

Europe goes for telecom reform - dynamic overhaul or business as usual?

The European Commission has finally published part of its plans to assess and reform Europe's telecoms rules. Its roadmap is one of the new Commission's most anticipated reforms, contributing to Commission President Jean-Claude Juncker's €350 billion growth and investment package.

The need to revive Europe's once thriving telecommunications industry is clearly understood and reform has broad political and commercial consensus. Publication of the Digital Single Market (DSM) strategy on 6th May and the provisional agreement on net neutrality and roaming at the end of June provides a strong platform to take a constructive agenda forward. The Commission has also repeatedly stated that it has learnt from the bruising process associated with its Telecoms Single Market (TSM) proposals.

Marcus Pepperell, Managing Director leading the Telco practice at FTI Consulting in Brussels, and Orestis Kalliantzidis, Consultant, look at the European Commission's plans to assess and reform Europe's telecoms rules and highlight the next steps in the process.

Deja-vu or an opportunity to engage in a process that could create real change? Either way real differences exist in what is needed, what should be prioritized and how it should be implemented. What is clear is that any future proposals could have far-reaching consequences for industry, consumers and internet companies operating in the internal market; it could also affect foreign operators and would-be investors who have so far been reluctant to enter or increase their EU presence due to regulatory fragmentation inconsistency.

An assortment of old and new

The roadmap points towards ambitious reform, responding to persistent calls for change. Traditional telecoms operators have repeatedly voiced the need for new measures in favour of market consolidation, to create a level regulatory playing field, and provide incentives for high-speed broadband investment.

But the roadmap also reflects the Commission's own agenda by re-launching reforms included in the initial TSM proposal, which previously failed to gain approval by EU member states. These proposals include a review of rules for consumer protection in electronic communications, potential changes in the operation of EU regulatory groups such as the Body of European Regulators for Electronic Communications (BEREC) and the Radio Spectrum Policy Group (RSPG), as well as the controversial reform of spectrum allocation and assignment.

Such measures could require a full revamp of several existing laws, most of which were adopted in 2002 (for instance the Framework Directive, the Authorization Directive, the Access Directive and the Universal Service Directive) and subsequently reviewed in 2009.



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Reviving the sector to create EU champions

President Juncker expects this bundle of reforms to provide legal certainty for companies, trust for consumers and incentives to investors; this in turn is expected to result in an increase in investment, and will support the continued investment in high-speed (next-generation access - NGA) networks.

While the Commission estimates that an additional 90 billion euros will be needed to be found to reach current NGA targets by 2020, investment is being held back by a number of factors.

Major telecoms operators have long bemoaned the loss of revenue and the subsequent squeeze on profits due to sustained competition by new players (messaging apps, social networks and content platforms) who use their networks to provide users with competing services (voice, messages, video). The data explosion is also putting strain on the existing allocation of spectrum generating repeated

requests for re-allocation of frequency bands in favour of the industry. Lastly, there is a logistical challenge of managing a fragmented regulatory and enforcement regime between the various Member States across the Union.



The roadmap points towards ambitious reforms after repeated calls for the need for new measures in favour of market consolidation, creating a level regulatory playing field and incentives for high-speed broadband investment.



There is recognition within the Commission that the rules need updating to attract new investment. However, the political will driving the reforms could be more about creating European champions in a globally connected market place than addressing some potential bottlenecks. This could have considerable consequences for companies looking to compete with EU telcos or looking to invest in EU markets. They could see their target markets becoming more connected but could also see the rise of a dominant handful of bigger and stronger competitors, clients or suppliers.

Who is in charge?

The man in charge of developing this ambitious legislation is Günther Oettinger, EU Commissioner for the Digital Economy. Seen as a friend of the big telecommunications industry and an ardent supporter of EU industrial champions, his team at DG Connect will prepare the reform, supervised by Commission Vice-President Andrus Ansip, who is responsible for the broader Digital Single Market.

DG Connect's Directorate B has been working on two elements of the reform since April: a "backward looking" assessment of areas of the 2009 framework in need of reform (REFIT) and a "forward looking" exercise on the most effective and efficient ways to achieve this (Impact Assessment).

