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"Getting Ready to Implement New EU Electronic Communications Law"

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

Article 7 workshop

Brussels, 15 July 2003

Art 7 Workshop - Introduction

In ten days the new regulatory framework will enter into force.

The procedure of Article 7 of the Framework directive on electronic communications is key for applying the new Directives in a consistent and transparent way. This workshop will later gives us an opportunity to run through all the measures the Commission put in place to manage it. This has happened through an effective and close collaboration between us and between our services.

Before addressing the new framework, I would like to recall the general context of the EU's information society policy. The objective is to foster the uptake of ICT because it is a key factor for productivity growth, and thus for the overall competitiveness of our economies.

Our policy is articulated around three pillars. Firstly, create a predictable and right legal environment for promoting competition, innovation and investment for electronic communications.

Secondly, through the R&D framework programmes develop Europe's solid technological basis in ICTs.

Finally, an overall policy framework to promote the information society, the eEurope 2005 Action plan. It stimulates both the demand side, through eGovt, eHealth, eBusiness and eLearning. And the supply-side, by aiming at widespread secure broadband deployment by 2005.

The 2003 Regulatory Framework – key features

Let me now concentrate on some of the key features of the new framework:

1. it is innovative as it is based on technological convergence,
2. it provides clear, stable and predictable rules and practices, improving certainty for investors and thus incentives to innovate and stimulus to long-term investment,
3. it will benefit the consumers by ensuring a competitive environment, stimulating innovation, with price reductions and more consumers' choice,
4. it simplifies. The number of directives goes from 22 to 6. And we have made the new legislation flexible, so it can be rolled back. By relying more on EU competition rules regulatory obligations on market players can be lifted as soon as markets become competitive. My colleague Mario Monti will cover this in more detail later. We will continuously analyse competition in each particular electronic communication market, and the operators holding significant market power. So that when markets become more competitive, through technological and market developments, obligations are lifted.

Factors of success

There are three critical factors for the success of the new framework:

Firstly, Member States must transpose and implement the new framework on time and in a coherent and effective way. Otherwise the predictability is put into danger. We will monitor this very closely, and report on it in November.

Secondly, NRAs need to apply the new rules. This involves, in particular, a process of market analysis and review of existing regulatory obligations. We will see to it that NRAs do this as quickly and effectively as possible.

Needless to say, the Commission will use all of its instruments to achieve this objective. Also with the Communications Committee and the European Regulators Group (ERG).

Regulators have to remain focused on their objectives, which are to promote competition, to protect the citizen, and to work to consolidate the internal market. In doing this, Regulators must also take into account the needs to both encourage efficient investment in infrastructure and also to promote innovation. This will help to guarantee the long term sustainability of competitive markets to the benefit of all.

Regulators will also be fully involved in the process of notification and consultation of the Commission and other national regulatory authorities. This is key for the consistent application of the new framework across the EU.

Thirdly, the Commission needs to manage these new tasks within very short time-limits. We think we are well prepared to do it. We have put all the legal acts in place (SMP guidelines, Recomm. relevant markets) and we will very soon publish the Recommendation on notification procedures which was intensively discussed with the relevant actors.

The Commission attributes great importance to its effective operation since it is almost the first time in the Commission's history that DG Information Society and DG Competition enjoy and exercise a joint review power vis-à-vis regulators' draft measures. I am confident that this joint effort will work smoothly and efficiently.

The Commission has allocated all the necessary resources to this task. Officials from both Directorates General are already working together and all internal efforts have been put in place, in terms of human resources and facilities, to make it a success.

So even if the task is impressive, I am confident that we will manage it jointly with success.

Remedies

Imposing the appropriate remedies to the competition problems that arise in certain markets will be critical. The guidelines set in the directives indicate that remedies must be objective, transparent, proportionate and non-discriminatory. But remedies must also be based on the nature of the problem identified, proportionate and justified in the light of the NRA's basic objectives.

NRAs thus need to balance a number of considerations before imposing remedies. This, includes the need to take account of the initial investment by the facility owner, and the risks involved in making the new investment.

NRAs have a duty to safeguard competition in the long term which means inter alia that they will have to take into account the technical and economic viability of using or installing competing facilities and the effect of such an intervention on possible investment. This is especially important where new technologies or networks are being deployed in previously uncontested markets.

NRAs will need to justify the imposition of a particular remedy, and NRAs need to agree between themselves on the types of instruments and remedies best suited to address particular types of situations in the market place.

NRAs must also co-ordinate their actions with national competition authorities (NCAs) to ensure that the remedy chosen is also in line with competition law principles and achieves the best effect in the market place. The fact that a remedy has been imposed in application of the new framework does not, in principle, preclude the possibility of taking further action under competition law. My colleague Mario Monti will probably say a few more words about this.

The new regulatory framework is very flexible on the available remedies. NRAs have a range of regulatory tools where a dominant operator exists on an identified market.

In exceptional circumstances it is possible for an NRA to look for other remedies than those expressly mentioned in the Directives and devise an alternative remedy that may be better suited to solve the competition problem. Such alternative remedies require the prior agreement of the Commission in order to safeguard the necessary degree of coherence.

The NRAs and the Commission are working together in the ERG to clarify how appropriate remedies might be selected and what the process for selecting those remedies might be. The stronger the agreement on a reasonable and transparent methodology for selecting remedies is, the lower the chance of so-called “regulatory risk”.

The NRAs and Commission will elaborate on broad principles to guide regulators, without seeking to “micro-manage” or prejudge detailed NRA decisions. Guidance on remedies should help to develop consistent approaches by NRAs to similar competition problems encountered in different markets.

Next steps – Vision – Conclusion

Before passing the floor to Mario Monti, I would like to express my longer-term view:

Convergence is happening. Therefore each network cannot continue with its own set of rules. The new framework addresses markets, not networks, and it does so in a technologically neutral manner. Therefore I am convinced that it is well suited to attain the longer term aim to go towards more sustainable facilities and achieve a situation with competition between different infrastructures. Competition will occur within and between platforms, and will grow over time as existing networks are upgraded to compete with each other and new networks are built. Thus we can achieve a prerequisite for widely available broadband.

Through mutual cooperation I am sure we can achieve this objective.