

Viviane Reding

Member of the European Commission responsible for
Information Society and Media

**Convergence in the electronic
communications markets: challenges
for the EU regulatory policies**

*Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort*

CMT's II International meeting: "Regulation in a convergent
environment"

Barcelona, 23 November 2009

Ladies and gentlemen,

It is a great pleasure to be here with you today at this important event. First of all, let me take this opportunity to congratulate the Spanish regulator, CMT, on the good organisation of this conference for the second year in a row. Spain is actively participating in the European regulatory debate on the new challenges in the EU telecoms market. Spain will play an even more significant role during the first semester of next year when it will take over the Presidency of the EU.

Today and tomorrow, we will discuss challenges in the convergent environment and the regulatory approaches that we can apply to face those challenges.

I believe that the Telecoms Reform Package, which has been agreed unanimously last Friday by the Council and is about to be adopted by the EU Parliament tomorrow, takes us in the right direction to face these challenges. The modernised EU rules provide a supportive and predictable environment for competition and investment in the electronic communications sector. They will also ensure that the common regulatory principles, which underpin the digital economy, are consistently applied across the EU, thanks to the central role now that they give to the European Commission and the new European Telecoms Authority BEREC in market analysis and competition remedies.

We should all work together to implement these measures quickly and efficiently in all Member States for the benefit of all stakeholders in the telecoms sector, a sector which is playing a crucial role in the recovery from the economic and financial crisis.

Towards a convergence of regulatory views

Looking back over past years, the CMT has taken a number of important regulatory decisions to address competition problems in the rapidly evolving Spanish telecoms sector. There have been times when the Commission and CMT shared a common point of view. There were also times when our views diverged.

Allow me to give you an example. Given the increasing importance of high speed internet services, it is crucial that Europe's broadband markets are defined and regulated consistently across the EU. Failing to regulate bottleneck markets prevents fair competition and investments in innovative high speed services. Inconsistency creates legal uncertainty for market players and increases regulatory burden, thereby hindering the consolidation of our European single market.

It was exactly for this reason that, the Commission invited CMT at the end of last year to impose remedies also for wholesale access products above 30 Megabits per second (Mbps). There was a risk that without a regulated fibre-based wholesale broadband access product, the Spanish incumbent could pre-empt the market for retail broadband services during the deployment of fibre, thereby hindering the competitive process in Spain.

I just want to make the point that **the Commission has always acted to defend competition and to reinforce a single telecoms market.** Adopting the Roaming Regulation, revising national market analyses, publishing market data comparisons, pointing out abuses of dominant positions, are all examples of this.

Strong competition and a functioning single market work in the best interests of European citizens and consumers. Concretely this means that Spanish consumers can benefit from a choice of high quality and low price electronic communications services. An objective which I am sure you all share with me.

I should acknowledge as well some of the many positive developments in Spain, such as the recently announced plans to open up the 790-862 MHz band to mobile and fixed communications services and the priority given by the CMT to the regulatory challenges of next generation access networks (NGAs). As an example of this proactive approach, I should mention the remedy for duct access and the measures to ensure equal access to wires in buildings.

Spain has also taken a leading role in consumer related areas. It continues to have one of the highest figures for ported numbers; it has always actively participated in the initiatives related to the European emergency number 112 and, I remember a couple of years ago, the CMT was one of the first supporters of the introduction of retail roaming regulation. Moreover, Spain has recently adopted a Charter of users' rights; an initiative that could also possibly be applied at European level.

Despite all this progress, Spain and all other EU countries can still derive much more benefit from a single market in telecoms. It is important that entry to the various national markets is open so as to drive down prices and stimulate competition. For example, the Spanish incumbent is present in many other European countries. **We have seen that the more operators become active on a pan-European basis, the more they realise the importance of consistent regulation – the issue which the Commission has emphasised for years.**

Convergence in the Telecoms Reform Package

It is worth recalling that the EU's regulatory framework for electronic communications adopted in 2002 was itself designed to take account of the phenomenon of convergence. Consequently, the existing framework covers the full range of electronic communications services – and not just telephony or access to internet services – in order to reflect convergence between different transmission media, including broadcasting.

Furthermore, the principle of technological neutrality (the flip-side of convergence) was already enshrined in the objectives of the current framework. This principle was also reflected in the mechanisms for imposing *ex ante* economic regulation, which require national regulators to define and analyse relevant markets in accordance with competition law methodologies and to look at the services provided rather than at the technologies used behind those services.

However, when the Commission came to review the functioning of the 2002 framework, it still concluded that further substantial adjustments to the rules were necessary to reflect the enormous changes taking place in the communications markets as a result of convergence, in particular the growth of broadband and the increasingly central role played by the internet in the lives of European citizens.

For example, operators across the EU have increasingly been offering bundled services based on the IP protocol, which combine the different elements within a single subscription and shift the consumer market further towards broadband connections.

