

**The governance of Telecoms markets – Competition and investments in the EECC**

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**1<sup>st</sup> Panel**

**Augusto Preta**, *President, IIC Italian Chapter, Founder & CEO, ITMedia Consulting*

**Giacomo Lasorella**, *President, Autorità per le Garanzie nelle Comunicazioni (AGCOM)*

**Lynn Robinson**, *Director general, International Institute of Communications (IIC)*

**Augusto Preta** started the session by introducing the core of the discussion, which was focused in particular in the interplay between the competition enhancement and the promotion of innovative investments. The first one has been historically a crucial aspect of the EU telecom markets regulation for the last 20 years. On the other hand, due to the increasing importance of investments in next generation access networks, the regulatory framework has progressively evolved, and investment promotion has become a new relevant general objective of the European regulatory framework. In this regard, the EEC Code encourages network sharing and co-investment. Under the EC code, regulatory authorities might impose network sharing to promote effective and efficient use of the spectrum, the rapid development of the network, effective competition of the environment, public health public security, and so on. NRAs might also require co-investments, included the co-ownership, long term sharing, co-financing and purchase agreement, giving rise to specific right of a structural character.

Dr Preta also introduced two further key issues deepened in the book “The governance of telecom markets”, written by Antonio Manganello and Antonio Nicita. The first one explores the change of paradigm consisting in the shift from sector specific vertical regulation to horizontal regulation. This is not the case of the EC code and the other sector-specific directives, but can be seen in the last EU packages containing DSA, DMA etc. The second aspect pointed out by Dr Preta relates to the issue of the ex-ante regulation and interplay between competition and regulation in a time of profound changes.

**Giacomo Lasorella** highlighted how the recently published literature offers a critical and comprehensive summary of the co-evolution of both the telecom market structures and the rules and public institution over the last 25 years. Since the early steps of liberalization in the '90s, policy initiatives in regulation were mainly aimed at boosting investments and innovation, while new insights provide links between regulation, competition law enforcement, and the evolution of consumer behaviour and empowerment in decision making processes. In such context, the framework provided by the new European code of electronic communication raises two main questions for market regulators. The first concerns the potential tensions arising from the dualism between the enhancement of competition and promotion of investment in very high-capacity networks, while the second relates to the impacts of such dualism in the regulatory activities. Regarding these, President Lasorella emphasised that the new Code offers a fair balance in the pursuit of these two regulatory goals, overcoming the fact that opinions on the relationship between competition and investments in all network industries, not just in telecoms, are to a large extent often influenced by dogmatic approaches.

As a matter of facts, Article 3 of the Code introduces a new regulatory objective concerning the promotion of connectivity and take-up of very high-capacity networks, which adds to the three traditional goals of promoting competition, contributing to the development of the internal market, and promoting the interest

of the EU of the EU citizens. The code does not introduce a hierarchy among these regulatory objectives, leaving the task of identifying the right options for the purses of such goals to national regulators and to the European Commission. The same multi-level cooperative approach is also confirmed by the various regulatory tools, allowing for flexibility in the NRAs' activities concerning the monitoring of competitive market dynamics and the safeguard of end users' welfare.

President Lasorella pointed that NRAs play a vital role in this context by making sure that the regulatory objectives do not conflict each other and that the pro-competitive EU legislative approach, together with its targeted applications, would still effectively serve the purpose of fostering connectivity in each member state and in the EU.

However, complementary mechanisms need to be considered to promote investment for a complete VHCN deployment. These could also include state aids aimed at universal coverage of high-capacity networks and at ensuring the availability of basic connectivity to all.

**Lynn Robinson** highlighted how the EU regulatory framework played a key role in the transition from a monopolistic to a competitive regime and in the promotion of infrastructure-based competition, and in fostering technological innovation. This has given rise to new challenges in the European public policy debate, making the regulatory framework to evolve. Accordingly, the development of VHCN has become one of the main objectives of the telecom regulatory framework, and specific provisions in the new EU code, such as co-investments and infrastructure sharing, are aimed to incentivise investments in this field by providing new tools in support of both national regulators and companies.

Mrs. Robinson, however, did point out that many countries are presenting delays in the transposition of the Code into national legislation, which initially presented a deadline set for the 21st of December 2020. As one might imagine, this delay was further aggravated by the outburst of pandemic and its economic effects.

## 2<sup>nd</sup> Panel

**Antonio Manganelli**, *Adjunct Professor of Competition Law and Policy, University of Sienna*

**Martin Cave**, *Chair Ofgem & Professor of Economics, London School of Economics*

**Alexandre De Streel**, *Professor of EU law, University of Namur, Academic Co-Director, CERRE*

**Dr Annegret Groebel**, *Head of International Affairs, BNETZAGENTUR, co-chair, BEREC Remedies EWG*

**Dr Kamila Kloc**, *Head of Unit, Market – DG CONNECT, European Commission*

**Antonio Manganelli** described the main milestones in the historical evolution of the relationship between innovation and technological development in the telecommunication sector. Being a capital-intensive field, telecommunications face a general trade-off concerning competition and welfare incentives on one side and sunk costs, maintenance an initial investment on the other. The theoretical thinking developed on this issue is vast and originates from the Joseph Schumpeter vs Kenneth Arrow debates. The former believed that monopolistic firms have greater investment capacities and incentives that firms in a competitive environment, whereas the latter stressed how a monopolistic firm faces fewer incentives to innovate as it would risk losing its existing pre-innovation monopoly profits through the so-called "replacement effect". Over time, in-between approaches were developed and supported by empirical evidence proving the existence of a non-linear relationship or an inverted U-shaped relationship between competition and innovation. Therefore, regulators questioned on how to introduce this knowledge in regulatory environments. A new regulatory framework built on the concepts of service-based competition and infrastructure-based competition, which were framed in Professor Cave's Ladder of investment Theory, as

complements in order to reconcile short-term benefits of competition with the longer-term benefits of innovation.

