

**Sector Inquiry New Media (3G)**  
**Public presentation of 27 May 2005**  
**Keynote speech by Philip Lowe**

Ladies and gentlemen,

Thank you all for being here today. I believe that the presence of so many of you underscores the importance of the issues we are discussing, and their impact on all involved in providing content-based services.

I will not attempt to summarize or reformulate the preliminary findings as they have been presented this morning by the team in charge of the investigation. As you know, and as this public presentation makes clear, the inquiry is still an ongoing process. We are progressing with our analysis and we will take into account all comments submitted in the run-up to this presentation, as well as those that you may yet want to provide.

**I. The reasons for a Sector Inquiry in the field of New Media**

I believe that this morning's presentations, and the existence of the inquiry itself, demonstrate the continued importance that the Commission attaches to the issues of telecommunications and media.

Telecommunications and media have long been an area of attention, and the Electronics Communications Framework is only the latest in a series of steps to achieve the full potential of the telecommunications industry.

In many ways, we are here today thanks to the success of this approach. The market's openness has spurred innovation and growth, in particular in the mobile industry. And the renewed technology-neutral approach of the regulatory framework, implemented at the national and Community level, shows the progress made in promoting the

development of new services, and allowing convergence between markets. Those achievements benefit the European consumers, and the European economy, with both an improvement of the service offered, and substantial price reductions for all types of consumers. The new framework provides a clear regulatory basis to allow and encourage innovation in the media and telecommunications fields. Together with broadband Internet, 3G is an area of strong growth that heralds a new phase for telecommunication and media development. It is important to remember that mobile has been one of the fastest growing segments in the European Economy over the last decade. In most countries, mobile devices have achieved remarkably high penetration rates, substantially higher than Internet access, or multi-channel television.

Possibly more than other sectors, mobile illustrates the shift away from telecommunications having a limited carriage function and towards it being a provider of sophisticated and media-rich services. This is made possible by a series of elements: technological maturity, consumer familiarity with more sophisticated devices, and in the mobile area, cheaper handsets, as well as network and device improvements. Thanks to these changes, mobile now integrates a wide number of functions such as access to email, organizers, and, last but not least, media playing.

The changes brought about by technologies such as 3G remove a number of limitations with regard to the provisions of sophisticated New Media services. Along with greater processing power, 3G's increased bandwidth allows better and quicker access to content as well as adequate viewing conditions for video clips.

The availability of such services is essential given the market's current stage of development, all the more so as the launch of third generation mobile networks has already been much delayed. The telecoms and internet "bubble" played a substantial role in this delay, deeply affecting the industries concerned, and also impacting the license allocation process. This long and difficult period is thankfully now over, and the networks are in place, through considerable financial and technical investment. 3G is now in its crucial launch phase where it is essential for it to establish its consumer benefits over and above previous mobile technologies

The market investigation has confirmed that availability of attractive content, in particular sports-related content, has a critical role to play in the roll-out of third generation mobile technology. High visibility content is frequently needed to boost interest in a new technology. And sports more than other content seems to have this ability. It would thus be problematic if the supply of sports based services on mobile networks was hindered, as it would endanger the launch phase currently under way in most EU countries. So what is the role of the competition rules?

## **II. Focusing the Commission's attention on areas and sectors where market conditions create risks for competition and consumers**

The competition rules require no market outcome, rather they require a market process and a market structure. I am sure that 3G will prove to be a great success, but the competition rules are not there to ensure that success. Rather they are there to ensure that the opportunity for success is available.

This leads me to the second aspect I would like to discuss today, that is the types of competition issues raised by media content, and the valuable input provided by the sector inquiry on the particular issues relative to New Media.

Access to key content is an area where the Commission has been very active in Mergers and the antitrust field. This reflects the increasing importance of Media content, fostered in particular by the development of multi-channel digital television. The increased distribution capacity could have led to a commoditization of content. This has not happened, on the contrary. Key content has achieved considerable importance, as reflected by the very high interest in top sports events.

The resulting market structure for sports content is quite specific. On the supply side, there are only a few providers of premium content. One of the reasons for this is the very specific attraction of football in most Member States. Joint selling of course also increases concentration, and has for this reason been subject to the Commission's scrutiny, as in the case of the UEFA Champions League for instance. Though joint

selling may generate efficiencies, measures are required to avoid excessive restrictions created by rights aggregation. One such measure can be the sale of New Media Rights, be it in a centralized manner or directly by the Clubs in the case of football.

