

By Richard Feasey

# The search for silver bullets in European telecoms policy: the case of the 'single market'

European policymakers have woken up to the fact that its telecoms industry is struggling. Growth has stalled for the past five years, and investment lags behind regions. Many of the ambitious targets of the Commission's Digital Agenda look likely to be missed.<sup>1</sup>

Various plans have been advanced to remedy this situation. Last December saw the efforts of some European operators to shift economic relations between network operators and Internet players stall at the ITU World Conference on International Telecommunications (WCIT) in Doha.<sup>2</sup> Commissioner Kroes' proposed €7bn Connecting Europe Fund suffered a similar fate in February this year.<sup>3</sup> Kroes had more success with her announcement last July, in which she proposed to give investors in next generation fibre networks greater wholesale pricing flexibility and to put a floor under copper prices.<sup>4</sup> Investors welcomed this attempt to reintroduce price inflation after decades of regulator-driven cuts, although the national regulators still seem unconvinced.

With broadband and the digital economy seen as key drivers for Europe's broader economic fortunes, the search for 'silver bullets' to restore the industry to health continues unabated. In March, EU leaders asked the Commission to come forward in October with proposals to 'complete the Digital Single Market by 2015'

and 'establish the single market in Information and Communications Technology', something that has long been a cherished goal of European policymakers.<sup>5</sup>

Given the tight deadlines set by the European Council we might expect there to be clarity about what a single market in telecoms might consist of and what steps are necessary to attain it. However, it is apparent that there are in fact many radically different views. Those I present below are not intended to be exhaustive, nor are they mutually exclusive.

## Anything that supports industry or investment

At one extreme, the single market is taken as a proxy for any policy which improves the financial outlook of the industry. Commissioner Kroes' proposals on NGA pricing last July persuaded many observers that the Commission is now much more sympathetic to industry, or at least fixed incumbent operator, concerns than national regulators (or than she was previously). On this view, any 'single market' proposals which emerge from the Commission are also likely to be helpful to the industry and proposals which attribute greater powers to the Commission and take powers away from national regulators are viewed positively.

Specific policies which might underpin this view include a more

sympathetic approach to in-market mergers between mobile operators, or the withdrawal or softening of regulation in areas such as mobile termination rate setting which have proved a significant drag on the sector in recent years or the interventions by regulators in some markets to support MVNOs. The focus of many of these policies is the mobile sector, where the Commission has yet to do anything to alleviate pricing pressure, as it did for fixed networks last July by allowing fixed wholesale prices to reflate. Since European mobile operators are not required to offer regulated wholesale access like their fixed counterparts, the silver bullet proposed last July for NGA is not appropriate for the mobile sector.

The debate on in-market mergers is complicated firstly by merger policy being the preserve of Commissioner Almunia (and formerly the preserve of Commissioner Kroes) and secondly by a tendency to confuse in-market mergers or consolidation (i.e., mergers between rivals in the same Member State) with cross-border mergers or consolidation (i.e., mergers between non-competing firms in different Member States). Almunia remains sceptical about the merits of a soft line on in-market mergers. The most recent example, between Hutchison and Orange in Austria, was approved, but only with what most industry observers regard as egregiously onerous requirements to support new MVNOs.



In truth, whilst these ideas might improve the prospects of European industry or otherwise have merit, it is difficult to see any very coherent or plausible connection to strengthening a 'single market'.

### Pan-European scale

Although Commissioner Almunia appears sceptical on in-market mergers, both he and Commissioner Kroes are far more enthusiastic about cross-border mergers which create European telecoms operators serving multiple markets (although Almunia often notes that the ownership structure of the European mobile sector is already relatively concentrated in the hands of a small number of multi-national players).

Many European industry commentators (including this author) have in the past bemoaned the fragmentation of the European telecoms industry structure and the relative lack of scale (measured in terms of subscribers) relative to US, Indian or Chinese peers. It is less clear precisely how this disadvantages the European sector, nor whether cross-border mergers are necessary to remedy it. For example, one common concern has been that European operators are too small to exercise much influence over the global supply chain which delivers new technologies or which supplies the Internet services which run over the European networks.

