



Cable Europe

Cable Europe Response to the Commission's Consultation on Universal Service Principles in E-Communications

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INTRODUCTION

Cable Europe welcomes the Commission's consultation on universal service principles in e-communications as well as the public workshop that was organised on 30 March.

Cable Europe agrees with the 2020 agenda goal of encouraging broadband for all, but questions whether such goal should be achieved by widening the scope of universal service as this is likely to distort market dynamic and places new financial burden on electronic communication operators. **It is essential that no confusion between the goal and the obligation is made.**

The way in which fixed, mobile and satellite networks can best contribute to addressing Europe's digital divide is by being given the best opportunity for true infrastructure based competition. Also, the EU should adopt a technology neutral approach.

Cable Europe believes that universal service obligations should be defined at EU level even if some mechanisms are put in place to allow for local market developments on the basis of objective and well justified reasons. As such, **harmonisation should avoid any extension of universal service to cover broadband** unilaterally adopted by Member States on the basis of recital 5 of the Amending Directive regarding the Universal Service Directive. In fact, we urge the Commission to **focus on the current definition of universal service or even undertake a complete downward review of its scope.**

Also, in order to better focus the current debate on whether broadband should be included in the definition of universal service, a **distinction** should be made between a **"connection at a fixed location...capable of supporting data rates that are sufficient to permit functional Internet access"**, as defined in the Universal Service Directive, and the **broadband service itself** provided over such connection. It is imperative that the market be left responsible for the scope, breadth and choice of broadband offerings, and in no circumstances should this be assigned to a universal service provider at subsidized prices. This would have a highly distorting effect on competition as it will crowd out the private initiatives by both mobile and fixed operators that are currently providing these services.

Cable Europe notes the widespread support from stakeholders for this position at the 30 March public workshop including two major countries:

France and the UK. This does not depart either from the Communication the Commission made in 2008.

More specifically, here below we answer to the questions raised in the Commission's consultation document.

Question 1: In today's competitive environment, can the market be relied on to meet demand for basic e-communications services from all sections of society, thereby ensuring social inclusiveness?

With regards to this first question, a clear distinction must be made between the examination of a potential market failure that would prevent market demand from being efficiently satisfied and the issue of "social policies" aimed at ensuring services to all consumers, irrespective of whether they can pay or not.

On the one side, we believe that the market provides already a lot of offers at different prices available to anyone around the EU. Indeed fierce competition between existing platform and services providers has led to constant price reductions and service innovation.

On the other hand, we believe that 'social policies' are the burden of the state and should not be confused with sector-specific measures oriented to correct market failures.

In any event, an analysis of the source of market failure to provide "basic e-communication services" should start by defining these services. Evidence shows that high mobile penetration rates in the EU, as well as increasing fixed-mobile substitution, is insufficient to conclude there is any **market failure associated to the provision of voice services**. With regard to Internet access, the 2008 Communication on Universal Service, as well as more recent reports show that broadband penetration in the EU is being fuelled by intense infrastructure competition not only among fixed networks, but also among fixed and mobile networks.

Even if in some underserved geographic areas the existence of scale and density economies associated with network deployment determines that fixed broadband operators do not satisfy the demand for **broadband connections** from customers who are willing to pay for them –allegedly a form of market failure- there remains the question of whether mobile or satellite broadband operators cannot cater for this unsatisfied demand.

Both the 2008 Communication and later reports demonstrate that the availability of a **broadband connection** does not automatically ensure higher rates of broadband penetration, due to the fact that broadband demand is determined by the customer willingness to consume Internet service, which in turn depends on socio-cultural factors, as well as on the availability of terminal equipment (e.g. a computer).

In summary, the goal of 'Internet for all' might be a desirable social goal, but a political one nevertheless, and should not be confused with the existence of market failure.

Question 2: If not, what is the best policy to allow disabled consumers, those on low incomes and those living in geographically

remote or isolated areas to access and use basic e-communications services?

At the forefront, Cable Europe believes that the question of social tariffs should be clearly left out of the discussion of universal service obligation and addressed –if at all- within the design of general social policies financed out of the state budget. The existence of low-income citizens is not a market failure and should be addressed through income re-distribution policies.

