

Sector Inquiry into New Media (3G) - Case COMP/C2/38.788

Fastweb S.p.A. comments

1- General overview

Fastweb S.p.A. (hereinafter Fastweb), the only Italian broadband triple-player, fully supports the use of the Sector Inquiry, as laid down in the art. 17 of EU Regulation 1/2003, because it aims at providing a clearer picture of the European markets and also because its preliminary findings are open to public consultation.

Furthermore, in this specific case, its field of application should not be limited to 3G, but it should be extended to other technological platforms, whose activity largely depends on access to sport content, i.e. Broadband connection.

2 - The inter-platform competition

With respect to inter-platform competition – considering the national dimension for sport rights demand, particularly football – the ‘preliminary findings’ take into consideration the scenario where each operator is active only on one technological platform.

The ongoing market developments are shaping a New Media market where competition would very likely be among few operators able to provide media content through different technological platforms, which is different from competition among each technological platform.

Fastweb cannot undervalue the emerging of few dominant players whose market behaviour could possibly limit the development of other technological platforms through constraints on access to sports and other attractive content. In order to guarantee fair and competitive conditions for all available technological platforms, Fastweb considers that legal principles must support a level playing field and technologically neutral terms for competition, without privileging a specific type of platform against others.

3 - Convergence affirmation, starting of ‘convergence competition’

In Europe, as well as in Italy, in order to recover the permanent decrease of revenues from fixed calls, telecom companies are moving to media sector through acquisition of contents to be provided on their mobile or broadband network.

Also, in order to look for new commercial opportunities, the media and broadcasting companies are entering telecom sector, through agreement with 3G operators or broadband providers.

Therefore, 3G, broadband and DTT will be key services and infrastructures for the multi-platform operators/competitors.

And clearly the 'convergence competition' will be open only to the multi-platform competitors, while it will be hard to keep the pace for independent operators active only on one technological platform.

4- Potentially harmful commercial practise

Fastweb believes that 'refusal to supply', 'cross platform bundling', 'excessive charging' and 'lump sum charging' are probably the strongest restriction for the realization of fair competitive conditions in such 'convergence competition'.

Furthermore, with reference to the principle of technological neutrality among different platforms, Fastweb believes that its effective application can be effectively realised only when content providers would be prevented to make illegal discrimination through 'exclusive agreements' or other commercial sole-rights, which benefit some technological platform excluding others.

5- Final remarks

The ongoing convergence process between the telecom and the media sectors is shaping a digital scenario where only few operators will be able to compete simultaneously on 3-4 technological platforms. This market structure could endanger access to contents (sports and other attractive content).

For this reason, Fastweb believes that the Commission should set up further policy instruments, i.e. guidelines, in order to guarantee a binding framework for the development of competition among multi-platform operators and single-platform operators.