



CONVERGENCE IN THE EU NEW REGULATORY FRAMEWORK AND ITS GLOBAL IMPACT

SOFIE MADDENS TOSCANO

TMG

Moscow, April 2004

Background to Developments

- ❖ The convergence of the telecommunications, broadcasting and IT sectors is **reshaping the communications market**; in particular the convergence of fixed, mobile, terrestrial and satellite communications, and communication and positioning/location systems.
- ❖ From the point of view of communications infrastructure and related services, convergence **makes the traditional separation of regulatory functions between these sectors increasingly inappropriate** and calls for a coherent regulatory regime

Background to Developments

The rapid development of the (tele-) communications sector and recent technological advances have brought about new challenges for regulators globally

- ❖ These changes are generally seen to allow data to be transported through all networks, and to be accessed from a variety of terminals. This process is defined as convergence
- ❖ Regulatory frameworks can take it into account by avoiding favoring one technology over another – otherwise known as technological neutrality

Key Questions and Issues Regulators Face

- ❖ Convergence creates a wealth of opportunities for both developed and emerging economies. However, to the extent that the global economy offers opportunities for such technologies to create new, interactively related networks in equipment and services, the regulatory environment must respond

No one solution exists as the ultimate regulatory response to convergence, just as no one definition of convergence exists

Key Questions and Issues Regulators Face

- ❖ Policy-makers and regulators face a continuum of choices in terms of how to balance the costs and benefits of convergence.

The crucial policy decisions facing countries around the world relate to ensuring efficient markets and an optimal use of resources given the cultural, legal and social framework of the country

Key Questions and Issues Regulators Face

- ❖ The unpredictable nature of convergence and the emergence of technologies outside the traditional oversight and regulatory structures have created a new challenge for regulators around the world

Regulators around the world must begin to look at creating dynamic and responsive policies and regulatory frameworks that address the issues raised by convergence in a proactive and flexible manner

Electronic Communications in Europe

THE EU'S NEW REGULATORY FRAMEWORK FOR ELECTRONIC COMMUNICATIONS IS SEEN BY MANY OF AN EXAMPLE OF A GOOD AND MODERN APPROACH TO CONVERGENCE

- ❖ In 1999 the European Commission launched a major review of existing EU telecommunications law for electronic communications
- ❖ The main objectives of the review were to create a set of rules that would be:
 - simple,
 - aimed at deregulation,
 - technology neutral and
 - sufficiently flexible to deal with fast changing markets in the electronic communications sector

Background to European Developments

- ❖ The liberalisation of Europe's telecommunications market reached its peak on 1 January 1998 with the **complete liberalisation** of all telecommunications networks and services **in virtually all Member States.**
- ❖ The developments in technology, innovation in the services being offered, price reductions and improvements in quality brought about by the **introduction of competition** provided the basis for Europe's transition to the Information Society.

Background to European Developments

- ❖ The old legislative framework was primarily designed to manage the transition from monopoly to competition and was therefore focused on the creation of a competitive market and the rights of new entrants
- ❖ In line with convergence between services, networks and technologies, the rules had to be adapted from a traditional telecommunications oriented framework to cover all electronic communications infrastructure and associated services in a consistent manner

Background to European Developments

- ❖ In this context, the Commission presented a review of the current regulatory framework for communications which responded to the need for a more horizontal approach to regulation of communications infrastructure revealed in the course of the consultation on convergence
- ❖ It also took account of the key ideas presented by stakeholders in, for example, the consultation on the Radio Spectrum Green Paper, the report on the development of the market for digital television in the European Union and the fifth report on the implementation of the telecommunications regulatory package

The New Regulatory Framework

- ❖ Due to rapidly changing technologies, convergence and the new challenges of the liberalised markets, a **single, coherent new framework**, that covers the whole range of electronic communications was agreed
- ❖ The new policy framework **caters for new, dynamic and largely unpredictable markets** with many more market players than earlier and a much more developed and detailed market environment

Bases of the NRF

- ❖ Five principles were defined to underpin the new regulatory framework and to govern regulatory action at Community and national level.

