

SINGLE MINDED

The IIC's TMF in Brussels was a comprehensive examination of ongoing digital single market issues, as **CRISTINA MURRONI** reports

European institutions and industry players convened in Brussels in March to discuss the latest policy developments in Europe at the IIC's spring Telecommunications and Media Forum (TMF), hosted by the Belgian Institute for Postal Services and Telecommunications (BIPT). The forum kicked off with keynote reports on the status of the digital single market (DSM) review from representatives of the main European institutions.

HOLISTIC APPROACH

Roberto Viola (director general, DG Connect, European Commission) underlined the Commission's holistic approach to the digital economy, resulting in a new AV media directive, new telecoms package, reform of copyright, reform of e-commerce rules, reform of privacy rules and more. Next will be the industrial technologies package: four policy communications that will set the priorities on which Europe should work to digitise industry. Among the new milestones: portability of digital content throughout Europe

without geo-blocking, a decision on the use of 700 MHz and sub-700 MHz for mobile broadband, and a new initiative for every researcher and SME in Europe to have access to a data factory.

Greater consistency across member countries is the expected result of

the new legislation, according to Pilar del Castillo Vera, member of the European Parliament. In particular, the 5G network will be a window of opportunity for greater spectrum coordination in the European Union. As the ensuing discussion reinforced, Europe has an international advantage in the production of machines, so it must grab the strategic opportunity of breaking new ground in the internet of things (IoT), as well as getting policy right.

Stefan Koreneef (attaché economic affairs, permanent representation of the Netherlands, European Council) revealed that the current presidency (Netherlands) is organising at least 25 DSM events to gather more feedback, evidence and support for the DSM proposals. The team is working with the two countries that will hold the EU presidency next year, in the belief that the DSM discussions will continue after their tenure, and this policy will be crucial for growth in the EU.

DELIVERING ECONOMIC GROWTH

Exactly how the DSM should deliver economic growth was the topic of the next session, opened by Tobias Schmid (RTL Group). Remarking that the new policy will need to work in the world we will face in the next 5-6 years, he suggested that regulatory objectives such as production of European content should be pursued by looking at how such content gets created in the new world, rather than by imposition. Theo Bertram (Google) focused on the important details that are still unclear about the level playing field in the DSM, highlighting the need to remove barriers to innovation.

Data-driven innovation, actual bottlenecks, and spectrum should be the key focus areas for the DSM, according to Ulf Pehrsson (Ericsson), and they should be approached with light touch, technology neutral regulation. For Ilse Van der Haar (Tele2) the DSM should be about allowing operators to compete effectively, because it is competition that drives investment, innovation and better quality.

Telefónica's Enrique Medina Malo stressed that ex-ante regulation should be relaxed or at least simplified, as the sector has changed dramatically since liberalisation.

FRAMEWORK REVIEW

Wilhelm Eschweiler (this year's chair of the European regulators' body, BEREC) brought BEREC's perspective to the next session, which focused on the telecoms framework review. While securing the widest possible access to fast broadband networks remains the key issue in telecoms, the different national markets may well have (and need) different tools to achieve this. BEREC proposes a graduated approach to OTT (over the top) players, recommending that only those 'OTT-1' services that substitute existing telecoms services (for example WhatsApp replacing SMS) should be immediately included in regulation.

Lise Fuhr (European Telecommunications Network Operators' Association, ETNO) recommended that the focus of regulation be the interests of users and the retail market, and ex-ante regulation should only be applied where retail markets appear not to be competitive. However good, regulation cannot build a market: investment, technology and consolidation build markets, according to Manuel Kohnstamm (Liberty Global). The cable industry certainly needs more scale. For André Merigoux (Nokia), the future of networks is in the provision of specialised services as an enabler for different industries and uses. This requires



In particular, the 5G network will be a window of opportunity for greater spectrum coordination in the European Union.



improved timings for spectrum allocation, if the EU wants to gain a lead in 5G.

Markus Reinisch (Vodafone) echoed that view, stating that Europe has lost the mobile lead to the US with 4G, and needs to move swiftly with 5G. To create opportunities for pan-European services that can compete against global players, a national approach cannot help – there needs to be more harmonisation and scale in Europe.

