

**Viviane Reding**

Member of the European Commission responsible for Information Society and Media

**From Service Competition to  
Infrastructure Competition: the Policy  
Options Now on the Table**

Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort

ECTA Conference 2006

**Brussels, 16 November 2006**

Ladies and Gentlemen,

I am very pleased to be here today to address an audience that represents a very important part of the European electronic communications industry; a part which is a dynamic proof that competition is the best recipe for growth and jobs, but also a recipe for more choice, better services and lower prices for the consumer.

We have gone a long way since the early 1990s when the liberalisation process started. With the help of three successive regulatory frameworks, we have moved to a competitive environment where a large number of telecom service providers thrive. This is based to a good part on service-based competition but whenever possible we should increasingly seek more infrastructure-based competition which is sustainable in the long term.

**The liberalisation of telecoms markets in Europe has been a success story.** Starting with handsets in 1988 and progressively adding services until 1998, the EU liberalised all telecoms goods and services. The 2002 framework gave more emphasis to achieving fully competitive markets in a convergent and technologically neutral environment.

Today, we have hundreds of operators offering fixed and wireless networks and services. About 94% of us have equipped ourselves with mobile handsets and we spend about 30% less on our bills, for the same services, than we did in 1996. Broadband, the key to a knowledge-based society, has been picking up very rapidly. The number of broadband lines in the EU grew by over 40% from July 2005 to July 2006 and has now exceeded almost 70 million lines.

**There are clear signs that the EU legislative environment, by its pro-competitive stance, is encouraging innovation and stimulating investment by both new entrants and incumbent operators.**

**There is, however, one overriding conclusion that I can draw from the implementation of the current framework: the incentives built into the framework for investment and innovation can only deliver their full benefits when the framework has been implemented properly. Member States that have applied the rules in a timely and efficient manner have clearly achieved the best results in terms of investment in new networks and take-up of new innovative services. Countries with a poor record of regulatory reform have less investment.**

I am pleased to see, in your response to the review of the EU's regulatory framework for electronic communications, that you share this conclusion.

After almost 10 months of very extensive consultation with industry, users and public authorities, my general assessment of the review is this: we can reaffirm the 3 key objectives of the existing framework, i.e. to promote competition, the internal market and citizens' interests.

I believe we should stick to the fundamental principles that are: a market-based approach to ex-ante regulation and technological neutrality.

However, I think we need concrete improvements in some specific areas. I specifically want to pursue **3 objectives**:

more flexible and efficient use of spectrum

less - but more focussed and more efficient – regulation

promoting competition and investment in the markets, and in particular in trans-national markets and for cross-border services,

I am glad to see that you have explicitly welcomed, in particular, the first two of these objectives. I will therefore only speak briefly about our intention to further liberalise spectrum usage, strengthen rules on enforcement and appeals and streamline the market analysis and notification process.

I would then like to discuss more extensively with you the third objective related to competition and investment, since I know that there are different views among market players and public authorities on this. In this context, I will also refer to the two main concerns you have expressed in the consultation process, as regards a possible functional separation remedy and our intention to withdraw retail markets from the revised relevant markets' Recommendation.

### **More Incentives for Investment in Spectrum**

Let me start with spectrum.

Radio spectrum is an interesting opportunity for investment. **If we could release the economic potential of this resource to exploit a true single market, the boost to the European economy could be enormous.** We urgently need to look at how we can use it more efficiently in the EU. Mobile operators are, as you know, among the most efficient users of their licences. I don't think it's a coincidence that mobile telephony is a sector with intense competition between operators.

The total value of services that use spectrum today is currently estimated to exceed 200 billion Euro. Mobile communications alone account for 2% of the GDP of Europe. **Wireless services could contribute significantly more if we could make access to radio spectrum more readily available on a pan-European basis.**

Concretely, I am saying that decisions about how spectrum is used should be taken, wherever possible, by those who have the usage rights. **I am proposing three concrete measures that are focused on empowering market players.** And I am sure that they will lead to a more flexible use of spectrum.

**I first propose to strengthen the use of the principles of technological neutrality and service neutrality in spectrum allocation.** The review should lower the barriers to access for spectrum and give the users more freedom to decide upon the technology used and the service offered. Of course some minimal technical conditions would remain, so that users can coexist without causing mutual interference.

