

Dear all,

Concerning interconnection regulation, I will start from the situation we are experiencing today for voice, sms and data. I will then move to the underlining reason which makes the current situation unsatisfactory and I will end with a proposal to redress the current situation. In a nutshell the proposal is to change the rationale and legal basis of regulatory intervention for interconnection issues, from control of monopoly power, which appears to be the result of circular regulation, to support of efficient coordination between network operators to provide end to end service.

---

Let's start from practical problems.

6 years after the adoption of the recommendation on fixed and mobile voice termination rates, we are in a disorder. An operational disorder as diverging TRs in Europe generate unjustified financial transfers between member states. This disorder impacts roaming regulation. A legal disorder, with at least Netherlands, Luxembourg and Germany openly expressing their opposition to the EC recommendation of TR at pure LRIC price. The dispute is economical for the BNetzA does not buy the reasoning of the Commission. It is legal when Netherland courts consider that European soft law violates national hard law by using a cost standard not supported by national legislation. The European Court of Justice will have to decide, and its decision will have far reaching consequences. This situation could have been anticipated: without reopening the economic debate on the TR recommendation, what is obvious is that pure LRIC cannot be a cost standard of general relevance for price control purpose under SMP regulation. If it may be relevant, it is only under very, very specific circumstances. Hence using a general purpose legal approach, such as market analysis and SMP remedy, to impose such a specific type price control was prone to be questioned under general legal principles. And it is what happened. If pure LRIC is to be imposed, it must be under a specific legal instrument and not under a general purpose approach.

---

A second practical issue is the recent case of French SMS termination regulation. If you have not followed this, Arcep wanted to continue to regulate SMS termination in France. EC considered that the conditions were not met and as the Commission has a veto power on relevant markets, Arcep had to withdraw its draft decision. What is interesting here is that several mobile operators including Orange found Arcep regulation useful and questioned EC approach. So the good question is: why operators found that they would have been better-off being regulated? The answer, at least for Orange, is that Arcep regulatory intervention would have supported an implicit but efficient form of coordination between network operators leading to more competitive end-to-end services.

The third practical issue concerns internet peering and transit dispute which may proliferate in the future. It would be useful if regulation explicitly supports classical forms of peering policies by which bill & keep types of arrangements are not unconditional but subject to conditions of symmetry or reciprocity.

---

Underlying these practical issues, I wish to stress that the current rationale for regulatory intervention on interconnection, the so-called termination monopoly theory is the result of circular regulation and does not stand an in-depth challenge. The reasoning which is supposed to prove the ability of an operator to abuse of its termination monopoly is subordinated to two regulatory pre conditions: first, it stands only if there is an interconnection obligation. Absent this obligation, the termination rate would need to be negotiated within the interconnection deal. Second, one can benefit from an increase of its termination rate only if other operators cannot retaliate by increasing their own termination, which is what they would do in such a case if they were not regulated. In other words, termination regulation based on termination monopoly is circular.

---

So it is time to change the logic of interconnection regulation. Interconnection allows each subscriber of each network to benefit of network effects corresponding to the union of all subscribers of all networks. They benefit of end-to-end services based on wholesale interconnection arrangements between networks. Retail services and interconnection services are complementary services. It is well known in economic analysis that it is efficient to allow strong technical and economic coordination between undertakings when they produce complementary services. Therefore, the rationale of regulatory intervention concerning interconnection arrangements should be to support an efficient level of technical and commercial coordination between operators, coordination which could be based on concepts of efficiency, balance and reciprocity. Article 5 of the access directive which defines symmetric interconnection obligations should be further developed in this respect.

---

Supporting coordination, balance and reciprocity principles for interconnection arrangement should then be an explicit basis for regulatory intervention.

On the specific topic of voice termination, the most obvious option would be to go for a European regulation imposing single values for FTR and MTR respectively in the EU. However, if such a text includes pure LRIC as a cost standard for termination rate, its legal basis would benefit from a specific justification related to the concepts of coordination, balance and reciprocity. In other words, both amending Article 5 AD in the one hand and a specific termination rate regulation in the other hand may be both necessary to go forward in the domain of interconnection.