DIGITAL PLATFORMS PANEL

A panel was set up to discuss platforms and the specific problems they pose. For Stefano Quintarelli (Italian MP) we are moving towards a society where everything will be intermediated online. More than just technical or economic, regulating this market is a huge political issue. It has to do with our vision for our society of the future. Are we prepared to have only one intermediary for all our immaterial transactions? Tomas Lamanauskas (VimpelCom) proposed that when dealing with platforms, policymakers should look at the new opportunities they represent, and ask questions like: How could telcos manage their platform across Europe the way OTT players do? How could they manage cross-border customers and their data? This is likely to produce regulation that delivers the best value.

Eirini Zafeiratou (Amazon Europe) argued that when it comes to data, the desired outcome is transparency for consumers by establishing clear responsibilities for platform providers. Ursula Pachl (European Consumer Organisation, BEUC) provided the consumers' perspective, stating that the main areas of concern relating to platforms are transparency, data ownership and consumer choice. There is substantive legislation in place already to protect consumers, but many open questions remain about how it translates into the online world.

The key word in regulation, according to Jan Krancke (Deutsche Telekom), is consistency. He said that once we decide that regulation is needed to guarantee a certain level of protection, is regulation applied consistently along the entire value chain? He added that competition law is the best tool to deal with network effects and platforms, but it moves too slowly.

Much of the following discussion focused on possible developments to make competition policy faster and thus more effective in a dynamic market like telecoms. The UK has introduced an interesting development, whereby entrants who face abuse from a dominant position can be heard on a fast track and obtain an interim injunction in as little as three weeks. An option is also to have some kind of quantitative index that triggers the regulators' attention.

SERVING THE DIGITAL CITIZEN

Day two opened with a panel that discussed proposals to better serve citizens in the digital age. Anna Herold (member of Günther Oettinger's cabinet, European Commission) presented three measures aimed at boosting demand for cross-border purchases: the abolition of roaming charges,



Top: the Brussels audience; below: the competition panel gets underway

the move towards portability of content, and a series of initiatives aimed at ensuring that anyone can buy physical goods online in another country, as if she or he were a local shopper.

Focusing on the EU's Audiovisual Media Services Directive (AVMSD: see also article, page 29), Celene Craig (Broadcasting Authority of Ireland; European Platform of Regulatory Authorities, EPRA) observed that the overall principles of the Television without

Frontiers Directive (TWFD) still apply, but adapting them to the digital world presents challenges. Material jurisdiction, ie. what services should come under the scope of the directive – and how



What services should come under the scope of the AVMSD – and how they impact on plurality and diversity goals – is a challenge.



they impact on the plurality and diversity goals – is a key challenge. The country of origin principle is likely to continue to define territorial jurisdiction.

From the BBC's perspective, presented by Helen Keefe, broadcasters' contributions to original European productions need preserving within a reviewed AVMSD. Given the virtuous circle of wide access and large investments, public service broadcasters are key contributors, but perhaps there should be greater flexibility to provide innovative commercial opportunities with the new technologies.

This may be an opportunity to deregulate some aspects of linear television, according to Andrew ➔

◀ Hall (NBCUniversal). Commercial media companies need to be able to extract as much revenue as possible from successful content, because films are a risky business and the winners have to pay for the losers. This often means being able to extract territorial rights or exclusive deals. Similarly, Mathieu Moreuil (English Premier League) argued that demand for sports rights is very different in the various countries and, for the rightsholder, pan-EU rights would be a complete game changer with no clear benefits. Portability is already enshrined in the league's new contracts, ahead of EU regulation.

Stefan Krawczyk (eBay) reminded the meeting that e-commerce platforms benefit small traders the most, because they give them the visibility they would not be able to have on their own, particularly in mobile-based e-commerce.

KEYNOTE ON DATA PRIVACY

Microsoft's John Frank started the conversation about data privacy with a keynote presentation. In the wake of international terrorist activity in Europe, clear rules about access to cross-border data should be set, especially for emergencies. A good balance between privacy and national security is maintained through independent judicial review of the request for access. Increasingly, there is also the need to respect territorial sovereignty, as data centres are located in different countries.

The Commission's perspective was presented by Rosa Barcelo (DG Connect), focusing on the privacy directive, which provides specific rules for the telecoms sector. Each article of the directive will be evaluated to avoid duplication, and to see if it is still relevant, effective and adds value, and whether it has a new dimension. The next task is to simplify privacy governance, to avoid having several regulators dealing with different articles of the directive in any one country. Finally, the new rules will level the playing field, so that functionally similar services are subject to the same rules.

