

Mrs Viviane Reding

Member of the European Commission, responsible for the Information Society and Media

**"The Challenges of the new European
Regulatory Framework for Electronic
Communications "**

Conference organised by the National Telecommunications and Post Commission "From Telecommunications to Electronic Communications"

Athens, 28 March 2005

1. Introduction

I am pleased to be here in Athens and I would like to address the challenges we face with the electronic communications legislation in Europe. I understand that Greece will soon adopt its national transposition of the regulatory framework and the Greek regulator will then be able to perform its regulatory duties and apply remedies under the new rules. I therefore feel privileged to be able to talk to you about confronting our challenges of the new framework. I hope that I will be able to persuade you to share my sense of urgency about this mission.

Even though some of my remarks may sound provocative, I hope that you will find them useful as a basis for creating a shared vision on the future of e-communications in Europe.

The challenges ahead are not trivial. We will need to make a sustained and determined effort to achieve our goals. We will need a new "mind set" on getting things right. But a great deal is at stake if we fail. If we do not succeed in establishing a credible and common regulatory approach, our industry will face different requirements in different countries; technology development and investment will be driven out of Europe; industry will desert the EU and invest elsewhere.

To achieve a single market, the legislation must be fully implemented in a harmonised manner. The Commission has repeatedly stressed, with strong European Parliament

endorsement, the importance of full, effective and timely transposition of the new framework. As of 25 March 2005, 22 countries had transposed the Directives.

All five directives are now fully applicable and should have been transposed and applied by all Member States. It is of course regrettable that some Member States, like Greece, have not met the deadline. This gives rise to single market distortions if some Member States apply the new rules and others don't. It means that old ex ante obligations are left in place beyond their desired expiration date, giving rise to a real risk of over-regulation.

For those countries that have not notified their transposition measures to date, we have opened the procedure for infringements. The European Court of Justice has already condemned Belgium and Luxembourg in a decision earlier this month. We take the application of the new rules quite seriously. We do not hesitate to take vigorous enforcement action where needed. [Last week Minister Neratzis reassured me that the draft law will be put to the Greek Parliament for adoption shortly.]

2. The Situation in Greece

I am fully aware of the problems that this delay has caused both to industry and to the Regulatory Authority in Greece. The Commission was obliged to discharge its responsibilities here and has taken Greece to the European Court of Justice.

I hope that imminent adoption of the Greek law will give the opportunity to the Greek legislator and to the regulatory authority to address some longstanding problems. The situation of Greece was highlighted in the 10th Implementation Report which reflected the under-developed nature of the markets in the absence of a regulator with powers to impose remedies and ensure availability of network facilities.

The report also noted the problems with complicated and non-transparent procedures for obtaining rights of way – as well as long, inefficient appeals procedures. Although broadband is a rapidly growing market in the rest of the EU, Greece has not managed to follow this trend. Greece comes last among the 25 Member States in broadband services penetration. The incumbent has succeeded in maintaining a much higher than average market share (85%) than in other Member States (average 70%) four years after full liberalisation in Greece. Greece seems to enjoy very limited fixed-line competition and Local Loop Unbundling.

With this background, I would predict that EETT will have a full agenda for some years to come. Furthermore, I would encourage the Greek authorities to consider adopting an ambitious programme of broadband deployment. Broadband is and will remain the tool for a new generation of converged communications services and, in this respect, Greece's broadband penetration is very disappointing. I truly hope that transposition of the regulatory framework in

Greece will speed the roll-out and take-up of broadband services by Greek businesses and citizens.

3. Link with i2010 and renewed Lisbon Strategy

From this quick look at specifics, let's step back for a moment and take a brief look at how the regulatory framework for electronic communications fits into the "big picture" of Europe's future.

Europe is re-launching itself. Three top priorities now pre-dominate our political agenda:

- (1) to restore economic growth in the Union;
- (2) to deliver a single market for companies to exploit and consumers to benefit from; and
- (3) to deliver meaningful job creation.

The tools at our disposal are financial, promotional and regulatory. I will talk to you today about the regulatory tool that can – if applied correctly – deliver a single market in electronic communications, as well as economic growth and create jobs in the process. That does not mean that supporting research and pursuing private/public partnerships are not equally important but these are less relevant to this audience.