It is argued that global suppliers tend to be located in, and more responsive to, markets in other parts of the world. But other measures, such as better co-ordination of the release of radio spectrum (which is already proposed by the Commission) or European standardisation of technology requirements would address some

of these concerns without the need for large cross-border M&A.

At the same time, the industry and its investors appear unexcited by the prospect of greater pan-European scale – unless it could somehow be achieved in conjunction with greater opportunities for in-market mergers, about which the industry and investors are far more excited. National politicians may also be reluctant to support a single market which envisages the sale of 'national champions' to foreign investors (which may be one reason why EU leaders declined to ask for proposals for a 'single telecoms market' in their March communiqué).

Aside from the uncertain benefits of greater scale, Almunia and others sometimes appear to consider that a change in the ownership structure of the industry is a necessary condition for some of the more far reaching changes in the way the market performs. Some (including this author) have previously argued that pan-European mobile operators would be better able to 'internalise' roaming traffic in Europe and so avoid wholesale charges which have otherwise inhibited the industry's ability to reduce roaming prices as far or as fast as politicians would like. However, that argument was largely ignored in 2006 and the Commission instead decided to regulate wholesale roaming charges directly.<sup>6</sup> In doing so, the Commission weakened the incentives for cross-border mergers.

This is one reason why the Commission's recent enthusiasm for cross-border mergers is likely to be largely unheeded by the industry or its investors unless new incentives can be found. It is worth noting that one early Commission

idea along these lines - to auction radio spectrum licences on a pan-European basis and thereby force the industry to reorganise itself so as to bid accordingly - looks likely to be (wisely) abandoned before it is subjected to attack by national Finance Ministers and the industry.

### The digital single market

For many years the Commission has been pursuing a variety of initiatives which aimed to make it easier for European consumers to use websites in other countries and easier for European Internet start-ups to scale their operations across Europe. Measures include reform of copyright licensing (to allow pan-European licences), consumer protection and redress (to build confidence and protect consumers who make purchases with suppliers in other Member States) and harmonisation in privacy and data protection.

This is the traditional 'Digital Single Market' project, the fulfilment of which is said by the Commission to deliver large economic benefits to Europe. It appears to be what the Heads of State had in mind in March. These aims command widespread support within the telecoms and digital services industry (with opposition more likely to be found in non-digital sectors), but most observers think they will take another decade to achieve and that the economic benefits are more likely to accrue to digital service providers and consumers than to the traditional network operators. It is hard to see how more cross-border e-commerce will restore the European telecoms sector to health or that proposals along these lines would meet the expectations of the industry or investors in October.

## The end of cross-border charges

European policymakers have long complained about international call charges in Europe, unfavourably comparing the cost of calls between Paris and Berlin to those between New York and California. More recently, the costs of mobile roaming have been a very visible target for regulators and politicians, with most agreeing that a 'true single market' would see the elimination of such charges. For many, this is the most visible and populist manifestation of the single market agenda.

There is therefore a large constituency which regards a single market in telecoms as synonymous with the elimination of mobile roaming fees and international call charges within Europe. Strenuous efforts have already been made to substantially reduce these costs through regulation, but in the most recent revision of the Roaming Regulation the Commission quietly backed away from its original target of eliminating any remaining differences between domestic and roaming prices by 2015. The current Regulation has only just been adopted and the industry is currently working on ambitious measures which are intended to inject new forms of competition into the market in mid-2014. It would be surprising for the Commission to revisit this position in October.

