

REDUCED REGULATION FOR TELECOMS?

A TIME OF RECKONING FOR
THE EU TELECOMS INDUSTRY



EU TELECOMS REGULATION SOON TO GET A REVAMP

The EU may soon see a significant shift in telecoms regulation. Look no further than the European Commission's recent white paper on Europe's digital infrastructure needs, the latest statements by Commission officials, and the increasing calls for a policy shift, as seen in the recently published Letta report.

The Commission's regulatory narrative on telecoms has been shifting. The upcoming DNA (Digital Networks Act), set to establish new priorities for EU telecoms regulation, will likely provide regulators with a new roadmap, perhaps focused on less intervention and less regulation. While some uncertainty remains, in this note we explore the trajectory and discuss possible changes on the horizon.

The EU telecoms regulatory framework has long strived to promote infrastructure competition. Access remedies have traditionally been seen as a transitory measure allowing new entrants to use existing infrastructure before being capable of deploying their own infrastructure where economically viable.

The growing focus on upstream regulation is embedded in the [European Electronic Communications] Code, which aims to promote the deployment of VHCN [very high capacity networks] and to foster network-based competition.

Explanatory Note Accompanying the Commission's recommendation on relevant markets (2020)

**UNTIL RECENTLY, THE
GOAL WAS TO FOSTER
INFRASTRUCTURE
COMPETITION**

Copenhagen
Economics

CE

However, there are now signs that the Commission is shifting the focus away from infrastructure competition by suggesting that it is no longer an objective to have multiple parallel infrastructures, referring to this as “overbuild”.

“

The limited SMP-based regulation could be ancillary or replaced to more general, harmonised symmetric rules addressing access to civil engineering infrastructure with safeguards providing investment certainty, e.g. in view of risk of unreasonable overbuild.

Commission’s White Paper “How to master Europe's digital infrastructure needs?” (2024)

”

