

Annex 1

Questionnaire on Review of the Recommendation on Relevant Markets Susceptible to Ex-Ante Regulation

III.1. Relevant trends in the electronic communications sector that have an impact on the definition of the relevant markets

Question 1: What are the technological developments in the electronic communications sector at the EU level as of 2007 that have an influence on how the markets should be defined in the revised Recommendation from an ex ante perspective?

In general, technological developments and innovation are most pronounced for telecoms equipments as well as for Internet and VAS services, rather then for cables or connectivity facilities. Optical fibres, coaxial and copper cables used for fixed access and backhaul (for both fixed and mobile) are much less characterised by innovation and are renewed on a very infrequent basis. For example, copper access lines installed more than 60 years ago are still in use.

As it will be explained below, the most important technological developments are taking place in the mobile sector as a result of LTE networks development (see §a below) and significant increase in mobile data demand (see §b below). Despite some claims, however, such changes are not resulting in definitive fixed-mobile substitution (see §c below).

(a) LTE development

LTE is coming as the next big discontinuity and disruptive force in the mobile industry. Most analysts believe that LTE will not constitute just another mobile access technology but the driver that will trigger a leap forward in the mobile customer experience.

LTE technology novelties include greater spectral efficiency, additional spectrum (800, 2600 and soon also 700 in Europe), shorter latency, flexible and advanced network architectures for improved mobility and, ultimately, smarter electronics and devices. Such evolutionary step will force strong advancements in the mobile industry both from demand and supply side and may end with changing the competitive equilibria of many geographical or product markets. From the demand

PosteMobile S.p.A.
Società con unico azionista
Via Aurelia, 866 - 00165 Roma
T (+39) 06 9667 4848 F (+39) 06 9667 4997
C.F. e P.i 06874351007 - Cap. Soc. € 32.561.188 i.v.
Registro Imprese di Roma, REA 995573
www.postemobile.it

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side, LTE will tap into the stronger demand of (smarter) personal mobility and will provide greater consumer convenience at relatively low prices (if European pricing trends will keep). From the supply side, the increasing role of LTE in the Digital Agenda (Digital Divide) will make such technology implemented faster than expected and a competitive force that may affect the long-term mobile-mobile and mobile-fixed equilibria.

LTE is going to happen as early as 2013. In many European markets the spectrum bidding processes are already over and few big countries have just launched market operations (es. Germany, Italy, UK).

(b) Mobile data demand

The mobile industry is completing a huge shift toward mobile data. Cisco reports that the data mobile access increased dramatically from 2008 up to now, doubling year by year. The current growth rates of mobile data traffic resemble those of the fixed network from 1997 through 2001, when the average yearly growth was 150 percent. In the case of the fixed network, the growth rate remained in the range of 150 percent for 5 years.

Such a growth is expected to continue dramatically, as shown in the following chart:

7/59/3 OAIER ZÖHNEZÖHG Exabytes per Month 10.8 EB рег month 6.9 EB per month 4.2 EB per month 2.4 EB per 1.3 EB month per 0.6 EB month per month 2011 2012 2013 2014 2015 2016

Figure 1. Cisco Forecasts 10.8 Exabytes per Month of Mobile Data Traffic by 2016

Source: Cisco VNI Mobile, 2012





Global mobile data traffic is expected to grow 18 times over the next five years. This dramatic growth is due, in part, to the increase in the estimated number of mobile Internet devices connected, which will likely exceed the number of inhabitants on Earth. According to Cisco, in the period 2011-2016 the global mobile data traffic will exceed three times the fixed data traffic globally.

Western Europe will record a CAGR rate of 68%, representing a growth of 14 times.

