



# EU regulatory framework review in full swing

The European Commission held a one-day public workshop in Brussels on 10 October 2006, providing an opportunity for stakeholders to express their views on the consultation documents published by the Commission last July in the context of its review of the EU regulatory framework for electronic communications.

The review of the EU Regulatory Framework for electronic communications is getting into full swing (see also our briefing of July 2006, *A flurry of EU regulatory activity in the telecoms sector*). The European Commission held a one-day public workshop in Brussels on 10 October 2006, providing an opportunity for stakeholders to express their views on the four consultation documents published by the Commission in July:

- a communication on the review of the EU regulatory framework for electronic communications networks and services;
- a staff working document outlining possible changes to the regulatory framework;
- an impact assessment of the proposed changes; and
- a draft recommendation on relevant product and service markets in the sector.

The workshop addressed the various aspects of the review, with both Fabio Colasanti, Director General, DG Information Society and Media, and Philip Lowe, Director General, DG Competition, taking part in the discussions.

## Regulatory approaches, innovation and investment

The current regulatory framework was adopted in 2003 and has played an important role in driving competition and growth in Europe's electronic communications sector. But some industry players are now calling for 'regulatory holidays' and an overall reduction in the level

of ex ante regulation of the sector. In particular, there is a concern that the Commission might seek to extend the scope of EU legislation to areas that so far have been unregulated.

In this context, the workshop also addressed the need for a light touch approach towards emerging markets. It was recognised that the concept of what constitutes an emerging market requires a clear definition to increase legal certainty for investors.

## A new approach to spectrum

The demand for radio spectrum for electronic communications has increased dramatically during the last decade. The Commission's consultation documents contain a number of proposals to improve spectrum management and allocation:

- introduction of market based approach to spectrum management with the possibility of secondary trading;
- application of principles of technology neutrality and service neutrality; and
- the establishment of an EU spectrum agency.

The workshop participants generally welcomed the Commission's approach and expressed their wish for a more efficient and flexible spectrum management regime and harmonisation of spectrum allocation at EU level.

## Market integration

Although significant progress has been made, the internal European market for electronic communications still remains 'under construction'. In this respect, the Commission has made several further proposals to promote completion of the internal market. One of the most hotly debated topics at the workshop was the proposal to extend the Commission's veto powers, in the context of the procedure under article 7 of the Framework Directive, to cover also remedies proposed by national regulatory authorities (NRAs). Some industry participants felt that a Commission veto power would lead to much desired consistency and harmonisation of remedies across the EU. However, others considered that remedies are often too complex, detailed and country-specific to be dealt with centrally and felt that NRAs are better placed to assess remedies.

## Streamlining of market reviews

In the light of its experience with the article 7 procedure, the Commission also proposed a number of changes to facilitate the market review process. This would include a simplification of notification requirements, a revision of the list of markets susceptible to ex ante regulation and the introduction of a binding timetable for market reviews. Workshop participants unanimously welcomed these proposals, as it was agreed that they would increase legal certainty and reduce administrative burden.

## Strengthening of consumer protection and user rights, improving security

In its quest to deliver consumer benefits, the Commission also has proposed measures to improve transparency and the publication of information for end-users. However, several stakeholders expressed their doubts as to whether such overly prescriptive measures are necessary.

In addition, the Commission made a number of proposals to improve security of communications. For example, NRAs would have to ensure that operators implement adequate security policies or emergency plans, based on recommendations agreed at EU level, whereas ISPs and network operators would be obliged to notify to NRAs breaches of security that lead to the loss of personal data. Some participants at the workshop

pointed out that these provisions would put an unnecessary burden not only on ISPs but also on NRAs. Moreover, market itself so far has managed to address the issues of security satisfactorily.

## Infringement actions

Finally, the Commission continues to monitor the implementation of the current regulatory framework. It brought proceedings against nine member states on 12 October 2006 and issued a reasoned opinion, thereby opening a second stage of infringement actions, in eight other cases. 'The Commission remains vigilant in ensuring that the EU's regulatory framework for electronic communications is correctly implemented. This is especially crucial as we are currently consulting on the future of this framework,' said Information Society and Media Commissioner Viviane Reding. 'It is extremely important that national telecom regulators complete their market analysis so that appropriate remedies are in place if needed to ensure efficient competition, for the benefit of consumers and businesses in the EU.'

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