After briefly describing his Ladder of investment Theory from a theoretical model perspective and showing its results with copper-based telecommunications, **Martin Cave** explained how this was applied in European countries when fiber networks started to be deployed. At the time, EU regulators followed one of two main alternative approaches: some regulators persisted with the ladder investment approach, deciding on the infrastructure as the initial access product so as to put investors and incumbents on an even footing in bringing fiber connections to homes. Other regulators, such as Ofcom in UK, preferred to allow the incorporation of fiber in the network to a more limited extent by the means of fiber to the node using vdsl. At first, fiber to the node grew very quickly, being considerably cheaper, while fiber to the home grew at slower pace and was significantly more expensive. However, subsequently, fiber to the home gained strength, proving that it was the most effective solution in the long term.

**Alexandre De Steel** further investigated the new determinants of investment other than regulation in the modern telecommunication environment. He highlighted the key role played by demand, which historically always saw the EU lagging behind, due to lacks in legal competences and digital government. In this perspective, the Covid and the Next Generation EU Fund are playing an impressive role in promoting a boom in demand for digital and technological goods and services. Another key driver of innovation investments is the state of the network infrastructures, and this is also linked to the geography and the population density of member states.

In the past regulators were mainly concerned about fostering innovation through the ladder of investment, whereas now they have a broader concern on social needs, which requires an additional element of industrial policy to be considered as well. This has recently been accompanied with an enlargement of the regulatory toolbox. However, this might present two issues soon: firstly, an inconsistent application and approach across member states and, secondly, an insufficient increase of the constraints on the regulators themselves.

**Annegret Groebel** focused on how the new code is going to change the role of national and international regulators. Dr Groebel thinks we are moving away from the very clear-cut concept of a principle-based regulation based on competition law principles. Regulatory framework might move towards an over-prescriptive approach. In her view, the growing additional pieces of soft law (EC recommendations, Berec guidelines, WACC notice) risks to reduce flexibility and the necessary margin of discretion for NRAs. Moreover, she believes that the EECC focuses on encouraging the connectivity goal risks reducing the need for NRAs to promote long-term end-user interests, which gets lost or buried under all additional prescriptive tools or prescriptive soft law. Groebel pointed out some doubts on whether this new regulatory paradigm might be weakening the attention on the main goal for the EECC and NRAs, which remains the promotion of competition within a well-defined framework, also allowing further goals to be reached (such as connectivity and end users interest). She sees a sort of deterministic aspect in focusing on predefined outcomes (like connectivity) rather than having a pro-competitive approach and making the market work by using the whole toolbox in a consistent way. In her view, in order to do this, NRAs should be able to use the entire toolbox also having the flexibility and the necessary margin of discretion.

**Kamilla Kloc** then highlighted regulatory shifts have been occurring rapidly in the recent years, raising the question on how markets will be in 10 years from now (which accounts for 40 years from the start of the liberalization process). The next decade will be crucial in the technological and communication development of Europe, and the EU Commission is therefore working hard on the issue concerning the developments that have to be made to prepare for the digital decade of communication and connectivity.

Concerning the objectives of the Code, Kamilla Kloc stressed that the promotion of connectivity for VHCN is a very important provision, but she also agreed on the idea that competition in internal markets and end

users' interest are crucial objectives. In this perspective, it was highlighted that the Code does not give priority for neither of the objectives.

On the other hand, she recognized that guidelines on co-investments are quite complex, as these have been the product of very difficult and highly negotiated provisions of the code, but nonetheless she believes they still provide a good balance which is very important in guiding regulators in the assessment of proposals. The Commission also proposed a reduction on the number of regulated markets due to enhanced competitive pressure and changes in the markets.

## Closing Remarks

**Antonio Nicita**, *Professor of Economic Policy, LUMSA University*

**Antonio Nicita** underlined the importance of the concepts presented by President Lasorella, as the role of universal services is a key aspect within industrial policies and plays a crucial part in providing broadband and ultra-broadband connections. This is especially true for countries, such as Italy, that have persistent technological lags that need to be assessed in terms of social inclusion and universal services. Professor Nicita recognized that these issues can't be dealt with uniquely by regulators, but nonetheless NRAs should help policy makers and international institutions in establishing a new idea of governance for these phenomena.

Professor Nicita then pointed out that many existing theories and regulatory practices were related to a specific paradigm in a specific timeframe and did not take account of geographical fragmentation which is a crucial issue.

The ongoing pandemic is now highlighting the importance of connection for social inclusion and also shed a light. In this regards, Professor Nicita said that the new framework, with its new flexibility and broader set of tools, can further help to deal with inclusion in terms of ultra-broadband policies both in fixed lines and in mobile lines.

In the conclusion of his speech, Professor Nicita pointed out that the next challenges are on one side the understanding of telecommunications services as commodities, and, on the other side, addressing big data and platform economy and their interplay (in terms of complementarity and substitutability) with communication services.