They are that the future regulation should:

- be based on clearly defined policy objectives,
- be the minimum necessary to meet those objectives (for example by introducing mechanisms to reduce regulation further where policy objectives are achieved by competition),
- further enhance legal certainty in a dynamic market,
- aim to be technologically neutral (not to impose, nor discriminate in favour of the use of a particular type of technology, but ensure that the same service is regulated in an equivalent manner, irrespective of the means by which it is delivered),
- be enforced as closely as possible to the activities being regulated (whether regulation has been agreed globally, regionally or nationally).

Main instruments in the NRF

- ❖ **Four Directives and a Decision were adopted in two readings by co-decision procedure in March 2002. A fifth Directive, on data protection, followed suit in July 2002. These included:**
 - **The Framework Directive** setting out the main principles, objectives and procedures for an EU regulatory policy regarding the provision of electronic communications services and networks
 - **Access and Interconnection Directive** stipulating procedures and principles for imposing pro-competitive obligations regarding access to and interconnection of networks on operators with significant market power
 - **Authorisation Directive** introducing a system of general authorisation, instead of individual or class licences, to facilitate entry in the market and reduce administrative burdens on operators
 - **Universal Service Directive** requiring a minimum level of availability and affordability of basic electronic communications services and guaranteeing a set of basic rights for users and consumers of electronic communications services
 - **Radio Spectrum Decision** establishes principles and procedures for the development and implementation of an internal and external EU radio spectrum policy
 - **Privacy and Electronic Communications Directive** setting out rules for the protection of privacy and of personal data processed in relation to communications over public communication networks

Main instruments in the NRF

- ❖ **In addition to these basic instruments, the Commission also adopted additional measures that will play an important role in the functioning of the new framework:**
 - **Commission guidelines on market analysis and the assessment of significant market power setting out a common methodology and principles for the national regulatory authorities charged with these tasks**
 - **Commission recommendation on relevant markets defining a list of 17 sub-markets to be examined by national regulatory authorities**
- ❖ **Member States must have transposed the Directives into national law by 25 July 2003 (31 October 2003 for the E-communications privacy Directive)**

Principles Underlying the NRF

- ❖ First - to create a coherent regulatory framework which applies to all transmission infrastructures, irrespective of the types of services carried over them (the so-called 'horizontal' approach)

The new framework therefore covers all electronic communications networks, associated facilities and electronic communications services, including those used to carry broadcasting content

Principles Underlying the NRF

Second - not to impose, nor discriminate in favour of the use of a particular type of technology, but ensure that the same service is regulated in an equivalent manner, irrespective of the means by which it is delivered (technology neutrality)

The new framework promotes the concept of technology neutral legislation

Benefits of Technology Neutral Legislation

Authorisation Directive of 7 March 2002:

“2. Convergence between different electronic communications networks and services and their technologies requires the establishment of an authorization system covering all comparable services in a similar way regardless of the technologies used.”

- ❖ Technology-neutral regulation allows provision of new services and leads to competition between different access methods, known as facilities-based competition
- ❖ In the mid to long-term this is seen in the EU as the best way to lower prices and increased choice of services
- ❖ It also seen as the best way to stimulate innovation and to create resilience in communications infrastructure as a whole

Principles Underlying the NRF

- ❖ Thirdly – to take account of the links between transmission and content regulation

These links concentrate on the following areas: authorization of networks and services, allocation and assignment of radio spectrum; must-carry; access to networks and associated facilities

Principles Underlying the NRF

❖ Fourthly:

to leave the regulation of content broadcast over electronic communications networks (e.g. radio and television programs) outside the scope of the 2003 Regulatory Framework

Mid-term agenda

- ❖ The major challenges ahead are :
 - Surveillance of timely and correct **implementation** of the new regulatory framework by the Member States
 - Assist the **accession countries** in incorporating and digesting the new acquis by the date of accession in May 2004
 - Establish a smoothly running procedure to handle Member States' notifications of national measures to be imposed on operators with significant market power ("**Article 7 procedure**")
 - Develop a **European regulatory culture** to facilitate harmonised application of EU rules throughout the single market , inter alia via the newly established groups and committees
 - Promote the achievement of the various goals of the new framework via targeted **implementing measures**, recommendations, guidelines, working documents and other actions where appropriate

