

Dear colleagues,

First I wish to thank Philippe for organising this timely meeting. Network access and interconnection regulation is the core of the electronic communications regulation which should start a well-deserved review or I would rather say rethinking.

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I start with considerations on the market situation.

Voices have expressed the concern of an increase of oligopolistic market power which would be at work in European telecom markets. This concern can be dismissed by the observation that telecom revenues and profits in Europe are still decreasing as they have been doing for years, whereas volumes have increased. This is incompatible with the hypothesis of increased market power. The shrinking of European telecom operators' revenues and profits, is a unique case worldwide in the digital world: everywhere else in the world, telecom industries have growing revenues. Which means that the cause is not in the general telecom business model. It is a specific European telecom problem. This decrease in revenues and profits has negative effects on investments and this limits volume growth and customer surplus. The insufficient level of investment in fixed and mobile telecom infrastructure is now a political concern shared by all stakeholders of our debate.

In mobile, recent mergers must in my view be interpreted as the correction of artificially fragmented markets induced by aggressive regulatory intervention. Within such fragmented markets operators could not cover the cost of capital required to sustain the level of investment necessary to operate with best in class technology. To take the French case, mobile investment has drastically fallen in 2014, as a knock-on effect of the entry of Free in 2012.

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Concerning wireline access infrastructure, we have moved from a standard of monopoly situation when the framework was designed, to a general standard of duopoly situation in a large part of Europe, calling for a more symmetric approach to regulation. Indeed, when infrastructure competition is the main driver of investment, the first duty of regulation is to avoid distorting this competition by prima facie asymmetric intervention. Moreover asymmetric SMP approach does not provide a solid legal basis for access to fixed infrastructure in case of fixed duopoly, which is a key concern in the context of convergence.

The underlying force behind the current fixed mobile convergence via offers and mergers is the switch from voice to data as a major output of our industry. Fixed voice and mobile voice are mainly substitutes. But with adoption of smartphones and tablets, fixed and mobile data are complementary goods from a demand point of view: we have clear-cut econometrical evidence on this. Furthermore, fixed and mobile access data networks are becoming more and more technically integrated. Therefore Fixed Mobile convergence has become a procompetitive and pro consumer move.

But today, mobile only network operators may be excluded from the market if they cannot propose competitive fixed mobile convergent offers, as they face aggressive fixed-mobile strategies by fixed operators and notably by cable operators currently exempt from access obligations but benefiting from MVNO obligations imposed to Mobile operators in their licenses.

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This market overview explain why today's challenges of fixed access are not efficiently addressed by the current framework.

Fixed infrastructure access regulation should be grounded on symmetric obligations, which in the one hand does not distort fixed infrastructure competition and supports co-investment, in the other hand secure access to fixed infrastructure in case of duopoly. If this is required to meet the efficient competition objectives of the framework, typically as long as there are less than three competing undertakings owning or co-owning fixed infrastructures, symmetric regulation obligation may consist in fair and reasonable access with no abusive discrimination imposed to all fixed infrastructures, as they may be bottlenecks. In addition, in case of SMP from a single undertaking, complementary asymmetric remedies, such as non-discrimination or price regulation, may reinforce symmetric fixed access obligation.

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This evolution of access regulation can be done by simple changes in the texts of the framework directives.

The primary role of symmetric access regulation for fixed infrastructure can be formalised using the article 12 of the framework directive which addresses on a symmetric basis the issue of fixed infrastructure sharing. It is mentioned by the NGA recommendation as the right basis on which symmetric regulation of fixed access can be grounded. It has been used in several member states for symmetric regulation of FTTH. The review may reinforce this article by including provisions:

- on the proportionality of symmetric access obligation in relation with the framework objectives
- on harmonisation and notification to the Commission to support the Single Market
- on framing the potential access obligations which could be mandated pursuant symmetric regulation
- on the process by which national authorities need to analyse or review such symmetric regulation

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The reviewed framework should also limit the scope of asymmetric SMP regulation. Market analysis and related asymmetric remedies imposed to SMP undertakings should exclusively concern fixed access infrastructure and may only add stronger remedies to access obligations mandated via symmetric regulation.

An irreversible exclusion of mobile access from any sector specific access regulation would be consistent with existing regulation and constitute a very positive political deregulatory signal in line with the logic of the framework itself. Moreover, spectrum licensing and competition law provide public authorities with all relevant instruments to regulate if appropriate mobile access.

And as explained in the second roundtable, interconnection can be better addressed via other means than asymmetric SMP approach.

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The framework resulting from this proposal would be:

- balanced, as potential symmetric regulation of fixed access imposed to owners of fixed infrastructure is the exact counterpart of obligations imposed in spectrum licences to mobile operators.
- efficient, focussed and forward looking using specific tools to address enduring sector specific issues while irreversibly limiting the scope of the general purpose tool of SMP regulation to actual residual cases of SMP situations
- ambitious and responsible, making a bold step towards the end of transitory sector specific regulation in the framework, while avoiding disruption in the substance of regulation itself.

Finally the objectives of the framework expressed in article 8 of the FW directive and with them the proportionality test of regulatory intervention must be redefined in line with today and tomorrow's challenges. This is a far-reaching topic which needs to be addressed on its own right and I will not elaborate more on it here.