In order to ensure that operators can provide the capacity and the quality needed for these advanced services, they need a climate that promotes investment in next generation access networks (NGAs) and allows the use of whatever technologies can best supply the needs of consumers.

The Telecoms Reform Package will help to achieve this in a number of ways:

- First, the Reform provides clearer wording on the importance of promoting efficient competition, investment and innovation in new infrastructures. In particular the new rules, while strengthening the competition tools available to national regulators will at the same time ensure that the risks involved in allowing access to NGA networks are properly taken into account. In this way, telecoms operators can receive a fair return on their investments.
- The rules governing the sharing of network elements, such as the measures that the CMT took in the last year on ducts and in-building wiring, are also updated by the Reform. Besides improving competition and services for businesses and consumers, this will also help lower the overall financial costs for operators of deploying NGA networks.
- The new provisions in the telecoms reform package on radio spectrum will help to overcome the "digital divide" by ensuring that spectrum resources are better managed and are available where most needed for delivering broadband connectivity at reasonable cost. The stronger emphasis on technology and service flexibility in spectrum use will also make it easier for new technologies and services to be introduced.
- All these provisions, combined with strengthened consumer protection against personal data breaches and spam, will increase confidence and legal certainty in the market, and thereby help ensure that broadband services develop to their full potential. **The rules of the game for Europe's telecoms markets are now clarified and stable, at least until 2015.**

Of course, if the full benefits of convergence are to be seen in the market place, we also need to see convergence in the way the rules of the game are applied in the Member States. The new European Telecoms Authority, the so-called Body of European Regulators (BEREC), will bring together the experience and skills of the 27 national regulators in a more transparent manner and provide them with a single, authoritative voice at the heart of the decision making process.

Convergence and Recommendation on termination rates

In addition to the Telecoms Reform Package, the European Commission has also taken other important measures reflecting also on the convergence trend. Across the EU there is a trend of fixed to mobile substitution, which in some countries has significantly intensified in recent years. Converged fixed-mobile services have started to appear in the market.

At the same time, termination rates have been regulated in all Member States to avoid distortions of competition, in particular excessive pricing, since in principle each operator enjoys a monopoly position for terminating calls on its network. As a result, although termination rates are on a downward trend, persistent gaps between different countries' mobile termination rates and between fixed and mobile termination rates remain.

This risks seriously distorting competition between fixed and mobile networks and delaying important technological innovations such as the roll-out of NGAs and converged fixed-mobile services. A balanced and proportionate regulatory approach based on efficient cost recovery across the Member States is in the long-term interest of both the EU telecoms industry and its consumers.

That is why the Commission had to act by adopting, in July this year, its Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, so as to ensure that appropriate regulation is put in place that avoids distortions between the fixed and mobile sectors. It goes without saying that telecoms companies planning difficult investment decisions can well do without such distortions. This Recommendation sets out clear costing principles for regulators when calculating termination rates and provides that termination rates should be set at the level of efficient costs by the end of December 2012.

It is very welcome that a number of regulators, including the CMT, have already committed to developing a new cost model along the principles of the Commission's Recommendation. This has been accompanied by significant recent reductions in mobile termination rates thus contributing to a clear downward trend in those charges and thereby future compliance with the Recommendation within the timeline provided. I am also confident that the Spanish regulator will do its utmost to phase out the remaining asymmetry between operators' termination rates without delay.

Convergence of telecoms and media

At the end of the day, convergence is already a reality in the market. The rise in the number of bundled offers (most frequently combining broadband, telephony and IPTV) serves to illustrate the convergence of the telecoms and media markets.

In April 2007, of a sample of 1226 broadband offerings available in different EU countries, only 13% combined broadband access with telephony and/or television. Two years later, this figure has increased to 27%.

In Spain this shift towards bundled services is even stronger, with broadband being the main driver. As of July 2008, 14.92% of the Spanish population had subscribed to a bundled offer. And the majority of Spanish residential customers subscribe to broadband services as part of a bundled offer. Moreover, the importance of content is increasing.

National regulators are facing different regulatory challenges due to the convergence of telecoms and media: these include margin-squeeze analysis of bundled offers by SMP operators, the revision of must-carry obligations the use of spectrum and, in particular, of the digital dividend.

There is no "magic" single solution to all this, but the overall objective of promoting competition and ensuring maximum benefits for consumers should always be kept in mind.

Net neutrality and internet access rights for the benefit of European consumers

Convergence between telecoms and media has had other consequences. It has brought in its wake an unavoidable debate on net neutrality and access to the internet, both seen as of great importance by consumers.

One issue that has come up in my discussions with my colleagues in the European Parliament and with consumer bodies is the blocking of VoIP applications (such as Skype) by some mobile operators.

The new Telecoms Package is a robust answer to such new threats to net neutrality. Transparency has been strengthened and national regulatory authorities will have new powers to set minimum quality levels. In addition, consumers must be informed, before they sign a contract, about the nature of the service to which they are subscribing, including traffic management techniques that are deployed and their impact on service quality.

