



Cable Europe

Cable Europe Comments on Mrs Trautmann Discussion Paper on the telecom regulatory framework

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Cable Europe, the European Cable Communications Association, groups all the leading European cable TV operators and their national trade associations throughout Europe.

Since the liberalisation of the European telecommunications sector, cable TV operators have invested billions of euro in building fibre-coax networks reaching more than 100 million homes in Europe. Cable's end-to-end networks deliver +100Mbps internet connection, High Definition TV, and telephony services direct to consumers' homes. As key enabler of digital life, cable operators provide their services independently from incumbent telecommunications operators. Hence, cable brings a new dimension to the e-communications market: large-scale infrastructure based competition.

Cable Europe welcomes the revised Discussion Paper 'towards a balanced reform of the telecom regulatory framework: the right rules to achieve information society leadership and maximise the value for citizens' as it contains a sound review of the main issues at stake in the current debate over the regulatory framework.

Although we agree with the main lines of outlined approach, we would like to offer some comments on the last two sections of the paper. We trust our observations might be helpful when finalising your draft report to the Industry Committee.

Improving effective and consistent implementation

In section 2.2, the Discussion Paper contends that: 'In the market analyses, the diversity of infrastructures (copper, cable, 3G mobile) providing equivalent services should be taken more into account'. Although Cable Europe agrees with this assertion, it is important to highlight in which way such diversity of infrastructures is to be taken into account by NRAs and the Commission itself. In that way, we believe that, where there is a significant roll-out of alternative infrastructures, access regulation to the incumbent network should never discourage investment incentives.

Transition towards full competition

Cable Europe agrees that NRAs should address in their market analysis the possibility that competition conditions vary amongst different geographic areas thereby justifying, in theory, a geographically segmentation of markets or remedies. However, we also believe that it is important to take into account the risks of a 'geographically segmented' approach to regulation. It is not clear that such policy will diminish 'the risk of dominant operators to cross-subsidising between non competitive and competitive regions'. On the contrary, depending on the details of the regulatory approach adopted in 'non-competitive' areas it might well occur that incumbents could have the incentives to follow predatory pricing strategies in those



areas where competition is developed or starting to emerge. In that sense, we call for a more nuanced analysis of this issue on a case by case basis by NRAs in the context of their market reviews.

In addition, a 'geographically segmented' regulation depending on unstable frontiers between regulated and unregulated areas and on ex ante ad-hoc definition of 'market' frontiers (e.g. local exchanges in the UK), might increase the cost of regulation, not being the least significant cost that of regulatory failure to provide incentives to deploy new infrastructure in 'regulated' areas.

Next Generation Networks

In the context of NGN regulation, in general terms, Cable Europe agrees with the Discussion Paper on the importance of finding the right balance between fostering infrastructure-based competition by not reducing incentives to invest and ensuring access to incumbent's access network in those areas where network roll-out is feasible.

However, we have some further comments to make about the role of access regulation, the adoption of ROI-based regulation for access to the incumbent's NGA networks, the inclusion of compulsory facility-sharing in the regulatory toolbox and the conditions to impose access to passive infrastructures.

Cable Europe believes that strong incentives for alternative networks to invest must remain a key feature of the amended directives. We believe that revisions to the framework must reinforce the role of infrastructure competition as the most effective means to attain **sustainable long term competition** to the benefit of consumers and also to achieve a highly competitive European e-communications sector.

A single network model, even if this network is open to a range of access based service providers, cannot alone deliver the investments necessary to finance and build the competing NGNs needed to drive broadband, broadcast digitalisation and e-communications services. Access regulation on incumbents – if necessary – should therefore not be over intrusive to avoid disincentives to invest in competing infrastructures and to allow sufficient return of investment.

Access regulation should, therefore, be limited to the non-replicable network assets derived from legacy monopolies (those parts of the fixed incumbent telecommunications that justify regulation because of their structural characteristics). This approach has the virtue of focusing on legacy facilities where regulation is still needed to promote service competition. Beyond the 'perimeter' established by this approach to legacy assets, regulation should be based on competition law and there should be a general policy of forbearance for new infrastructure platforms so as to promote long term and sustainable competition between infrastructure platforms.

Accordingly, Cable Europe welcomes a change of paradigm in relation to pricing regulation from a cost-based approach to a more nuanced approach that takes into account the fact that access prices should be such that new entrants were indifferent between investing in their own infrastructure and 'renting' the incumbent's network.



Indeed, we believe that the structure of wholesale pricing should be set in a way that alternative operators are encouraged to invest further. Whereas cable operators always face the need to invest in order to increase their customer base, service operators historically have been given the option to either invest in their own infrastructure, or “rent” the incumbent’s network. Access prices that do not take this into account will clearly favour service based competitors over investors in competing platforms, notably cable operators. Therefore, we agree with the Discussion Paper that cost-based regulated access prices do not strike the appropriate balance between service and infrastructure competition, and can disadvantage investors in alternative infrastructure, such as cable operators, potentially creating discriminatory treatment amongst alternative undertakings. What is proposed is therefore certainly interesting but one should note that ROI (return on investment) regulation is very similar to a ‘cost-plus’ regulation model and further discussions are necessary to understand its advantages, disadvantages and the way it needs to be applied.

Finally, with respect to the **toolbox of remedies available to NRAs**, we believe the proposal to make mandatory access measures to backhaul facilities to be misplaced alongside measures seeking access to passive network elements, as backhaul facilities are an active component of the network.

Furthermore, with respect to access to passive elements of the network such as ducts and in home wiring, we believe the proportionality of such a measure must be assessed based on the use of an SMP assessment if the criteria ‘depending on the degree of competition in an area’ is to be fulfilled.

Indeed, duct sharing will depend on practical and legal issues such as duct occupancy, network integrity, possible interference and the rights of ways regime, which can only be dealt at national level and will make an EU regime highly complex. Duct sharing regulation should therefore in principle remain a matter of national and local legislation, but at the minimum should only be applied to those operators designated as having market power.

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