

# THE AGENDA FOR EUROPE

**GEORG SERENTSCHY** sets out the agenda for Europe in 2017, which looks likely to be critical in developing aspirations for the digital single market

This short article aims to list the key policy options and regulatory topics which are high up on the priority list of policymakers, regulators, digital firms and telecoms operators in Europe, and many of which are being closely watched globally. The driving forces for the current changes are the ongoing stream of new, innovative services delivered by OTT players, the growing importance of ubiquitous ultra-fast and very low latency (gigabit) networks and – in the European context – the draft Electronics Communications Code published by the European Commission in mid-September 2016.<sup>1</sup>

## 1 – A SHIFT OF THE REGULATORY FOCUS IN THE EU

- Connectivity and investment are becoming one overarching principle (in the previous EU regulatory regime it was solely competition).
- There is a need to revisit the concept of significant market power (SMP) regulation, taking into account operator's investment plans, coverage, universal service, public funds, symmetric regulation, treatment of copper and invitation for co-investing, as a driver to facilitate investment and lower the regulatory burden – a concept fit for purpose for the 'gigabit society'.
- The EU broadband cost reduction directive<sup>2</sup> is an important cornerstone to deliver ubiquitous connectivity faster and more efficiently.
- We see many markets developing towards tight oligopolies, and national regulators and competition authorities are struggling with this situation because general and sector specific competition law does not have good and proven legal instruments at hand. In this context, it makes sense to take a pragmatic stance, as a leading policy expert recently expressed, by stating that minimising network monopoly is more important than maximising retail competition.<sup>3</sup>

## 2 – MASSIVE PUBLIC FINANCING OF TELECOMS INFRASTRUCTURE

Such financing has not been seen for decades and raises some crucial issues.

- What will competition authorities say on co-investment?
- Invitation to co-invest will be a way to relax harsh regulation from the past, but this might be perceived as an invitation for regulatory gambling.

Therefore, an invitation to co-invest must be reasonable and verifiable.

- This calls for a revised role of national regulators as agencies to help improve connectivity in an efficient and effective manner.

## 3 – MODELS TO BUILD (NATIONAL) FIBRE WHOLESALE NETWORKS

Some of these models are based on public-private partnerships, some on new build and others are carved out from incumbent's networks. They also raise new policy and regulatory issues.

- Investment and innovation incentives.
- Functional and ownership unbundling and potentially the end of vertically integrated telecoms players.



**Minimising network monopoly is more important than maximising retail competition.**



## 4 – VERY HIGH CAPACITY NETWORKS

The Commission has presented – as part of the new code – the concept of very high capacity (VHC) networks, including G.fast, a kind of last resort technology to exploit

copper-based assets. This aims to achieve ubiquitous connectivity for the gigabit society by 2025 across EU but raises some questions.

- Is the principle of technology neutrality still in place and at the same time acknowledging that fibre is ultimately the superior infrastructure for both fixed and mobile networks?
- Is the inclusion of G.fast in the VHC concept the best way to achieve quick connectivity wins, or is this only a lukewarm compromise which will ultimately slow down investment in fibre?
- Or should copper be decommissioned earlier?

## 5 – OVER THE TOP (OTT) REGULATION

- Interoperability requirements for messaging platforms.
- Obligations for providing emergency call capabilities.

## 6 – NET NEUTRALITY

Net neutrality rules (including zero rating) will remain a hot topic everywhere.

- In the EU, the body of national regulators, BEREC,

### REFERENCES

- <sup>1</sup> Proposed Directive establishing the European Electronic Communications Code. [bit.ly/2caAmrr](http://bit.ly/2caAmrr)
- <sup>2</sup> See [bit.ly/2jnEPcE](http://bit.ly/2jnEPcE)
- <sup>3</sup> Feasey R (2015). Some comments on European regulation. [bit.ly/2iwX5Fe](http://bit.ly/2iwX5Fe)
- <sup>4</sup> Roberto Viola (head of DG Connect at the European Commission), has said that "...800MHz awarding in EU was a disaster".

has recently published net neutrality 'guidelines' (which are in essence a new piece of legislation), on how net neutrality will work in practice and what it means for innovation.

- What kind of commercial practices (for example bundling of services under a specific data plan) will be accepted or not by authorities? In the UK, for example, Virgin Media (part of Liberty Global) has launched 4G mobile services that let users access WhatsApp and Facebook Messenger without using up their data allowance.