**...BUT NOW THE
LADDER OF
INVESTMENT MAY
BE GOING OUT
OF FASHION**

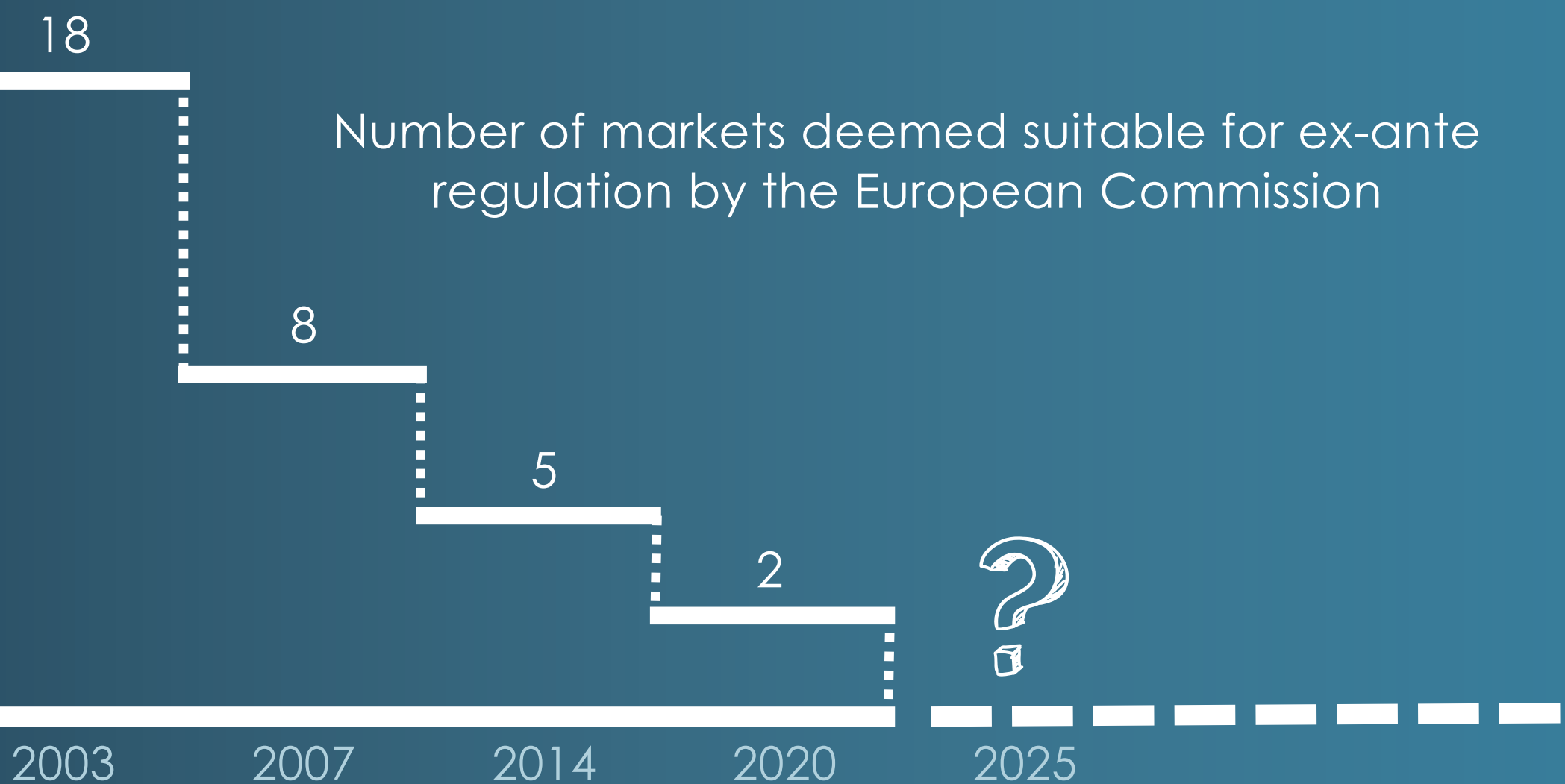


Copenhagen
Economics

CE

THE COMMISSION MIGHT SCRAP RECOMMENDED REGULATION ENTIRELY...

Historically, telecoms regulation in the EU has largely applied to the relevant markets identified by the Commission as susceptible to ex-ante regulation. While regulating a market has always required passing the three-criteria test, the Commission's Recommendation has in practice served as strong guidance and has aimed at fostering regulatory harmonisation in the block.



Copenhagen
Economics

CE

...WHICH WOULD LEAVE NATIONAL REGULATORS TO FEND FOR THEMSELVES

The Commission recently suggested that it might stop recommending any relevant markets for regulation, a possibility also considered in the White Paper. The standalone three-criteria test would still be part of regulators' toolbox. However, regulators would have to define the markets susceptible for regulation themselves.

“

What we will do - and that is the Commission to do it - we will not recommend any more markets ex-ante to be analysed but we rely on what the code tells that each market should be analysed on its own merits with the so-called three-criteria test and then regulators will be able to actually specify a market which is good for regulation but on a basis of new criteria.

Roberto Viola, DG Connect Director-General, BEREC Stakeholder Forum
2024

”

Copenhagen
Economics

CE

MEANWHILE, REGULATORS MAY STILL BELIEVE THAT IT TAKES THREE TO TANGO



Although the Commission may be changing tack, it will be interesting to see whether regulators fall in line. BEREC recently endorsed a regulator's decision to intervene in a market, writing that “academic literature and NRA and National Competition Authority ('NCA') decisions generally suggest that the presence of at least three firms is conducive to effective competition”. This suggests that regulators may maintain a focus on regulation which promotes a market with competing infrastructures.

SEVERAL UNCERTAINTIES REMAIN

- What will the application of the three criteria test look like going forward?
- What will the Commission's 'standardised cross-EU access remedy' look like: will it be intrusive or light-touch?
- Will a reduction in the number of recommended markets lead to more or less regulatory harmonisation across the EU?
- Will the Commission suggest - or even recommend - that telecoms regulators should begin to regulate over-the-top services, such as cloud, "instead" of traditional telecoms infrastructure?

GET IN TOUCH



Rodrigo Cipriano, Lead Economist
roc@copenhageneconomics.com



**Neil Gallagher, Managing Economist
Service Leader for TMT & Digital**
neg@copenhageneconomics.com

www.copenhageneconomics.com

**Copenhagen
Economics**

CE