Together these two elements constitute the reform framework and will form the basis and justification for any final proposals. Several additional Commission services are also expected to contribute to their development depending on the policy area in question: DG COMP (consolidation), DG JUST (consumer protection) and DG GROW (internal market). The Commission's Secretariat General is also expected to have an active role in the process as its services support the Vice-President, while the Legal Service will also have a say in the formulation of the legal provisions.

This diverse pool of actors will participate in an inter-service steering group set up in May to coordinate a complex internal consultation process. Finally, the Impact Assessment will be vetted by the Commission's Regulatory Scrutiny Board, to guarantee compliance with the EU's principles for better regulation.

Process and Timeline

The REFIT evaluation and the Impact Assessment will be developed hand-in-hand and coordinated closely in terms of timing and content. DG Connect aims to deliver a full proposal in the second half of 2016, following its evaluation of the existing telecoms rules and taking on board feedback from an extensive consultation process. The latter will include feedback from several stakeholder workshops, six new external studies on – among others – OTTs, market access and entry, interoperability/standards, consumer protection, as well as a cost-benefit analysis for regulatory intervention. It will also include a public consultation process.



Anticipating and shaping change is paramount for success in times of market disruption and regulatory change. Industry players and investors, no matter their geography or level of involvement in EU markets, should be alert and prepared to engage with EU policymakers.



The challenges: competition, OTTs and spectrum

Despite the ambitious timeline, such a comprehensive reform will be no walk in the park.

Incumbent network operators in Europe are strongly advocating for further market consolidation as a means to acquire scale and more spectrum. This entails the so-called “4-to-3” mergers which reduce the number of players in local markets below the “magic number” seen by competition authorities as a natural balance to ensure fair competition and the best deal for consumers. This idea may face opposition from national regulators and certainly from smaller operators who fear they are going to face anti-competitive practices and increased charges for accessing the networks.

Pro-ETNO Oettinger might also have to face a sceptical Competition Commissioner. Margrethe Vestager publicly

warned in June that further consolidation could potentially harm consumers. With a resurgent European M&A market involving a number of high profile telco mergers, there is much anticipation how this will play-out and whether, despite her bullish tone, this will ultimately result in any proposed deals being blocked.

Satisfying ETNO's request for regulating online platforms might also lead to tensions, this time with US internet companies, which see this as digital protectionism driven by EU member states (a view endorsed recently by US President Barack Obama).

Finally, the Commission will certainly need to be persuasive if it is to sell spectrum harmonization and changes in the competences of EU and national telecoms regulators to Member States. Despite efforts made by Ansip, Oettinger and their predecessor, Neelie Kroes, the Council has until now unanimously objected to any measures threatening a Member States' capacity to draw revenues out of spectrum assignment and their respective sovereignty in enforcing telecoms legislation.

