ETNO Workshop on the Regulatory Environment for NGA - Speaking Notes - Caroline van Weede, Managing Director Cable Europe

7 May 2008

Current telecom regulation was mainly designed to introduce competition into a **relatively stable industry** but we are now facing a wind of change in particular driven by technological developments. Existing telecoms and cable infrastructure are moving to next generation architecture, which will offer many converged services and very high speed internet access. As a result the telecom and cable industry will experience **unprecedented change** and will require **major investments**.

Cable is very well positioned to compete with the incumbents. This will also be the case in the future because many cable companies have their own network capable of delivering video, voice and data. But like the other new entrants, cable companies remain relatively modest in size and do not enjoy a national footprint or the financial strength of the incumbents.

Cable fiercely competes with incumbents but also with new telecom companies such as free or tele2. There is also strong competition from satellite TV (Sky, CanalSat) and Digital Terrestrial Television all over Europe. The sector has therefore – and rightly so - not been subject to intensive wholesale economic regulation at least at the European level. Most of the regulation imposed today on cable is related to content and copyright, or is regional and local and linked to cable’s past as former municipal owner of networks.

I guess the question of today is what signals cable companies are expecting from policy makers to encourage them to invest further in their networks.

NGA roll out and the cable sector

A number of Cable companies in Europe have already networks that offer many of the features of the so called NGAs.

Something which is still unknown to many is the fact that cable companies have invested in fibre for quite some time now, sometimes very deep in the network and close to the customers’ premises. These companies are reaping the benefits of their investment. Fibre gives a tremendous advantage in terms of capacity and speeds.

Virgin Media advertises very clearly the advantages of fibre in its network. We will probably see more of this type of advertising elsewhere in Europe in the future.

We recently organised our annual Cable Congress and I am happy to share with you a few comments that were made by the speakers: Cable's technical advantages, exploiting high quality fibre and broadband infrastructure is a huge window of opportunity - of at least three to five years - in which to roll out video applications before rivals will be able to catch up. The focus of cable companies today is on new video applications such as video on demand, personal video recorders, high definition, "just missed" TV. Capacity hungry video applications such as the BBC iPlayer are playing to cable's strength in network capacity and speed.

There is little sentiment in the sector that cable companies are lagging behind or have taken the wrong technological choices. It seems to the contrary that there is a new wave of interest from consultants and financial analysts alike who tell us that the sector is well armed to face increased competition.

Obviously, this favourable momentum has positive effects on investment decisions. Cable Europe is keen to ensure that the European regulatory environment remains favourable a well.

But, why are the cable companies investing? Obviously, because you are there around the corner… They invest, so they can effectively manage triple play offerings, ensure customers' - increasing bandwidth and quality needs - are met, and successfully manage the transition to Digital TV. Cable companies invest so that people can use the full potential of cable for all their e-communications needs.

In the last 10 years or so, a modern cable company has been investing heavily in upgrading its network.

- 1990's : from CATV to Hybrid **Fibre Coax** Network, to make the network bidirectional for data and telephony services

- 2000 -2010: investments for advanced data services, VoIP and interactive digital TV

- 2008-…: investments to cope with future bandwidth demands with further reduction of node size and introduction of eurodocsis 3.0, high definition television, etc.

Data at our disposal indicate that cable has invested around 4 billion € in 2007 or 22´% of the sectors revenue.

The EU Telecom rules and Cable Europe's position

Liberalisation of the telecom sector in the EU has allowed cable to enter the telecom market. However it is important to underline that the telecom rules have been initially written to force the ex-monopolist to share some of its resources with other companies. For cable, these detailed rules are not really needed to make a business case. Cable companies have their own network and are fully independent from the incumbent network.

But, one of our main concerns is that rules that benefit companies using the incumbent networks can jeopardise the development of companies investing in their own networks. We see the danger that strict cost-based regulation of your networks | presents |to the competitiveness of our cable-base retail broadband services |and |may place at risk revenues in this area. This also valid in an NGA environment

A few examples:

Cable Europe was relieved to see that the list of relevant markets is now limited to a smaller number. This is a good sign that regulation can be rolled back as markets evolve towards more competition.