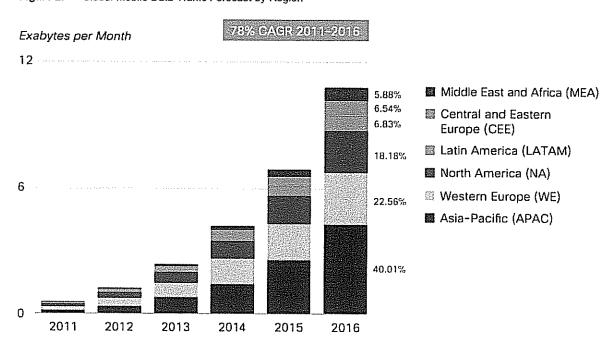


Figure 2. Global Mobile Data Traffic Forecast by Region

Last month (November 2012) also Ericsson published a Mobility Report, stating that:

Data traffic doubles between Q3 2011 and Q3 2012

Source: Cisco VNI Mobile, 2012

Quarterly growth between Q2 2012 and Q3 2012 was 16 percent

Ericsson traffic outlook is that mobile data traffic is expected to continue the trend of doubling each year. Mobile data traffic will grow considerably faster than fixed data

¹ Cisco ® Visual Networking Index (VNI) Global Mobile Data Traffic Forecast 2011-2016, (February 2012)



traffic over the forecasted period. Mobile data traffic is expected to grow with a CAGR of around 50% in the period 2012-2018, entailing a growth of around 12 times by the end of 2018.

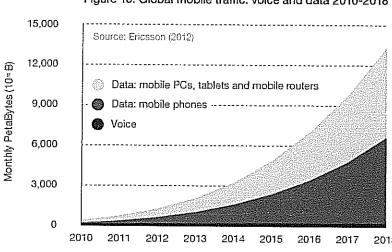


Figure 10: Global mobile traffic: voice and data 2010-2018

(c) Lack of fixed-mobile substitution

Both fixed and mobile sector the simple upgrade (or just replacement/modernisation) of the existing transmission infrastructures is permitting to reach higher capacity and speeds. Some authors may argue that technological developments in mobile such as the roll-out of LTE networks (as described above) might result in substitution between fixed and mobile access networks thereby affecting market boundaries and leading to an absence of SMP in both fixed and mobile. However, it should be noted that fixed equipment is evolving as the same (or even greater pace) than mobile technologies. This means that there is a constant or even increasing speed gap between fixed and mobile technologies. For example the latest optical equipment can deliver 1Gbit/s over fibre, whilst the speed capabilities of copper or FTTC lines have increased with new iterations of xDSL equipment and vectoring.

Other important technological differences remain between fixed and mobile which affect the reliability, cost and service capabilities of each technology. The fact that mobile is a shared rather than dedicated medium, for example, means that it cannot be sold with reliable guarantees about the speed delivered and, if there was significant use for high bandwidth services such as video – the cost would increase dramatically. These differences tend to mean that fixed technologies are more suited



to high bandwidth applications and entertainment packages, whilst mobile is more suited to lighter use.

Increased demand on the mobile network would in turn be likely to spur increased need for fixed investment and offloading from mobile to fixed networks in order to support that demand. This is another factor on the supply side which supports the conclusion that fixed and mobile networks are complementary rather than substitutable.

Conclusions on technological developments

To sum up, despite technological developments in the ICT sector as described above, in general access bottlenecks, both in the fixed and in the mobile sector, are unchanged.

This is particularly relevant for the mobile sector, where LTE development is going to shake the market. Despite spectrum awards, the competitive scenario is not going to change. The mobile access market is due to remain a strict oligopoly tending to further consolidation (like in Switzerland and in Austria).

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Question 2: What are the changes in structure and functioning of the relevant markets (e.g. supply and demand side developments, bundles, convergence, geographic scope), which should be reflected in the revised Recommendation from an ex ante perspective?

Demand-side developments

The main developments on the demand side are the trends towards increased specialisation and customisation in retail services with bundles of services becoming increasingly the norm.

Data from the European Commission and BEREC show increasing trends towards take-up of bundled offers by residential consumers. These comprise at least voice and broadband – and – depending on the member state - increasingly also television. Integrated fixed and mobile SMP operators are also starting in some countries to take advantage of their scope by offering quadruple play bundles including mobile. Austria is a notable example.

The bundle practices have the effect to limit the concrete possibility for customers to switch from a provider to another, because terminating the contract with a single provider would impair the fruition of a plurality of services. This situation permits fixed-mobile-content integrated operators to exercise considerable retention power vis-à-vis respective customers. Thus, in a context of developed bundles market

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practices, switching is always theoretically possible for consumers, but in practice it is unfeasible.

