

The right policy mix

Viviane Reding



Regulators everywhere face challenges. While the challenges vary depending on the country and market concerned, on a more general basis I believe that the main challenge which regulators (including the European Commission) face is to find the right policy mix: a sound regulatory framework which combines the strength of free market forces with targeted legislative measures that lead to market liberalisation, more competition and create incentives for further investments and innovation.

The Single Telecoms Market

In Europe we have been talking about the completion of the Single Market since 1992 and more recently about the building of a Single Telecoms Market. The completion of a Digital Single Market, that encompasses the 27 EU Member States and eliminates all borders for online services, is thus a very specific important regulatory challenge for the European Commission. Looking at the construction work done so far, I still see many 'bricks' which are missing.

The 'coherence brick'

One of the bricks is 'coherence' in telecoms regulation. In a world where communication technologies unite people across borders and where 'technical resources' such as radio spectrum know by their very nature no borders, we need to be able to deal with regulatory issues on a European scale.

Although radio frequencies may be in the first place a national resource, they are used to deliver services to consumers across borders (such as TV programmes or mobile phone communication).

Therefore, having 27 national telecoms regulators working next to each other in an uncoordinated way on the telecoms markets, is not always an efficient way for dealing with today's borderless communication technologies and services. What we need, and what the Commission has proposed is a small but efficient European Telecoms Authority that brings together the expertise of the national telecoms regulators in a coordinated way.

I am therefore very glad that the European Parliament and the EU Council of Ministers have meanwhile agreed on the creation of an independent "Body of European Regulators for Electronic Communications", in short: BEREC.

BEREC will be managed by a strong European personality of standing in the telecoms sector, who will be supported by an office with around 20 experts, able to identify quickly cross-border solutions to cross-border problems, and consistency in Europe's regulatory approach.

High speed broadband for all Europeans by 2013...

This will not only be beneficial to operators who will enjoy a level-playing field and to consumers who will have greater choice of services but above all save Europe's economy billions of Euros.

Experts estimate that poor and inconsistent national regulation costs Europe's businesses €20 billion – €20 billion which Europe could save per year by advancing the single telecoms market and removing regulatory fragmentation – a challenge

which is worth addressing in view of the present crisis.

The 'broadband brick'

Another missing 'brick', which the European Commission together with national regulators in Europe should put in the building block, is the 'broadband brick'. Although on average 80% of the EU population have today a fixed broadband connection, there are still considerable 'white spots' on Europe's Internet landscape, in particular in rural areas, which need to be closed not only for economic but also for social reasons.

That is why I have made it my political priority to achieve broadband for all Europeans by 2010 and high-speed Internet broadband for all Europeans by 2013. The roll out and development of high speed broadband Internet could create around one million jobs in Europe, and spur broadband-related growth in economic activity to the tune of €850 billion.

Let us also not forget that each 10% of additional broadband penetration yields 1.3% extra growth, according to a new World Bank Study. However, to meet this challenge, we need to accelerate the switchover from analogue to digital

TV. The switchover will free very valuable radio spectrum, currently used by terrestrial analogue TV, for use by new communications and content services. The incremental value of this spectrum for wireless broadband across the EU is estimated to be between €150 and €200 billion. Every corner of Europe can reap this "digital dividend", without it costing the taxpayer a single cent – if all EU governments and regulators act now and switch over even before the agreed EU deadline of 2012.

The European Commission will promote an effective use of the digital dividend through a series of measures, including an EU Recommendation on a coordinated approach in the weeks to come.

The 'competition brick'

Although European consumers and operators have already benefited from the liberalisation of telecoms markets since the 1990s through more choice in telecommunications services and a greater market access for offering these services, the laying of the 'broadband brick' can only go hand in hand with enhanced competition on Europe's telecoms markets, both on the services and on the infrastructure side. Still too often incumbent operators with a market share of up to 90 or even 100% dominate crucial market segments like the fixed or the broadband market. And still too often these dominant operators benefit in addition from the protection of their national government.

As a Luxemburger, I am particularly concerned about these competition bottlenecks, as they almost automatically mean that the bigger countries and their companies will win over the smaller companies from smaller Member States. This is why I favour and will continue working towards further progressive market opening in the telecoms markets, and especially more cross-border-competition and a level-playing field for cross-border services.

I note that one of Europe's champions in telecoms is Denmark, which, even though one of the smallest Member States, has one of the most open and most competitive markets in the EU, and its consumers are profiting from one of the highest broadband penetrations and the lowest prices for communication services across Europe. I cannot repeat it often enough: competition benefits consumers and businesses at the same time.

Some lessons learned

First, it is a very positive lesson to see that we have agreement in Europe – in the European Commission as well as in the European Parliament and among the 27 EU Member States – that the EU's regulatory framework should continue to be based on pro-competitive principles, and this also when we will move to next-generation networks.

The new rules will therefore promote efficient investment in new fibre optic networks preserving incentives to invest by taking into account the risks involved in

The new rules will promote efficient investment...

allowing access to new networks while allowing for various cooperative arrangements between investors and access-seeking operators. National telecoms regulators will in addition gain the tool of functional separation as an additional remedy they can use to overcome persistent competition bottlenecks.

Second, a lesson from these negotiations on the new rules is that there is broad agreement in Europe on the need to have more consistency on the European telecoms market and to move towards a single telecoms market. As already mentioned above, the new European Telecoms Authority, BEREC, will help ensure fair competition and more consistency of regulation on the telecoms markets and will replace the loose cooperation between national regulators that exists today in the European Regulators Group with a better structured, more efficient approach.

