

#NetCompetition Alliance urges EU lawmakers to keep focus on competition and avoid anti-competitive deregulation in the European Electronic Communications Code

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The #NetCompetition Alliance is a unique group of stakeholders that brings together Consumer Organisations, Service Providers and Network Operators, Digital Rights Organisations and Online Content Providers. Together, these organisations represent the large majority of EU citizens' interests in broadband. The Alliance is committed to promoting EU policies for the on-going availability and better and affordable internet access, specifically through healthy competition.

With view to the upcoming trilogue on the Electronic Communications Code, the members of the #NetCompetition Alliance express their concern about the complex nature and potential **anti-competitive effects of recent texts proposals on co-investment (Article 74)** tabled in the trilateral negotiations.

The initial idea behind regulating co-investments was to incentivise the deployment of Very High Capacity (VHC) networks across the EU, through cooperation on the infrastructure level while safeguarding competition. Unfortunately, this objective has been undermined by the introduction of intricate bureaucratic processes that are ultimately designed to allow individual deployment by operators that have significant market power (SMP), deregulating these operators instead of incentivising them to cooperate with other market players. We believe that the article in the newly proposed form will lead to more legal uncertainty and a potential **re-monopolisation of the market**. Given these negative effects and the currently limited added value of the provision, we consider it **best to delete Article 74 entirely** from the framework.

If co-legislators decide to maintain provisions on co-investment in the Code, they should be substantially **simplified and adapted to comply with the following key principles**:

- Cooperation before deregulation: Any deregulatory move should only be triggered upon actually concluded agreements between at least two parties jointly investing and not favour unilateral deployment of the incumbent or SMP operator;
- The article should focus only on new very high-capacity networks;
- Third parties not participating in the co-investment should receive access to the network based on fair, reasonable and non-discriminatory terms;
- The co-investment agreement should enjoy broad market acceptance, contestable through dispute settlement before national regulatory authorities;
- The original future-proof definition of VHC networks introduced by the Commission should not be diluted;
- Sustainable competition should be safeguarded;
- National regulators should maintain the prerogative of granting regulatory relief if these principles are fulfilled and therefore not be obliged to deregulate.

Considering all the aforementioned arguments, we urge decision-makers to amend the proposed rules on co-investment to ensure a pro-competitive environment for agreements between market players

dedicated to driving VHC deployment. Under the mentioned principles, the competitive dynamics of infrastructure deployment will be maintained, and consumers will benefit from lower prices, better quality and increased choice to meet their connectivity needs.

Read more:

#Netcompetition: Supporting broadband choice and freedom of communication

<http://savenetcompetition.eu/pdf/NetCompPrinciples.pdf>

#NetCompetition Alliance's position on the proposed EU Electronic Communications Code [COM(2016)590]

http://savenetcompetition.eu/pdf/EECC_Position.pdf