BITS seminar: Should Europe adopt an industrial policy to strengthen its telecom sector?

Cullen International, together with the Universities of Leuven and Namur, held a seminar on: Should Europe adopt an industrial policy to strengthen its telecom sector?

Some of the key points made by the speakers are highlighted in this report.

Panels were composed of the following speakers:

- Alexandre de Streel (University of Namur)
- Justus Haucap (University of Düsseldorf)
- Fabio Colasanti (International Institute of Communications)
- Peter Alexiadis (Kings College and Gibson Dunn Crutcher)
- Richard Feasey (Fronfraith Ltd and Frontier Economics)
- Frederick De Backer (Telefónica)
- Roland Doll (Deutsche Telekom)
- Catherine Trautmann (MEP)

Slides and speeches, where available, can be found here.

Alexandre de Streel (University of Namur) took the view that industrial policy in the telecom sector can be defined as the policies applied by the state to achieve market performances and market structures.

Such policies have been pursued both by the European Commission and the National Regulatory Authorities to seek to deliver the best performances in price and quality for consumers. However, such objectives remain implicit and somewhat hidden behind the complex implementation of the SMP regime and the modernisation of spectrum policy.

Those tacit market structures evolved over time according to the changes in technology, financial markets, political preferences, and lobbying forces - and across Member States.

Prof de Streel then made two proposals to improve the regulation of telecommunications in Europe:

- The Commission and the regulators should be ready to discuss more openly the market structures they have in mind when adopting their decisions and exchange best practices in that regard.
- The Commission and Member States should be ready to set up market performances (e. g. a given level of penetration of broadband) to be attained and, with their decisions, nudge the market in those directions.

Justus Haucap (Heinrich Hein University of Düsseldorf) explained that it was difficult for an academic to be strongly in favour of an industrial policy for the telecom sector because:

- Economic literature on telecom policy is rather contradictory, for example on the relative merits of inter-platform competition vs. service-based competition (see long list of opposing papers in the slides).
- Then, major successes in ICT (Microsoft, Apple, Facebook…) are not the result of an industrial policy.

Prof Haucap referred to a 2009 statement of the German Merger and Monopoly Commission on the regulation of mobile markets. Taken in isolation, the regulation of termination rates or roaming charges is warranted; but when considered together, they lead to a serious fall in margins and a push to consolidation. This highlights the need to adopt a holistic approach of regulation rather than a piecemeal technocratic approach of individual issue.

Fabio Colasanti (Chairman IIC) explained that industrial policy should obviously be an instrument to address market failures. However, industrial policy should not be used to defend national champions or to push a specific technical solution (e.g. D2MAC, X400, ERMES…). However, when there is a high level of confidence regarding the way forward and the choices to be made, governments should not shy away from promoting developments towards a given industrial goal.

Mr Colasanti quoted Luc Hindryckx, the former chairman of BIPT, the Belgian NRA, who deplored that coordination among NRAs was concentrating more on the instruments than on the outcomes. Regulation is a mean to realise an industrial policy and not an objective as such. Concentrating on the outcomes – if these had been spelled out – would make coordination easier and more operational.

Peter Alexiadis (Kings College and Gibson Dunn Crutcher) insisted that the pursuit of "industrial policy" at EU level is not an open invitation for any Commission Directorate to adopt any given new policy that is neither based on their express powers. Thus, even Article 114 of the TFEU (the traditional legal basis for telecom directives/regulations) is based on the understanding that only a very limited range of matters is capable of a maximum level of harmonization (with most being prone only to minimum standards).

These constraints, he said, are part of the fabric of EU decision-making. This is partly because of the "democratic deficit" which characterizes EU legislative action, with the Commission having both the power of initiative and veto while the sole elected body in the EU hierarchy – the European Parliament - has the power only to propose amendments. Consequently, the Treaties are agnostic on many points, with policies following a general moderate liberal line that seeks to balance opposing interests in a spirit of "constructive distrust" reflected in provisions such as Article 106 TFEU (Application of competition law to public undertaking). Its powers are also constrained by reference to such broad principles as proportionality and subsidiarity in Article 5 TEC and the need that such policies not be in conflict with, inter alia, competition policy (Article 7, TFEU).

This results in a EU decision-making characterized by its analytical coherence, based on an arduous system of checks-and-balances and a system of transparency and dialogue. That is reflected most clearly in the importance attached to the conduct of a Regulatory Impact Assessment in advance of harmonization measures being adopted. The small margin for industrial policy action introduced by Article 130 of the Maastricht Treaty " to ensure that the conditions necessary for the competitiveness of the Community's industry exist" is subject to numerous in-built limitations, including the emphasis of that provision on the promotion of SMEs, the imperative that the measures in question not "distort competition" and the need for the Commission to liaise with the Member States in pursuit of such policies.

