IIC TMF Brussels 2011

The Elusive Common Market Goal

Brussels -- April's IIC Telecommunications and Media Forum in Brussels had a number of overarching themes ranging from the Digital Single Market to Internet funding via Connected TV and Cloud Computing. At the level of networks and services, three key elements were identified which need to be addressed by regulation and competition rules, namely: the importance of disruptive technological developments; the increasing importance of service bundles; and the significance of broadband applications, and particularly the role played by mobile traffic data. There was general consensus that a harmonized frequency allocation procedure could prove to be a major instrument in realising harmonization goals.

At the same time, it also needed to be acknowledged that there exist real regulatory differences among the Member States which should not be ignored when forging business models that would operate across the EU; as such, it should still be a matter for the EU Member States to drive the pace of change.

Change should take into account the need to foster competition in infrastructure, with a view to eventually de-regulating the market, and fostering the growth of NGA networks through the introduction of the adequate economic incentives and legal safeguards. Only where such incentives and safeguards are carefully chosen will operators take the appropriate steps to rollout technologies and build the networks which will determine the success or failure of the Digital Single Market.

A number of participants also highlighted the vested interests of certain Member States in raising barriers to the Single Market and in avoiding real competition in the sector. Some of them also expressed hope that, with the entry into force of the new Article 7 procedure in May, BEREC will be able to push forward some major reforms in the regulatory environment.

At the forefront of other participants' minds in creating a Digital Single Market were the issues relating to illegal content and IPR protection (especially relating to piracy). In this regard, the lack of sufficient rules of deterrence, both at the national and transnational levels, were identified as constituting a barrier to harmonization. In the absence of such deterrence, there were those who felt that the *three-strikes-and-you're-offline* rule is the only feasible and effective method of fighting piracy. Having said that, there were also advocates of a less intrusive approach striking the balance between openness and blocking, especially at a time when a clear position on net neutrality has yet to be adopted in the EU.

Cross-border access to digital material was also seen by some to be a key element in achieving a Digital Single Market. The differences in obtaining access across national borders in terms of differences in price, functionality, regulation, and industry structure, and the fact that national incumbents are not challenging each other outside their "home" markets, were canvassed as the evidence of market deficiencies. Finally, certain participants considered the relative importance of developing coherent data protection and privacy rules in dealing with the particular problems raised by the era of social networking.

Many governments have identified the need for them to arrive at proportionate responses; in this light, Vice-President Reding's tabled proposals, together with the emergence of the "do-not-track" system, constitute clear evidence that not all is well in the regimes which currently operate for the handling and processing of personal data in the social networking domain.

Tomorrow's Internet Funding – Who Pays the Piper?

The discussions naturally moved to the challenges faced by European governments, regulators and industry in funding the Internet of tomorrow, at a time when Europe was not in a leadership role in any of the key parameters of competitiveness for investment in a broadband environment.

The high level view expressed was that Euros 200 billion of investment needs to be deployed to finance the Internet of the future. While new sources of demand pull for such investment is arguably found in the growth of public sector services in generating critical scale (eg., e-government and e-health),

there are also question marks about whether all investments are financially justifiable, especially in non-urban areas. In this respect, the pending revision of the existing *Broadband State Aid Guidelines* is seen as being of particular importance, given the messages that it will send or reinforce to industry about the perceived role of the State in the development of broadband networks and services, and the impact which this role will have on private investment.

At the heart of larger operators' concerns about their ability to finance the investments required to build bandwidth-hungry networks in Europe lies a constellation of concerns around their perceived inability to share in the wealth created by the Internet due, *inter alia,* to the lack of commercial flexibility afforded by the existing Regulatory Framework. Accordingly, the benefits of being allowed to put an end to free peering, to charge for higher bandwidth services without offending net neutrality principles, to be afforded greater flexibility in devising differential charging models, to be permitted to manage traffic for the management of traffic congestion, and to be allowed to maintain or to raise copper access prices, was put forward. As one can imagine, opinion was divided among participants as to whether each of these elements was actually borne out in theory or in practice, especially as regards to inherent flexibility of many facets of the existing Regulatory Framework.

Discussion also centered upon the tangible results being achieved in the United States in the development of broadband, including through wireless, and the regulatory "mix" used to realize those results. Some of the US messages for the EU also touched the possible need to afford different regulatory treatment to business services as opposed to residential users.

Another important emphasis was on the need to actively explore co-investment models and to deploy more efficiently the resources already available under various European Structural funds. Whatever funding options adopted, the regulatory policies adopted should not deter the adoption of new business models, which were developing around the shift from "access to" to "experience on" the Internet. The simple message from the broadcasting sector was that the funding model for the Internet should be a thriving competitive user-facing access selling market with a strong attractive content sector supporting it ("Content sold radios. It worked. And it is working in getting more people to buy broadband").

The general feeling was that commercial business models which raise revenue for investment in faster networks, including "fast lanes", are acceptable, but it is also important that these fast lanes do not disincentivize investment in the open Internet (i.e., the standard Internet should not become a proverbial "dirt track" which is subject to large amounts of management).

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