

by Fabio Colasanti

Where is the telecom sector going? Do we need to tweak again the regulatory approach?



The liberalisation of the telecom sector that we have witnessed throughout the world has been based on two tenets: a) reliance on the private sector for the roll out of networks and the provision of services and b) the imposition of “economic” regulation aimed at creating in the sector the conditions that would exist if full competition prevailed.

This approach has reached an almost “elegant” formalisation in the regulatory framework adopted by the European Union in 2002, but it is also the basis of the policies followed in many other industrialised countries. The first “tenet” mentioned means also that the state will intervene directly in the construction of the networks or in the management of services only in the presence of a clear “market failure”. The second means that regulation is used extensively to create conditions where alternative operators have access to the existing infrastructure under conditions as similar as possible to those enjoyed by the retail arm of the incumbent. In addition, regulation aims to arrive at a situation where durable competition is achieved thanks to the existence of competing infrastructures and “service competition” is only a temporary stepping stone to the ultimate goal.

This approach has been criticized by the incumbents, especially when applied to new networks (e.g., NGA), but it is usually credited with having contributed significantly to the development of the sector. Over the last few years the criticism from the incumbents has become more vocal, especially in Europe where many large operators are facing stagnating revenues. The approach was intensively discussed in the European Union from 2006 to 2009 on the occasion of a revision of the basic directives, but it survived the exercise unchanged in its fundamental provisions.

No one, apart from the incumbents, is openly challenging the approach, but a number of actions and initiatives prompt questions about the extent to which policy makers still support it wholeheartedly.

Policy makers seem to be unhappy with the pace of the roll out of very fast communications networks by the private sector. Money is being invested in fibre developments in some of the most advanced parts of the industrialised world, where it seems difficult to argue there is a “market failure”. In certain cases, governments are discussing the setting up of public companies tasked with the building up of a new national fibre network. A number of countries - recently Australia - have gone ahead with such a plan. Do policy makers still believe that the private sector can deliver the networks our societies need?

In 2000, the United States departed somewhat from this approach, relying on the competitive pressure coming from cable. But most other countries followed it. Last year, however, the Brazilian authorities decided to grant a nine year “regulatory holiday” for new fibre networks. Less extreme forms of “tolerance” have appeared in the decisions of other regulatory authorities.





Ten years ago, competition rules were ruthlessly enforced in the European Union, even to the point of covering “passive infrastructure”. Today, in the face of popular resistance to the proliferation of masts and antennas and confronted with the high costs of investment in NGAs, regulators are encouraging operators to cooperate and share more than simply “passive infrastructure”. European policy makers have also appeared to take a more direct regulatory approach to the roll out of NGA networks with suggestions that some cost orientation decisions may be tweaked to discourage reliance on the old networks or to encourage the roll out of new ones. Recently, a story appeared in the *Financial Times* saying that the major European telecom operators were considering pooling together their networks in a European-wide single network (which would have certainly been severely regulated; a sort of voluntary “structural separation”?). The story may have been true or may have been apocryphal, but the shares of most companies went significantly up during the few hours that followed the publication of the story. Do policy makers still believe that infrastructure competition is the ultimate goal? Just as important, do the markets believe that infrastructure competition is the best option from the point of view of the investors?

These are some of the most obvious indirect challenges that are being raised against the current regulatory approach. There is a need to discuss them and see whether regulatory changes are indeed necessary. In addition, there seem to be important diversities appearing. North America seems to be an area where the sector is developing at a healthy pace, but also thanks to relatively high prices. Most of Europe seems to be offering “low cost” telecom services: prices are low, but the service is not exceptional. Yet even the European landscape is not a uniform one, a few large companies are doing quite well.

More generally, policy makers throughout the world should ask themselves where the telecom sector is going. They should try to understand what are the major factors that are shaping the evolution of the sector. Certainly the desire of consumers to access content from different devices is a powerful factor and one that should be accommodated. How different will the telecom networks be from the content delivery ones? Where will the “telecom cum audiovisual” sector be in five or ten years from now?

Regulatory changes take a long time to produce effects. The lead times are very long, especially in the European Union, and industry has to be given sufficient time to adjust. Discussing changes today, may mean regulatory changes in two or three years from now, their implementation in three to five years and changes on the ground even later.

The International Institute of Communications believes that attention has to be paid to the many important issues that are on the table now (spectrum, data protection/privacy, OTT vs. telcos, cloud computing, governance of the Internet, etc.), but that it is also necessary to start discussing again more fundamental issues and will make its contribution through the Telecom and Media Forum Series, its Annual Conference, its International Regulators Forum and through *Intermedia*.

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