Charlotte Holloway (techUK) welcomed the news that the privacy directive is being checked for duplication or unnecessary complexity, particularly as the UK's Investigatory Powers Bill, currently under discussion in parliament, is a major concern. Thomas Dailey (Verizon International), reiterated that the digital economy requires huge amounts of investment, and a simple, predictable regulatory environment is a key requirement for investors. Joe McNamee (European Digital Rights, EDRi) echoed the need for clear, predictable and well-enforced rules, understanding that there are contexts in which self-regulation will work, and others where it cannot. He added that since data protection is about flows of information being analysed in real time, the principles of data minimisation, purpose minimisation and protection by default are extremely important.

The following discussion observed that constraining data production may not come naturally to engineers, who would like to use as much data as possible, but privacy by design is taken seriously, not least because security concerns push towards minimising data generation.



Top: BEREC chair Wilhelm Eschweiler fields a question; below: Microsoft's John Frank in full flow

CONSOLIDATION AND COMPETITION

The final panel brought a range of views on consolidation and competition policy. Agustin Diaz-Pines (DG Competition) commented that most recent in-country mergers have been cleared without conditions or remedy. Geoffrey Myers (Ofcom, UK) reported the push towards consolidation in the UK, with the O2/Three merger,

and how this has led Ofcom to defer the next spectrum auction until the EU competition authorities clear the merger. *[The merger was of course blocked shortly after.]* Elisabeth Dornetshumer (Austrian



Before the merger, prices were lower in Austria than in ten representative European countries, but after they increased.



Regulatory Authority for Broadcasting and Telecommunications, RTR) gave details of the effect of a merger on mobile prices in Austria. Before the merger, prices were lower in Austria than in ten representative European countries, but after they increased while decreasing or staying constant elsewhere.

Markus Wagemann (German Federal Cartel Office) reported on the remedies imposed on the Telefónica/E-Plus merger in Germany, which did not actually result in higher prices but increased the likelihood of coordinated effects between the three remaining competitors.

CRISTINA MURRONI is a telecoms and media analyst.

MIAMI REACH

The IIC's second TMF of the year took place in its now regular Miami location, focusing on Latin America. There is also a regulators' forum. By **CRISTINA MURRONI**

The IIC's Miami Telecommunications and Media Forum (TMF) welcomed regulators, policymakers and industry from the Americas and the Caribbean with a keynote presentation by FCC commissioner Ajit Pai, who offered his recipe for the widest deployment of broadband. He argued that facilities-based competition, strengthened with competition law, is the best framework to ensure that as many people as possible will take advantage of the opportunities offered by digital platforms.

DEMAND STIMULATION

"There is a virtuous circle involving adoption, investments and prices: as adoption increases, investments increase, driving prices down, which in turn translates into higher adoption rates," explained Ellen Blackler (Walt Disney). Demand-side programmes, however, need to reach scale in order to make a real difference, reported Antonio López-Istúriz White (European MEP). The EU is making huge investments in people and knowledge: he spoke about a big data initiative and open access to big data networks, while 13 EU countries have joined a 'grand coalition' for digital jobs, to provide their citizens with digital opportunities.

According to Juan Antonio Ketterer (Inter-American Development Bank), the objective is to ensure that Latin America does not miss the digital revolution, and the IADB is developing digital solutions for farming and agriculture. This is the digital equivalent of the lending of seed and fertilizer – the main way the bank used to work in the past – and an example of how digital technology can help Latin America adapt to climate change.

OTT PLAYERS – SETTING A HIGH BAR

Over the top (OTT) players, the new kids on the block, are creating disruption in every continent. In his keynote, Daniel Sepulveda (US Department of State) argued that the relationship between broadband providers and OTT is an issue that requires more research and debate before a solution or an agreement can be reached. If we engage in that conversation with open minds and mutual respect, the right balance can be found.

One of the best known OTT companies, Netflix, is now a truly global company with presence in over 190 countries worldwide. Paula Karol Pinha announced that the company is investing heavily in production (\$5bn this year) and in technology, particularly in mobile video and 4K TV (ultra HD resolution). She argued that OTT players are



The audience at the Miami TMF, held at the Palms Hotel, Miami Beach

innovators but also push competitors to innovate, as broadcasters develop their own OTT offerings alongside linear television.

Manuel Kohnstamm (Liberty Global) echoed that view, arguing that OTT players have set the bar of consumer expectations at a high level, forcing the industry to innovate and provide a better experience all the time. For Javier Tejado Dondé (Grupo Televisa) the key problem is the huge difference in regulation across different distribution modes, something that his company experiences first hand, since Televisa operates as a free to air broadcaster, but also has pay-TV on both satellite and cable, and OTT services.

