

CONSUMER RIGHTS AND COMPETITION IN THE TELECOMMUNICATIONS MARKET

Key demands of the Federation of German Consumer Organisations (vzbv) for the European Electronic Communications Code (COM (2016) 590 final)

On 14 September 2016, the European Commission presented its proposals for revising the legal framework for European telecommunications in a comprehensive ‘Connectivity’ package. The core element of this package is the proposal for a directive establishing the European Electronic Communications Code (EECC).

vzbv welcomes the European Commission’s efforts to adapt the legal framework of the telecommunications market to existing market developments. However, the proposal will result in changes to the existing regulatory and legal framework which may have lasting damaging effects on competition and could weaken consumer rights in the long term. In view of this, vzbv is calling for the following key changes to the proposal:

VZBV DEMANDS

❖ Return to a minimum harmonisation of consumer rights

vzbv rejects the European Commission’s proposal for a partial full harmonisation of end-user rights. Any further development of the rules should be aimed at ensuring a high level of protection but allow Member States to go beyond. On this basis, vzbv would support the European Commission’s mainly positive proposals for end-user rights.

❖ Maintain the current ex-ante regulatory regime

vzbv calls for maintaining the current system of ex-ante regulation of dominant market players with a balanced relationship between symmetric and asymmetric regulation. This is the only way to ensure sustainable competition for all market players and an efficient network deployment.

❖ Modernise universal services and adopt a new definition of ‘functional internet access’

The definition of ‘functional internet access’ by means of a specified minimum service list should be changed. Instead, the mandatory minimum bandwidth that a ‘functional internet access’ should offer shall be equivalent to the bandwidth the majority of households in a Member State are subscribed to. 10 Mbps could constitute a minimum basic value for a ‘functional internet access’, and this value should be reviewed and adjusted dynamically every two years according to the definition proposed above.

EXAMPLES FROM EVERYDAY LIFE/FACTS AND FIGURES

- ❖ In 2015, the German Regulatory Agency in charge, the Federal Network Agency (Bundesnetzagentur), registered around 178,000 consumer enquiries and complaints regarding telecommunications issues. Around half of these related to switching providers.¹
- ❖ Deregulation of the American telecommunications market has led to less product choice and higher prices for poorer services than in the EU and its example should not be followed.²
- ❖ In Germany, the proportion of households with an internet connection over a fixed line and a subscription of at least 10 Mbps is 71 per cent.³ However, full geographical broadband coverage is less than 6 Mbps and a portion of the population has no internet access at all (25 per cent of all German households).⁴

BACKGROUND INFORMATION ON VZBV'S DEMANDS

The demands laid out above are based on the following summarised arguments, which are explained in greater detail in vzbv's position paper on the telecommunications code.⁵

Switch the directive to minimum harmonisation of consumer rights

A full harmonisation of end-user rights that removes all regulatory autonomy from Member States is not desirable. It hinders individual Member States' ability to quickly adapt the legal framework to technological developments or specific problems in the market and thereby provide "best practices" in consumer protection to other Member States and the EU-Institutions. For example, while switching providers is the main source of problems for consumers in the German telecommunications market, accounting for around half of all enquiries received by the Federal Network Agency, Belgian consumers have more queries relating to contract terms (e.g. notice periods for terminating contracts). Following the Belgian telecommunications market reforms in 2012, which made it possible for Belgian consumers to terminate their contracts after six months, the volume of complaints relating to contracts dropped considerably.⁶ This example shows that telecommunications markets are highly decentralised and characterised by country-specific structural problems that cannot be solved by a one-size-fits-all approach. Sector-specific consumer rights would remain inflexible for years once they are codified at EU level, and purely national issues may have to be resolved via the circuitous route of EU law making. In order to create high-level but flexible consumer protection that is geared to domestic needs, markets and technological

¹ Federal Network Agency: Annual Report 2015, 2016.

² Stiftung Neue Verantwortung: Why Europe Should Avoid the Mistakes of US Internet Access Policy, 2015.

