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## 23<sup>rd</sup> ETP Plenary Session

# **Converging technologies and regulations : broadcasting, datacasting, communications**

The Telecom and the media sector enter a new phase in Europe.

Let me start my short contribution with three statements :

- (1) The Telecom Regulatory Framework in Europe is being modified substantially, with the Telecom Reform Package. At the same time, the EU antitrust regime will undergo substantial change and decentralisation, with the current reforms of Regulation 17 and of the Merger Regulation underway.
- (2) Both the telecom and the media sectors are in a very critical stage. Everybody in this conference knows this.
- (3) The reform offers a new *tool box*. Everything will now depend on how we use these tools to shape a new and credible growth environment - and that we manage to do so *in time*.

Let me concentrate here on the media sector - even if there are obvious interactions with the telecom reform package that will regulate the underlying infrastructures.

A few observations :

- ◆ The growth model of the media sector throughout the nineties seems to stagger - the media sector is squeezed between a slackening advertisement market, and high content costs ; and pay-TV models have not reached profitability in a number of Member States ;
- ◆ As a result, the development of the new platforms seems to be in a crisis in a number of cases - as the sometimes dramatic events in the European media sector during the last weeks and months seem to confirm ;

- ◆ In all Member States, regulators and operators will have to reconsider their current regulatory and business models ;
- ◆ As sometimes dramatic restructuring will proceed, competition rules will play a major role in creating a new healthier base for the future growth of the sector.

We are living a paradigm shift.

In television / broadcasting some 45% of revenues come from advertising, the rest in nearly equal terms from public broadcasting fees and from pay-TV subscriptions, both for the access network and the pay-TV providers.

According to figures published by the European Audio-visual Observatory (used as a reference by the Commission) advertising revenues have grown by some 8% annually during the 1997 - 2000 period. Advertising has delivered the bulk of revenue growth - even if pay-TV revenue has grown in a number of cases more spectacularly but from a substantially lower base and entailing substantial market entry cost. Licence fee income of public broadcasters grew during the same period by no more than 3%.

As we all know, the diversification of revenue streams was reflected in the diversification of platforms and products : free TV, pay-TV, pay-per-view, the introduction of the various bouquets, and the first arrivals of interactive television and broadband Internet that still has to materialise on a mass basis.

But, advertisement revenues have flattened down, and, in fact, contracted by 10% during each of the last two years.

Content prices have skyrocketed - particularly in the field of premium content, sports and premium films. For major events such as the football world cup, prices in major markets went up by a factor of 4 to 6 within a period of 4 years.

We have seen unhealthy market concentration in those areas and resulting unhealthy cumulation of market risks, and speculation. According to the European Audio-visual Observatory, the EU television sector went into overall deficit as early as 1999, at the time largely unnoticed - and therefore was ill-prepared for the levelling off of market growth and particularly, its main support, the advertisement market.

The development of the new platforms is now at risk in a number of Member States, as we all know. The word of today is *consolidation* and *concentration on core businesses*.

This defines the agenda :

- ◆ How to re-launch and further grow the new digital platforms ;
- ◆ How to cope with media concentration in a way that still allows the development of the sector ;
- ◆ How to ensure access to content and to dismantle unhealthy structures in that area that have shown their risks during these very days ;
- ◆ And, how to avoid that agreements are concluded that continue to withhold content from the New Media - for fear of cannibalising the core revenues in the television sector that are under threat, or sometimes in a very difficult situation.

As is well known, media regulation is probably one of the most complex - and most sensitive - areas of cultural, social, and economic activities in the Union, and I have for good reasons put the term culture first.

The Treaty framework has recognised that Member States are the first guardians of the cultural and social values in the sector in the Community, within the general framework set by Community Directives (in particular the Television without frontiers Directive).

But media is also an important business activity both in its own as well as for other fields. It provides 80% of revenues of key sport activities - as has been recalled to everybody by the recent events in Member States, just think of Germany and the UK.

And the media sector will, according to forecasts in the second part of the decade be the main user of the new interactive broadband infrastructures, and therefore is vital for any successful mass development of broadband - be it fixed or wireless.

And this explains our focus and interest under competition perspectives in the development of the New Media (Internet, UMTS, and other wireless).

Given the crucial dimension of media, European Competition Law has been deeply involved in the restructuring of the sector in the recent growth phase where the sector expanded - as some would now say, overexpanded - by acquisition and horizontal and vertical agreements in order to ensure that competition was not sacrificed during that process.

Examples will still be on the mind of many here :

Let me cite a few major examples:

- ◆ Kirch / Bertelsmann / Premiere—prohibition in order to check market power in the German digital pay-TV market;
- ◆ BskyB / Kirch—green light after concessions by Kirch concerning access to Premiere's pay-TV technical platform;
- ◆ Vivendi / Canal+ / Seagram—green light, subject to conditions. At stake Vivendi / Canal+'s dominant position in certain European pay-TV markets, and privileged access to content.

With the change of conditions during this year with regard to many of the actors just mentioned, some may not always see the relevance of those decisions now. But everybody should be aware : the ground rules set by these decisions remain in place. And we will now apply competition surveillance as consolidation proceeds.

But while the rules remain the same, and the Commission will continue to be favourable on restructuring, but not at the price of elimination of competition, the focus will now be on areas which ensure that consolidation will set a framework that allows future competition and future growth.

Let me make here four points on our action.

- ◆ One focus will be the agreements on sport rights.

With the recent agreement on a pro-competitive sales policy for the UEFA Champions' League rights that we expect to be turned into a formal Commission Decision before the end of the year, ground rules are set that should avoid the anti-competitive effects that we have seen in the past resulting from overly long exclusivity periods and foreclosure of markets, made possible by uncontrolled pooling of the sale of sport rights.

As Mr Monti has made clear on the occasion of the settlement the same measures will be applied to the national leagues, as complaints are brought to our attention.

- ◆ Major attention will be paid to the New Media, the very topic of this panel, broadcasting, data casting, wireless.

We do not want and cannot admit that rights are held back with the sole purpose of securing core revenues in the traditional services. This is a flagrant output restriction to the disadvantage of consumers and will be found normally to fall foul of EC Competition Rules. We will also see that other structures do not make these rights - such as rights for music transmission via the Internet - unnecessary difficult to obtain or charge unfairly for them, preventing market development.

- ◆ With the current reform of Regulation 17 - the anti-trust regulation - we will see more emphasis on systematic market investigation in key fields. This method was initiated by the sector inquiries in the telecom field started back in 1999 - on roaming, leased lines, local loop - where it has proven highly successful.

Again , distortion of competition or anti-competitive action concerning the New Media will certainly be a target for consideration.

- ◆ The reform of Regulation 17 foresees substantial decentralisation of anti-trust enforcement to the National Competition Authorities. Future action will be based primarily on the future network of competition authorities and the Commission. This promises to substantially increase efficiency and coherence of anti-trust supervision also in the media sector, and will intensify co-operation with National Anti-trust Authorities and National Media Regulators.

We are currently undertaking surveys of market definitions in the media field at both Community and national levels, as a preparation for this co-operation - and this will extend as soon as possible to the new Accession Countries.

With the recent deferral of the review of the current Sogecable / Telefonica digital platform merger to the Spanish Competition Authorities under the Merger Regulation, Commissioner Monti has emphasised the role of National Authorities in this area.

Let me conclude.

The main issue is to create competition conditions that develop current consolidation into future growth, not only for the media sector but as a condition sine qua non for future broadband development. The *toolbox must be used for creating growth, not regulation per se*.

New Media will be a focus. Current reforms will allow to do our job more efficiently.

Thank you.