The decision by Malta not to regulate the Maltese incumbent together with Melita, the local cable company, is also a right step and shows that –with EU support - over intrusive broadband regulation, and unproven claims of joint dominance, are not regulatory options that encourage sustainable investment in infrastructure.

Functional separation. It is our opinion that the use of this tool should be carefully considered by any national regulator: a disciplined approach must be taken in determining whether sustainable fixed access network competition is possible, notably from existing cable networks.

We are pleased to see that this line of thinking has been followed by Mrs Trautmann in her draft report. Her recommendation to submit functional separation to the "procedure for the consistent application of remedies" new Art. 7a, is a welcome development. NRAs must be discouraged from taking an over simplistic view of the conditions under which sustainable investment in NGA competition is likely to occur.

It is always possible that at one stage trade offs and choices need to me made in favour of regulatory interventions over regulatory forbearance based on the belief that infrastructure competition – alone - cannot deliver the necessary competition. However, Cable Europe thinks that these decisions need to be made on the basis of a thorough and future looking market analysis, taking into account the competition potential that fully independent networks such as cable are able to offer.

Cable Europe has some mixed feelings about the use of sub national markets for the purpose of market definitions. Although most of the current discussions refer to it as a tool for further deregulation, we tend to see it also as a risk for introducing further regulation, in particular on market players such as cable who are doing very well in some regions. However, it seems very artificial to look at the competitive pressure in one region without taking into account the financial weight and national footprint advantages of the incumbent operator. It is undeniable that competitive pressure will vary between densely populated areas and the other areas. This is an economic fact which needs careful attention from the policy makers. However, we would recommend that the market definitions remain national allowing - where necessary -differentiated remedies according to the level of competition in different areas.

Access to ducts is another unpopular theme in Cable Europe. This is a point where we tend to disagree with those who believe it is THE solution for stimulating the roll out of NGAs. If there are some incumbents who wish to offer this type of access to their competitors this is of course fine. However, it is a totally different story to mandate access to ducts to an existing owner of competing ducts.

Existing facility sharing under the telecom package has proven to be a highly complex undertaking.

Duct access may potentially have a role to play in the development of next generation competitive access. But in terms of this review, the widely differing national contexts, ownership structures and legal and environmental restrictions we believe makes it necessary to further reflect on whether and under which conditions an EU regime can be beneficial, as OFCOM is currently committed to doing.

Fundamentally, we think the issue should primarily remain a matter of national and local legislation. At the very least, duct sharing needs to pass the SMP test before being used as a remedy, like any other access remedy.

Finally what should be the role of access regulation in the future in a world of NGAs? We agree with Mrs Trautmann on the importance of finding the right balance between fostering infrastructure based competition - where this is possible - and ensuring access to the incumbents network in those areas where network roll out is not feasible.

Access regulation on incumbents should not be over intrusive to avoid disincentives to invest in competition infrastructures and to allow sufficient return of investment. Looking forward, we can see merit to the view that access regulation should be limited to non replicable network assets of legacy monopolies. In any case, access prices in areas where infrastructure competition is already in place - or has the potential to emerge - should be such that new entrants are indifferent between on the one hand investing in their own infrastructure and on the other hand “renting” the incumbents network. A new approach on access price regulation is necessary: access prices should allow a risk adjusted rate of return. We welcome that the European Commission will examine more closely the regulatory questions around NGA in the coming months.

The ultimate goal of the regulatory framework has always been the application of competition rules. Competition rules are to replace a large part of the telecom – economic - rules once competition is well established on the market. But how can this swap between regulatory approaches happen? This should be one of the core questions for the review. We believe that future telecom rules should remain simple and easy to implement (beware of sub national markets). Rules should be transitory by nature: they should be easily withdrawn, when necessary (beware of functional separation).