ETNO-GSMA position paper on the New Consumer Agenda

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Introduction – telcos and consumers

A 2019 study conducted for ETNO by Assembly[1] identified the telecoms sector as one which is characterised by evolving service, improved trust, and enhanced customer relationships. A result of strong competition between providers, innovation and considerable ongoing investments in networks and services, consumers derive considerable benefit from our services. As a sector defined by providing services to meet new demands and challenges, and one which develops and makes use of new technologies, we welcome the European Commission's ambition in its forthcoming New Consumer Agenda: consumers must be at the heart of the Green and Digital Transitions in Europe, responding to the most important challenges of today with a holistic and coherent vision on the role of consumers.

Consumers are a crucial enabler of, and recipient of the benefits of, the Green and Digital Transitions. Such challenges present an opportunity to evaluate the EU's consumer agenda, and specifically certain pieces of legislation, including the General Product Safety Directive, to ensure they are fit for purpose in a digital and green economy. Such challenges also represent an opportunity to realise not only the Green and Digital Transitions, but also improve digital literacy among consumers, which is continually of high interest for telecoms operators.

A New Consumer Agenda in Europe should not only respond to challenges, such as ensuring that consumers are guaranteed the highest protection and provided with accurate information regarding new technologies, but it should also make the most of opportunities to empower the consumer, and ensure readiness for the green and digital transitions.

Chapter 1: Elements of the New Consumer Agenda

1. Green Transition

The climate and environmental ambitions of the European Union, as set out in the Commission's Green Deal and Circular Economy Action Plan, will be realised by the availability and uptake of sustainable products and services by the consumer. However, in addition to mere compliance with environmental standards of products, consumers are demonstrating a growing interest in sustainable consumption. 'Sustainable' becomes a competitive factor.

First and foremost, digital technologies, and the services which they support, are a crucial enabler and a critical pre-requisite for achieving the EU's Green Deal goals. Indeed, the European Commission has recognised that high-quality telecommunications networks and services are the basis for digitalisation (cf. European Commission Shaping Europe's Digital Future). Only through massive uptake of digital infrastructure and digital services can Europe reap the environmental and socio-economic benefit offered by new technologies.

However, in addition to supporting the Green Transition by virtue of the services which they enable, telecoms operators are themselves promoters of the circular economy. Members of ETNO and the GSMA have long taken measures to increase circularity in their businesses, including the selection and development of suppliers and products in compliance with environmental sustainability criteria, periodically checking along the entire life

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[1] Delivering Consumer Value in Digital Times, a study for ETNO, conducted by Assembly, September 2019. Accessible here: https://www.etno.eu/library/reports/88-consumer-study-2019-final-pages.html

cycle, recycling and refurbishing devices, re-using consumed material for new products, and reducing their own waste. Such measures are also consumer-facing, including the use of labelling to enable consumers' informed choice in favour of sustainable products and services. We are eager to share our expertise in order to further improve the circularity of value chains.

In our experience, voluntary measures in the telecoms sector have been among the most effective ways to drive sustainability efforts: GSMA and ETNO companies played a key role in driving the market towards greater transparency by committing to environmental reporting that was more stringent than the mandatory requirements.

Telecoms operators have voluntarily implemented a broad variety of circular economy measures. Due to difficulties in requiring several sectors or suppliers along the value chain to take collective action, voluntary actions are usually more effective when less complex cooperation is required. In such instances where individual companies are highly dependent on the contribution of other market players, clear legal obligations could be necessary throughout the value chain. Accordingly, in these areas where interdependency is high, and thus binding rules are required, obligations should not be introduced by way of consumer law addressing only the trader: a holistic approach is needed instead, taking into account the actual source of the problem, and who has the most effective means.

Alternatively, the trader should at least be allowed to enforce specific rights vis-à-vis the suppliers and producers and to easily detect the degree of sustainability of the provider. Consideration should particularly be given to the entire value chains and particularly the manufacturers with regard to potentially new rules such as on minimum lifetime warranties, right-to-repair, spare part availability or comprehensive ecological information.

2. Consumer engagement in the circular economy

We support more **standardised and reliable information on sustainability**, building on established good practices. Information should provide real value for all consumers and truly empower sustainable consumption.

Labels are an important tool to inform the consumer about the sustainability of a product. At present, there is no standardised definition of 'Environmentally friendly' that could serve as a universal label, however, there are different recognised labels that are good practices and could serve as blueprints. We consider it important that manufacturers and traders be able to use their own labels, adhering to standardised templates, indicating the environmental features / performance of a product, rather than relying on third parties. Nevertheless, European businesses and consumers would benefit from greater transparency and reliability for sustainability labels and logos: We believe that standardisation of labels could support this, e.g. defining minimum requirements. Contrary to this, information, such as the product's life-cycle environmental and climate footprint, risks to provide little reliable information on the actual impact to truly enable informed choice, as it is extremely granular, complex, and depends on highly individual factors such as usage.

