established by secondary EU legislation.

As concerns the proposed new user rights, it should be kept in mind that no user right can be enforced without matching obligations, which have to be proportionate in view of a well-defined public policy goal.

It is a major concern that a concept such as net neutrality, which has far-reaching repercussions for competition and network innovation, is presented as a user right that can seemingly be established 'for free'.

ETNO agrees that the topic of universal access to the Internet remains a key policy issue. It should be debated in terms of concrete measures to improve access for citizens and find innovative solutions to connect rural and remote areas.

Chapter 5: Consolidating the online Single Market

The Charter of Fundamental Rights of the European Union (art. 8) recognises Data Protection as a Fundamental Right. Trust and confidence is essential. ETNO member companies are continuously working to improve security in their networks and services beyond current regulations. The Telecoms industry fully complies with the strict obligations already established in the current EU rules on Data Protection. ETNO believes that the existing basic principles are still accurate and valid (quality of data, informed consent, right of access to data, rectification and withdrawal, etc.). Against this background, in ETNO's view, privacy rules need not be reshaped at this stage.

It is important to differentiate between "personal data" (a more objective concept) and "privacy" (a subjective concept). According to the definition of Directive 95/46/CE, "personal data" means information relating to an identified or identifiable natural person (i.e. the data subject) whereas "privacy" is something that can be different from one person to another, or from one culture to another.

The main issue is the need for better implementation at the national level, a more uniform application of data protection rules by Member States for a proper functioning of the Internal Market and appropriate application by operators (data controllers) of these rules, in order to increase confidence in e-business, in particular, from consumers.

The basic principle of "users' informed consent" to process his/her personal data, already enshrined in current EU legal framework, is therefore a key element to build an online relationship based on trust and confidence. Broadening the concept of personal data or imposing new stricter rules on how to handle personal data could hamper the development of new services.

On the other side, copyright owners are also asking for a revision of data protection rules in order to "better fight against piracy" (copyright owners claim data protection rules have become a barrier to fight piracy as IP addresses are considered personal data). As Data Protection is considered a Fundamental Right, it should not be restricted without a prior judicial decision.

ETNO companies do scrupulously apply the law. Operators are squeezed between strict e-privacy rules and the demand from some sectors to have loose rules to better fight piracy.

Chapter 6: Promoting access to creativity at all levels

The continued transition to digital modes of delivery for content should be based on the principals of competition law, intellectual property rights, copyright and pluralism. The market, as well as the regulatory framework, needs to meet the consumer's right to privacy, choice, knowledge and cultural diversity.

ETNO supports the goal of digital rights management (DRM) interoperability. Standards, implementation and use of DRMs should be market-driven.

The debate regarding illegal activities on the Internet frequently focuses on copyright. The positions of key stakeholders in this debate are often very polarised. ETNO wants to emphasise that the best way to counteract illegal file-sharing of copyrighted material is through the availability of accessible, secure and price-worthy legitimate content.

In the area of copyright infringement, there is also a need for adapting court-based procedures to situations created by new technology. Access to such procedures needs to be more efficient and effective.

ETNO supports the promotion of competition between collecting societies on the market for rights management. Each collecting society should be able to grant multi-territorial licenses on the basis of improved reciprocal agreements between the collecting societies.

Furthermore, regulation for multi-territory licensing should be harmonised for all types of content, not only for music. It is essential that licensing solutions are adapted to the online environment.

Chapter 7: Strengthening EU's role in the international ICT arena

Over the coming years the Internet will be key for economic and social development. ETNO fully supports the view that European industry has an important part to play in the stability and growth of the Internet, whilst championing the core values of trust, security and privacy, innovation and entrepreneurship, in particular as these are the fundamental requirements that underpin the principles adopted by the European Union.

The Internet relies on a global network of hundreds of thousands of servers and routers. Without an impartial multi-stakeholder governing scheme, it will be impossible to have a truly global working Internet. Keeping governance as decentralised as possible, while at the same time ensuring that it can respond effectively and efficiently to regional or local needs, is a core necessity. These considerations underline not only the need for widely-accepted global governance, but a sound one as well. The European Union, in consultation and close cooperation with industry, needs to be in the front of discussions and must shape a clear, balanced policy, by respecting the following principles:

- recognition of the effectiveness of current mechanisms and the necessity to build on existing structures, such as IGF or ICANN;

- recognition of the need for enhanced cooperation between governments and all other stakeholders on public policies related to the Internet;

- no government oversight function over Internet governance.