There is also substantial concentration on the buying side, which can raise concerns given its potential effects on access to content. I would like to remind you that a number of decisions with commitments have been taken with respect to mergers in the media area, for instance when the two Italian DTH operators Stream and Telepiù merged.

The Commission's competition decisions have consistently emphasized the need to keep markets open. This is a central concern where concentration of limited inputs, or foreclosure of such inputs from neighbouring markets, may lead to an elimination of competition. Additionally, the media sector is characterised by strong contractual relations between a limited number of players, thus raising barriers to entry. Limiting the duration of contracts is for instance essential – but not sufficient - to ensure that contestability in the market is maintained.

The competition rules can also intervene to ensure that innovation is allowed to take place. Alternative platforms must be given an opportunity to develop and to provide new services to consumers.

This said, the Commission acknowledges the complexities of media related markets. It is one of the reasons for the extent, and duration of its investigations, though this can in turn raise difficulties in a fast-changing environment. And it also warrants launching a sector inquiry, as it can help address the complex nature of the issues, as was discussed this morning by Mr Rocca. The Sector Inquiry provides other benefits in such markets. Its organization in stages allows both to form a clear overall picture of a sector, and to narrow down the analysis to the major issues. The current inquiry has proceeded in three stages, with a preliminary analysis of existing data and case-law. This first series of questionnaires addressed a sample of 50 market players requesting detailed data which in turn informed targeted, in-depth questions in the second wave of questionnaires

Sector inquiries allow a detailed and comprehensive analysis of a whole sector, providing – among other things - data to support robust market definitions that underline any competition assessment. Thanks to the extent of the investigation, the preliminary findings presented today can thus be grounded on a comprehensive review of the mobile and neighbouring sectors.

I would like to finish this part on media policies and sector inquiries by stressing that the Commission is committed to addressing cases where it believes it can be most successful in maintaining or restoring competition, and serving the interests of consumers. Beyond the scope of a particular case, decisions play a major role through their advocacy and precedent value. They contribute to setting out which restrictions fall under competition law, and where such and such restrictions cannot be justified under article 81-3 of the Treaty.

Such focus is all the more crucial when the existence and development of an emerging sector is at stake, and when limitations may be set by operators active in neighbouring markets. Given the uncertainties inherent in any market launch, there is great need for regulatory predictability in New Media. Indeed, only clarity as to the availability of premium content will make possible the development of new services, and of new business models. Such visibility is essential for all operators concerned, for users and well as for providers of content.

I would like to turn now to the implications of the principles I discussed for the inquiry into New Media, and reflect on some of the preliminary findings presented to you this morning.

### **III. Implications of the Sector Inquiry's preliminary findings**

I have already mentioned some of the issues raised by the inquiry, and in particular the importance of sports content for third generation mobile distribution. This conclusion regarding sports in no way implies that the Commission will in future limit its attention to this particular type of content. We are concerned with all situations where restricted access to inputs threatens competition and market development.

The sector inquiry appears to confirm the conclusions we reached in individual cases, that at the present stage of the market's development, 3G exerts very little competitive pressure on other media services.

The reasons for this have been detailed this morning, and I would just want to mention a few of the relevant findings of the inquiry. Their particular characteristics set mobile transmissions and mobile devices apart from other media delivery platforms such as television for instance. Mobile transmission is not a broadcast medium as it does not work on a one-to-many principle. This has considerable implications on its cost structure and the business models it can develop for content. Beyond supply considerations, mobility also implies a specific type of use by customers, in particular due to the particular social contexts in which devices are used. We should keep in mind that the technical ability to show similar content over different platforms does in no way imply that those platforms are substitutable. The user experience is also relevant – cinema screens, television screens and mobile screens are different and will continue to be used by consumers in different ways. Mobile screens in particular are an individual experience and not a social one.

The investigation however reveals a difference of approach in the market place over this question. There are worries on the part of certain players, in particular television operators that 3G could emerge as a rival platform for content delivery, and in the future challenge television's position as the sole transmission platform for sports events. Rights holders are affected by this, as such perception might lead to television reducing the price it is prepared to pay to broadcast some events.

Some cannibalisation may be possible. But if that reflects consumer preferences so be it. If consumers are given a choice between receiving the same content on television and on mobile devices, and some consumers choose mobile devices then for as long as it is financially viable to deliver both services, consumers should be given that choice. One medium – such as television – has no special right to hold exclusive rights to content, any more than radio would have had such a right when television was introduced. No

operator should have the power to control the development of its successor.

