

# REGULATORY DIRECTIONS

In March, the IIC Telecommunications and Media Forum (TMF) convened in Brussels for a profound debate about the future direction of regulation, reports **CHRISTIAN AARON COCKCROFT**

**J**ack Hamande (the recently appointed chairman of the Belgian Institute of Postal Services and Telecommunications) opened the forum, remarking on the challenges faced by both national regulators and BEREC, the European telecom regulators body, in providing clarity for all stakeholders in the regulatory environment of the future, in the face of major changes. "It's a perfect storm because we have so many things to watch," he said.

In a keynote, Robert Viola (deputy director-general, DG Connect at the European Commission) gave a brief overview of the Connected Continent vision, and remarked that there are many reasons within the EU why it is difficult to offer services between member states, a problem which the legislative package seeks to address. He explained that the Commission's vision is not short-term or about internal market dynamics, but is designed to ensure that an effective framework remains in place to facilitate cross-border telecoms services, while also ensuring that asymmetric regulation continues in force only where there is a genuine market failure. He further remarked that anticipated net



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super-regulator. "In our proposal, the idea is about reinforcing the present regulatory system, making sure regulators cooperate more together, especially when it comes to the most challenging issues, like spectrum and net neutrality, while also taking out as much red tape as possible from industry."

Constantinos Louropoulos (the new president of Greece's Hellenic Telecommunications and Post Commission, EETT), followed Viola and said that establishing the single digital market is essential if the telecoms players in the EU are to keep up with the rest of the ICT world. He made an interesting observation: nine out of every ten euros moving

over the internet are between businesses, not between businesses and consumers.

In the Q&A session which followed, Viola commented that the classic 'I pay for what I consume' scenario does not apply within the context of the internet, and that the Connected Continent strategy aims to ensure that conditions are right in order to ensure sufficient incentives to increase capacity. Another question touched on whether profit maximisation is the right way to approach spectrum allocation. Viola noted that best practices are a key point of the single market proposal, and that the mixing of ingredients in spectrum allocation (design, price, auctions etc.) may benefit from future harmonisation.

## THE SINGLE MARKET PACKAGE

The chair for this panel, Peter Alexiadis (partner, Gibson Dunn & Crutcher), depicted the regulatory challenges faced by market convergence. He questioned whether we need to resort to the Open Network Provision (ONP) model to address many of the ex-ante challenges, but could rethink the traditional view of collective dominance and explore further the notion of complex oligopoly.

**Consolidation** One panellist explained that telcos in Europe are faced with unprecedented regulatory uncertainty and may fall easy prey to buy-outs from large global players, and that we might already be past the point where more competition is capable of triggering more investment. Another panellist commented that the original policy goals of telecoms regulation, to curtail the power of the incumbent and facilitate competition, had been by and large a success. However, he explained that it is now no longer a problem of taming the incumbent, but appraising how many competitors the market can realistically support, as infrastructure-based competition will inevitably reach (if it has not already reached) saturation point.

The views from the panel were divided, with some indicating that the trend towards industry cross-consolidation was actually creating issues of joint-dominance (which is difficult to prove) in complementing networks, such as fixed and cable; this has, in turn, led to alternative market players being pushed to the fringes.



**Net neutrality and OTT** A large part of this session focused on the net neutrality debate. While all stakeholders appeared unanimous that net neutrality should be introduced in some form, delegates were divided as to how broad in scope net neutrality obligations should be defined. The representative of a business users' group commented that net neutrality provisions should be broad in scope, similar to those in the Netherlands, while a fixed incumbent believed that some scope for price differentiation should be allowed in order for telcos to respond to the threat from large OTT content providers. He also commented that the traditional concerns with net neutrality were consigned to history, as the pricing of services had changed significantly over time.

**The end of roaming?** Finally, the panel was in agreement that the end of international roaming charges within the EU is a positive element of the single market reforms. However, one operator queried whether DG Connect should depart so quickly from the terms of the Roaming III Regulation (due to come into force in July), as it has done in the single market proposal, given that it was the result of an in-depth consultation with all stakeholders. One delegate from a mobile operator added that the abolition of charges should not apply to wider international roaming, given that third party operators would not return the favour when EU citizens roam on their networks. Another comment was that the abolition of roaming charges could potentially open up much untapped consumer demand.

#### OPTIMISING COMPETITION IN NATIONAL MARKETS

Chaired by Emanuela Lecchi, partner at Watson, Farley & Williams, this panel's focus was on whether current regulation has run its course, with one academic commenting that using the present symmetric regulation of last mile access as a means of connecting households is a distortive policy goal. In particular, comments were made on the impact of multisided platforms such as Google, which offer services for free and so undermine traditional regulatory cost-based models. However, a telecoms operator argued that its experience as a fixed

**Speaking on competition:**  
**Carlo Alberto Carnevale Maffè**  
professor of strategy, Bocconi University School of Management

incumbent in one particular market, while being a new entrant in another, led it to believe that the current regulatory system is still required to remedy market failures, in particular in fixed wholesale access, where incumbent market shares still remain, on the whole, very high.

**Spectrum allocation** Comments were also made about the system of spectrum allocation, and the observation made that regulators should be mindful that when they allocate spectrum they are, in effect, determining the future market shares of the industry. One mobile operator observed that, with respect to valuable spectrum such as high frequency bands, the allotted amounts are viewed within the industry as an indicator of their 'production capacity'.

