



Next Generation Networks and the EU regulatory framework for electronic communications:

EU experiences and perspectives

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OUTLINE

- I** Regulation in an era of change (convergence, NGNs)
- II** Overview of the EU framework
- III** Some key characteristics of the new framework
- IV** Implications – pointers for further discussion



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Market developments: convergence, NGNs

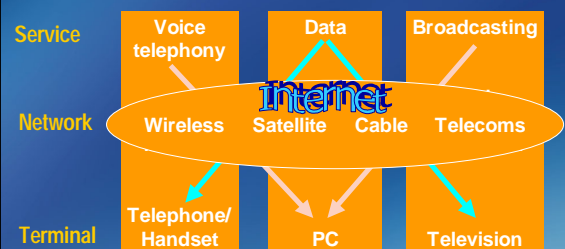
- Transport increasingly IP based, so circuit switched equipment will be gradually phased out
- New standardisation and interoperability requirements emerging
- Powerful NGN roles may be built up (eg controlling both services and infrastructure)
- Interconnection of NGN backbones
- A new services environment
- Customer control through billing



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The Challenge of Convergence



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The Challenge of NGNs

- How does the EU see them? Not specific technologies, but rather the future competitive marketplace for communications and information services
- "Control points" (market power, bottlenecks, essential facilities) will no longer be only in the area of basic access, but may be in any layer of the network hierarchy, including services and content
- Difficult to identify "control points"
- Once "control points" identified, further market developments necessary before we can decide what, if any, action to take
- Plus issues relating to interconnection and to consumers



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DEALING WITH CONVERGENCE AND NGNs

1. All content can be delivered over all networks; network-dependent rules are being overtaken by technology; markets are merging; so:
 - need coherent regulation of communications infrastructures and associated services
 2. Content and transport are different, so:
 - separate regulation for transport and for content, while recognising the links between them
 3. Regulation should be kept to a minimum, so:
 - only impose regulation where competition not effective and where competition law isn't enough
- roll back regulation where no longer needed



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OUTLINE

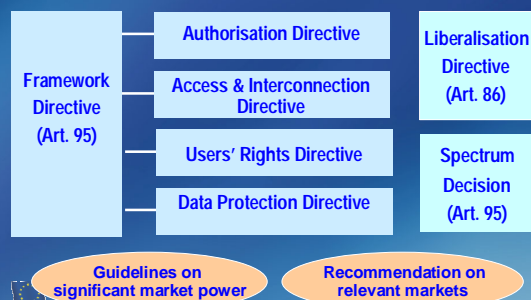
II Overview of the EU framework



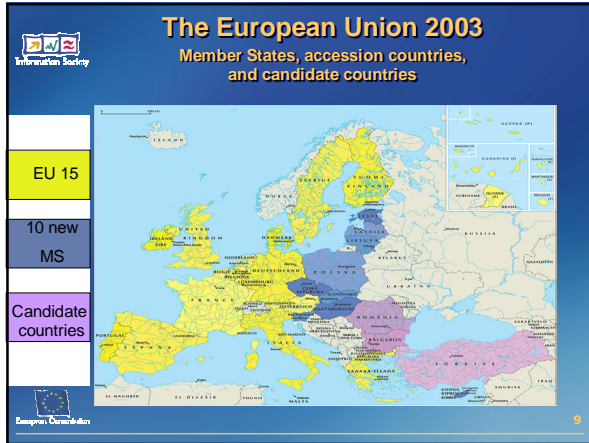
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The EU regulatory package



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Electronic communications

Scope is all networks and services – independent of infrastructure

- Content Services**
- outside scope of EU framework
(e.g. broadcast content, e-commerce services)
- Communications services**
(e.g. telephone, fax, e-mail)
- Communications networks**
(fixed, mobile, satellite, cable TV, powerline systems, networks used for radio and television broadcasting) and associated facilities (e.g. CAS)

- ### Regulatory approach of the package
- **Identify markets**
 - product markets (eg call termination)
 - geographical markets (eg local, national, global)
 - **See whether there are dominant operators on those markets (Significant Market Power)**
 - minimal and linked to degree of competition
 - flexible BUT harmonised at a European level
 - technologically neutral
 - **Regulate only where an operator has a dominant position in an identified market where competition is not effective**
 - **Rely increasingly on competition law**