Supply side developments

On the supply side, a major development is the increasing trend towards converged core networks serving both fixed and mobile, and the strategy – particularly by operators with extensive fixed infrastructure – of offloading mobile traffic on to their fixed infrastructure. These developments would tend to confirm that mobile cannot on the supply side substitute for fixed infrastructure. Increasing mobile demands rather tend to incentivise increased reliance on fixed infrastructure. These developments tend to benefit integrated operators, and we expect that in general incumbent operators with both fixed and mobile infrastructure are likely to be able to leverage these to their best advantage in both residential and business markets, increasing the challenge for NRAs to sustain effective competition going forwards.

Question 3: Can you identify any market bottleneck which in your view cannot be addressed by ex ante regulation via a revision of the Recommendation alone? How in your view can such market bottlenecks be addressed?

A bizarre anticompetitive situation is emerging for MVNO as a result of the Roaming III Regulation of June 2012.

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III.2. Three criteria test

Question 4: In your opinion, is the three criteria test, as defined in the Recommendation, an appropriate instrument in defining the relevant markets susceptible to ex ante regulation or would alternative means to identify relevant markets be more suitable?

We continue to believe that the 3 criteria test remains an appropriate tool for both the Commission and NRAs to "screen" markets in order to decide whether or not to analyse them further in the context of the possible need for ex ante regulation. The 3 criteria test is to some extent embedded within the current telecoms framework (recital 27 of the Framework Directive) and should remain constant in order to provide some stability and predictability for the market.

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Question 5: Should, in your view, criteria be added or removed from the list or should the criteria be formulated in a different manner? Should additional guidance be given to the existing criteria?

In view of article 14(3) of the Framework Directive concerning "leverage", it should also be possible to identify a market as susceptible to ex ante regulation if links between two markets would allow dominance to be leveraged from one to the other. More guidance should be given in the cases of **collective dominance**, a very frequent scenario in the mobile access market which however neither NRAs or competition authorities have been able to address properly.

Question 6: How, in your view, can legal certainty be best ensured in identifying the markets susceptible to ex ante regulation?

Developments with the list of relevant markets so far — in particular the reduction of the original 18 markets down to 7 - have suggested an emphasis by policy makers on withdrawing regulation. This results in considerable uncertainty for non-SMP operators that may be relying on regulation of bottleneck assets (ie assets that cannot economically be duplicated) to achieve a viable business case. In particular, with this bias, entrants can have little expectation that regulation will persist beyond a period of a few years and in turn this increases the risk of their operations and cost of capital.

To achieve any meaningful competitive outcomes through SMP regulation, it is important for policy-makers to provide some comfort about their intentions longer-term, and in particular to avoid the perception of bias towards "removing markets" and to indicate markets which are considered to represent economic bottlenecks for the foreseeable future and thus can be expected to remain on the list for a significant period.

III.3. Scope of the markets listed in the Recommendation

Question 7: In your opinion, should the scope of any relevant market(s) identified in the Recommendation be changed? If yes, please explain why, referring to the relevant market(s) concerned.

Non applicable

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Question 8: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of such changed scope on consumers (users), competition, and development of the internal market. Please provide separate reasoning for each market subject to a new scope.

Non applicable

III.4. Relevant markets listed in the Recommendation

Question 9: On the basis of the three criteria test carried out at EU level, should any of the markets listed in the Recommendation be removed from the list in the revised Recommendation? If yes, please provide comprehensive reasoning thereof.

We do not believe that competitive developments warrant the deletion of any of the markets listed in the relevant market recommendation. Without discussing these matters in details, it is worth highlighting that, with the exception of market 1, these are "wholesale" markets – and thus it is not only relevant to consider the number of infrastructures (although more infrastructures would tend to result in greater incentives to wholesale) and retail market shares, but also whether the market structure leads to wholesale demand being met on fair commercial terms.

Question 10: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of such removal of markets on consumers (users), competition, and development of the internal market. Please provide separate reasoning for each market you propose to delete from the list.

