



Electronic Communications Code: ETNO expresses concern and proposes 5 urgent actions

Brussels, 31 May 2018 – ETNO, the Association representing Europe’s leading telecom operators, is following with attention and concern the final discussions on the European Electronic Communications Code (“the Code”) that are poised to conclude next week.

This law overhauls the way in which the Union regulates communication services and digital networks for the years to come, with huge impacts on fibre and 5G roll-out as well as innovation in the telecoms field. This, in turn, will impact our ability to empower citizens with new services and support the competitiveness of the European economy.

ETNO is concerned at the outcome of current negotiations

While we recognize the efforts of the European Commission and of co-legislators in advancing the debate, we remain concerned that the current outcome of the negotiations would hamper the achievement of the Gigabit Society objectives and deteriorate the investment climate.

A group of 35 telecoms CEOs, the Unions and other leading digital stakeholders have expressed clear disappointment at the significant dilution of pro-investment measures across all the chapters of the Code. This includes the lack of real progress on spectrum reform as well as concerning developments on incentives for Very High Capacity network deployment and on the creation of a fair playing field.

5 urgent actions for the final negotiations

In light of such limited progress and concerning developments, ETNO asks to the co-legislators that they put the following 5 key actions at the core of the last days of negotiations:

1. **Refrain from arbitrary and detrimental price regulation of competitive markets.** Proposals for intrusive retail price regulation have not been subject to impact assessment. As international call markets are competitive and there are plenty of free alternatives, regulation would bring no substantive consumer gain, but would have high costs in terms of negative signals to investors;
2. **Refrain from distorting markets.** To this end, Universal Service Obligations (USO) should provide a strong safety net for including all citizens into the connected society. However, funding mechanisms for USO should not interfere with private investment and obligations should not distort markets through excessive requirements that overlap with commercially available offerings;
3. **Ensure incentives for investment in very-high capacity networks are inclusive and provide long-term certainty.** It is crucial that under the new co-investment rules we incentivize all models that provide long-term certainty and ensure sustainable competition for end users, including through terms of risk sharing and purchase agreements. We should avoid restrictive conditions and broad exemptions that would lead to investment uncertainty. VHC investments should not be delayed by lengthy regulatory processes and not be subject to parallel, symmetric access regulation;
4. **Provide the necessary legal certainty.** Ensure that rules on symmetric regulation provide all the necessary clarity and visibility to the investors’ community, across the EU. Symmetrical regulation should remain a proportional tool to address situations where the duplication of certain critical infrastructure elements is proven to be not viable, avoiding the creation of a parallel form of economic regulation, in addition to the SMP framework, while safeguarding already existing national systems that is in place and well-functioning;
5. **Do not sanction investors.** The mere idea of imposing fines on operators because they roll-out competitive infrastructure, because they have not warned their competitors, would be in full



contradiction with the very principle of infrastructure competition and more generally with the freedom of enterprise.

Building on these 5 principles is a must in order to avoid a further deterioration of the investment climate. In the past months, the investors' community was already disappointed by the partial failure of spectrum reform. It is therefore crucial that the last negotiations produce significant progress on all the other parts of the reform.

Phillip Malloch, Executive Board Chairman of ETNO, said: *"5G and fibre deployment is about building a stronger European society and economy. The negotiations on the Code have so far disappointed investors and created concerns on regulatory certainty. The coming days are crucial to mitigate such concerns and avoid further negative signals to those who are committed to increase network roll-out across the Continent".*