OUTLINE

III Some key characteristics of the new framework



Some key characteristics of the framework

- Licensing – simplified market entry
- “Light touch” regulation – linked to degree of competition
- Identify markets
- Identify firms with Significant Market Power (SMP)
- Access (“Interconnection”)
- Obligations on SMP operators
- Independence of regulators



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Characteristics (1): Licensing (Authorisation): simplifying market entry

- **Previously**
 - mainly individual licences, especially for voice telephony services
- **Now**
 - no prior permission needed for market entry
 - general authorisations: limited conditions and fees
 - but individual licences may be needed for rights-of-use of scarce resources (eg frequencies);
 - the authorisation gives rights (eg rights to use spectrum and numbers) and also obligations (eg US and consumer protection obligations)
 - *The important point is that companies are allowed to supply electronic communications networks and services to end users without first having to notify or seek the permission of the regulator.*



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Characteristics (2) “Light touch” regulation

Regulation linked to the degree of competition.

Ex-ante (prior) regulation only imposed in markets where:

- competition is not effective

AND

- competition law remedies do not suffice



- except for general obligations arising from public policy reasons eg consumer protection

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Characteristics (3): Identifying Markets

- **Commission Recommendation**
 - identifies product/service markets which may be subject to ex-ante regulation
- **NRA decides on relevant geographic market**
 - NRA can define markets other than those in Recommendation



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Characteristics (4): Identifying firms with Significant Market Power

SMP is the threshold for ex-ante intervention by NRAs, when competition is not effective

- 'old' threshold of significant market power based on 25% market share
- 'new' SMP threshold based on competition law concept of dominance
- A firm is deemed to have SMP if, either individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.



European Commission issues Guidelines on 'new' SMP

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Characteristics (5): Access ("Interconnection")

- Reliance on competition and commercial negotiations
- Regulatory intervention only when market analysis reveals that competition is not effective (new SMP test), with some exceptions
- Obligations to be proportionate to the problem
- A reference interconnection offer is a very useful tool



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Characteristics (6): Obligations on SMP operators for access

- "Tool box" of possible obligations for NRAs to use. May include one or more of:
 - transparency, non-discrimination, accounting separation, mandatory provision of specific facilities, mandatory access to specific facilities, price control
- To fix specific types of problem
- Following a common set of objectives and guidelines



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Characteristics (7): Ensuring effectiveness of the regulatory authority

- Staff need to be equipped with the necessary technical, economic and legal expertise
- Regulator needs to have the legal powers to impose obligations on operators (eg in resolving disputes)
- Decision-making processes need to be impartial and transparent, and subject to an appeal procedure



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Two cases of EU regulatory approach to early examples of NGN services

- **Voice over the Internet (VoIP)**
 - Authorisation Directive creates right to provide electronic communications services and to choose services offered.
 - Regulation is not based on technology used.
 - Commission will clarify so that new services facilitated (public consultation period under way).
- **WiFi**
 - Authorisation Directive creates right to provide electronic communications services and to choose services offered.
 - Offered in an unlicensed band
 - Commission has taken steps to see that the unlicensed band is available across all of the Member States.



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Implications of NGNs

- NGNs facilitate diffusion of potentially highly disruptive technologies (VoIP, WiFi, WIMAX, "IP everywhere")
- NGNs challenge established jurisdictional boundaries (eg "VAS"/"basic", eg "facilities-based"/"services-based")
- NGNs shift competition from lower transport and network layers to higher layers of services and applications – leading to new sources of possible market power
- Possible legal and regulatory responses:
 - **Laissez faire: maximize dynamic competition, but at possible risk to widely accepted goals**
 - **Apply existing regulatory framework, but this may suppress dynamic competition and does not provide legal certainty**
 - **Adaptation of existing policies – this was the route EU took and will in future apply in the NGN environment, identifying market power and new "control points"**



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Thanks for your attention. For more information.....

- **On DG Information Society:**
 - http://europa.eu.int/information_society/topics/telecoms/index_en.htm
- **On the new legislation:**
 - http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/index_en.htm



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