

Relevant trends in the electronic communications sectors 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?

Answer: The main technological development of the 3G, LTE and fibre technologies led to the increase of the data transmission speed of the fixed and mobile broadband, especially talking about the most competitive part of up to 10 Mbps speed (i.e. excluding super-fast broadband). This development gradually erases the margin between services provided by fixed or mobile technology as such. Moreover, the conventional criteria to distinguish fixed technology from mobile are not sufficient any more, as for example services via WiMax can be treated as fixed services as well as mobile, depending on the used mode; the same can be said about WiFi (if the network of the WiFi basic stations is dense enough, the mobility as a movement of the terminal equipment from one basic station to another without ending the session is possible). Likewise some MVNOs apply the service providing schemes, in which it is difficult even to compare the “traditionally” provided services with the services of the new schemes, or to decide whether the provided services are of the mobile or fixed nature. Usually the nature of the service reclines on the numeration basis, but also this solution is very relative as the portability of the number is a mandatory obligation for the operators and is technically possible in (and between) both platforms (fixed and mobile) and only legal barrier for the time being does not allow a full migration of numbers.

The competition between the telephony at a fixed and non-fixed location become more and more strong, the prices of the services approximate to the same level. Therefore the market definition, based entirely on the technical characteristics, seems to be insufficient to justify separate markets. Also see the answer to question 2.

The technological development also determines the convergence of the Market 5 and Market 6. See a more explicit answer to the question 7.

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?

Answer: The above mentioned technological convergence leads to the structural and functional market changes. For instance, talking about the possible Market 5 definition, it could be noticed that in the actual version Recommendation this market comprises non-physical or virtual network access including ‘bit-stream’ access at a **fixed location**. The practice in Lithuania as well as in other countries shows that despite the initial definition of the access at a fixed location, all Market definition analysis (retail market analysis, technical approach, demand side and supply side analysis) is being carried out evaluating direct and indirect influence and/or constrains of mobile broadband access. Therefore, the definition limited only to the fixed location should be revised.

The same can be applied to the voice services at a fixed and at non-fixed location. As the call to each network is terminated in that particular network, there is no cause to distinct fixed and mobile networks, and the analysis of the demand and supply side can be made comparing mobile networks not only each mobile, but also fixed networks. Besides, the fact that the prices of mobile services decreased to the level of the fixed voice services prices and that penetration of mobile voice telephony has reached 150 % in most of EU countries and mobile voice services gives a high pressure on fixed telephony market, also points that this separation, based almost only on the terminal equipment characteristics, became artificial and creates a barrier for further technological and service convergence.

In general, the gradual convergence processes take place in the development of the terminal equipment such as tablets PC, smart phones and smart TV, where it becomes difficult to separate

one service from another. The technological development determines the development of new services and therefore the competition of platforms, services and equipment. Thus it additionally demonstrates the necessity of wider approach to the initial market definitions.

Question 3: Can you identify any market bottlenecks 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?

Answer: Peering or direct interconnection for exchange of internet traffic/data traffic might be considered as a potential market in the Recommendation. As moving to NGN, IP interconnection and exchange of IP packets (not only voice, but also internet or other data services) would become important and limiting interconnection of networks to exchange traffic, might become a bottleneck of competition.

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?

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?

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

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.

Answer: Markets 5 and 6 possibly could be considered as one market. Wholesale terminating segments of leased lines are usually defined as a separate market due to the specific characteristics as guaranteed data transmission speed, symmetric both direction data transmission speed, transparent transmission process, etc. Technologically it can be considered as one of the Market 5 services with high quality demand. Theoretically (and practically), if the WBA provider offers high quality access, it can be equated to the Market 6 services. The retail leased line service as such does not create any demand any more, as internet access services can supply high speed data transmission services.

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.

Answer: In the case of Lithuania, when the Market 5 was being analysed, the retail internet access via leased lines was also taken into the consideration. But at the very early stage of the analysis it was evaluated that the retail part via leased lines takes only 0.1 % of the total consumers of retail internet access, and therefore in the further investigation process leased lines were not separately analysed. From what was said follows that in the case of Lithuania the leased lines are modestly used and the consideration Market 5 and 6 as one would not much influence the general situation. If there is a demand for such specific product as actually is provided as leased lines terminal segment, the WBA qualitative characteristics are fully sufficient to satisfy such demand.

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.

Answer: As mentioned in answer to question 7, the leased line terminating segment (Market 6) can be removed from the Recommendation.

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.

Answer: Competition in retail calls depends on regulation/competition in call origination/transit/termination. And probably more emphasis should be put on call termination/transit as call termination services are getting cheaper, less relying on call origination and the construction of own networks is facilitated.

Competition in retail/wholesale leased lines would depend on competition/regulation of physical infrastructure (access to ducts, masts, towers, related facilities). As was mentioned in the answer to Q 7 and 8, for example, in Lithuania there are entities which are engaged in the lease of fibre optics or the provision of data transmission services that could be easily transformed into leased line services or alike.

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.

A number of Member states partially regulate Wholesale broadcasting transmission market (ex Market 18). It seems to be the market that depends in a wide part on the national legal basis and circumstances, however (like duct access in electronic communications) access to the masts suitable for TV broadcast might be considered as a common bottleneck EU-wide. As regards broadcasting transmission (Market 18) in Lithuania, RRT adopted a full set of obligations in the ex Market 18 (not the partial competition). Market 18 consists of 7 submarkets because of legal entry barriers, defined in the Law on the Provision of Information to the Public: TV and radio broadcasters have been bound by TV and/or radio broadcasting licences where broadcaster is obliged to transmit TV programs via **specific** transmission service provider. This situation seems to appear only in Lithuania.

However, according to BEREC information, only 8 countries do not experience the necessity to regulate this market (Market 18). Therefore, if the regulation of Market 18 in many other Members States is determined for any reasons, especially for the legal circumstances or for the circumstances that are not going to change in the following 5-7 years, it appears that Market 18 could be re-involved in the Recommendation list.

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.

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.

Answer: Peering or direct interconnection for exchange of internet traffic/data traffic might be considered as a potential market in the Recommendation. As moving to NGN, IP interconnection and exchange of IP packets (not only voice, but also internet or other data services) would become important and limiting interconnection of networks to exchange traffic, might become a bottleneck of competition.

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.

Answer: As fibre is deployed in the access networks and operators have plans to move to NGN platform (where transmission should be IP based), IP interconnection might become a problem. The same IP interconnection could be used for voice, internet, TV, and the operator, which has the largest amount of customers or largest traffic load, might be reluctant to connect its network to the networks of other operators to protect its business. RRT has already received some complaints from the market players about the problems of internet peering or direct interconnection with historical operator.

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.

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.