**Secondly, I propose to introduce spectrum trading across the EU in selected bands agreed at EU level.** At least one third of the spectrum available at present could in this way be opened to a more market-oriented approach.

**Thirdly, I propose a way to achieve common authorisations for services having a pan-European dimension.** Those who develop wireless services with a wider reach than a single country should be able to obtain a market entry authorisation swiftly and without being hampered by divergences in licensing conditions at national level.

With the switchover from analogue to digital TV, which at my insistence will be complete by 2012, we have a window of opportunity for change. The spectrum that will be released can be used to promote new services, and we need to make sure that we do not foreclose any service in deciding on how the freed spectrum should best be used.

By harmonising spectrum bands across Europe with the same, but minimal, technical restrictions, cross-border or pan-European services can develop.

**We have to recognise the competitive disadvantage which the EU faces because, instead of having one single regime for spectrum management and spectrum licensing, as in the US, we have at least 25 different systems.**

Therefore, I believe that we need to discuss the idea of a European spectrum agency or the integration of spectrum into the mandate of a possible future EU telecom authority. This is not a question of a shift in power, but relates instead to efficient spectrum management. **When the markets of wireless equipment and services are developing at EU-wide level, such a new body could cut a lot of “red tape” in spectrum management by replacing 25 administrative models with one agency with EU wide responsibility.**

Success in adopting the spectrum reform and implementing it efficiently should give better investment incentives for operators. It should also give the citizens of Europe access to new and better communication services through more competition in wireless services. This, to me, is a win-win situation.

### **Less, but more efficient Regulation**

The second issue I want to tackle in the review of the EU's regulatory framework for electronic communications is better regulation. As you know, at present, independent national regulatory authorities must define the national communications markets on the basis of competition law. They must start from a list of 18 markets in the Commission's 2003 Recommendation on Relevant Markets and assess whether these markets are characterised by the presence of at least one operator with significant market power. If these markets are found not to be competitive, then they are subject to *ex ante* regulation, in order to stimulate competition.

The Commission has the power to check the draft regulatory measures proposed by national regulators. This is the so-called 'Article 7' procedure. To date we have examined more than 500 notifications from national regulators. The overwhelming consensus on this procedure is that we can make the important procedure less burdensome for market participants and also for regulators themselves.

Therefore, my proposal is to simplify the notification requirements for certain national measures. **My objective is to allow regulators both at European and national level to focus resources on issues of substance, on the key bottlenecks for competition, rather than procedures.**

**I also see a need to take a decisive step towards the completion of the internal market. We need greater consistency and effectiveness in the application of remedies to repair the fragmentation of the internal market.** The Commission has therefore proposed as one possible option to extend the internal market-control that is already exercised today by the Commission with regard to market analyses also to the remedies.

I know well that some national authorities are saying that they know best what is happening on their markets. As a Luxembourger, I feel very strongly about the principle of subsidiarity, which means taking decisions as close as possible to the source of a problem. **However, I also know very well the experience from more than 500 Article 7-notifications: very often, this experience has shown that “two pairs of eyes” see more than only one.** Just a couple of days ago, the Commission could convince a national regulator that a problem on the leased line-markets required further attention because the economic data given to the national regulator had been insufficient. Only in the second phase of the Article 7 procedure, which had allowed the Commission to enter into direct contact with market participants, this solution could be found. **Without the Commission’s role of surveillance being foreseen by the EU legislator in the present regulatory framework, we may well have ended with a wrong decision on this important market for leased lines.**

I also read in a number of contributions to the public consultation on the review of the regulatory framework that in many instances, the Article 7 procedures take very long and that in particular the role of the European Regulators Group would require clarification in this context. I have a lot of sympathy for this analysis. **For me it is clear that the most effective and least bureaucratic way to achieve a real level playing field for telecom operators across the EU would be to replace the present game of “ping pong” between national regulators and the European Commission by an independent European telecom authority that would work together with national regulators in a system similar to the European System of Central Banks.** In such a system, national regulators would continue to act as direct contact points with operators and could directly analyse the market as they do today, but would have to operate as a system, and in line with the guidelines and decisions of their supranational level. This is certainly an idea that will deserve further reflection in the months to come.