Regulation should be technology neutral and not oppose new ways to use or bundle technology, reasoned Jeffery McElfresh (DirecTV Latin America, AT&T) in his keynote, since technology changes so fast that no one is really able to predict where it will

take us next. For David Geary (Digicel Group), free offers from OTT players create obvious difficulties for network investments, particularly in low ARPU markets, and the solution must be between the



Better to put aside the entrenched positions, concentrate on getting connectivity first and then worry about net neutrality.



polar opposites currently held by OTT and network operators: better to put aside entrenched positions, concentrate on getting connectivity first and then worry about net neutrality.

Alejandra de Iturriaga Gandini (CNMC, Spain) concluded by explaining that new EU rules classify OTT into OTT1 – providing services like telecoms (eg. WhatsApp) and OTT2 – the others. Only OTT1 services are likely to be regulated. ➔

← PIRATES OF THE CARIBBEAN AND BEYOND

A keynote presentation on piracy by Alfredo Rafael Deluque Zuleta (president, house of representatives, Colombia) explained how technology has changed the way content is obtained illegally and provided some figures: half of South America's 222 million internet users take advantage of online sites that have piracy issues. There has to be a conversation about ways to work with the industry to find wide-ranging solutions.

Javier Figueras (HBO Latin America) confirmed that working with regulators has resulted in some progress, while Pascal Métral (Alianza contra Piratería de Televisión Paga) described the coalition approach adopted by the industry. The alliance proposes a range of measures: monitoring the extent of the problem, hitting strategic targets that will send a message to the sector and the consumer, training law enforcement officers, educating consumers, as well as working with regulators.

Dialogue between industry and regulators has been successful in educating the public and developing preventive measures in Honduras, reported Doris Madrid Lezama (National Telecommunications Commission). For Todd Reves (US Patent and Trademark Office) in Latin America the entire sector is so used to living alongside piracy that it fears that eradicating it may kill the industry, but of course there are solutions and new ways to package TV offers that could address the problem, if all stakeholders sit around a table to find them. Regulator Nievia Ramsundar (TATT, Trinidad and Tobago) added that the industry needs to find new ways to satisfy the demand that pirates address, and needs to ensure that only properly authorised content goes on air.

There was consensus that spelling out the industry and country damage resulting from piracy – jobs lost, public services that cannot be financed because of lost tax revenues – can work well as an educational, preventive measure. Prevention is better than running after pirates.

GROWING SKILLS FOR ICT INNOVATION

This session was devoted to the question of talent: how to develop, attract or retain the right talent for the digital world. Digital technologies are moving jobs geographically, and making some skills obsolete. Other skills, such as engineering, are becoming scarce and valuable.

Senator Juan Gerardo Flores Ramírez (secretary of the communications and transportation committee, Mexican senate) opened the floor, telling the audience about the strong incentive programme that Mexico has set up to develop the skills needed in the energy sector, and arguing that a similar programme should be set up for ICT. Rodrigo de la Parra (ICANN) reported on ICANN's memorandum of understanding to develop more talent in South America and the Caribbean, while Microsoft's Pedro Julio Uribe-Bermudez told delegates about the company's programmes in public schools and the success of white space technology in Africa and Jamaica.

For Daniel Manfredo (Intel) education is the great challenge, because half of today's children will work in jobs that have not been invented. Education should be geared towards production, not consumption, of technology. Other solutions, such as incubators and pilot projects, were suggested in the discussion that followed, as additional tools to assist in the short term. Dialogue between industry and academia, and ensuring that educators are re-trained (and have incentives to do so) are other important factors in growing the right skillset.

UNIVERSAL SERVICE FUNDS IN A CHANGING INDUSTRY

A look at the past, present and future of the sector was offered by Ulf Pehrsson (Ericsson) in a keynote presentation which really brought home the pace of change in the communications industry. Still, by 2021 there will be 1.7 billion people who are not connected, the key barriers being affordability, content and supporting infrastructure rather than technology. The public and private sectors need to work together to help bridge this gap.