With respect to disabled consumers and those living in geographically remote or isolated areas to access and use basic e-communications services, as indicated in the previous question, we do not see a priori why market forces cannot satisfy the demand of these groups of consumers. If there were indeed a market failure - and that is to be demonstrated and not merely asserted - it should be addressed by specific policies or projects financed with public funds. These could promote, for example, PC penetration in a certain remote or isolated area or finance some project that would allow basic access to e-government services and others.

One essential task that needs to be done is for Member States to correctly and quickly transpose art. 23a of the Universal Service Directive on “ensuring equivalence in access and choice for disabled end-users”.

Question 3: Broadband for all is a widely-stated policy objective at national and European level. What role if any should universal service play in meeting this objective?

Cable Europe agrees with the EU 2020 agenda goal of encouraging access by all European citizens to broadband services across the Union, but questions whether such goal should be achieved by widening the scope of Universal service as this is likely to distort market dynamic and places new financial burden on electronic communication operators.

In order to carry out a preliminary assessment of the negative impact on competition of extending the Universal Service scope to include broadband, two main aspects are to be considered. Firstly, the definition of the Broadband service: whether it refers to a physical connection capable of providing voice and data connection of given characteristics or the voice/data services themselves provided over that connection. Secondly, the financing mechanism and in particular if universal services are financed by electronic communication operators and not out of the State budget.

With regard to the first question, the current framework includes within the scope of universal service the **“connection at a fixed location...capable of supporting data rates that are sufficient to permit functional Internet access”** and also the “publicly available telephone service provided over that connection” but not a data or Internet service itself. Therefore, data services can be provided in competition over the network of the operator designated to provide the fixed connection. It is important to make this distinction because if the inclusion of physical broadband connections **capable of ...** in the universal service definition is potentially distorting, much more so would be the inclusion of a broadband service itself, particularly at regulated “affordable” prices. These services would be provided by the designated universal service operator, which is likely to be the incumbent, crowding out competition from alternative operators which would be otherwise feasible at the service level.

With respect to the second question, although few Member States have set up a universal service fund, the inclusion of broadband connections in the universal service definition can be expected to raise the universal service net cost substantially and this, in turn, would imply increasing pressures for Member States to activate universal service funds, particularly under the current economic circumstances, where Member States are trying to control State deficits. This will certainly hamper the prospects of many operators that are considering investing in New Generation Networks, which will, in a vicious circle, affect the goals set up in the EU 2020 agenda to increase very high speed broadband penetration.

Indeed any unnecessary burden on operators might distort competition, investment, innovation and employment. It is essential that no confusion between the goal and the obligation is made.

One should leave to the market the possibility to respond to the demands by investing and rolling-out broadband networks. We believe in the value that can be brought by infrastructure based competition to raise broadband penetration and delivering competitive innovative services combined with public funds in rural areas only where private investments cannot be made, as indicated by the EU Guidelines for broadband State Aid.

With broadband competition shifting from a service-driven to an infrastructure-based level, Cable operators have significantly impacted the European broadband landscape. Competition in the telecommunications market is recognized as boosting service uptake and, with infrastructure-based competition, is likely to provide the most long-term benefits to consumers. Broadband penetration in markets with infrastructure competition, driven by cable, is not only higher than in markets with limited infrastructure competition, it also reaches higher penetration considerably earlier. While in 2006, 2/3 of all Western European Cable markets already showed penetration rates of more than 40% (i.e. the average EU-27 penetration in 2007), only 25% of DSL-focused markets had reached this level¹. Markets dominated by DSL have only started catching up after Local Loop Unbundling (LLU) regulation and ULL pricing was revised. Incumbent telecommunication operators were then forced to allow their competitors to connect their own backbone network to the customer access network, the so-called "last mile", which is owned by the incumbent. ULL operators have then to rent the "last mile" from incumbents. Cable-driven broadband markets are approximately 2 years ahead in broadband penetration than their DSL/ULL driven counterparts.