These constraints become more intense when EU legislators engage in the re-regulation of an already regulated sector, Mr Alexiadis concluded.

Richard Feasey (Fronfraith Ltd and Frontier Economics) took the view that Europe does not have an industrial policy.

The pursuit of the Single Market is not appropriate to the nature of telecom services and cannot be described as an industrial policy. With the Connected Continent proposals, the Commission wants to make European telecoms firms bigger in order to better compete in a global marketplace but it is unclear what the economies of scale are, since most costs are incurred locally, he said. Likewise, further harmonisation seems to have become an end in itself rather than a means to achieve higher goals.

Mr Feasey criticised the Digital Agenda targets for reflecting too much an outdated preoccupations with fibre networks. There is a lack of attention to:

- demand stimulation;
- the decommissioning of copper networks;
- a review of the digital agenda targets.

Europe would be incapable of producing an industrial policy, he said, because:

- European institutions are too weak.
- Little public money is allocated to telecoms.
- European competition law makes industrial policies difficult.
- The European Commission lacks strategic capability.

The US doesn't have one either but there is at least a clear sense of direction and purpose – lead the world in LTE, switch off copper networks by the end of the decade, reallocate capital from fixed to wireless and find the spectrum to support all of this. This agenda is being driven by the operators, with the policymakers very much in a supporting role.

Mr Feasey called for a common goal at the European level and for sharing insights into successful policies at national level (and worrying less about harmonisation). Why, for example, is Sweden doing so well on most metrics that matter in telecoms today.

Frederick De Backer (Telefónica) argued that industrial policy consists of a mix of political objectives (innovation, investment, consumer choice…) and a mix of measures to achieve them (e.g. access regulation or competition law). Market structure should not be a policy objective but rather an outcome, he said.

European and national regulators and competition authorities pursue an objective of perfect competition by eliminating market power. The underlying theoretical model of perfect competition assumes no product differentiation, no innovation and no economies of scale. Equilibrium is achieved instantly. Such static models are not appropriate for the telecom sector.

Choosing to ignore dynamic efficiencies in the assessment of regulatory and competition law cases often lead to unwarranted interventions on the market. It is necessary to develop alternative dynamic models that analyse innovative and investment intensive markets to capture dynamic efficiencies.

Roland Doll (Deutsche Telekom) explained that the concept of industrial policy could potentially encompass very different things. The European ICT sector in the last decade has suffered from a dramatic fall in market capitalization, a fragmentation of markets, falling revenues, to a large extent driven by regulatory policy, resulting in a shortage of investments and a competitive disadvantage compared to large operators from other parts of the world and compared to dominant global Internet companies.

Therefore, if an industrial policy was going to be developed for the European ICT sector, it should have to meet the following requirements:

- Boost digital infrastructure by encouraging private investment and facilitating the development of applications such as eHealth, eEnergy or eMobility.
- Adapt telecom regulation to market realities where former incumbents are competing with other infrastructure providers and global Internet giants.
- Ease in-country market consolidation as well as cooperation between operators (EU-wide standards and interoperability) to allow European operators to achieve the necessary scale to compete with global players in the converging markets.
- Enhance cyber-security, data protection and privacy with a strict application of rules also to overseas suppliers, also to ensure a level playing field.
- Harmonise spectrum policy to ensure better coordination and predictability across Europe preventing excessive prices for spectrum and preferential treatment of entrants and allowing for more scale in Europe.

Catherine Trautmann (MEP-S&D) explained that the expression 'Industrial policy' was a "no-go" for a long time; now fortunately it's coming back to the forefront, said Ms Trautmann. Europe currently does not have a proper industrial policy for the telecom sector but definitely needs one.

She stressed that while sectorial regulations were initially designed to dismantle State-owned monopolies and establish effective competition, the challenge going forward is to incentivise efficient investment in NGA without jeopardising competition.

The current framework is a kind of mutant, she said, bearing the initial DNA of the pure liberalisation project with new features to incentivise investments in NGA. The question is how do we move from the double-objective of effective competition and efficient investment in 28 markets, to effective competition and efficient investment in one European Single market?

In the EU, there was neither the political consensus nor the financial means to pour that much public money into network roll-out (unlike in South Korea, for example). But there is at least one (less costly) thing which could be replicated in the EU: a virtuous relationship between demand and supply, where the general demand of digital equipment and services is created by public authorities (e.g. mandated e-Education), which in turn creates a market for home manufacturers (e.g. tablets for kids). In Europe there is no trace of such schemes, because we tend to consider our main advantage as only being "the biggest market in the world".

Taxation should be part of any good industrial policy, she said, before referring to the work of OECD and of the recently appointed EU high-level group (tax evasion certain Internet giants).