On the other hand, providing stronger protections for consumers against **greenwashing** is important, firstly to ensure that consumers are accessing reliable and trustworthy assessments of the environmental impact of their purchases, but also to ensure that legitimate labels, based on accurate information, are not undermined or devalued. Telecoms operators have a strong and long-standing commitment to sustainability, and it is in our interest that customers are properly informed.

The establishment of new consumer **rights to repair products** (including critical software updates) are reasonable but should be very carefully considered. These should not become excessively burdensome for businesses, especially if covering a very long lifespan. When defining possible new obligations, established good practices should be taken into account to ensure efficient solutions. Indeed, **information on repairability** may

not provide the consumer with accurate information to inform their decisions: traders and manufacturers have no certainty on how long a product will actually function, as this will depend on a number of factors, including how it is used by the consumer. A warranty period ensures that consumers may rely on a *de facto* minimum duration, but any new obligation for an estimated lifespan must not create legal confusion by constituting a new warranty period. In addition, information on whether products can be repaired by professional repair services, or by the consumer himself, would risk being misleading, as these depend on third-party services available to consumers, and on the technical ability of the consumer him/her-self to repair the product.

3. *Enforcement and harmonisation*

Existing laws (e.g. Unfair Commercial Practices Directive) can provide a solid basis on which to build a robust system of enforcement of consumer protection rules. As a first step, better enforcement and legal clarification of the existing regime should be ensured. Only then, where gaps are identified, could additional steps be considered (e.g. EU advisory system).

The provision of detailed guidance for enforcement bodies against greenwashing and obsolescence claims, and on enforcing consumer information rules, is an important element. That said, the establishment of an EU-level advisory system to ensure that sustainability claims on products are based on reliable information should only be considered if guidance proves to be an insufficient measure. Otherwise, an advisory system would be heavy-handed as a first step. Above all, a strengthened cooperation between public authorities and businesses to allow for the swift removal of misleading claims would be helpful for all market players.

4. *COVID-19 impact*

From the very beginning of the crisis, and throughout, the European telecommunications operators' community has reacted very swiftly, playing an essential role by keeping people connected and businesses running, supporting public administrations and healthcare systems, developing new data-based services, assisting local communities and safeguarding employees.

Telecoms operators have worked to ensure the continuity of their services in a reliable, stable and secure way and they have strengthened network capacity as needed. The episodes of traffic increases reported by our members showed up to 50% increase in voice traffic, up to 40% increase in mobile data traffic and up to 70% in fixed data traffic. In addition, operators have ensured the resilience of emergency communication services.

Telecoms operators have also mobilised resources to support their customers, public administrations and local communities, including the delivery of free or unlimited services and collaborating with health authorities to support social distancing and monitoring. Also, operators have cooperated from the very beginning with public administrations to support eLearning/eSchooling activities and to improve digital skills.

Our services have proved resilient during the pandemic, allowing millions of Europeans to stay at home, and still be able to work remotely, receive education, access essential services, and stay in contact with one another. However, to ensure greater long-term resilience, Europe needs deep and widespread digitalisation. In order to foster this digital ecosystem, digital uptake and demand is as important as supporting supply. Demand generation must be consumer centric.

In some countries, the COVID-19 crisis has been a natural push for digitalisation for those individuals who were previously relying on offline services. This is a positive side-effect of a challenging situation and should be turned into an opportunity to further improve digital literacy, media education, and provision of information to consumers. As telecoms operators, we have implemented many good practices in this regard and we will continue to reinforce our engagement.

Chapter 2: Specific instruments

1. Review of the General Product Safety Directive

ETNO and the GSMA welcome the approach by the European Commission to already indicate specific plans and instruments within the context of the New Consumer Agenda, such as the review of the General Product Safety Directive, scheduled for 2021. It is important that the specific challenges and objectives identified by the Commission (e.g. ensuring that such legislation is future proof) are considered in the broad context of a new, holistic consumer agenda.

Specific features of Artificial Intelligence (AI) may challenge the current liability and safety framework, and the General Product Safety Directive may need to be adapted accordingly: maintaining the status quo does not seem appropriate to address such challenges.

Nevertheless, the adjustments needed to the law on product safety would not require a full revision of the Directive, but targeted adjustments, particularly focusing on high-risk applications and products. Furthermore, the inclusion of standalone software and security update obligations should be considered. Other risks linked to cybersecurity, privacy or ethics are subject to other EU legislation and should not be considered as part of a revised scope of the GPSD.

Improved implementation and enforcement of the existing legal framework, without revision of the GPSD (option 1), would therefore allow new risks to be accounted for without hampering innovation. A targeted revision of the GPSD (option 2) may also be relevant regarding clarification on how the scope and definitions of the legal framework would apply to risks related to new technologies, standalone software and security updates. Regarding AI, telecoms operators could support introducing the definition of high-risk AI and associated technologically neutral obligations.

ETNO (European Telecommunications Network Operators' Association) represents Europe's telecommunications network operators and is the principal policy group for European e-communications network operators. ETNO's primary purpose is to promote a positive policy environment allowing the EU telecommunications sector to deliver best quality services to consumers and businesses.

For questions and clarifications regarding this position paper, please contact **Ross Creelman** (creelman@etno.eu), Public Policy Officer at ETNO.

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