

GSR13 Consultation

Contribution from the Office of Electronic Communications, Poland

The ICT technology is a sector which extensively influences on the world growth. The global export of goods from the ICT sector constituted 12 % of the global good trade in 2010. The incomes from telecommunications services reached 1.5 milliard USD in 2010 which was 2.4% of the world GNP. In addition, the ICT technology is used in other sectors of the economy and has a significant impact on increasing the productivity and the effectiveness of the companies.

Last decade was a dynamic development of the ICT technology in the world. The significant growth was noted in the mobile telephony for the last 10 years. The number of subscribers of the mobile telephony increased from 962 million in 2001 to 6 milliard at the end of 2011, which represents 85% of the world population. The numbers of subscribers of Internet access grew up to about 25 % for the last decade and reached 2.2 milliard of users which represents 33% of the world population.

Poland could be a good example for this positive trend of the telecommunications market. Poland has made significant progress since 2005. At the end of the year 2011, Poland was one of the EU Member States with the highest percentage of the mobile broadband penetration, reaching 8,3% (compared with the EU average at 8,1%). The number of people using this type of access exceeded 3,3 mln. In 2008, the mobile broadband penetration was only about 2% (1,92% to be exact) and 733 000 2G/3G modems. Since that time, we have observed dynamic growth in the number of devices on the market, which resulted in the rapid increase of market penetration, reaching about 3% each year (4,66% in 2009 – 1,778 mln modems, and 7,40% in 2010 – 2,82 mln devices). At the same time, we can see a growing number of Polish people who have chosen the mobile access to the internet. The highest annual growth, at about 9%, was recorded in 2010 (24,6% of people using mobile the internet in comparison to 15,7% in 2009). In the next years, the situation stabilized, with a visibly growing tendency (23,3% in 2011 and 26% in 2012). Moreover, Poland has almost the same percentage of citizens using more than one mobile device as the world (for example in 2012: Poland had 89% of users with one mobile device, and 9% of users with two mobile devices, the World: respectively 88% and 12%).

These dynamic trends was possible thanks to liberalization of the markets and abolition of the monopolies, stimulating competition, introducing the harmonized standards, appearing new, cheaper equipment and finally closer international cooperation aimed at the exchange of experience and resolving certain common problems. A lot has been done for the development the ICT sector till now; however the market trends are dynamic and continually changing which requires an on-going deliberate reaction from policy makers and regulators and creation an adequate policy and regulatory environment.

A rapidly developing digital ecosystem has more and more expectations. The market expectations should induce a essential shift in policy and the regulatory approach which adapt to the requirements of the new environment. The regulation should be more flexible, innovative and light-handed. It shouldn't be created in isolation to changing realities of the ICT sector and to market players existing on the market.

In our view there is no room for strict regulation in the market and for imposing a full set of regulatory remedies on the incumbents. Regulators have to combine their duty to protect competition with the very important tasks aiming to stimulate investment. Operators do not want to invest under strict regulatory environment and they expect more flexible approach.

As a result, the regulatory model should account for regulatory predictability, showing entrepreneurs on what rules they will operate in the market and co-regulation, collectively administering a regulatory solution between regulator and industry. Too tough and restrictive regulation may discourage investors. While lack of regulation may bring about monopolies with discriminatory approaches. The role of the regulator is to construct such regulation which balances the different fields of actions. Currently, we need incentives for investors as well as the development of competition which is a driving force for further investment. We also understand that the obligations imposed must ensure a reasonable return on investment for entrepreneurs. One of the effective instrument for future regulation is cooperation between the regulator and operators. However, the competition and consumer rights should not be compromised. A new regulatory approach should also correspond to the best interests of citizens and consumers and develop fair competition on the market.

Nowadays, when new network investments are needed for further development of digital world. In this context, the regulations should not create excessive and unnecessary burden for the operators to invest and operate in the market. That's why we have to remember about the rule *primum non nocere – first of all, do no harm*. We shouldn't intervene using regulatory tools before the market develops. At first, we have to encourage the development of infrastructure, which is so needed by our citizens. Afterwards, we can analyze the market and assess if there are any regulatory problems to be solved.

Creating the optimal conditions for broadband investment and ensuring free competition are the key goals of the regulator. In Poland, we have set the priority to develop solutions which suit the specific needs of the market. That is why we propose amendments to the law, carry out an analysis of the broadband infrastructure and services, provide educational assistance for the market players and develop our own know-how, using the experience of other countries. For example, in Poland we are developing several projects aimed at building regional broadband networks, worth more than 1 billion € in total. That is why the regulator supports entrepreneurs and local governments by providing advisory and educational assistance, including the "National Broadband Forum". We support and cooperate with local governments, which are responsible for deploying the telecommunications networks in areas where telecommunications entrepreneurs have not invested yet.

Co-regulation should be treated as more flexibility and collective initiatives aim at establishing market effective rules of the cooperation between market players. Poland has already experience in this regulatory trend. A good example was the Agreement between the Polish NRA and the incumbent on the provision of wholesale telecommunication services signed in 2009. Now, this trend is transferring to further areas. There are certain present Polish examples of co-regulation. For example, UKE signed the Memorandum on quality of services for operators in 2012. The Memorandum introduced transparent and clear terms and conditions of contracts signed

by the customers, an obligation of publication of comparable information on the availability and quality of the services and minimum requirements of the QoS in order to avoid degradation of the QoS provided to customers. Now, parties of the Memorandum are discussing specific indicators which will be used to measure the quality of services. Another Polish example could be the RAN (Radio Access Network sharing) agreement between the PTC and Centertel operators, which enables to use the broadcast signal or the equipment of one of the two operators to provide services to the clients of both operators.

To sum up, the co-regulation will be a good future solution as it could evolve over time, balance of regulatory and industry interest and finally deliver objective expected by the digital environment. In this, the inter-operator cooperation play an important role and it is viewed in the telecommunications environment as a positive trend, which brings savings in costs and allows quicker implementation of new technologies. The regulators in many countries see this type of action as a good signal for the market, and change their attitude towards those initiatives and their regulatory approaches. They discover that they contribute to the development of the market, with the benefits for all of its actors and participants.