Internet governance requires an open trans-national, multi-stakeholder approach. The public sector and the private sector should be on an equal footing. As a network of networks, Internet policy is flexibly shaped by tens of thousands of autonomous systems, e.g., by all of us. The European Union must promote both within its borders and globally a multi-stakeholder dialogue, as it can help shape policy and raise user and business awareness of the need for engagement and informed choices about the Internet.

The well functioning of the technical coordination and management of the Internet's domain name and addressing systems is a crucial element for the stability and growth of the Internet and hence for Europe's e-communications providers and the global business community. Constructive and proactive European input to support and shape the development of ICANN is important -- in particular, in ensuring wider international accountability and improved multi-stakeholder engagement in consensus-based decision making. The accountability of ICANN to its entire stakeholder community is the cornerstone of its transition to a fully independent and privatised international organisation in its own right for the benefit of global stakeholders. An oversight function of ICANN by a single government or governments only, or an intergovernmental body, would contradict the goal to move ICANN responsibilities to the private sector and would not appropriately take into account all stakeholders. ETNO strongly calls on the EU to ensure that the private-sector led multi-stakeholder model on which ICANN is built is preserved and enforced, as a key factor of Internet's success.

Considering the significant impact of Internet on the world economy as well as on our everyday lives and businesses, ETNO supports in principle the existing ICT and Internet governance structures, but with certain improvements that are necessary. In addition, ETNO believes in a stronger and clearer European representation in international fora, but, at the same time, ETNO considers that the only way forward is that all stakeholders must be involved in the definition and implementation of public policies on an equal footing, in line with the multi-stakeholder principle of the World Summit on Information Society.

Market Access for eCommunications Services

ETNO is of the view that for the strengthening of the European Union's role in the international ICT arena the conditions for investment and the operation of electronic communications services in third country markets are essential elements. These issues can be addressed at multi-lateral, regional and bilateral level in the form of

concrete trade negotiations or through political and regulatory dialogue with the respective authorities and we fully support the European Commission's efforts in this context.

ETNO still would like to use the opportunity of the post i2010 Consultation to restate our key principles expressed already in DG Information Society's "Questionnaire for an EU Strategy for International Co-operation on ICT" of September 2007 (RD 268): http://www.etno.be/Default.aspx?tabid=1952

At the core has to be the effective application of the principles on the regulatory framework for the Basic Telecommunications services as outlined in the Reference Paper annexed to the WTO Telecommunications Agreement. In many third countries these rules still lack proper enforcement. However, there are also other crucial aspects to ensure market access in electronic communications:

- Where possible, elimination of all foreign ownership limits on Basic telecom services and value added services. Such limitations remain the single most significant market entry barrier for our sector in many countries;

- Unduly restrictive market access conditions should be removed to facilitate foreign participation in basic and value added Telecoms Services ;

- There should be a transparent and streamlined application and granting processes for all types of licences;

- Rigorous accounting transparency requirements should be applied to services in which the legacy operator retains market dominance;

- Where competition law is in place also the telecommunications sector should be subjected to it;

- Harmonization of regulatory frameworks for electronic communications across specific regions (like Latin America or ASEAN) is desirable in areas such as access regulation, spectrum policy, universal service or license regime.

- National Treatment across the ICT sector would be optimal;

- Promotion of better regulation through open consultations prior to the enactment of new law;

- A general strengthening of transparency, non-discrimination and the rule of law in general should be promoted. Regulatory predictability and legal certainty are a vital pre-condition to stimulate investments in this sector.

Also ETNO sees a need to consider market access issues in converged market segments. Convergence is increasingly blurring the boundaries between telecommunications and audiovisual services. Some European operators may become also content providers in third country markets, such as for mobile TV, IPTV or VOD, developing quadruple play strategies and new and innovative services that are critical for the global competitiveness of the EU industry. In this sense current restrictions on foreign capital for companies not only in the telecommunications sector but also in broadcasting should be reviewed.

Furthermore, we support the idea expressed in section 7.3 to strengthen Information Society representation within the EU delegations across the world. In this context we would like to encourage the Commission's services to take full advantage of our industry's know how in the respective markets and to consult with us when appropriate before visiting those regions. Many ETNO member companies have local representations, who can provide first-hand information about local market conditions and regulatory issues.