External Relations and International Influence

- ❖ **The EU “model” has influenced the telecommunications regulatory landscape around the world.** As such, EU Member States and the accession countries have implemented this principles of the new regulatory framework into their national legal and regulatory framework as part of the revision process and accession process respectively
- ❖ **The influence of the model is not limited to the EU and the accession countries only though.** Through organizations, groups, programmes and initiatives such as CEPT, ERG, IRG or the EEA, or through EU assistance programs such as @lis, PHARE, TACIS, or MEDA, as well as through cooperation with other regional organizations such as CITELE, Regulatel, the GCC, TRASA or UEMOA, other countries are seeing the benefit of bringing their legal and regulatory framework closer to the EU model

Commission role in Implementation

- ❖ The Commission recognises the **enormous amount that has been accomplished** by the Member States that have transposed the framework in ensuring that the principles on which it is based are faithfully carried over into national law.
- ❖ The Commission's mission is to contribute to the timely and consistent implementation of the regulatory framework for electronic communications by:
 - Monitoring implementation in the Member States and Accession countries.
 - Analysing draft measures made available by national regulatory authorities under Article 7 of the Framework Directive and, where appropriate, preparing Commission decisions relating to withdrawal of such measures.
 - Bringing infringement proceedings.
 - Providing the secretariat for the Communications Committee set up under the Framework Directive.
 - Ensuring bilateral contacts with Member States' ministries, regulatory authorities and market players in the countries referred to above.
 - Reporting on implementation to the European Parliament and Council.

Intra-EU Coordination and Harmonisation

- ❖ The new regulatory framework has created new committees and working groups in order to assist the Commission in its task and facilitate a harmonised implementation of the recently adopted regulatory framework.

The newly created committees are:

- the Communications Committee (replacing the Open Network Provision and the Licensing Committee) - COCOM
- the Radio Spectrum Committee,
- the Radio Spectrum Policy Group – RSPG - and
- the European Regulators Group - ERG

- The Working Party on the Protection of Individuals with regard to the Processing of Personal Data, known as the Article 29 Working Party is maintained under the new Data Protection Directive.

COCOM

- ❖ The Communications Committee has been established by the Framework Directive (Article 22 and Recital 34). It has replaced the ONP Committee and the Licensing Committee which were instituted under the 1998 regulatory package for telecommunications.
- ❖ The Cocom assists the Commission in carrying out its executive powers under the new regulatory framework and the Regulation on the .eu Top Level Domain. The Cocom furthermore provides a platform for an exchange of information on market developments and regulatory activities.

COCOM

- ❖ **Members:** EU member States. The representatives of Norway, Liechtenstein and Iceland are welcome to attend committee meetings. Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovak Republic, Slovenia and Turkey are welcome to attend committee meetings as expert-observers.
- ❖ **Chair:** European Commission
- ❖ **Procedures:**
 - The Cocom exercises its function through advisory and regulatory procedures in accordance with the Council Comitology Decision.
 - In practice, there are at least two meetings every quarter.

RSPG

- ❖ This consultative group has been established by Decision 2002/622/EC with the mission to assist and advise the Commission on radio spectrum policy issues such as radio spectrum availability, harmonisation and allocation of radio spectrum, provision of information concerning allocation, availability and use of radio spectrum, methods for granting rights to use spectrum, refarming, relocation, valuation and efficient use of radio spectrum as well as protection of human health.
- ❖ **Location:** Brussels, secretariat is with the European Commission in Brussels.
- ❖ **Members:** heads of each relevant national regulatory authority in each Member State.