Non applicable

III.5. Further markets regulated at national level

Question 11: On the basis of the three criteria test carried out at EU level, should any of the markets regulated by NRAs on the basis of national circumstances (such as SMS termination or broadcasting transmission services) be added to the list in the revised Recommendation from an ex ante perspective? If yes, please provide comprehensive reasoning thereof.

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SMS TERMINATION

In the last recommendation on relevant markets of December 2007 the Commission gave no clear explanation as to why SMS were not included in the final revised



recommendation. However, it was said: "To the extent that the exchange and termination of SMS are considered to result in similar market power problems [as voice-call termination], it is open to NRAs to consider defining and notifying an additional separate market for SMS."

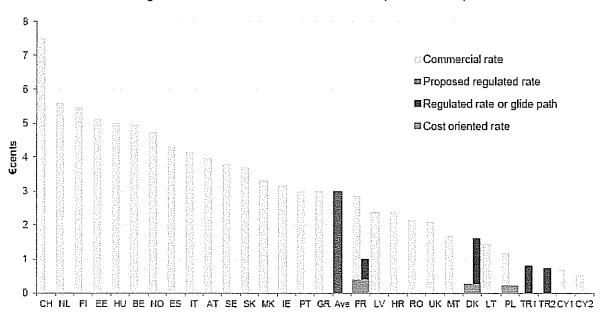
Recently AGCOM published a public consultation on SMS termination market (Del. 420/12/CONS of November 13, 2012). <u>Apparently, AGCOM</u> intends not to regulate the wholesale market for termination of off-net SMS on each individual mobile network <u>because the three cumulative criteria for ex ante regulation are not met.</u>

In particular, AGCOM considers that the second criteria should not be met on the grounds that competitive pressure from alleged substitutable messaging services would be sufficient to increase competition in the future.

PosteMobile **OMISSIS** believes that the following background should be taken into account.

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Figure 1 – Mobile-to-mobile SMS termination rates (Cullen research)



Ave: European weighted average, as calculated by BEREC (July 2012)

TR1: Avea (highest), TR2: Turkcell (lowest)

CY1: MTN. CY2: CYTA

FI: source BEREC Jan. 2011 snapshot. No more recent data publicly available.

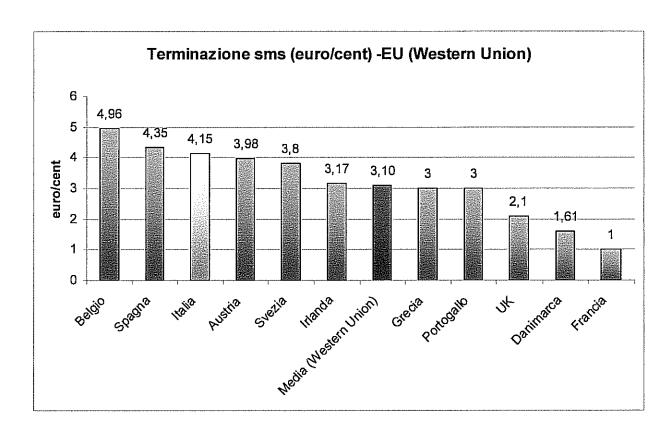
FR: commercial rate for Free Mobile (ARCEP analysis of Free Mobie SMS termination service underway.

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More specifically, if we look only at the average SMS termination rates of EU countries western union the competitive problems (market power) are obvious in the SMS termination market in Italy, where the Italian tariff is higher than the EU average (WE) of 33.8 %.

December 2012 (Cullen International)



Conclusions on SMS termination

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WHOLESALE MOBILE ACCESS



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In any case, whatever may be the incentive for MNOs to grant mobile access, one should not conclude² that once the an MVNO business is launched, then a virtuous circle will start and MNOs will be naturally induced to offer more and more competitive conditions to access seekers because:

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a) Absence of a virtuous circle – fragility of competition in the mobile access market

Currently, the MVNO business is declining throughout Europe. A study of GSMA³ reports that recently 84 MVNOs closed the business, while 44 were acquired by MNOs. Considering that the number of MVNOs in Europe is around 500, this means that over 20% of the undertakings left the market. If this trend will continue, the MVNO business will be strongly reduced in Europe. A report from AnalysysMason shows that decline is well consolidated in Nordic countries.⁴ Another report (Informa⁵) considers that "the mortality of MVNO is very high" and that since 2006 the number of launches of MVNO is constantly declining. Since 2007 in Italy almost 50% of MVNO either left the market or remained insignificant. These figures suggest the idea that, while an important number of MVNO have been launched in the last 10 years, the cycle is now coming to an end.