Before turning to our regulatory objectives, we should also bear in mind that another crucial element in achieving a successful EU electronic communications sector is to stimulate successfully the creation of new content and new applications in ways that attract customers. People do not

buy technologies. They buy services. They also need public services in their everyday lives.

4. Overview of Regulatory Framework

Let me turn now to the principles enshrined in the legislation and how they translate into market and technology “drivers” that move us in the right direction. Three principal goals are built into the regulatory framework. They are (1) promoting competition; (2) developing the single market; and (3) promoting citizens’ rights.

Our regulatory design is geared to getting a wide range of high quality services in the markets at competitive prices. When competition alone cannot deliver our objectives, then we use specific rules, such as mandating universal service for all.

Seeing the impact of convergence on market developments, we have incorporated “technological neutrality” into the framework - to reflect the fact that we understand the need to regulate the convergent IT, media and telecoms sectors in parallel ways.

The topic of convergence brings us to the dynamic nature of the technology that we are dealing with. Dynamic, evolving technologies change markets quickly. Innovation drives competition and new services deliver greater choice for consumers.

This means that our legislation must be future proof if we are to stand any chance of making it successful. This must

be built into the very nature of the legislation or else regulation will always be lagging behind technological developments instead of encouraging them.

We also need a way of deciding if we even need to regulate at all. If the regulation that we put into place has the hoped-for effect of encouraging innovation and market entry, we can increasingly leave the regulation of those markets to market forces and let competition law constrain the behaviour of companies in the market. This is - without doubt - our ultimate goal. Although it may sound contradictory, our regulatory framework can only succeed by becoming redundant.

Market players and investment bankers must be able to count on our system to remove regulation that is no longer necessary - and vice versa. For different regulators to reach different regulatory results in different countries with similar underlying situations is – so to speak – our “worst case scenario”.

Regulation also needs transparency and stability – which is not in contradiction to being future proof – but complementary. Investment in new and competing infrastructure will bring forward the day when transitional access obligations can be relaxed.

For regulation to produce its desired effects, regulatory signals to the investment markets must be crystal clear and reasonably stable. Potential market entrants must be able to predict that, when existing markets become competitive,

regulation will be removed. Results in one country should be comparable with the regulatory results in another country. In theory, we should be able to switch national regulators between countries and still achieve comparable and compatible results.

5. Signs of Success of Regulatory Action

We will know that our regulation is succeeding when we see the evidence in the marketplace: we will see global choices in favour of EU investment. These choices will lead to innovation and ultimately to more competition and choice.

If we don't see these developments, then we won't achieve the fundamental objectives of adopting the legislation in the first place. So, for as long we have regulation, it must be predictable and be seen to apply consistently across the EU – including the enlarged EU. Otherwise, the markets will respond accordingly.

To encourage investment decisions, we have to balance the interests between light touch regulation that encourages the risk takers to enter the market, on the one hand, and the lack of restraint on excessive market power, that chills the investment climate, on the other. But restraining market power must, too, be done with as light a touch as possible.

The new framework is designed to regulate on an ex ante basis only where the level of competition in defined markets is insufficient when assessed under competition law methodology.

The new Framework gives national regulators the tools to impose obligations that can substitute – temporarily - for real competition in both networks and services. They also have powers to promote the single market in Europe. When commercial negotiations fail between market players, NRAs can resolve disputes and can intervene to ensure end-to-end connectivity or interconnection terms.

Market players who do not need numbers or frequency can now enter markets on the basis of a general authorisation alone. All players should be able to develop services with the expectation of an adequate return on their investment, while competitive pressures should help to ensure attractive prices and stimulate innovation. So how do we achieve that?

6. Challenges for Regulators

The new regulatory framework is flexible because it forces regulators to evaluate and respond to changes in markets while encouraging market players to take risks if a commercial case can be made.

For successful regulation, we need good regulators. This means that regulators must be empowered to do their jobs effectively and they must be given the powers and level of discretion that the legislation foresees. This is an area to which we pay particular attention when examining national law transposing the EU framework.

Regulators must, in turn, understand how their decisions affect investment choices. Clearly this is a major challenge

for the EU as a whole. The rest of the world is looking to the EU and the implementation of its new convergence-friendly regulatory framework. Without a proper application and implementation, the whole approach in our framework will be undermined.