ERG

- ❖ The European Regulators Group for electronic communications networks and services has been set up :
 - to provide a suitable mechanism for encouraging cooperation and coordination between national regulatory authorities and the Commission,
 - to promote the development of the internal market for electronic communications networks and services, and
 - to seek to achieve consistent application, in all Member States, of the provisions set out in the Directives of the new regulatory framework, in particular in areas where national law implementing Community law gives national regulatory authorities considerable discretionary powers in application of the relevant rules
- ❖ **Location:** meetings are held in different countries, secretariat is with the European Commission in Brussels.
Members: heads of each relevant national regulatory authority in each Member State.
- ❖ **Chair:** Currently, Eric Van Heesvelde, Chairman of the BIPT Council (Belgium)

EU Telecommunications Legislation and the Accession Countries

- ❖ The enlargement process involves that all new member states adopt the EU communications policy legislation fully by the date they become members. This means that all new member states will have subscribed to a competitive market approach for all communications services to be overseen by a fully independent regulatory authority
 - Ten countries (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia) will join the European Union on 1 May 2004
 - These accession countries agreed, in the course of the accession negotiations, to implement the 1998 telecoms acquis and to ensure compliance with the new framework as from the date of accession
 - It is a prerequisite for the accession countries that the process of liberalisation and regulation be effectively achieved in the run-up to the full application of the new framework within their territories - it is possible for this process to be carried out legally only once they have formally acceded to the EU

EU Telecommunications Legislation and the Accession Countries

- ❖ The accession countries undertook to take the following steps in order to meet their Community obligations in the electronic communications sector:
 - The accession countries will implement in full, and maintain in force until after the date of accession, the requirements of those provisions of the old framework referred to in Article 27 of the Framework Directive
 - As far as the general legal framework for telecommunications and the rights and obligations generally applicable in the sector are concerned, it is expected that by the date of accession these will have been, on the one hand, implemented effectively in accordance with the commitments made in the accession negotiations and, on the other, adapted where necessary to comply with the requirements of the new framework.
 - As an example, by the date of accession the system of authorisation of electronic communications networks and services in an accession country would comply with the new framework by providing for general authorisation and rights of use only

Examples of Further International Influence

- ❖ The European Union maintains and develops bilateral and regional relationships with a number of countries and regional organisations around the world:
 - The Trans-Atlantic Business Dialogue (TABD) has become an significant factor in the EU/US dialogue on information society matters
 - Relations with other OECD countries like Australia, Korea and Mexico are also important and meetings and exchanges on information society and electronic commerce matters take place at frequent intervals
 - Relations with emerging market economies and developing countries on information society matters are being reinforced and put into a more formal format through co-operation agreements or exchange of letters

Examples of Further International Influence

- ❖ The European Union maintains and develops relationships with a number of organisations around the world:
 - WTO/GATS: The WTO/GATS 2000 services negotiations on telecommunications and electronic commerce
 - ITU: Preparations for common European positions for ITU meetings is one of the most important parts of the Commission's involvement in these matters.
 - OECD: The OECD groups 30 member countries sharing a commitment to democratic government and the market economy. With active relationships with some 70 other countries, NGOs and civil society, it has a global reach. Best known for its publications and its statistics, its work covers economic and social issues from macroeconomics, to trade, education, development and science and innovation
 - WSIS: World Summit on the Information Society. The Summit's aim is "to develop a common vision and understanding of the Information Society and to draw up a

Examples of Further International Influence

- ❖ Examples of programmes with third countries which include regulatory policy and/or technical cooperation elements:
 - eEurope+: The eEurope+ Action Plan launched by the Candidate Countries during the Göteborg Summit on 16 June 2001 is an initiative to co-operate in the implementation of the Information Society in Europe
 - EU MEDIS: Euro-MEDiterranean Information Society. An initiative to stimulate applications designed to reduce the region's informational and technological gap relative to neighbouring countries.
 - Asia IT&C: Co-financing partnerships in Information Technologies and Communications.
 - NeDAP: Northern e-dimension action plan: NeDAP is a specific, operational plan to promote cross-border Information Society co-operation between countries in the Baltic Sea Region. NeDAP builds upon the eEurope and eEurope + initiatives, taking national e-initiatives into account.