At the same time, we should bear in mind that new uses, and new services, generally increase the overall demand for media content, including for existing platforms. According to the investigation, use of the new services, and payment for them, is likely to come as an addition, rather than as a substitute, to those for existing services. By offering more sports coverage, it is likely that multi-platform availability will result in higher viewing patterns for sports across platforms. This will be made possible by the increased visibility of sports, and also through cross-promotion of sports coverage between platforms.

This part of the preliminary findings on the markets is important when considering the substantial restrictions to 3G rights that have come to light in the course of the investigation, and that have been detailed this morning.

The clearest type of restriction, of course, is when New Media rights are not offered for sale at all. This output limitation has already been identified in a number of past antitrust decisions, and was one of the reasons for launching the sector inquiry.

Lack of supply may in some instances be based on particular factual circumstances that have then to be considered on a case by case basis. Nonetheless, it must be stressed that any such situation will need to also be examined in the light of the transmission rights granted on other platforms. Given the differing state of development of TV and New media platforms, TV operators may be in a position to achieve cross-platform exclusivity through a small premium compared to what they pay for the sole TV rights. As was mentioned earlier, such configuration may result in a serious threat to the development of other innovative services, especially as it occurs while the new media services are developing.

It would likely be a concern if an existing and perhaps dominant platform secures rights to all distribution platforms with a view to under-exploit or not exploit at all those other

rights. In a situation of strong asymmetry between different platforms, this could result in a non-competitive situation, where a dominant player would block developments in neighbouring markets.

Bundled acquisition implies that the buyer is in a position to control access of others to the rights, and in particular, beyond direct competitors, players in neighboring new markets. The exclusive buyer is in a position to choose who gets access, and may be tempted to favour those players that share interests similar to his. In such a gatekeeper position, he may also act by imposing limitations on the rights offered for resale.

As my last point, I would like to come back to the restrictions to the rights, as they have been detailed this morning. An accumulation of restrictions may have effects similar to a lack of supply. Let me just as an illustration mention the issue of embargoes. There are few contents whose value decreases as rapidly over time as that of live sports coverage. Only a limited number of consumers will be prepared to watch an isolated clip of a goal after the end of a match, as the result as well as the details of the match will most likely be known to them. Thus, restrictions on the timing, the number or the length of clips may make a New Media offer very difficult to market and indeed of little interest to consumers.

To conclude on this, let me emphasize that the Commission's services are concerned with the effect that certain restrictions, alone or together, may have on competition and innovation. The exact form taken by those restrictions is secondary, though some types of restrictions, as discussed, raise concerns *prima facie*. The Sector Inquiry has proved a very useful tool to highlight the effects of cumulated restrictions. It allows a comprehensive view of contractual arrangements and restrictions, and helps to appreciate the overall impact of such restrictions on the 3G services that can be made available to consumers.

Finally, I wish to outline the next steps that the Commission intends to take on the basis of the investigation that it has now completed.



Let me say again, as I did from the start, that this presentation by no means signals the end of the sector inquiry. The process is ongoing, and today's event is meant to further the Commission's understanding about New Media, and to provide a forum for comments on the main issues that have been outlined here, and in the Issues Paper that was released a fortnight ago.

I would like to thank you for the very substantive and substantial contributions that have been provided. We furthermore welcome any additional contributions that would be relevant to the inquiry, in particular with regard to the issues discussed today; in order to keep the inquiry within a reasonable time-frame, we would request that such material be submitted no later than the 1<sup>st</sup> of July.

The investigation has already proved extremely valuable to establish a clear picture of the sector, and of how sports rights are made available.

The inquiry has pinpointed certain important issues, and indeed associated situations, some of which I have touched upon today. The inquiry helps foster changes in the way rights are made available. In a number of instances where rights were not offered, those rights seem to become available on the market place. We will follow those developments closely, and will establish a watch list in that respect, to make sure that the rights offered, and the conditions in which they are offered, allow for a meaningful exploitation of those events over 3G networks.

On the basis of our findings, and of the comments received, we continue at the same time our internal review process, to identify more clearly which situations fall under competition law and may require further action.

We will report back to Mrs Kroes on the results of the investigation including the comments received and then discuss with the national competition authorities regarding the follow-up actions required. We want to collectively further the understanding of the issues identified. I can assure you that those particular areas which need attention under competition rules, will receive that attention.