The combination of technological neutrality and the application of our framework to all electronic networks means that only the competitiveness of the relevant market - and not the technology used - will determine if sector specific regulation is needed.

The "technology neutral" approach to all transmission infrastructure should encourage companies to engage in infrastructure-based competition for the delivery of competing services.

I particularly associate the successful implementation of the new framework with the continued growth of the electronic communications sector generally and the rollout of broadband services in particular.

How does the new framework avoid over regulation and premature regulation? The intention is that companies should only be subject to ex ante regulation when there is at least one undertaking with dominance in a market and the dominance is likely to be durable - so-called significant market power or SMP.

However, we have already established that the technology is dynamic and that innovation and market entry are

encouraged. So we can expect – and welcome - new offerings. But when a company launches a new service on a market, it may be one of very few market players. It may initially enjoy a very high market share. As a general principle, emerging markets should not be regulated because it is a normal part of dynamic technologies for the markets in new services to have an initial market player with a large market share, because it is creating the market.

7. Consistency of Implementation

To deliver predictability and consistency in the application of the new legislation, we created an entirely new Community mechanism found in Article 7 of the Framework Directive. Here, the Commission has the right to vet individual decisions by National Regulatory Authorities and, if necessary, to veto those that deviate from the new EU regulatory framework and single market rules. Our challenges will be twofold in reviewing NRA decisions on market definitions and SMP designations: (1) to make sure that NRAs assess markets in accordance with competition law principles and (2) ensure that they do not regulate markets prematurely.

Under the regulatory framework, the Commission has adopted several complementary measures, one of which is particularly important to successful implementation, the creation of a European Regulators Group. This group has begun its work and our challenge here will be to deliver a harmonised approach for the single market so that

regulators begin to think less in terms of their own national territories and more in relation to the single market. Given the tendency of each regulator to focus on his national markets which is only natural, this challenge is a real one. I have high hopes for what the ERG can achieve and my services are working very actively with regulators in this forum.

I was pleased to note that the ERG recently adopted a Common Statement on Regulatory Approaches to Voice over the Internet. I particularly welcome the following commitment in their Common Statement: ***“The ERG is therefore committed to creating a regulatory environment in which VoIP services can flourish.”*** We will closely monitor this commitment in future to see if the regulators actually deliver what they undertook to do.

8. Priority Implementation Issues

We still see considerable challenges ahead in the area of ex ante remedies. The ERG adopted an important position paper on remedies in the spring of 2004. It is important because it was a first step in trying to achieve consensus between 25 regulators. We will continue to work on this subject with regulators. Getting 25 national regulators to adopt a consistent and proportionate approach to imposing remedies will be crucial for the new framework.

One thing is already clear: markets respond to negative regulatory signals by investing elsewhere. Regulators need

to realise that the EU is not the only investment opportunity for the ICT industry.

Removing barriers to the development of an innovative EU ICT sector is a key Lisbon objective as the electronic communications sector is a proven driver for economic growth and job creation. When I talk to CEOs in industry, they are cautiously optimistic but they are still worried. Anyone even remotely connected with this sector realises how desperately a turnaround is needed, in view of the hard times that the sector has gone through.

On the regulatory side, we will continue to focus on full and effective transposition. We will continue to work with Member States, with regulators and with industry to ensure a successful implementation of the framework. We will give guidance when useful.

9. Conclusion

I know that it is easy to say that we will ensure effective implementation. I am also conscious of how difficult it will be to achieve in practice. [But, if I could put things into context, Greece - having won the 2004 European Football Championship - and having staged an outstandingly successful Olympic Games in the summer of 2004 - implementing the new regulatory framework into place should be a relatively simple matter for Greece.]

Joking aside, I have the impression that those actively involved with the regulatory framework genuinely want to

see it succeed. I recognise that you, too, want to make this framework a success. So I want to work with you to build on this willingness, this consensus.

In conclusion, I can say in all honesty that we still have some way to go. But we have re-engaged our commitment to our destination and we have re-energised our determination to get there. If we achieve our goals, Europe as a whole will be better off, succeeding generations will be better off and we will be well on the way to creating the strong and vibrant Europe in which we can all take pride.

Thank you.

Official responsible: Sandra Keegan, INFSO/B1, ☎50628