

By Yacine Chebloune

IIC TMF Brussels 2013

In March 2013, the IIC Telecommunications and Media Forum (TMF) in Brussels considered a range of legal and regulatory challenges for the European communications sector. After some opening remarks from Catherine Rutten (Member of the Council, Belgian Institute for Postal Services and Telecommunications) calling for stakeholders to step out of their comfort zones and to give customer needs more attention, the Forum addressed the future of European telecoms regulation, spectrum allocation policy, principles of copyright protection in a single digital market, the ramifications of WCIT, and the impact of connected television.

The future of investment, structure and competition for European telecoms

In the chair for this session, Marc Furrer (President, Swiss Federal Communications Commission) depicted the rapid changes in the telecoms market and in consumer expectations. He explained that services such as cloud computing and video required enormous bandwidth, which the current PSTN-based network architecture had difficulty supporting.

Remodelling the regulatory framework?

The panel noted that current regulation tended to segment markets based on technology. By contrast, consumers demanded speed, access everywhere, and quality (especially for enterprises). It was suggested that consumer demands be reflected in the market definitions to be adopted by the

European Commission, rather than focussing on rapidly shifting technologies which do not necessarily provide a robust frame of reference for future-proof regulation.

Stimulating investment

Several panellists argued that regulatory pressure should be alleviated, and that taxation on the investments required for broadband deployment should be reduced. Additionally, it was argued that efforts to date placed too strong an emphasis on infrastructure subsidisation while overlooking the effects of business plans.

Business perspective

Industry players expressed the view that there was a business case for next generation networks and that their investments were driven more by commercial, rather than regulatory, reasons. The issues of legal certainty, predictability and level playing fields did arise, but these were primarily fuelled by discrepancies in regulation and by the behaviour of local authorities. A panellist argued that there might be too much emphasis by policy-makers on deployment costs, argued that greater power over pricing was required to justify next generation network investments.

Spectrum allocation

Pearse O'Donohue (Head of the Spectrum Unit, DG CONNECT, European Commission) emphasised that, over the past five years, an increasing number of people had come to understand the fundamental role that spectrum policy plays. Although the digital dividend

enabled regulators to mature in their understanding of what needed to be done, much had yet to be accomplished (e.g., a policy format for sharing spectrum and enforcing the 800 MHz Decision). In the view of the speaker, a first step might be to identify available spectrum bands, including those that are in use, and to determine how to improve spectrum use through efficiency measures, while ensuring that current users of spectrum would not be deprived of their rights.



The spectrum inventory

The European Commission had yet to determine a specific timetable for the spectrum inventory. It was committed to pursuing its in-depth analysis, and hoped to have taken important decisions regarding the 700 MHz band by WRC-15. There was an expectation that the inventory would be up and running in June 2013 and that certain bands would be prioritized.

The notion of efficiency

How one defined "efficiency" was critical in determining the appropriate allocation of spectrum. The European Commission was building its knowledge on what constituted efficiency by using a bottom-up approach. In any event, the Commission would be under an obligation to consult users and operators in preparing its Impact Assessment.

Copyright in a single digital market

The panel weighed the relevance of current copyright law against the dramatic changes brought about by use of the Internet. The extent to which “fair use” sufficiently addressed the increase in the sharing of copyright materials was discussed, as well as the accessibility and preservation of cultural works.

Copyright enabling innovation

A panellist expressed the view that copyright facilitates innovation by allowing companies to introduce their products in varied formats, while ensuring a fair return on their investments. For instance, companies could offer a digital copy to users purchasing a movie in disc format.

Reforming copyright?

Another panellist opposed copyright law and stated that sharing is paramount in the digital era and should not be adversely affected. It was noted that enforcement over the Internet had been rendered much more complex for technical, legal and societal reasons. It was also noted that enforcement policy should take note of the demand from civil society for greater flexibility in access to knowledge.

After WCIT

US Ambassador William E. Kennard gave his view on the United States’ position during WCIT. The Ambassador proposed a return to the “first principles” of the Internet, which had led to unimaginable economic and social benefits. According to the Ambassador, though many take the Internet’s success for granted, only two billion people had access to it, and there was a responsibility to ensure that the next billion who would join in the

next few years had access to the same freedoms that the first two billion users have enjoyed.

A panellist argued that the Internet was causing some measure of culture shock, as the two billion people with Internet access are but one click away from one another. In order to address that issue, dialogue needs to continue, including with persons who are not enfranchised under the present formal structures.

Another panellist stressed that it was important that the freedom to innovate and the freedom to price according to demand should be recognised.

“Connected TV” in the European market

The panel, composed of regulators and private parties, considered the future of television, given that the platform is undergoing considerable changes in relation to Internet connectivity.

The EC’s Green Paper on connected television had yet to be published. However, there were indications it would take a broad view, for instance, with the inclusion of tablets as a display mechanism. Connected TV adoption was quite low but was on the rise, and incumbents were facing strong competition. The EC was expected to address the protection of minors and accessibility, especially given the many display mechanisms available.¹

One panellist suggested that “windowing” does not make sense and that it is the sources of content that should occupy the centre of attention, rather than the final display mechanism. In that perspective, it would be useful to rethink the Audiovisual Media Services Directive.



Conclusion

The Forum successfully addressed many of the burning issues that confront EU telecommunications and media policy and regulation, with participants expressing their interest to continue discussions at the IIC Forum in Istanbul, scheduled for June 2013. Although many of the issues discussed were “work in progress”, positive policy outputs nevertheless were keenly anticipated by the end of the year on many of the topics discussed.

Yacine Chebloune is an associate with the Brussels Office of Gibson Dunn & Crutcher LLP.

¹ EC (2013) Green paper: Preparing for a fully converged audiovisual world: growth, creation and values. COM (2013) 231 final.