Also, the existing rules under which national regulators consult the Commission and their counterparts in other Member States on draft regulatory measures are

strengthened to ensure a direct and efficient involvement of BEREC. In particular national regulators may be required to amend or withdraw a draft measure which both the Commission and BEREC consider to create a barrier to the single market or to be otherwise incompatible with EU law.

The last, but certainly not least, is a lesson that the telecoms package has taught me is that the European Parliament has become a strong partner for the European Commission when it comes to strengthening the rights of citizens. Throughout the negotiations, it has been in

particular the European Parliament that supported consumer-friendly measures in the package, including the right to change, in one working day, fixed or mobile operator while keeping one's old phone number, or the rules further strengthening net neutrality in Europe.

National regulators will be able, under the reformed EU telecoms rules, to intervene in the market by setting minimum quality of service requirements for network transmission services which will be further supported by new transparency requirements vis-à-vis consumers. This will allow the European Commission to become, within the next years, the first line of defence whenever there will be threats on net neutrality in Europe.

More regulation?

We Europeans have well understood that it was certainly not 'over-regulation' that has caused the financial crisis. In order to have stability – whether on the financial markets or elsewhere – certain rules of the game need to be in place. For years, incumbent telecoms operators have told me: "Just look to the US,

there the telecoms market flourishes because of total deregulation.”

I have never been too much impressed by these claims, and the current crisis has confirmed my view. Deregulation can only happen when competition is effective; and when basic consumer rights (for example, on net neutrality) are guaranteed. I also firmly believe that regulation taking care of competition always has a positive effect on the economy. Times of economic crisis are thus not a reason to suspend principles of competition law. However, I have also always stressed that regulation should never be just an end in itself – it should be targeted to the problem and have a general economic and societal purpose: access to better and more affordable services for more and more citizens from wherever they are in Europe and the possibility for telecoms operators to seize the opportunities of an enlarged Single Telecoms Market and offer their services on a cross-border basis.

I am therefore convinced that the reform of Europe’s telecoms rules, which will enter into force in the course of next year, is the right path and the right mix. It regulates where necessary; and deregulates where possible. This has been Europe’s approach before the present crisis. And the crisis is confirming that it has been the right approach.

Balancing act

In answer to questions about the perceived move to more competition-law based policy, we can say that, in fact the EU’s common telecoms rules, since their inception in the 1990s, brought about a shift from general competition law principles to sector-specific regulation ensuring effective competition on the market. Just because the European Commission decided that some markets that initially required ex ante regulation did no longer need to be regulated a priori, this does not

Futures

My vision for the years to come is to see a generation of high-tech Europeans and ‘digital natives’ emerge who use their mobile devices to access the Internet, listen to music, watch TV or do online banking.

I could imagine an ‘information delivery chain’ where we do no longer make a difference between the devices/platforms and the services – thanks to regulatory policies which further convergence. The roll-out and take-up of broadband should not be parallel to but in fact complement a more attractive access to content online, be it digitised books, music or movies.

As I always ask: “Would you take a high-speed train that isn’t going to an exciting destination?”. The answer is obviously ‘no’ and this is the reason why I have recently outlined my personal vision of a ‘digital strategy’ to boost the potential of Europe’s digital economy where private and public investors can expect a particularly good return on investment – IF we create the right framework here.

While around 35% of the total EU population use today advanced Internet services on a rather regular basis, this number goes up to 73% for people aged between 16 and 24. These digital natives who will soon turn into consumers with purchasing power are willing to pay in order to access content online – if there are consumer-friendly legal offers.

If however, a consumer based in Poland is not be able to buy his iTunes songs or download a BBC TV programme from the web everywhere in Europe per se (due to the currently existing territorial licensing regimes), then this will not only cause frustration and possibly

lead to Internet piracy but it will also be of no use to the content producers depriving them of any potential revenue.

In the year 2014 licensing of intellectual property rights for online services and content should cover the territory of all 27 EU Member States – saving not only much time but also money currently spent on administration costs.

I would also like to see by then a modern set of European rules that encourages the digitisation of books so that the currently more than 90% of books in Europe’s national libraries which are no longer commercially available, can be viewed on the screens of your PC, laptop or mobile phone.

A large part of these 90% are orphan works and if we do not set up a European registry to ease the identification of rights holders and facilitate rights clearance, digitisation of those books (and the according remuneration of their authors) will be possible only across the Atlantic putting Europe at a competitive disadvantage.

I am confident that the work the European Commission will be doing in the years to come will contribute to achieving such a landscape by 2014: A landscape where it will make no difference any longer for a company to build a high-speed Internet network in France or Germany or one from Germany to France via Luxembourg. And when a Luxembourgish Internet telephony operator will have access to the network infrastructure all across Europe and is able to offer and provide his services on the same basis as the local incumbents to consumers in all EU countries. And where consumers will be able to easily access rich content online – no matter where they are, while creators and rights holders get the fair remuneration.
- Viviane Reding

mean that there is no sector-specific regulation any more.

It just means that sector specific regulation has done its job on some markets, that there is effective competition on those markets, and that therefore regulation can be phased out. On the other hand, there are still markets (like the wholesale broadband market) where, for structural reasons, competition bottlenecks still persist and therefore regulation continues to be needed for quite some time.

The phenomenon of roaming is another example where competition law alone could not solve the problem and where sector specific regulation in form of the EU's Roaming Regulation of 2007 and 2009 had to be adopted by the EU's legislator.

The same could apply to one of the most recent phenomena: the blocking by some operators of VoIP services. If the operator blocking the service is not in a dominant position, the Commission or national regulators so far has no specific power to act against such blocking practices. The Commission will be monitoring closely in the months to come whether also in this respect, further EU rules will be required.

I believe that these two examples illustrate that sector-specific regulation tailored to the problem is a powerful weapon for achieving competition where ordinary competition rules fail.

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