State Aid can complement broadband investments made by the private sector but must not distort existing infrastructure competition, nor should it undermine the preconditions usually associated with the development of competition. Cable Europe supports the public funding for the development of networks only in areas where, due to market failures, it exists a persistent lack of commercial initiative by any private infrastructure providers to invest in the building of new, or the upgrading of existing, infrastructure. However, in such cases, State Aids should be proportionate to the market failure they intend to correct.

Question 4: What impacts could an extension of the role of universal service to advance broadband development have in relation to other EU and national policies and measures to achieve full broadband

¹ Solon Management Consulting, *Cable Industry in Europe*, 2009

coverage in the EU? What other impacts would be likely to arise regarding competition, the single market, competitiveness, investment, innovation, employment and the environment?

As indicated, Cable Europe does not assign a role to universal service in advancing broadband coverage as the broadband market is already delivering competitive services and access by disabled and the poor is a matter of state-wide social and income redistribution policies.

Moreover, in various Member States, including Belgium where the EC even filed a case before the ECJ, the 2002 Universal Service Directive was not correctly transposed. An incorrect transposition leads in many cases to unjustified financial burdens on the telecom sector as a whole and the alternative operators in particular. In such unclear legal circumstances it does not seem proportionate to widen the scope of universal service scope.

Furthermore, we note there are already spill-over effects of broadband on other policies/sector economy. As indicated above, European cable operators are instrumental in creating sustainable infrastructure competition. Cable operators act as catalysts for greater European network investment and actually help to stimulate the investments of other telecommunication players. They thereby create an economically positive situation in which investment levels are becoming a means of competing with other service providers. Also, by the end of 2008 the Cable industry directly employed about 84,000 people, 43% more than 5 years earlier. Another 94,000 jobs at European Cable suppliers and in the broadcasting sector can be directly linked to the Cable industry putting the total combined employment impact at 178,000. The Cable industry has created 53,000 additional jobs since 2003, of which 25,000 are directly with Cable operators.

These jobs can be characterised as “sustainable” in the sense that as Cable is a local service and infrastructure business, the jobs are not the sort which can be off-shored. Most of the Cable industry’s expenditures directly benefit the European economy. All in all, Cable operators spent €12bn on the purchase of goods and services in 2008 – of which European suppliers earned approximately €8.2bn. And, Between 2003 and 2008, Cable operators have invested more than €22bn in the upgrade and build-out of networks and the introduction of new product platforms. This equals an average CAPEX of approximately 25% of revenues, which is significantly higher than the spending levels of incumbents (15%) and alternative DSL operators (19%).

As Cable operators continue to tune their networks for new TV and communication services, annual investments are expected to remain at the currently high levels and part of the general business model. Investments currently focus on expanding the NGA infrastructure by rolling out EuroDOCSIS 3.0 and bringing fibre closer to the home, which will collectively help to accelerate Cable internet downstream speed to up to 400 Mbps. The Cable industry’s drive for constant innovation has a knock-on effect on related technology industries. It contributes to a healthy European hardware manufacturing industry with firms such as Philips, Pace, Kathrein, Thomson, ADB as well as to a vibrant software industry with players including NDS, Kudelski, Irdeto and Conax.

As a consequence, any unnecessary burden on operators might distort the benefits cable brings to competition, investment, innovation and employment. From the supply side, broadband network deployment is

subject to different taxes and different administrative procedures (bureaucratic burdensome) to exercise rights of way to deploy broadband networks. Network deployment implies administrative and bureaucratic processes management in order to exercise rights of way set in the Telecom Package. Excessive red tape is a burden that poses a real challenge for effective competition in a Single Market, prevents European citizens from benefiting from quick of high speed broadband deployment, and weakens economic recovery potential coming from broadband network investment (each 10% of additional broadband penetration yields 1,3% extra growth, according to World Bank recent study)².

Beyond those taxes, Member States levy different fiscal charges on electronic communication providers that detract financial funds from investment in NGN, risking wider coverage or improved capacity network deployment. For instance, recent legal initiatives in selected EU member states have forced public TV stations to withdraw from the advertising market. To bridge the emerging funding gap, it is suggested that broadband providers and commercial TV providers are imposed to finance public broadcasters with a new tax. This new emerging funding system for public TV is another example of a disproportionate burden put on the telecoms sector that hampers investment and innovation.

