

# The European Commission's draft recommendation will have a wide-ranging impact on the electronic communications sector

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CAMBRIDGE, UK, 30 June 2006 - The European Commission's draft recommendation on relevant product and service markets within the electronic communications sector, published today for consultation, will intensify the debate over telecoms regulation in Europe, says Analysys.

Once this draft recommendation becomes final, it will replace the existing document, which defines 18 Relevant Markets. "The most interesting aspects of the current draft are the removal of a significant number of the markets and the modifications it makes to a number of the others," says James Allen, Principal Consultant at Analysys. "The recommendation also explicitly calls for responses from the industry on a number of contentious issues, which is sure to result in heated discussion."

The recommendation forms a key part of telecoms regulation in Europe, as it determines to a very large extent which Relevant Markets are susceptible to ex ante regulation by national regulatory authorities (NRAs). Unless there is a Relevant Market and a party found to have significant market power, no ex ante remedies (such as price control, transparency, non-discrimination, accounting separation, etc.) can be applied in that market. Without a Relevant Market, consumers will now be protected by the existence of competitors, via ex post competition law, and by the light-touch regulations that apply to all telephony providers (the "general conditions of authorisation").

Allen observes that, under the current draft recommendation, withdrawn markets include retail telephone call markets and the market for retail low-speed leased lines (also known as the "minimum set of leased lines").

"This will give the retail divisions of incumbent operators much greater pricing flexibility for calls (e.g. discounts for big customers). Only one of the 25 EU NRAs have withdrawn all retail voice call regulation on the basis that there was no Relevant Market (PTS in Sweden), (though regulation had also been withdrawn elsewhere due to no SMP), so this is a bold move by the Commission, moving ahead of the NRAs to remove retail ex ante regulation," says Allen.

The most significant modification to a market definition, within the draft recommendation, is in the mobile telephony area where the market for mobile termination is extended to include SMS termination. "Again, the Commission is ahead of most of the NRAs; only the French regulator, ARCEP, has created a Relevant Market for SMS," says Allen. "The most likely effect would be lower wholesale SMS revenues; this does not mean that retail prices for mobile SMS will necessarily fall, though fixed-to-mobile SMS might become cheaper."

Beyond these important, proposed changes, the recommendation also discusses a wide variety of issues including the vexed issue of self-supply and focuses more on data, broadband and Internet than before. For example, it even discusses whether Internet interconnection (what it refers to as “Wholesale Internet connectivity”) would be a Relevant Market, before deciding against this. Allen adds “This is the right answer; Internet peering and transit are highly successful and unregulated markets which do not need ex ante intervention. An interesting question is why it is discussed at all; perhaps the Commission is trying to put a stake in the ground on this issue.”

The consultation period for the European Commission’s draft recommendation ends on 30 September 2006 - an electronic copy can be downloaded at:

[http://ec.europa.eu/information\\_society/policy/ecomms/doc/info\\_centre/public\\_consult/review/recommendation\\_final.pdf](http://ec.europa.eu/information_society/policy/ecomms/doc/info_centre/public_consult/review/recommendation_final.pdf)

Analysys works on many of these issues for operators and regulators worldwide. For more information on its work in this area, email [james.allen@analysys.com](mailto:james.allen@analysys.com).

About Analysys ([www.analysys.com](http://www.analysys.com))

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