

News brief

Thinking holistically? Trust Europe

BRUSSELS --The IIC Telecommunications and Media Forum Brussels 2010 saw one of the clearest calls yet for coherence, co-ordination and holistic and flexible thinking to address some big challenges.

Keynote speaker and Chief Advisor at the Spanish Cabinet of General Directorate for the Development of the Information Society, Cristóbal Guzmán, emphasised that the European telecommunications and media sectors find themselves at a critical stage. Opening the conference, Sr Guzmán urged increased technological investment and innovation to stop Europe losing its competitive edge to North America and Asia. He highlighted key issues, including harmonising the regulatory positions of Europe in international fora, on issues such as infrastructure development, digital rights, digital inclusion and consumer trust. The Spanish administration regards the issue of consumer trust as essential to achieving continued European success.

Many of Sr Guzman's comments were echoed in the address of the Forum's other Keynote speaker, John Doherty, Chair of the Body of European Regulators for Electronic Communications (BEREC), who acknowledged that recent technological developments "require predictability and clarity in decision-making" by European regulators. He observed that the movement towards a European Single Market for telecommunications and media services, though desirable, is being slowed

by the various baseline positions currently found in each Member State. Mr Doherty also discussed the evolution of BEREC from its earlier incarnations as the ERG and IRG, into a "more consistent and professional body" which should in future carry greater weight with the European institutions in regulatory and advisory matters.

Debate

Intellectual property rights polarised opinion at the Forum, and it was apparent that a clear European position on IPR needs to be adopted soon in order to facilitate innovation. Creative media representatives, in the form of both content producers and broadcasters, argued forcefully for the retention of the existing IPR regime.

Content producers such as Oliver Hergesell of the RTL Group resisted arguments for an EU-wide single market for broadcasting, on the basis that TV and radio programmes tend to have mainly national or sub-national appeal. Other creative media representatives supported this proposal, observing that content has different values in different countries. On the flip side, content producers also argued that, irrespective of national tastes, third party platforms which make premium content available on a broader geographic basis should be prepared to pay for the corresponding territorial licence. This view was strongly countered by proponents of a rights-free digital economy, who dismissed content

producers' concerns that ending traditional licensing patterns would destroy funding, thereby stifling creative development in the future. Contributors such as Simon Hampton of Google promoted advertising-based alternative revenue models, which include personally targeted advertisements, whilst other speakers preferred to place the ownership of personal data and its potential revenue streams in the hands of individual users. Despite these differences, there was general agreement that the regulation of content itself could be better harmonised throughout Europe. The recent codification of the Audiovisual Media Services Directive, though controversial in part, should help to achieve this.

Trust

Consumer trust was another recurring theme at the conference. Topics ranged from the protection of the vulnerable to the security of payment, but the most controversial issue was the usage and security of personal data. Concerns were voiced by participants, including Patrick Walshe of GSMA, that in the online world "there seems to be an assumption that usage of user data is acceptable, and privacy is an add-on." Rosa Barcelo of the European Data Protection Supervisor called for an international 'privacy by default' baseline, under which ICT users must opt-in before their data can be disclosed. Trust was also identified as a key factor in digital inclusion, and one which should help to encourage

non Internet-enabled EU citizens (estimated to be around a quarter to a third of the population, even in the most early-adopter nations) to go online.

Structure

Structural developments and product interoperability provided further fuel for the discussion on harmonisation and convergence. Proprietary platform owners debated with open-source operators the benefits of their particular business models, whilst software and hardware producers discussed the relative importance of their companies' contributions to growth and change.

In the mobile sector, calls were again heard for a more efficient allocation of radio spectrum. In fixed communications, fibre to the home was broadly identified as a priority investment, though Massimo La Rovere of WIND argued alternative operators should not be forced to pay twice for the modernisation of an incumbent's network, namely for both local copper loop unbundling and for the fibre optic installation. Brian Williamson of Plum Consulting notably questioned the wisdom of further investment in fixed infrastructure at all, urging that funds would be better spent on improving wireless and other mobile infrastructures as soon as possible. Structural development also formed part of the digital inclusion debate, with participants considering whether adoption problems are more a question of economics or relevance, and related principally to platforms or services.

New tools?

Underpinning stability and growth through coherent regulation was a key theme but caused divided opinion in terms of approach. Anti-trust session chair Peter Alexiadis of Gibson Dunn noted the difference in approach between the USA, where *ex ante* and *ex post* regulation falls into distinct "silos", and the EU, where "considerable cross-fertilization" of ideas occurs between sectoral regulators and competition enforcers. Several commentators asserted that the European Commission already has at its disposal the tools necessary for effective regulation, but that significant intellectual effort is required to ensure these tools are properly applied in challenging new situations. DG Competition's Head of Unit for Telecommunications, Joachim Lücking, provided *inter alia* an overview of judicial developments in the *Deutsche Telecom* appeal and the various options available to regulators with which to compute the costs of an "equally efficient operator" to the incumbent.

In contrast, Jacquelynn Ruff of Verizon advocated the total abolition of *ex ante* regulation, arguing for an "on-going engagement of government entities with technical experts...with government as a backstop to make *ex post* decisions on alleged anti-competitive conduct". Nonetheless, all participants agreed that regulation at any stage must be ready to adapt to new business models, which increasingly involve collaboration between unlikely

bedfellows, for example Verizon and Skype.

Crucially, both convergence and bundled service offerings pose problems for practitioners and regulators used to dealing in a linear way with concepts such as market definition. However, it was the constant evolution of cloud computing which was identified as one of the most tricky areas to control. Forum participants grappled with new issues of regulation raised by a technology which transmits data fleetingly from one point to another without necessarily being tied to proprietary channels. However, cloud computing may be a complex driver of change to traditional analytical models. The international nature of 'the cloud' raises complex questions of both technology and law, relating to which service provider and which country's legal system controls data transmissions delivered at any given moment. Participants pointed to IPR and user privacy as particular concerns with the cloud, and agreed that flexible thinking and co-operation between regulators and industry players must provide the best way forward.

The spotlight remains fixed on these issues and many more as the European Council of Ministers meets later in May (on 31 May 2010) to conclude on the European Digital Agenda, followed by a further Ministerial meeting on the Information Society on 14 June 2010.

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