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**The Broadband Opportunity**

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Herbert Ungerer

## **I. Introduction**

Let me use my slot of time at this conference to make three points on current EU policy concerning the transformation of Europe's communications infrastructure into a broadband medium :

- how we position the introduction of broadband in the general context of the development of Europe's information economy. You will find that the European Commission allocates a key role to this transformation in its growth strategy;
- the adjustment of the regulatory framework to accommodate that change, and the growing role of competition law;
- the introduction of broad competition into the local loop—a major condition for accelerating change.

## **II. The positioning of broadband in Europe's growth strategy**

It is the Internet which ushers in the new multimedia local access world—as I think many here would agree.

It may be an Internet very different from the one we know now. It may not even be called by that name in a future time. But the Internet stands for a ubiquitous , easily accessible, multi-purpose data link giving global access—at local rates. In the future it will be a broadband link allowing carriage of all of the media we know now: image, sound, data, and, of course, telephony.

That future medium may have a number of starting points: cable, satellite, television—both traditional and interactive; and, of course, the telephone networks and the current narrow-band Internet.

Let us just look at current narrow-band Internet.

We expect a cross-over point between telephone penetration and narrow-band Internet penetration well before 2007. Or in other terms, a near 100% penetration of households by that time across the EU. According to recent statistics there are currently some 65 million Internet users in Europe—of course a moving target given the high growth rates experienced. This corresponds to an average penetration of 17%—even if this continues to hide substantial differences between countries. Just recall : this is the penetration that we had in the EU in mobile just two years ago—now at 37%. Or apply another measure : 17% penetration means that some 40% of private households in the EU have some form of Internet access already now.

In a survey of 500 enterprises published last year by the European Information Technology Observatory, nearly 50% of companies said that they were running Internet based e-commerce applications by then. But even more important is that 80% of those businesses which were running Internet applications said that they did not do so just two years before. This shows the speed of change underway.

The European Commission recognizes the magnitude of the transformation. Commission President Prodi said in his message to the European Parliament already last autumn : "we must continue...promoting liberalisation to bring even more competition in the goods and, especially, the services sector"; ...Information technology is transforming the way in which we live and work and the way in which firms operate"; ...The current stunning performance of the American economy owes much to the gusto with which the US has embraced information technology."

The special European Summit at Lisbon in March of this year has firmly written this transformation into Europe's top priorities. In the e-Europe Action Plan as published in June a number of short-term goals have been set in key fields : full scale introduction of the Internet into schools, education, social institutions, government—all aiming at deadlines as early as 2002.

The e-Europe Action Plan is a very broad concept to make Europe's society fully accept and benefit from the Internet change. All of this will speed up further Internet penetration. While stepping up penetration, the Internet itself is in full development : from narrow band into a broadband media. This will fundamentally change Europe's communications landscape— in close interrelationship with the two other drivers of this transformation: media and mobile.

The major contenders for leading into that broadband future are well known : cable; xDSL in its different variants; UMTS; and perhaps soon what has come to be called Wireless Cable.

Let me set out the EU's basic concept regarding this rush towards broadband.

Broadband must be driven by the market place. The new markets will be markets formed out of convergence of current markets. Therefore

- markets must be allowed to converge

*but*

- markets must be kept open

in order

- to ensure choice for the consumer.

Competition is a guarantee for the expansion that we need. Monopolising the new markets is the direct route into stagnation.

### **III. Adjustment of the Regulatory Framework**

Let me then turn to my next point, the regulatory framework.

Commissioner Liikanen defines the aims of the current EU telecom reform package as following :

- simplify and clarify regulation;
- rely more heavily on non-binding measures;
- adapt the 1998 framework in the light of technology and market development.

This is the program behind the current EU reform of communications regulation, as announced in July in Brussels :

- technology-neutrality of regulation to let markets converge. This puts the concept of "electronic communications" services at the heart of the reform;
- rely as far as possible—but not exclusively—on soft law and private sector self regulation, in order not to be outpaced by market development;
- scrap a large part of the sector specific regulations of the past that would just impede the formation of new markets;

*and*

- unlock the bottleneck which must be opened if we want to move quickly—the local loop, the prime driver of any broadband development.