In addition, one should note that market shares owned by MVNOs are negligeable in most of the markets. With the exception of a few countries, such as Netherlands, France and Germany, the average market share throughout the EU is 4,1%. In Italy MVNOs own around 4% of the mobile market. There is no evidence that such market shares may be increasing in the future, in despite of innovation MVNO are able to provide to the market⁶.

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² EXPLANATORY NOTE to the 2007 Commission Recommendation on Relevant Product and Service Markets, p. 45.

³ Wireless Intelligence "The MVNO model, global footprint and outlook", Joss Gillet, May 2012

⁴ http://www.analysysmason.com/About-Us/News/Newsletter/Is-there-a-glass-ceiling-for-MVNOs/

⁵ Informa 2011, Global MVNO Forecasts to 2015.

⁶ In Italy, PosteMobile was the first mobile operator providing innovative and extremely useful SIM-BASED VAS: M-Banking, M-Payment, M-Commerce, M-Postal services. Recently, Near Field Comunication services. In 2012 PosteMobile managed more than 20Mln of both informative and financial transactions



All the above conditions lead to think that the virtuous competitive circle is not working for MVNO, this business is generally declining and MVNOs are not able to exercise competitive constraints over MNOs. The Commission should be worried about this decline which is a clear symptom of decreasing competitiviness in the mobile market.

b) Mobile access agreements in the market

The European Commission tends to believe that the mobile access is competitive because of the large amount of commercial MVNO deals in the market (around 500 in the EU).

Against this background, one should note that the vast majority of such MVNO deals cannot be considered as "access" in technical terms, because they are pure resale/rebranding agreements.

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It is worth-noting that, once a pure resale agreement is operational, the upgrade to a full-MVNO model is very problematic, since in addition to the mentioned problems (excessive and bundled access prices lack of unbundling combined with the cost of the mobile access) one should consider further issues like the change of SIM-cards and the full migration process (see below).

c) No realistic switching capability

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To conclude, the European Commission should carry-out a deep analysis about hosting switching for MVNOs and consider, on the basis of the concrete cases verified in the market, whether this is a realistic possibility. Should the number of switching cases verified in the market be ZERO or insignificant, then the Commission should re-consider switching as a criterion to assess the competitiveness of the wholesale mobile access market.

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Conclusions on wholesale mobile access

In most European countries MVNOs are declining, competitive failures are emerging and market solutions (such as switching) are not working. The European Commission should therefore add the mobile wholesale access market to the list of the relevant markets in order to clearly empower NRAs to address such issue.

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Question 12: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of adding those market(s) on consumers (users), competition, and development of the internal market. Please provide separate reasoning on the impacts for each market you propose to add to the list.

See answers to question 11 above.

III.6. Markets to be added to the revised Recommendation

Question 13: On the basis of the three criteria test carried out at EU level, can any other markets be identified that should be added to the list in the revised Recommendation, from an ex ante perspective? If yes, please provide comprehensive reasoning thereof.

Non applicable

Question 14: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of the relevant markets(s) you propose to add on consumers (users), competition, and development of the internal market. Please provide separate reasoning on the impacts for each market you propose to add to the list.

Non applicable

III.7. Transnational markets

Question 15: On the basis of the three criteria test carried out at EU level, can any transnational market(s) be identified in the revised Recommendation, from an ex ante perspective? If yes, please provide comprehensive reasoning thereof.



Non applicable

Question 16: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of the relevant market(s) you propose to introduce on consumers (users), competition, and development of the internal market. Please, provide separate reasoning on the impacts for each market you propose to introduce.

Non applicable

Roma, 8 January 2013