³ Excluding the around 10 million German households, which have no Internet connection at all at a fixed line. Destatis 2015, Breko: Breko Breitbandstudie 2016 (broadband access study 2016), page 16, 2016.

⁴ Federal Ministry of Transport and Digital Infrastructure: Aktuelle Breitbandverfügbarkeit in Deutschland (Stand Mitte 2016) (current broadband availability in Germany, as of mid-2016), 2016.

⁵ vzbv position paper: Protecting Consumer Rights and Competition in the Telecommunications Market (in German), 2017, available at: http://www.vzbv.de/sites/default/files/downloads/2017/03/01/17-01-25_vzbv_stellungnahme_tk-kodex.pdf.

⁶ Service de médiation pour les télécommunications: Rapport Annuel, 2015.

developments, end-user rights must be implemented through a minimum harmonisation approach with a high level of protection.

Maintain the current ex-ante regulatory regime

The comparison of the American and European telecommunications markets, as shortly explained above, demonstrates the positive effects of sustainable competition based on a system of ex-ante regulation. This has not only resulted in lower prices and a range of innovative services such as IPTV and VoIP. This type of competition has also had a positive effect on actual broadband usage and can support the achievement of EU targets for the deployment of the new networks. Furthermore, despite downward pressure on prices, operator revenue has grown.⁷ If essential wholesale services were no longer regulated ex-ante the positive effects of competition for the entire economy would be under threat. That is why vzbv wants the current system of ex-ante regulation to remain in place. First and foremost, it must be ensured that national regulatory agencies remain free to choose those remedies that are best suited to create sustainable competition and can be tailored to the specificities of the respective markets. Furthermore, the focus must not be based on competitive deficits at retail market level alone. Stable and sustainable competition in retail markets is utterly dependent on competitive wholesale markets. Moreover, using commercial agreements as an indicator of vibrant competition in the market – as foreseen in the EECC – provides little stimulation for competition in the telecommunications sector. On the contrary: depending on the market power of companies, they are likely to force smaller businesses to accept unfavourable contractual terms. Co-investment models also raise antitrust concerns, especially where such investments involve operators with significant market power and are coupled with a deregulation promise.

Modernise universal services and adopt a new definition of ‘functional internet access’

When it comes to equal digital opportunities, access to the internet – and, with it, to education and information – must be provided especially for socially disadvantaged communities. The new definition of ‘functional internet access’ with a pre-defined minimum list of services may give rise to monitoring and implementation problems. It is difficult to prove if consumers are unable to use certain services, such as online news or social media due to low data transmission rates. Furthermore, any attempt to do so would create a huge amount of bureaucracy for the national regulator. The aim should rather be to provide a full geographical coverage of ‘functional internet access’ for all consumers. With regard to the minimum connection speed, ‘functional internet access’ should be defined as the bandwidth the majority of households (at least 50 per cent) in a Member State are subscribed to. This value is therefore dynamic: if the bandwidth the majority of households are subscribed to increases, the bandwidth of a ‘functional internet access’ under the universal service regime must also increase accordingly. In Germany, the proportion of households which have an internet connection over a fixed line and a subscription of at least 10 Mbps is 71 per cent.⁸

⁷ Analysys Mason: The digital single market and telecoms regulation going forward, 2015.

⁸ Breko: Breko Breitbandstudie 2016 (broadband access study), page 16, 2016.

Across the EU, 75 per cent of households are subscribed to at least 10 Mbps.⁹ Currently, this would mean a basic full geographical coverage of 'functional internet access' with at least 10 Mbps.

Further information can be found at www.vzbv.de (in German)

[Protecting Consumer Rights and Competition in the Telecommunications Market | vzbv position paper on the European Commission's proposed Directive for establishing the European Electronic Communications Code](#)

[EU Code: New Rules for the Telecommunications Market | vzbv fact sheet | January 2017](#)

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⁹ EU Commission: Connectivity, Broadband market developments in the EU, 2016.