This makes the introduction of greater competition into the last mile—the local loop—central to the success of the whole strategy.

In launching the sector enquiry into the local loop last July under Article 12 of Regulation 17—governing the application of anti-trust rules to undertakings—Commissioner Monti said : " Competition has meant lower prices, better service and wider choice for customers ..." but he continued : ' we must remain vigilant'. Competition in the local loop is certainly a case in point.

This then summarises the current reform of the EU communications framework:

- make regulation technology-neutral—at least in its basic principles;
- soften regulation to allow markets to converge. In consequence, this will mean more reliance on competition law;

*and*, underlying the whole approach,

- secure consumer interests in the transition.

#### **IV. Application of Competition law to a new Environment—some Principles**

It also determines the position that the EU has taken consistently on market restructuring . The European Commission has shown in a number of cases that it is :

- positive on market restructuring through mergers and acquisitions

which are

- required to exploit market integration and face globalisation

*but*

- competition cannot be sacrificed in the process.

Let me just give a quick review for those of the investment community here in this room not so much acquainted with the reasoning under competition law which may seem sometimes complex to the non-initiated. Screening under EU competition rules implies :

- Article 81 TEC—Treaty establishing the European Community (former Article 85) : Anti-competitive agreements;
- Article 82 (former Article 86) : Abuse of dominant positions, including unfair pricing;

*and*, most important now:

- Vetting mergers and acquisitions under the EU's merger regulation

Procedures under the EU's merger regulation are triggered as soon as combined aggregate world-wide turnover of participating companies is more than 5 billion Euros and EU-wide turnover of at least two companies is more than 250 million Euros—unless each of the companies achieves more than two thirds of total turnover in one and the same Member State (the "two-thirds" rule). Since 1987 — under an alternative test and a more complex set of secondary thresholds—cases below that threshold can also trigger an investigation under certain conditions, if they concern at least three Member States. Without going further into the details of this process—a domain of highly specialized lawyers—let me just retain the main basic criteria which is very much behind major current cases: what counts is not location of companies *but* the impact of their operations on the EU market. As the

European Court of Justice and its Court of First Instance have confirmed in a number of rulings, EU competition rules fully apply to enterprises operating within its market—even if they are located mainly outside the EU. To that extent, one may say that EU competition law is well prepared to deal with the now global Internet world.

EU competition law has demonstrated this in a number of cases. It would be inappropriate to refer to the major ongoing cases that are probably on the mind of many here in the room. Instead, let me refer to some of the past decisions which make the reasoning clear :

- Worldcom/MCI, the 1998 landmark Decision under the EU's merger regulation—an example for the globalised approach to competition law application set out, and a Decision that analysed for the first time Internet markets at a global level to substantial detail;
- The recent MCI-Worldcom /Sprint case where the Commission drew a red line as far as domination of global Internet markets is concerned;
- The British Interactive Broadcasting case (BiB, now operating under the Open tradename), a milestone in the attempt for finding the right balance in dealing with the convergence of telecoms and television—driven by the interactive applications that are being pioneered by the Internet.

These cases are of course different and need consideration one-by-one each. But there is one common thread through all of these cases that I would like to set out—the issue of access:

- Access to infrastructure and content, both an issue in the BiB case where particularly access to the set-top box was concerned. The parties made



commitments that allowed a positive decision. Again, the goal was maintaining the freedom of choice for the customer.

- Access to "top-level-connectivity", the major issue in the two cases concerning Worldcom where access to the Internet backbone was the primary issue. In the case of Worldcom/MCI in 1998, the parties offered divestiture commitments that were considered a sufficient remedy to the competition concerns. That allowed green light to be given. In the second case—this year—of MCI-Worldcom/Sprint, the offers were insufficient. That resulted in the prohibition of the planned merger.