The speakers' panel, comprising Héctor Huici (ministry of communications, Argentina), Luciano Charlita de Freitas (Anatel, Brazil), José Juan Haro (Telefónica), Marcelo Mejia (TIM Brazil) and Roslyn Layton (Aalborg University, Denmark), described how most countries have yet to use the USO funds they



USO funds lose revenue from free OTT services, operators not based in the country, and by services not falling within formal definitions.



set up. Sometimes the problem is a political one, with instability and new governments making it difficult to set up USO projects; sometimes USO funds are blocked by legal definitions that no longer match reality; in other cases the rules are there but their implementation lags behind.

In all countries, however, USO funds lose revenue from the use of free OTT services, by services offered by operators that are not based in the country and by new services that may not fall within the formal definition of telecoms services that qualify for USO. There were calls for alternative ways to finance universal service, ranging from general taxation, to coverage obligations placed in licence conditions, to innovative, flexible funds. Zero rating was discussed as a 'free to air' model for digital services in developing countries.

SPECTRUM UPDATES

The initial phase of the world's first ever incentive auction has been completed in the US, and Mindel De La Torre (FCC) commented that it has become an 'extravaganza' that looks set to become a second digital dividend. Efficient use of the spectrum is a constitutional goal in Mexico, revealed Adriana Labardini Inzunza (IFT, Mexico's regulator) but the objective is not simply economic efficiency – there are also coverage and affordability considerations. She also reported on the regional harmonisation

effort in the 600/700 MHz band, with five neighbouring countries involved.

In Costa Rica the big issue is to assign the large amount of spectrum currently available, as Maryleana Méndes Jiménez (Sutel) explained. The lengthy process needed to set up auctions, which involves the political domain, requires a full reorganisation of frequencies from broadcasting. A new auction is planned for 2017, but many aspects of the auction design still remain to be defined.

Discussing best practice in spectrum management, Sebastián Kaplan (Millicom) highlighted the importance of clear mechanisms for licence renewal and consideration of the overall investments involved when setting prices. Sebastián Cabello (GSMA Latin America) added that the revenues realised in the past are not really a good guide for the future, since market conditions have changed enormously in the past ten years. He further argued that coverage requirements need to be carefully researched to ensure they are viable and that developing secondary spectrum markets is another important avenue, but so far only Mexico has implemented rules, while Peru, Colombia and Chile are planning to do so.

REGULATING FOR INNOVATION AND INVESTMENT

Designing policies for universal connectivity, observed Luis Andrés Montes Bazalar (Fitel, Peru), requires all government departments to work together, as the infrastructure is pervasive and will impact other important sectors like education and health. There was wide consensus in the discussion, that sectoral divisions make it difficult for change to become systemic and ensure that benefits are widely shared. Having a national plan (and sticking to it) does appear to make a difference – not immediately, but within five to eight years. Juan Manuel Wilches (CRC, Colombia's regulator) added that to promote growth and development we need the best combination of infrastructure and demand, but the focus has usually been only on supply.

Operators gave their suggestions for a healthy, sustainable sector. Alejandro Cantú Jiménez (América Móvil) argued for simple, predictable access rules, with third-party access requirements as the rule and exemption as the exception. Elizabeth Rojas Levi (Nokia) reported Nokia's drive to produce technology that is open and easy to install and maintain, which is crucial to ensure the gap between the super-connected and those who are completely unconnected – still 45% of the world population – is bridged and not increased.

Olivier Puech (American Tower) stressed that local government should be aligned with the objectives of national government, while the difficulties linked with market fragmentation were highlighted by Andrea Giuricin (University of Milan Bicocca, Italy). In the discussion, the point was made that sustainable business models require transparent bidding processes and regulators who are well informed about consumers and changing usage patterns.

CRISTINA MURRONI is a telecoms and media analyst.



Top: Alejandro Cantú Jiménez (América Móvil) argued for simple, predictable access rules
Middle: interventions from the audience; below: lunch!

REGIONAL REGULATORS FORUM

The IIC's Regional Regulators Forum was held in Miami on Wednesday 18 May, just before the 2016 TMF dedicated to the Americas. Key issues discussed at the RRF included:

- Regulatory tools for the converged ecosystem – using merger conditions to impose good behaviour on the big players rather than the same rules for the entire industry; different responses to the challenges posed by OTT players; the importance of conducting research into consumer behaviour.
- How to ensure a level playing field in the communications sector – introducing competition issues in the design of spectrum auctions; geographical constraints and competition; using insights from other utilities.
- Regional integration – abolishing roaming as a response to free OTT services; sharing intelligence across regulators; achieving scale as a region; lessons from the EU's drive towards a digital single market.