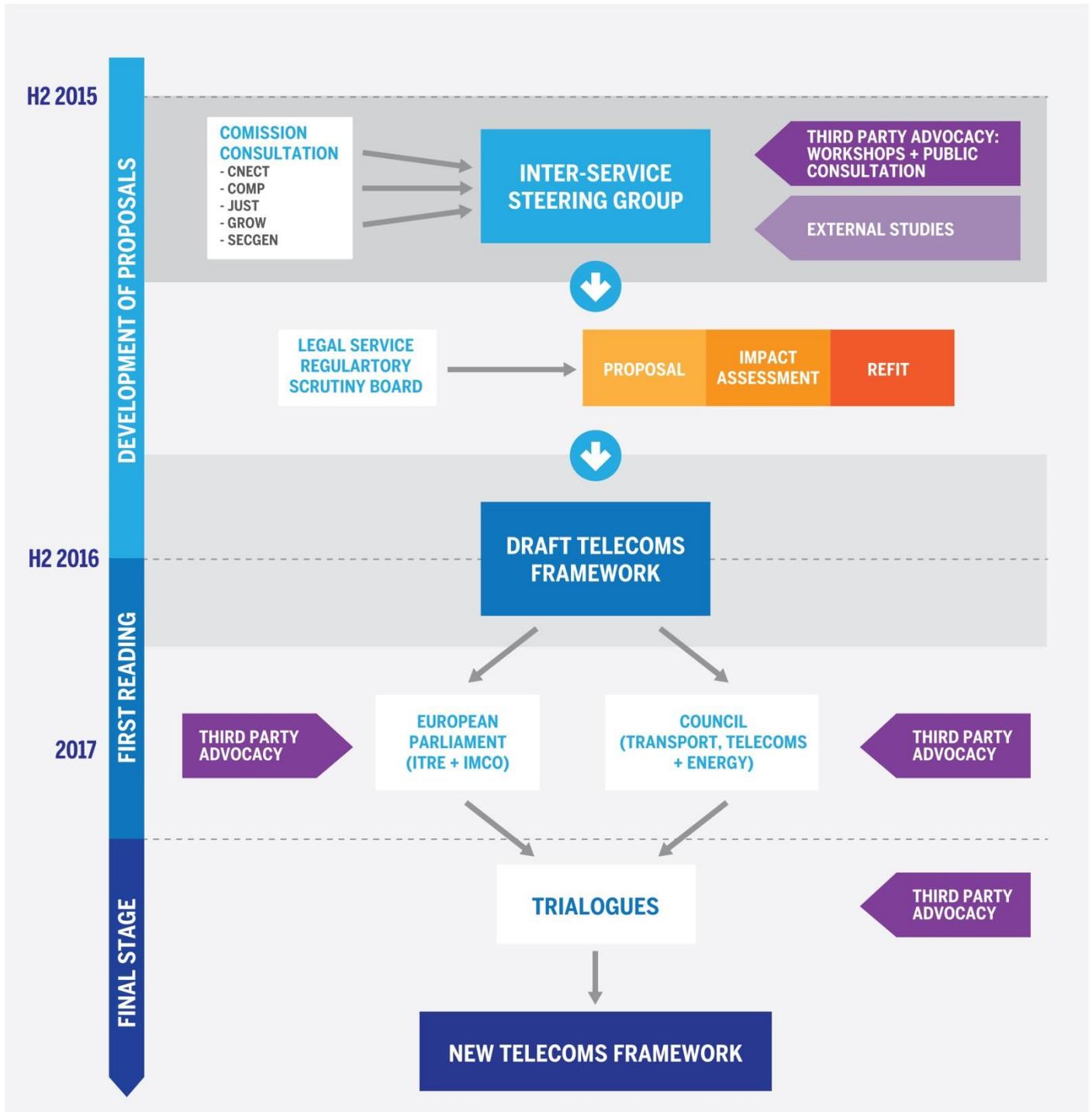
Understanding the Brussels dynamic – Be engaged, be on time, be smart

Anticipating and shaping change is paramount for success in times of market disruption and regulatory change. Industry players and investors, no matter their geography or level of involvement in EU markets, should be alert and prepared to engage with EU policymakers, to play a part in helping to shape the future of Europe's telecommunications market and create a conducive environment for investors and operators in one of the world's largest commercial markets.

Timely outreach is crucial: stakeholders should prepare now for a process that will start building momentum from September onwards. Robust economic and regulatory arguments and analysis are key. Stakeholders should also be prepared to invest in the economic and financial analysis to evidence their positions.

Constructive dialogue with Commission services will begin with the start of the consultation programme, the drafting of the impact assessment and initial brainstorming of new proposals. Early engagement will ensure a more balanced debate and enable a stronger voice in the decision making process. Building consensus with the right stakeholders at the right time with the right messaging will better ensure an outcome that moves away from ‘business as usual’ and delivers the changes Europe's telecommunications framework desperately needs.

TELECOMS FRAMEWORK REVIEW: EXPECTED TIMELINE



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Marcus Pepperell
+32 2 289 0930
marcus.pepperell@fticonsulting.com

Orestis Kalliantzidis
+32 289 0930
orestis.kalliantzidis@fticonsulting.com



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