#### PRIVACY, SECURITY AND TRUST

Joan Barata (principal adviser, OSCE) posed the question to this panel – do stakeholders have sufficient technical and legal resources to defend access requests made by government bodies (especially law enforcement), and commented that the recent allegations regarding the US NSA have thrown the privacy issue into the public domain.

#### Engaging with consumers

A key theme acknowledged by the panel was that stakeholders have increasingly sought to bridge the consumer trust gap by engaging more with the end user. One fixed incumbent explained that its initiative of putting data control back into the hands of its

customers had greatly reduced its privacy-related complaints. Another stakeholder explained that privacy is not only about data protection, but about engaging with your user and explaining how you use their data.

**Big data** In response to several questions, one panellist noted that the monetisation of big data and its related data protection issues encapsulate the discrepancies between the various regulatory regimes. While content appears to be converging across sectors, a telecoms operator observed that

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**When allocating spectrum, regulators are determining the future market shares of the industry.**  
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his industry is subject to strict consumer protection regulation, while in contrast, very little regulation exists in the internet space, so requiring a rebalance of the regulatory mix and increased scrutiny of OTT players. One stakeholder disagreed and believed that the regulatory tools required to address big data's related concerns were already there, such as the 'cookie law' which requires companies to seek consent every time they use data for commercial purposes.

### ACCESS AND INCENTIVES FOR PREMIUM CONTENT

In this session, the panel assessed the current audiovisual media regulatory framework and the increased consensus on the view that the European Commission needs to afford greater flexibility to national regulators to address their national concerns. However, there were calls from both an industry association and content developer to ensure that audiovisual media regulation is made compatible with other sectors, as vertical integration can otherwise be affected by divergent regulation across the sectors.

**Infrastructure investment – private vs public interest** The panel acknowledged the challenges which regulators face in designing a regime that is conducive to the private interests that are necessary to facilitate infrastructure investment, while ensuring that the general public interest is not undermined. In this regard, a content provider argued that striking this balance was difficult in areas where matters such as ensuring cultural diversification in broadcasting have to be addressed.

A German broadcaster commented that the current regulations tend to undermine risk-taking for large innovative projects, such as introducing a new television channel, and that regulators should consider regulating individual companies in the sector, rather than services.

### PREPARING FOR THE INTERNET GOVERNANCE DEBATES

The keynote speaker for this session, Frédéric Donck of the Internet Society, explained the many different views that resonate across the international community, questioning whether there could, or should, be a single common approach to internet governance. One global operator said that ICANN is an important agency for facilitating the multilayered discussions taking place between stakeholders.

**Global vs regional action** One panellist argued that, as action could only be successful at a global level, the EU should refrain from proposing more intrusive regulation that was not in accordance with the policies of the rest of the international community. An EU official on the panel defended the European Commission's position, insofar as if genuine problems were identified that affected the interests of EU citizens, then it is appropriate that action should be taken. But the official did explain that unilateral action taken at regional level that garnered support from the wider international community should then be channelled into international bodies and harmonised globally.

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### 'THE COMMISSION IS DEAD, LONG LIVE THE COMMISSION' – POLICY AGENDA BEYOND THE BARROSO COMMISSION

The chair for this session, Richard Feasey (consultant, Frontier Economics), opened a debate on what the 2020 Digital Agenda targets should be for the new European Commission, and whether achieving those targets requires a fundamental rewriting of the EU's regulatory framework.

A spokesman for ECTA (European Competitive Telecommunications Association) believed it would be counter-productive to redefine DG Connect's current 2020 targets, and that Europe was not lagging behind the rest of the world in most areas, and was in fact ahead in certain important elements such as fixed network access.

#### Making regulation future-proof

Several panellists argued that only minor revisions might be required to the current regulatory framework, which has already proved itself to be adaptable to important changes that have confronted the sector. These views were shared by a speaker from a fixed incumbent, who thought that Europe should not try to incorporate elements from other jurisdictional models,

given the special characteristics of Europe. However, an ETNO (network operators) spokesperson commented that to ensure regulation is future-proof, Europe must reach a consensus on the fundamental goals needed for it to be a digital leader.

**Facilitating investment** Infrastructure investment was acknowledged to be the backbone of Europe's digital economy, and the prevailing view appeared to be that both regulatory certainty and simplification are needed. One panellist commented on DG Connect's various consultations, which were said to have been helpful in framing the key areas of concern, but that action was needed to provide legal clarity in areas such as spectrum allocation, net neutrality and the symbiosis between ex-ante regulation and competition policy. Additionally, a fixed incumbent believed the rules need to be simplified to allow all stakeholders to understand their regulatory obligations irrespective of the tier on which they sit in the value chain.

### CONCLUDING REMARKS

In closing the meeting, IIC president Fabio Colasanti reiterated that in light of the plethora of regulatory and legislative developments currently taking place at national, EU and international level, this IIC forum had taken place during what appears to be a fundamental change in the regulatory climate. Given that many of the burning issues currently being debated in Europe could be settled after the next European Parliament meets in its plenary sessions in June and July, the 2015 Brussels TMF could be meeting under the auspices of a very different regulatory regime.

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