Behind the issue of top-level-connectivity looms a more general problem of the New Economy—the fact that customers tend to turn to those having gained a leading presence at an early time. The theme "leader takes all" or "the snow ball effect" seems to become a leitmotiv of the New Economy—and a major challenge for antitrust, on both sides of the Atlantic. In fact, we have seen close cooperation—and analysis along similar lines—by the EU competition authority and by the Department of Justice on all of the recent major global cases.

Let me then turn to my last point, the local loop bottleneck.

## **V. Cutting the Gordian Knot—the Local Loop Bottleneck**

Let me first clarify any misunderstanding:

The issue is *not* a choice between

- unbundling

*or*

- building new alternative infrastructures.

We need both and we believe these options are complementary.

*But*

new entrants should have the possibility to combine both options to reach reasonable penetration within a reasonable time—with the balance between building new infrastructures or using unbundled network elements drawn by them, *not* the regulator and *least* the incumbent.

The EU's strategy on this issue has been set out in very clear terms over the last few months:

- ensure access to the local loop as an essential facility across the EU;
- the EU recommendation on local loop unbundling issued in April sets out in detail various forms of unbundling, use of which should be the choice of the new entrant : from using fully unbundled lines, to sharing lines with the incumbent—such as using the non-voice spectrum for roll-out of xDSL only.
- using regulation to break open the local loop where the ongoing process does not do this with sufficient speed. As part of the current telecom reform package, the European Commission has unveiled a—binding—regulation to un-bundle the local loop by 31 December of this year. The proposed regulation is now before the European Parliament and the Council of Ministers.
- the Commission has it also made clear that it will use its competition powers to the full if agreement will not come about in time otherwise.

Action is required. The figures speak for themselves:

- by the end of last year some 900 local call providers were in operation or authorized in the EU;

*but*

- they reached out to only 0-5% of the subscriber base in nearly all Member States. With some exceptions, the incumbents still dominate over 95% of the local market.

The new technologies—such as xDSL, the various modes of digital subscriber loop technologies—offer the potential for deployment of broadband of a new dimension, benefitting from the existing near 100% telephone penetration of households in the EU. xDSL means finally putting the telephone line to full use — across all of its frequency spectrum and at flat rate. It offers to Europe—together with the cable modem option, fixed or wireless—the chance to leapfrog current world-wide competition right into the next generation Internet, as is has leapfrogged into digital mobile telephony in the early nineties. The competition is on for the first mover advantage of mass-deployment of broadband between the US, Europe and Japan..

According to recently published data, less than 8% of Europe's households had ADSL or cable Internet coverage last year, and only 0.2% were actually using it—i.e. a bare 200-300 thousand across the EU. But according to the same sources broadband Internet penetration could increase to near 20% (i.e. some 30 million households) within just five years—if competition increases and prices come down, absorbing at some stage the per-minute-pricing of local calls which will be seen, in an age of wave length multiplexing and packet switching, more and more as an anachronistic remnant of past times of bandwidth scarcity. High bandwidth and flat rate pricing taken together could revolutionize Europe's communications and

media markets bottom-up, and turn the sector into the growth machine that Europe needs.

## **VI. Conclusion**

The trigger is more competition in the local loop. As Commissioners Monti and Liikanen have said, the aim is to "stimulate competition in the local access network...to facilitate deployment of high speed Internet services", be it via xDSL, cable, fibre or wireless.

The new mobile technologies and the licences currently being allocated offer a further route to high-speed deployment, combining the fascination of mobile and the Internet. They have the potential of carrying Europe's leading position in mobile forward into the Internet and the future e-markets. But UMTS will need the rapid development of broadband markets across the board, in order to create the general broadband communications market environment that it will need for its success.

By the end of last year

- six Member States had implemented unbundling in some form
- and
- six others were planning or consulting on implementation.

This means that most EU Member States are well on their way. And we are confident that the remaining can be convinced in time. Europe must use the broadband opportunity— through competition in the local loop towards broadband Internet access at fair rates, creating the infrastructure for Europe's future communications and media markets.