I am glad to see that my friend Roberto Viola, the chair-elect of the European Regulators Group for 2007 is here today, and I am very much looking forward to deepen the reflections in particular on this issue with him in the months to come.

More important than institutional issues is of course the internal market issue itself that is at stake. **In any event, we will need to tighten up the timescales in which regulators must act, in order to avoid the long delays that we have seen in some countries. In a fast-moving sector such as the electronic communications markets, delays are the biggest enemy of effective competition and investment – and longer procedures in one Member State can very well operate as market entry barriers for operators from other EU countries.** Such distortions of the internal market cannot be tolerated if we want to make Europe more competitive.

I am working also at the moment in close cooperation with the Commissioner for Competition, Neelie Kroes to be able to revise, in spring next year, the Commission **Recommendation on Relevant Markets** of 2003. **Here, we are on the way to break new ground in EU telecom regulation: As you know, the Commission is ready to remove at least one third of the markets that were originally listed as markets where ex ante regulation is appropriate.**

You have expressed some concern that **“the removal of retail markets may leave a vacuum which can be exploited to leave consumers or competitors open to abuse”**. I am fully aware that this risk exists, especially in some Member States in which access and non-discrimination rules are not fully effective. We are therefore currently looking into the option of giving national regulatory authorities the possibility to exceptionally add retail markets to the list of relevant markets if this is well justified by national competitive circumstances which show that the conditions for considering ex-ante regulation are fulfilled. It is clear that in such a case, the “two pair of eyes-principle” would have to be carefully observed. Of course, the final decisions on this will only be taken in spring 2007.

### **Greater Investment and Competition**

**The third priority of the regulatory review that I would like to talk about today is to make sure that we maintain the right incentives for achieving our policy objectives of growth and jobs. We cannot rest on our laurels. We must strive to achieve stronger competition and thereby more investment in Europe.** Therefore we must evaluate how well the framework has contributed to promoting investment and enhancing the move from service-based to infrastructure-based competition. This will allow us to identify the right policies to **facilitate convergence and the take up of broadband** by all businesses and citizens in Europe.

The current EU rules are based on the view that, by giving competitors access to the network of the dominant operator, new market entrants will start generating revenue, climb up the **ladder of investment** and in the process roll out their own infrastructures.

The first question I want to examine with you is **whether our current framework has actually facilitated the “ladder of investment”**. I will do that by using broadband services as the example.

**If we look at the situation in the different Member States, the first conclusion we can draw is that the most significant factor enabling broadband growth is the existence of alternative infrastructures**, in particular cable. In all six Member States which have exceeded 20% broadband penetration, cable has an important market share and this regardless of the effectiveness of regulation.

**A second conclusion we can draw is that investment decisions by the operators are certainly affected by regulation, but they are also affected by the socio-economic and geographical environment of the country concerned (for example, GDP and per capita income, PC penetration, language barriers, remoteness of rural areas)**. This to some extent explains why, for example, in a given Member State operators invest in wireless or fibre infrastructures, or continue to rely on the incumbent’s local loop; why in some cases structural funds are used to roll out broadband to remote areas.

**A third and very important conclusion for public policy makers, however, is that regulation does play a very important role in the investment ladder, especially in Member States with no or weak alternative infrastructures.** Although cable is important in some Member States, DSL continues to be increasingly the predominant broadband technology. Despite a gradual, steady decrease in their market shares, incumbents continue to be the main players in the DSL market. This is the area in which regulation has proved to be most crucial.

**I can say with satisfaction that across Europe, there has been on average a very significant move up the ladder of investment in the 3-years of implementation of this framework.** In July 2003, 52% of new entrants were offering broadband services through simple *resale* and only 27% through full or shared access (Local Loop Unbundling). In July 2006, *resale* has gone down to 36% and *full or shared access* has gone up to 46%. This progress is certainly due, to a large extent, to the effective implementation of the regulatory framework.

**If we look at each Member State individually, we will see a more mixed picture, which simply confirms that where there has been more effective implementation of the framework, including enforcement of full or shared access rules, there has also been more progress up the investment ladder.** Conversely, ineffective regulation leads to continued dominance of the retail market by incumbents.