Question 5: If universal service obligations should prove necessary to achieve the policy objective of broadband for all, at what level (EU or national) should such obligations be defined, taking into account the different levels of market development across the current Union of 27 Member States?

As already mentioned, Cable Europe does not believe universal service obligations are necessary to achieve broadband for all.

In practice, however, on a general basis the definition of universal service and the way it is going to be financed may have an important impact on the competition conditions across Member States and thence in the functioning of the internal market. Consequently any universal service obligation should be defined at EU level even if some mechanisms are put in place to allow for local market developments on the basis of objective and well justified reasons.

In this respect, two issues should be the subject of harmonization. Firstly, the perimeter of what is to be understood as broadband in the context of universal service. As indicated before, even if access to a fixed location capable of providing broadband is included in the definition, the broadband service itself should not under any circumstances.

Secondly, it is vital that the Commission provides inputs for a harmonized interpretation of the revised Telecoms Package as recital 5 in the Citizens' Rights Directive can be used by some member States (e.g. Spain, Finland) to widen the scope of universal service even before the current debate - started with this consultation- comes to a conclusion. Recital 5 should not been used as a possible backdoor to include broadband in the scope of universal service.

² Industry Partnership Contribution to the Spanish presidency Digital Europe Strategy, p.60, http://www.cableurope.eu/uploads/MediaRoom/documents/Brochure_Spanish_Presidency_14-12-10_web.pdf

In this respect, the Finnish and Spanish cases are setting a particular bad precedent against a harmonized approach to the universal service question. The Spanish government consulted until January 26, 2010 on a draft law on 'a sustainable economy' including provisions on the inclusion of a 1 Mbps broadband in the scope of universal service from January 1, 2011 onwards. It is not clear whether by broadband services the draft law refers to the physical connection capable of providing such service or to the service itself.

The draft law also envisages that retail prices for these services can be regulated. Finally, according to current Spanish Telecom Law, any service included in the universal service is to be financed by operators. Therefore, if this law is finally approved by the Parliament, the Spanish government will have broadened the scope of the universal service by the backdoor, and would have done so in a way particularly distorting to competition.

Question 6: If a common harmonised universal service needs to be defined at EU level, should a mechanism be put in place to balance the need for national flexibility and a coherent and coordinated approach in the EU?

At the first place, Cable Europe believes that the principle of no extension of universal service to broadband should form the basis of a common harmonisation. As answered in question 5, we strongly consider that any universal service obligation should be defined at EU level even if some mechanisms are put in place to allow for local market developments on the basis of objective and well justified reasons. Indeed it is clear that a harmonized European approach will reduce legal uncertainty.

Question 7: Irrespective of the scope of universal service, are mechanisms whereby funding is provided by the sector appropriate in the context of a regulatory environment that seeks to eliminate distortions of competition and promote market entry?

No, Cable Europe strongly believes that no funding by the sector is appropriate and considers, as explained above, that it is a worrying mechanism with regards distortions of competition (for the NGA deployment, infrastructure competition, etc). Indeed, general economic principle on optimal taxation presupposes that any tax scheme supported by a small number of companies is more harmful than a tax scheme funded on a broader basis.

Question 8: In the context of the roll-out of broadband in Europe, is it still appropriate to limit the financial arrangements of universal service to market players in the e-communications sector, while this provision would have wide-ranging benefits outside the sector, for instance, the delivery of information society services and digital content? Are other means of financing more appropriate?

Regarding the funding mechanisms, Cable Europe believes that the funding of the universal service obligations in general by the telecom sector is inappropriate. This is a highly questionable mechanism that could bring distortions of competition for the deployment of NGA networks, in infrastructure competition, etc.

More particularly, we question the necessity of widening the scope of universal service to cover broadband.

But, in the event that this extension is taking place, quod non, it is clear that it will be a very heavy burden for which we believe that public funding will be the less distorting tax mechanism applicable and the best suited mechanism to translate the benefits that will be gained by almost all various sectors not only the telecoms one. In that way, everybody contributes, and one avoids the issue of establishing a boundary for the finance responsibility.

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