

# The Case for Regulation in a Converging Electronic Communications Environment

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Convergence<sup>1</sup>, having been through its hype-cycle, is emerging with a potential to provide widespread benefits for consumers, in the form of increased choice and lower prices, business, in the form of opportunities for increased economies of scale and scope, as well as intra- and inter- modal competition, and governments, in the form of means to engage citizens through communication services in greater society participation. Though convergence is brought about by market forces, Regulatory Authorities have a role in influencing the speed at which this occurs, the wealth of benefits enjoyed, and the extent (geographic/population coverage) to which these benefits are enjoyed. In effect, regulation can be a catalyst for development or a constraint upon it.



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## Competition among Platforms

Markets all over Europe are witnessing increasing competition between different platforms as the increasing adoption of IP as the protocol of choice in fixed, mobile and cable networks allows the provision of the same services in a technologically neutral fashion.

At the same time convergence is threatening to expose limitations in regulation as applied to traditional networks with respect to the requirements that may exist when regulating Next Generation Networks, a term which collectively characterises emerging networks that enable broadband services and convergence. Care should be taken, therefore, so that distortion of competition in the simultaneous presence of restrictive and not-so-restrictive regulatory regimes<sup>2</sup> is avoided.

While convergence and technological advances are laying the path for broadband services, increased competition slashes the possible profit margins and consequently the funding possibilities of Universal Service provision in view

of the commercial non-viability of offering services to remote or sparsely populated regions. Furthermore, the advent of technology and the array of access means force the issue of reconsidering the content of Universal Service which will most probably have to be enriched if digital divide is to be avoided.

## The Role of Regulation

As a result, a long term view of the implications of regulation needs to be taken which should consider:

- > The need for increasingly using competition law in ex-ante regulation in the face of rapidly changing markets<sup>3</sup>.
- > Balancing the extent of regulation with the need to allow for innovation and investment while at the same time catering for consumer protection and promoting competition<sup>4</sup>.

In assessing the need for regulation at the various stages of the supply chain<sup>5</sup>, access will continue to stand out as the main bottleneck. While regulators should ensure that ex-



isting wholesale access products<sup>6</sup> are available to the market in a non-discriminatory fashion, they should also turn their attention to the provision of network facilities such as co-location and duct sharing, as well as non-discriminatory access to 'Rights of Way'<sup>7</sup> as means of expediting the roll out of (or the consolidation of existing) alternative competitive<sup>8</sup> networks. On the downside, regulators will need to think hard on how/whether to regulate new types of access such as Fiber To The x (FTTx), caught between the

need to promote innovation and new services to the public and the danger of discouraging investment and network modernisation.

Furthermore, special attention should be paid to the provision of bundled services and the economic and competition effects of such offers in the marketplace. The provision of new services under new conditions should also call for a rethinking of issues such as Quality of Service and Network and Information Security.

Regulators should therefore be cautious in their approach to the new environment that evolves due to market forces. Rather than prescribe solutions based on or transposed from the traditional environment, regulators should instead decide on the assessment criteria<sup>9</sup> against which they would test regulatory proposals, as a consequence of their worries about the sustainability and durability of competition and the quality and security of the services provided, rather than the degree of competition present.

1. The ability of consumers to obtain multiple services on a single platform or device, or obtain any given service on multiple platforms or devices
2. Varying regulatory regimes are a result of lack of product substitution or differing levels of competition
3. e.g. is voice a single market?
4. e.g. through recognising and regulating against new barriers to entry that come about due to integration of networks and services
5. User Terminal, Access, Transport, Applications
6. Reference is made to Local (sub)Loop Unbundling and Bitstream products as well as to the development of a new interconnection regime (technical and financial considerations)
7. Reference is made to the permissions granted by a property owner or government to an operator, to dig, build or otherwise use a specific stretch of land to install some form of permanent infrastructure (e.g. telephone line, underground duct), and subsequently to maintain (and possibly upgrade) that particular infrastructure as required.
8. Implying efficient
9. These could be based on economic efficiency, defined as the best use of resources (allocative efficiency), least cost production (productive efficiency) and incentives for innovation and investment (dynamic efficiency), the assumption being that efficiency is a precondition for maximising welfare.