

The International Telecommunication Union
Regulatory Implications of Broadband
Workshop

*Market Implications of Technologically
Neutral Regulation*

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- Dial up access
 - Flat rate
- Broadband access
 - xDSL (digital subscriber line)
 - Cable modem
 - Conditional access (set top boxes)
 - Wireless
- Competitor access
 - Local loop unbundling
 - Collocation
 - Open access (cable TV networks)
- Alternative networks

Competition Law/Dominance as Substitute for ² Sector Specific Regulation

- Relevant market determination
 - Time
 - Certainty
 - Effects on investment, innovation, choice and prices
 - WTO commitments

■ Telecommunications Access Notice

[http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=31998Y0822\(01\)](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=31998Y0822(01))

■ Relevant Market Definitions

http://europa.eu.int/comm/competition/antitrust/relevma_en.html

- Demand and supply side substitutability

■ Convergence Green Paper

<http://europa.eu.int/ISPO/convergencepap/97623en.doc>

■ 1999 Telecommunications Review

<http://europa.eu.int/ISPO/infosoc/telecompolicy/review99/review99en.pdf>

■ Internet Telephony Notice (2000)

http://europa.eu.int/eur-lex/en/dat/2000/c_369/c_36920001222en00030005.pdf

Proposed EU Telecoms Regulation

■ Proposed Regulatory Framework Directive

<http://europa.eu.int/ISPO/infosoc/telecompolicy/review99/com2000-393en.pdf>

- “The convergence of the telecommunications, media and information technology sectors means all transmission networks and services should be covered by a single regulatory framework.” Recital 7.
- Content regulation not included.
- Heavy regulation only justified in presence of dominance, or
 - ◆ “only for undertakings which have financed infrastructure on the basis of special or exclusive rights in areas where there are legal, technical or economic barriers to market entry, in particular for the construction of network infrastructure” Recital 20.

Proposed Regulatory Framework Directive (2) ⁵

- “[N]ational regulatory authorities [shall] take the utmost account of the need for regulation to be technologically neutral; i.e. that it neither imposes nor discriminates in favour of the use of a particular type of technology.” Article 7.1.
- SMP (dominance) determination
 - Joint dominance
 - Neighbouring markets

Proposed EU Directives (3)

■ Draft Guidelines on market analysis and the calculation of significant market power

<http://europa.eu.int/ISPO/infosoc/telecompolicy/en/com2001-175-5en.pdf>

- EU Commission will carry out analysis to determine relevant telecommunications product markets.
 - ◆ Ex-ante analysis is necessary
- NRAs will (yearly) determine relevant geographic markets, existence of dominance and joint dominance, and impose regulatory measures.
- Supply substitutability, “products or services whose objective characteristics, prices and intended use make them sufficiently interchangeable.” para. 39.
- Narrow product markets likely. paras 56-58.

Proposed EU Directives (4)

■ Proposed Access and Interconnection Directive

http://europa.eu.int/comm/information_society/policy/framework/pdf/com2000384_en.pdf

- “The Directive lays down a framework of rules that are technological neutral, but which may be applied to specific product or service markets in particular geographical areas, to address identified market problems.” Explanatory Memorandum, p. 2.
- “The use of ex-ante rules by national regulatory authorities should be limited to those area where ex-post application of the remedies available under competition law cannot achieve the same results in the same time-scale.” Recital 4.
- Conditional access systems included. Annex I

Proposed EU Directives (5)

■ Proposed Authorisation [licensing] Directive

<http://europa.eu.int/ISPO/infosoc/telecompolicy/review99/com2000-386en.pdf>

- “Convergence between different electronic communications services and networks and their technologies requires the establishment of an authorisation regime covering all similar services in a similar way regardless of the technologies used.”
Recital 2.

Proposed EU Directives (6)

■ Draft Universal Service Directive

http://europa.eu.int/comm/information_society/policy/framework/pdf/com2000386_en.pdf

- “In a competitive market, certain obligations should apply to all undertakings providing publicly available telephone services at fixed locations and others should apply only to undertakings enjoying significant market power or which have been designated as a universal service operator.” Recital 4.
- Universal service support funds may be established by Member States and funded from general revenues or from undertakings providing services in the Member State. Recital 16 and Article 13.3-4.

US Approach

■ 1996 Telecommunications Act

<http://www.fcc.gov/Reports/tcom1996.pdf>

- Neither technological nor company neutral

■ Enhanced Service Provider Exception

■ AOL/Time Warner Decision

http://www.fcc.gov/aol_tw.html

■ US doing well in broadband deployment

- Cable modem services not subject to same regulation as ILECs
- ILECs (Bell companies) leading in DSL deployment
- Prices are increasing

- It is questionable how much change will be noted in reality of regulation.
- Disappearance of special categories means loss of regulatory subsidy.
 - Regulation is a cost, and should only be imposed for sound reasons.
- Most efficient market players should prosper.
- Consumer welfare, that is competition, should benefit.
- Re-concentration dangers.

Conclusions

- Technological neutrality can be seen as a step on the path to full de-regulation and the substitution of competition law for sector specific regulation.
- Information technology industry/Internet has flourished in a largely unregulated environment. This benefit should be extended to all convergent market participants rather than continuing artificial distinctions.

“’Tis a consummation devoutly
to be wish’d.
To die - to sleep.”