

European Commission

Sports content over third generation cellular networks

an **INTUG** submission to the Competition Directorate-General
June 2005

Introduction An examination of the availability for carriage of sports content over third generation (3G) cellular networks is both interesting and challenging. The [materials](#) presented to the workshop in May 2005 illustrate the progress made by the European Commission.

There has also been very useful but unfinished work at the OECD on digital content, including [mobile content](#). In particular, the recent [study](#) on music which showed the variety of possible scenarios. Additionally, the OECD has undertaken work on convergence, notably a recent [roundtable](#).

There are well established problems of applying competition law to high technology markets, largely because of the considerable changes driven by innovation in technologies and their applications. Almost anything can change.

The Mobile Network Operators (MNOs) have well established relationships with the world of sport. For example, Vodafone sponsors a Formula 1 racing team, Benfica FC and David Beckham. O₂ sponsors Arsenal Football Club and has previously sponsored the England Rugby Football Team. T-Mobile sponsors a cycling team, the UEFA Euro 2004 championships, West Bromwich Albion FC and previously FC Bayern München (now sponsored by its affiliate T-Com). Handset manufacturers are also enthusiastic sponsors, as indeed are many user corporations.

The present inquiry gives three causes for concern, firstly that the market definition used may be incorrect, secondly that the purpose of the exercise may be to support a service for which there is no demonstrable demand and finally that there may be more serious problems in the electronic communications sector to which the resources could have been applied.

Sector inquiries INTUG has accumulated some experience of sector inquiries, since these have been conducted into leased lines, local access and international mobile roaming.

The sector inquiry on international mobile roaming has been a central concern for INTUG over several years. We most recently presented [comments](#) to the European Parliament in March 2005.

In the context of the present sector inquiry, the substantial "surcharges" for data access while roaming are a very significant barrier to viewing content when in another member state.

The sector inquiry seems to be a somewhat unwieldy tool to apply in high technology cases.

Market definition The definition of a market for the purposes of advertising and sales is seldom easy. It is very much tougher for competition law, where greater precision and certainty are required by the courts, because of the severity of the penalties. In this case, especially in looking at a

hypothetical market, it is exceedingly difficult and even presumptuous to arrive at a definition.

For users, the biggest change came not with 3G - which is yet to come - but with 2.5G, that is with General Radio Packet Service (GPRS). This brought the possibility of a mobile Internet connection at modest speeds, what the European Commission described as "ISDN features" for GSM. 3G or UMTS and eventually 3.5G or HSDPA will provide more of the same, but at higher data rates.

The adoption of GPRS has been very poor, in part because of high prices for the data services and a failure by the operators to understand the market, exemplified in the painful demise of WAP through their self-administered overdoses of hype.

Even today, there is little evidence of revenues from data services, as distinct from SMS (carried in the signalling channel), a point the [presentation](#) from Vodafone concedes. In particular, i-mode which had been highly successful in Japan seems to have had sequential failures in Europe, though no convincing explanation has yet been offered for this.

Many services were launched in Japan and South Korea using 2.5 G and these attracted and retained millions of customers. The services have been migrated to 3G and some forty millions of customers are now using them. In South Korea there has also been the commercialisation of digital broadcasting services, in particular Digital Multimedia Broadcasting (DMB), in both its terrestrial and satellite forms. These compete with and complement services over 3G cellular networks and with general Internet access. The same service can be accessed on many networks, including the new wireless broadband (WiBro).

There are a number of potential rival networks for the supply of sports content, including Digital Audio Broadcast (DAB) and Digital Video Broadcast (DVB), plus wireless broadband services including Wi-Fi, WiMAX, FLASH-OFDM and cdma450 which might all carry or allow access to such content. The distinctions between broadcast and narrowcast, push and pull services appear to be problematic; one service provider may supply content all of these. In the USA XM satellite radio is already linked to AOL, providing the same channels over terrestrial Internet access, both wired and wireless.

