



**Public Consultation on the Review of
EU Regulatory Framework for Electronic
Communications
Networks and Services**

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Public consultation on the review of EU regulatory framework for electronic communications network and services		
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De-regulatory Commitment instead of Re-regulatory Interventionism in Telecommunications

Germany's independent free market think tank, the Institute for Free Enterprise, Berlin (*IUF – Institut für Unternehmerische Freiheit, Berlin*) highly appreciates the opportunity to contribute to the European Commission's review of the 2002 Regulatory Framework.

1. The regulatory state

Liberalisation of telecommunication sectors had been imposed in the EU by sector-specific regulation for the transition into competitive markets. IUF fully endorses the objective to terminate government monopolies and to release formerly state-owned undertakings into the free market.

However, IUF would like to remind the Commission that government ownership of the sector created the problem of a non-existing market in the first place. Government ownership did what no supposed private monopoly would have been able to ever accomplish. Governments granted legal protection to state-owned telecommunication undertakings that could by no means be contested by competition, even if potential competitors had outstanding products. Governments and statist planning were responsible for closing the sector from competition and offering no choice to customers.

Whereas governments initially excluded competitors to engage in market activities, the so-called liberalisation provided a further fallacy in attempting to artificially create a market by the very same agents that prevented competition previously. It may thus come as no surprise that any attempt to design a market in telecommunications is not only a contradiction in terms, but a direct result of the preceding process of administrative planning of telecommunications that led to eventually administered liberalisation.

In IUF's assessment sector-specific interventionism is the wrong approach to market liberalisation in principle, producing unintended side effects that are known as regulatory failures. Governments have their own agenda of how markets should be shaped, depending above others on economic and social concepts of political parties currently in power. Politics, however, is never a good advisor for markets – previous government ownership provides the best evidence of how politics was running markets.

The intention of sector-specific regulation was to ensure a smooth transition into a competitive market in telecommunications. However, instead of proper deregulation of the telecommunication industry after a regulatory regime that has long passed its due date, the changes to sector-specific regulation



proposed by the Commission focus on tightening the regulatory mechanisms rather than promoting a competitive market absent of regulatory meddling. The least that IUF would have expected from a Commission committed to market competition would have been sunset-regulation with a firm date of terminating the current burden to one of the most innovative sectors of the European economies.

Rather than finally freeing the industry from further distortions, the Commission chose sector-specific regulation as a second-best approach to design a competitive market in telecommunications. Even worse, the proposed changes to the regulatory framework would lead to re-regulation of the industry on a European layer rather than finally passing regulatory oversight to relevant competition institutions and competition law.

2. Recommendation for a free market in telecommunication

Acknowledging past liberalisation efforts and the entailed market distortions during the last decade, we request the Commission to refrain from further market planning. IUF demands an immediate release of the telecommunications industry from the interventionist grip of sector-specific regulation into the oversight of national competition authorities.

In addition to government and regulatory failures before and after the supposed market liberalisation we would like to remind the Commission of the fundamental principles of a market economy. These principles had been harmed by governments' provision of telephone services in the first place; these principles are once again infringed by the Commission's regulatory initiatives. Rather than alleviating a harm that had irreversibly been done, more of the same is prescribed as the solution.

Regulation of private companies constitutes a harsh infringement of property rights on the verge of expropriation of ownership rights that are legally granted. With respect to formerly state-owned undertakings, the same principle is valid, so long as private property rights were allocated during privatisation. Privatisation of former government monopolies has usually been based on conditions that were attached during privatisation procedures. It is explicitly on these conditions that regulation may rest.

IUF proposes to the Commission to embrace a competitive and innovative telecommunications market. By allowing market, rather than administrative forces to prevail, Europe's ailing economies would receive a competitive advantage in the knowledge society. Free market reforms are to be based on:



1. Rule of law and non-interventionism in property rights
2. Termination of sector-specific regulation
3. Oversight of competition authorities and law

Finally, for advocates of sector-specific regulation we recommend comprehensive study of Friedrich August von Hayek, Ludwig von Mises and Joseph A. Schumpeter, whose underlying guidance is based on the principle that markets – not governments or their agents – are most efficient regulators.

We encourage the Commission to take the steps proposed above towards competitive and contestable markets and request to avoid the pitfalls of further re-regulating the market.