## Supply across borders

A classical conception of the 'single market', as applied to other goods and services markets, envisages German, Italian or Swedish suppliers all competing for the custom of British or French consumers. This is relatively obvious when supply is highly mobile – when professional services providers can practice in any Member State or when physical goods can be exported and distributed across borders - but the application of this conception to telecoms network services, is very challenging. Most advocates of this idea talk about the ability of British consumers to purchase mobile SIM cards from non-UK providers (the idea of 'pan-European MVNOs' is already included in the Roaming Regulation) or to buy their broadband supply from French or German suppliers, just as they buy their energy from EDF or RWE. Any move in this direction would likely require the structural separation of networks from service provision and the introduction of pan-European regulated access prices which retailers from all Member States could then utilise to serve their customers.

One immediate feature of any such concept is that competitive intensity in the industry - at least at the retail level - can be expected to intensify because barriers to entry are lowered.

Wholesale access prices would also likely be more intrusively regulated than before. Lower prices are generally seen as the key benefit of the single market for consumers, and generally explain why attempts to extend the single market are often resisted by national interests. It may also make this option unattractive to the Commission in the current context - if the aim is to improve the telecoms sector's financial health and confidence then a bold attempt to use regulation to reconfigure markets and increase competitive intensity is very unlikely to achieve this, at least in the medium term.

There is much more that can be said about the disruptive measures that would be required to move to a single market of this kind, and the incentives and capacity of the affected firms to sabotage or resist these efforts. Some European policymakers look longingly at the United States as an example of what they are seeking - single prices across the continent, very large operators, no roaming charges - but the US did not attempt to create a 'single market' by regulatory fiat. European policymakers would be straying into unknown and potentially explosive territory if they did.



## More power to the Commission

Finally, we should not exclude the possibility that the single market debate is also a convenient veil behind which the long-standing institutional rivalries between the European institutions and the national regulators and governments are again being played out. We have seen passing references to the need for a 'single European regulator' in recent months - an idea which surfaced under Commissioner Reding during the review of the Telecoms Regulatory Framework.

The rationale for more regulatory oversight by the Commission is likely to be twofold. The first is the lack of harmonisation that has been achieved by national regulators operating under existing arrangements and the claim that greater harmonisation will facilitate the realisation of the single market (although precisely how is often left unstated). The second is that we are increasingly seeing the development of genuinely 'pan European' markets, such as that for services to multi-national customers, which require review and oversight by a similarly pan-European body.

## Concluding thoughts

The Council has now asked the Commission for proposals to complete one single market and establish another. Many observers assume that anything that is proposed by the Commission to achieve these objectives will also support the European telecoms industry. I am not sure the position is so straightforward: there are many policy initiatives that are likely to improve the health of the European telecoms sector which have no obvious relationship to anything we might recognise as a 'single market', whilst there are a number of conceptions of the 'single market' that I think would either have no impact for, or would be positively harmful to, the prospects of Europe's telecoms operators.

Clarity is not helped by the fact that some of the proposals will be unpalatable to one side or another, and so proponents hide them behind empty phrases which everyone can support so long as they remain empty.

This is an important, perhaps historic, opportunity for Europe's telecoms policy to take a new direction.

More clarity in the language we use and precision in the ideas we have will be needed if we are to grasp it.

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*Views expressed in this article are personal to the author.*

<sup>1</sup> EC (2010) A digital agenda for Europe. COM(2010)245

<sup>2</sup> <http://www.itu.int/en/wcit-12/Pages/default.aspx>

<sup>3</sup> Neelie Kroes "A budget for European growth" February 9th, 2013. <http://blogs.ec.europa.eu/neelie-kroes/eu-budget-innovation-cef/>

<sup>4</sup> Neelie Kroes "Broadband for all: new regulatory certainty to allow investment in the next generation" July 12th, 2012 <http://blogs.ec.europa.eu/neelie-kroes/broadband-investment/>

<sup>5</sup> Conclusions of the European Council 14/15 March 2013. EUCO 23/13 [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/136151.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/136151.pdf)

<sup>6</sup> Viviane Reding "The review 2006 of EU telecom rules: strengthening competition and completing the internal market" speech to the Annual Meeting of BITKOM, Brussels, 27 June 2006. [http://europa.eu/rapid/press-release\\_SPEECH-06-422\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-06-422_en.htm)