While it is easy to distinguish the technical characteristics of a 3G network from a terrestrial DAB or WiMAX network, this says very little about the services available on them, let alone how they might be used.

Much will depend on the construction of the handsets, a market that changes very rapidly. Some mobile phone handsets already have Wi-Fi interfaces, allowing the user Internet access to all forms of content without going over a cellular network. The distinction between accessing the Internet over a cellular network and a hot spot network is very slight, especially when using the same device; it may not be evident or important to the user. 3G handsets with DMB are becoming available and radio interfaces are expected to be added.

It is possible to turn the proposition that 3G operators must have access to sports content on its head, and ask whether broadcasters and other interested parties have sufficient access to 2.5G and 3G networks in order to provide their services?.

emand The European Commission suggests there is "strong growth" in 3G, though it much less than in parts of Asia. In Europe, consumers have been attracted by cheaper voice telephony, rather than demand for non-voice services.

This study by the Commission appears to be based on market research provided by the Mobile Network Operators (MNOs). If so, then the risks of bias are considerable, given the inherent problems in the interpretation of market research data. A prerequisite for further work is independent research, if any conclusions are to be defensible to legal challenge.

Clearly there is demand from the 3G operators for access to sports content. However, it does not follow that consumers will prefer to purchase their sports content directly from the MNOs, they may prefer other technologies and other service providers. There are already well established specialist broadcasters, some with strong brand recognition. Sports teams may wish to move into content delivery either directly or through franchises.

The specificity of access to content over cellular networks may not be a sufficiently important factor.

In speculating on demand for services delivered over 3G cellular networks, it worth recalling the hype that once surrounded Location Based Services (LBS), where operators have failed to deliver services or revenues.

onclusion There can be no doubt that it is important to examine how competition law can best be applied to areas of high technology and especially to examine emerging markets. In particular, it is necessary to identify any failings in the practice of competition law in such areas.

Access to sports content has been a concern not only in Europe, but also in Asia and in North America. Consequently, action has been taken by competition authorities against any anti-competitive plays by broadcasters, by sports teams and by their associations.

The technologies are hard to distinguish and evolve rapidly. The putative markets are even less certain, being more like shifting sands.

INTUG supports the principles of technology neutrality and non-discrimination. Content, whether sports or otherwise, should be available to customers of all network providers, as it is on the Internet. Likewise, all content providers should have access to all IP networks.

The leverage of power between markets is a significant risk and one that must be watched to ensure that competition law is not violated.

There are serious doubts about the level of demand for 3G beyond cheap voice telephony and also the capacity of the operators to respond to that demand.

The preference of INTUG, stated several times, is to see the enduring market failures of 2G resolved, before they pollute 3G markets. These include excessive pricing for:

- call termination
- international mobile roaming
- SMS

There are also problems in call origination markets that require to be addressed.

INTUG wishes to see policies that ensure competition between all forms of provision of electronic communications services, wired and wireless, cellular and hot-spot, broadcast and on-demand. At the present state of the technology and of the market, it is too early to determine how sports content will be viewed. Consequently, it is important to ensure that all market players and all technologies have a fair chance to attract customers.

While we understand the desire of the mobile network operators to be more than a "bit pipe", we do not see that the role of the competition authorities is to do more than remove bottlenecks arising from essential facilities or related problems. They will need to show that they can add value to their cellular bit pipes in the face of competition from other networks.

INTUG

INTUG, the International Telecommunications Users Group asbl, is an association of international telecommunications users and national telecommunications users associations, based in Brussels.

INTUG was founded in 1974 in Den Haag at the suggestion of Vicomte Etienne Davignon, then a European Commissioner, to act as a single voice for users of telecommunications. The mission of INTUG is to ensure that users have access to affordable, interoperable telecommunications services and that their voice is heard wherever telecommunications policy is decided. For over thirty years INTUG has argued for the introduction of competition in telecommunications and that all users must have access to the benefits of such competition.

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