Examples of Further International Influence: EU - REGULATEL

The regulators of electronic communications of Europe and Latin America have the responsibility of facilitating the existence of favorable conditions for the economic development of their countries and the electronic communications sector, especially within the framework of the Information Society. As such:

- ❖ They are aware of the importance of the development of telecommunications and the broad possibilities fostered by the technological advances that contribute to the individual and collective progress of their societies and the growth of their economies.
- ❖ For that reason, in their second joint meeting they have discussed several strategic issues of common interest such as interconnection charges, the cost structure of mobile networks, the implications of interconnection charges for the market and final users and the development and challenges of broadband communications.

Examples of Further International Influence: EU - REGULATEL

- ❖ The European Commission has been giving REGULATEL co-operation support in the context of the *@lis* programme. The European Commission will also provide additional support to this co-operation under the *@lis* policy and regulatory bi-regional dialogue that is expected to be launched from the second quarter of 2004.
- ❖ IRG and Regulatel also intend to participate in the organisation and implementation of joint activities for mutual exchange of information, experience and technical assistance as much as possible.

Examples of Further International Influence: EU - REGULATEL

- ❖ IRG and Regulatel agree on a continuation of the co-operation program for the year 2004 entailing the following elements:
 - Information exchange on expert level. Members of IRG and Regulatel will be able to draw on the expertise and experience of their colleague organisations by way of queries about regulatory practice in the participating countries. The response to such queries will be made available to all participants.
 - A program of regulatory courses, study visits to specific regulators and in-depth workshops for the exchange of expertise and experience on specific subjects. The Secretariats of IRG and Regulatel will draw up a draft program of these activities.
 - A third summit meeting between the Heads of the regulatory authorities of IRG and Regulatel, to be held towards the end of 2004, in which the Heads will:
 - evaluate the implementation of the co-operation program of 2004
 - decide on the elements for the co-operation program for 2005
 - discuss highlights of their regulatory challenges with a view to mutual exchange of experience and identifying topics for mutual assistance where appropriate.

Key Considerations for Countries Looking to Accommodate Convergence

- ❖ EU seen by many as the “perfect model” for a NRF accommodating convergence
- ❖ The overall aim of the telecom policy development in Europe in the 1980’s and 1990’s was to dismantle national monopolies. The aim behind the change of the framework was to gradually reduce sector-specific regulation and to rely more on general competition law **as soon as the level of competition in the market allowed for this**
- ❖ Although the model is well adapted to the European realities **today** and a clear example of how to adapt the regulatory framework to the changing reality of technology and the market, it must be kept in mind that:
 - **this may not necessarily be the best solution for every country at this time** and that
 - **European countries have gradually evolved to this framework** since the late 1980’s.

Key Considerations for Countries Looking to Accommodate Convergence

- ❖ Countries around the globe have struggled to come up with the right solution for their market and have crafted out different schemes and timetables for their respective liberalization processes and the legal and regulatory framework to accompany this change

Key Considerations for Countries looking to accommodate convergence

- ❖ The main point is that the final decision regarding an appropriate legal and regulatory framework which accommodates convergence must:
 - be **acceptable** to those governing the sector as well as to those who have a stake in the sector, and
 - **Lead to a solution that fits in with the legal and administrative framework** in the country

REMEMBER

- ❖ **YOUR ROLE IS UNIQUE** - Government and/or regulator is a stakeholder among stakeholders but with a unique agenda
- ❖ **DO NOT GET LOST IN THE DETAIL** - Need to consider the overall set of objectives to be pursued **FOR YOUR COUNTRY**
- ❖ **DO NOT BE SHORT SIGHTED** - A focus on the long term will help avoid inappropriate short term decisions
- ❖ **YOU ARE PART OF A REGION/GLOBAL PROCESS:** While a national matter, essential to consider the situation in an international context



THANK YOU FOR
YOUR ATTENTION

SOFIE MADDENS TOSCANO

Senior Regulatory and Policy Advisor

TMG – Telecommunications Management Group

www.tmgtelecom.com

Tel: +1. 703. 224 1501

Fax: +1. 703. 224 1511

Email: sofie@tmgtelecom.com