The Commission has also committed itself to keeping net neutrality under close scrutiny and to use its existing competition powers as well as new instruments available under the reform package to launch a broad debate in 2010.

As for the debate on the degree to which the right of access to the Internet should and could be protected by EU law, of course, I welcome very much that the negotiators of Parliament, Council and Commission could agree, in the last night of negotiations, on a new internet freedom provision. The new internet freedom provision now provides that any measures taken regarding access to and use of services and applications must always respect the fundamental rights and freedoms of citizens. Effective and timely judicial review is as much guaranteed as a prior, fair and impartial procedure, the presumption of innocence and the right to privacy. What the debate in Parliament and Council clearly showed was that we need to find new, more modern and more effective ways in Europe to protect intellectual property and artistic creation. Repression alone will certainly not solve the problem of internet piracy; it may in many ways even run counter to the rights and freedoms which are part of Europe's values since the French Revolution.

In this regard, I've been following with interest the discussions in Spain, first between operators and associations of copyright holders, and now in the inter-ministerial Commission. I would like to stress the need for any possible legislative initiative to comply with the agreement reflected in the Telecoms Reform Package. Spanish measures that would allow for the cutting off of internet access without a prior fair and impartial procedure in front of a judge is certain to run into conflict with European law. The case of France has shown that national constitutional law may raise even more immediate barriers to such proposals. I therefore invite the Spanish authorities to consult very closely with the European Commission before heading into a direction which could soon turn out to be a blind alley.

The next frontier: Copyright

On a parallel track to the big increase in the use of broadband and mobile services in Europe, the cultural and creative sector – comprising published content such as books, newspapers and magazines, musical works and sound recordings, films, video on demand and video games – generates a turnover of more than € 650 billion annually and contributes on average 2.6% of EU GDP, while employing more than 3% of the EU work force.

The growing importance of the internet and of digital technologies offers new possibilities for distributing creative content online. The availability of attractive content will be decisive in driving the further take-up of bundled offers and individual telecoms services, in particular high-speed broadband Internet, digital television and mobile communication

We therefore have a responsibility to protect copyright, especially in an evolving economic and technological environment, while also removing the barriers facing the easier, wider and faster dissemination of creative content to European citizens.

If we do not very quickly make it easier and more consumer-friendly to access digital content, we could lose the greatest opportunity we have ever had, both to maximise the amount of content available to consumers and to secure more efficient protection of rights holders. The stakes are high: the development of a wide range of new and innovative business models which would boost the creativity and competitiveness of the European economy.

The reality of convergence requires to take a hard look at the still too fragmented copyright system we have today in Europe and ask ourselves whether it is still fit for the purpose in the digital age, or whether it needs to be re-shaped in line with a renewed intellectual property rights strategy. We have to tackle the main obstacles that stand in the way of the free movement of creative people, cultural activities and the digital distribution of products and services. We must avert an unacceptable digital divide.

The Digital Single Market for online content is currently hindered by the fragmentation of copyright law and by widespread licensing practices, which tend to partition the EU market to better control distribution and to maximise revenues. The lifting of impediments to the cross-border online distribution of creative works will improve the supply of attractive and affordable services that are legal. In turn, this will reduce the temptation for consumers to indulge in the illicit consumption of copyright-protected material.

The next European Commission will have the task of developing a new strategy for growth and jobs and of re-invigorating the single market project. Presented to the European Parliament in September 2009, the Policy Guidelines of the Commission President call for an ambitious European Digital Agenda. José Manuel Barroso's strategic vision is called "EU 2020" and it will include targeted legislative action.

In order to put it into practice, we have, in collaboration with my Internal Market colleague Charlie McCreevy, adopted a Reflection Paper on Creative Content in a Digital Single Market. This Reflection Paper highlights the challenges confronting both the content industries and consumers in order to achieve the goal of delivering a wider choice of content from all around Europe and opens up a discussion on possible actions to overcome those challenges.

The Commission has recently launched a public consultation on the possible policy options for better access to content and more efficient protection of rights holders under the "creative content online" initiative. The objective is to unlock the enormous potential of online distribution to the benefit of all stakeholders – creators, intermediaries and consumers.

I believe that it is necessary to act at EU level in order to create a more coherent licensing framework.

One of the options at stake is a more profound harmonisation of copyright laws in order to create a more coherent licensing framework at European level. A "European Copyright Law" – established for instance by means of an EU regulation – has often been mooted as a way of establishing a truly unified legal framework that would deliver direct benefits. This would be an ambitious plan for the EU, but not an impossible one.

Ladies and gentlemen,

To conclude, I would like to highlight again the importance of converged approaches by all the different stakeholders in order to address these important challenges.

I therefore call on all of you to contribute with your particular experiences and backgrounds to the application of the new Telecoms Reform Package and the construction of this European Digital Agenda, which will help us master the challenges that lie ahead.

Thank you very much.