**Some doubts have been expressed, however, by market players including yourselves whether, even in the Member States with very effective national regulatory authorities, the current remedies always produce sufficiently quick results.**

You have argued that dominant operators naturally tend towards non-compliance or stretch the rules to their limit, which is assisted by the lack of operational transparency that often characterises vertically integrated businesses. To address this problem you would be in favour of the measure, already taken in the United Kingdom, of creating functionally separate businesses for services, on the one hand, and access provision, on the other. These separate businesses would be obliged to provide equivalence of treatment to all operators. This would be achieved by adding “**functional separation**” as a possible remedy under the EU telecom rules.

First of all, we have to be clear as to what is meant by terms like “structural separation” and “functional separation”. The term “structural separation” has been used to mean several things: full divestiture of companies; legal separation with separate management structures; functional separation of organisational and management structures within vertically integrated undertakings; and simple accounting separation of specified activities within vertically integrated undertakings. I have expressed myself already in June in favour of finding a European way on the separation issue.

**I believe that functional separation, which is a specific form of separation in the large sense as just described, could indeed serve to make competition more effective in a service-based competition environment where infrastructure-based competition is not expected to develop in a reasonable period.** It may be a useful remedy in specific cases. It is certainly not a panacea. A cost benefit analysis therefore has to be made on a case by case basis, before such a remedy is imposed. And the effects of imposing such a remedy in Europe's internal market have to be carefully analysed in each individual case. **Functional separation is certainly a field where one will not be able to do without the “two pair of eyes” principle.**

There is another aspect of regulatory policy I want to speak about in the context of the review of the EU's regulatory framework: forward looking regulation that takes into account technology and market developments and the need to encourage investment in New Generation Networks.

A few incumbents have been very critical of the current regulatory environment which, they claim, is discouraging “high risk” investment in new technologies and services. Some have even called for a “regulatory holiday” that will give them a clear financial incentive for such investment – even though I am not sure whether this call is still on the agenda in view of last weekend's developments. I have stressed it a number of times and will repeat it today that in our experience supported by facts, competition drives investment. The EU rules do therefore deliberately not provide for “regulatory holidays”, precisely in order to prevent a re-monopolisation of markets. **I seriously hope that after aberrations by some on the theme of “regulatory holidays”, we will be able to start very soon a more constructive discussion on the real issues, which is how to enhance investment in a competitive environment and in increasingly transnational markets.**

Where dominant operators are required, by means of *ex ante* regulation, to open their network to competitors, they must, under the present EU rules, be paid a price for this that allows them to get a reasonable return on investment, bearing in mind the risks involved. So the system already builds in the idea of a fair return on investment when obligations are imposed on dominant undertakings. In my view this is a sound principle we should further develop together with the national regulatory authorities.

I want to make a point concerning the specific question of New Generation Networks, notably fibre networks, rolled out by incumbents. The general principle is that the mere installation of a new technology or new infrastructure as such does not affect existing access obligations.

In mandating access to new infrastructures, national regulatory authorities must balance the needs for short term and long term competition; in other words they must ensure fair prices for consumers and new entrants today, while maintaining the incentives for investment in own networks and more sustainable competition tomorrow.

Some incumbent operators seem to realise that it is in their commercial interest to offer access to fibre as a means of sharing the cost and risk of investment. Voluntary access agreements between operators would seem to be the best solution from a regulatory point of view.

To conclude, as I have said on several occasions, “regulatory holidays” are not a policy option for the Review 2006. In the review of the EU’s regulatory framework, I want instead to ensure that real competition remains the main driving force for investment, and that the EU policy contributes to new opportunities for jobs and increased quality of life for everybody.

I intend to bring forward concrete legislative proposals next year which will then be submitted to the European Parliament and the Council of Ministers. The new rules should come into force around 2009/2010.

Ladies and gentlemen,

ECTA is bringing those companies and operators which have most profited from the pro-competition approach chosen by the EU legislator when it was decided to open Europe’s national telecom markets to competition. This has been a very important step in the process. It is my objective to complete this project by opening the entire internal market to cross-border competition and to the emergence of pan-European services, whether offered by incumbents or new market entrants. You can be sure that the European Commission will accompany very actively this completion of the internal market for electronic communications – and ensure an institutional settlement for this final step in the process of market-opening that will always guarantee the “two pair of eyes” principle in order to ensure fair and effective competition.