- Will there be a homogenous practice across Europe? Rather not, under the current regime.

## 7 – SPECTRUM

Spectrum, the life blood of the mobile industry, is becoming even more important.

- Will we see coordinated awarding methods and timing for the next series of spectrum bands (700 MHz, 2.1 GHz, 3.4-3.8 GHz) across Europe?

- Will there be perpetual licences (at least 25 years) for usage rights?

- Will Europe again miss the boat in international competition as happened in 4G?<sup>4</sup>

## 8 – DIGITAL SINGLE MARKET: REGULATORY OVERSIGHT

The digital single market is one of the hottest policy topics in the EU (and is also being considered in other regions such as Latin America). How will the EU square the circle to create an effective and workable regulatory set of policies and oversight for a digital single market, supported by national regulators (NRAs) and member states? The core issue is to orchestrate the interplay between different instruments to speed up ubiquitous connectivity by a combination of infrastructure competition, state-aid, co-investment, coverage obligations and universal service. But how will the regulatory oversight architecture in Europe be organised? Is the current system future proof, or should BEREC be transformed into a European agency, as the European Commission has proposed? A more realistic option – and a way to get out of the current entrenched situation – could be a three-tier model for the European Commission, BEREC and NRAs with distributed tasks and responsibilities, each of these dovetailing with the next level:

- European Commission in charge of the legal framework, and DG Connect taking care of policy setting, which has been much neglected

- BEREC in charge of translating the legal framework into principles guiding the operation of the NRAs and advising lawmakers on what works and what does not

- NRAs in charge of applying these principles in a bespoke manner depending on national/regional circumstances; monitoring market developments and enforcing rules.

## 9 – DIGITAL SINGLE MARKET: ROADMAP

High up on the EU policy agenda is the roadmap to create the European digital single market and to reach the connectivity targets. This requires a set of measures on both the supply and demand sides. The new communications code has these measures



## Digital Assembly 2016

Andrus Ansip, the European commissioner in charge of the digital single market, spoke recently at the Digital Assembly in Bratislava, where he highlighted obstacles to data flows that are standing in the way of the development of the market, and the imperative to adopt the new General Data Protection Regulation. He said: "Within the single market, data has to be able to move across national borders and in a single data space. This is not what Europe has today. Instead, we have a series of legal and technical barriers that constrain cross-border data flows. I have heard advocates of these restrictions refer to data protection and security as reasons to keep limitations on free movement of data in place. Let me be clear. The vast majority of these constraints have nothing to do with protecting privacy or fighting security threats." Why, he asked, should company, financial and health data be stored forcibly inside particular borders in a single market? What the public authorities need is access rather than storage, he added, citing Denmark as recently changing its law on book-keeping data: companies can now store their data anywhere, as long as tax authorities have full access. "Forcible data localisation rules will not lead to better protection, but to fragmentation. This will be to the detriment of benefits for citizens, consumers, SMEs and society."

incorporated with wholesale products to ease market entry and to create harmonised offers on the supply side and harmonisation on the demand side (consumer rights). This sounds logical, but is it worth the high price at this point in time?

Wholesale offers, if designed for pan-European applicability, might no longer fit national demand; harmonisation for end-user rights might lead to opposition; and so transnational demand might be low. The current policy debate in the EU hovers between the political ambition expressed by the European Commission and a comparably low appetite of some member states to follow this route. Many countries prefer to follow a path based on the subsidiarity principle. BEREC officials call this 'BEREC's rootedness in its membership', meaning that independent NRAs will have the last say in BEREC and not the European Commission.

This raises the question, is it worth starting the battle for a fully-fledged digital single market right now given the current state of the debate? Further, would a digital single market built on the mobile sector be a suitable 'plan B', a kind of transitory option? Mobile is the innovative force and the end-user interface in many countries. The mobile industry is facing high investment and short innovation cycles but mobile devices are becoming a key tool in everyday life.

It would be much easier to develop a European industrial telecoms policy for mobile and so create harmonisation across Europe for this as a start. Would this be an option for the European Commission if its plans fail because of national resistance? What are the minimum requirements for such a partial single market – and is the potential of mobile reflected appropriately in the code and various EU policies?

I leave these questions open for other European and global commentators for the year ahead.

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