

Cable Europe comments on the ERG Working Programme 2008

26 November 2007

Cable Europe appreciates the initiative of the ERG to invite the industry to comment on its Working Programme 2008.

First of all, we would be happy to communicate to the ERG our support and to welcome the greater transparency that has been driving the ERG for the last years. We are happy to encourage the ERG to continue in that direction. However, we would kindly request the ERG to give associations at least one month when launching a consultation allowing them to consult all its members before being able to submit any fruitful comments. A somewhat longer consultation period would also be necessary when the process takes place during main holiday's period enabling the association to support the ERG's work the best that it can.

1. The Framework Review

On the Programme proposed by the ERG, Cable Europe supports the steps the ERG will take in the context of the Review of the Regulatory Framework. We agree with the ERG's decision to make it its first priority and very much welcome the ERG's will to further meet stakeholders early in the decision-making process and in advance of ERG Plenary meetings.

Cable Europe would also wish to underline the importance and value of infrastructure based competition in driving broadband uptake and the development of new, innovative content offerings to consumers. We believe the promotion of sustainable infrastructure based competition should be given greater emphasis in the NRF review and in the contributions from ERG to Commission during this process. In this context Cable Europe finds it instructive to recall that a review of broadband competition and deployment takes into account the broad Lisbon and i2010 objective of promoting infrastructure competition. In particular, it is important to bear in mind the clear evidence that demonstrates broadband deployment is most advanced precisely where infrastructure competition is most developed.

Cable Europe will be most happy to continue to discuss with the ERG in 2008 about the cable specificities in this context and its ability to contend incumbents and allow effective competition in the regions with good cable penetration.

2. Further harmonisation of the internal market

2.a. Cable Europe supports the continued harmonisation work of the ERG for 2008, but calls upon the ERG to handle the issue of regional segmentation of markets with care. The Commission addresses the treatment of geographic relevant markets for

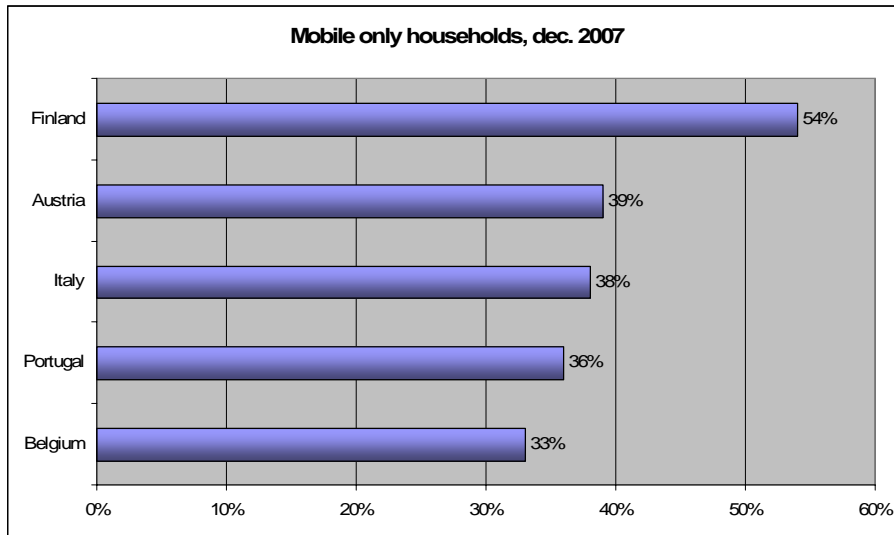
the purpose of ex ante regulation in the memorandum accompanying the new Recommendation of relevant markets. Cable Europe believes that full deregulation of the incumbent in geographically segmented broadband markets cannot be economically justified on the basis of the mere presence of cable networks in some areas, and that such approach could lead to a costly, ineffective and un-harmonized regulatory regime which in the long term will delay the transit to overall full competition and deregulation in the European Union. Such regime would also suppose a step back to the use of pre-established thresholds in the assessment of market dominance.

2.b. On Mobile Termination rates, Cable Europe will support ERG work in 2008 and would like to underline the following: The glide path for the mobile operators is supported by a generic cost model. The mobile operators can (more than) recover their costs based on one cost model while the fixed line operators cannot do this and do not even get the option to do this. Thanks to substantial interconnection income, mobile operators can offer sharp outward mobile end-user rates or develop aggressive discounts. As these substantial interconnection revenues largely derive from fixed line operators this means that fixed line operators have to subsidise their own competitors. The fixed alternative local loop operators are therefore caught in a pincer grip from two different angles; on the one hand they have to survive in a shrinking fixed line telephony market with an historical operator which can enjoy multiple (historical) advantages and on the other hand they are faced with aggressive commercial practices from mobile players which they themselves have to subsidise heavily.

The introduction of IP technology is allowing the mobile and fixed line telephony sectors to converge towards each other. Continuing to maintain an artificial distinction for regulation between fixed and mobile is no longer sustainable and is also harmful for the fixed alternative local loop operators¹. See below countries with the greatest number of households who only have mobile telephony².

¹ Paul de Bijl and Martin Peitz, Regulation and entry into telecommunications markets, Cambridge university press, p. 250.

² E-Communications households survey, April 2007, Special Barometer, European Commission.



The transfer from fixed to mobile also has an increasing impact on the trend towards the bundling of services. The existing price distortion results in additional negative effects for fixed line operators who increasingly have to be able to react to mobile operators that offer mobile data services and fixed Internet services³, partly subsidised from interconnection income.

Cable Europe is therefore urging the ERG to reduce mobile operators' interconnection rates on an accelerated pace so that the convergence of fixed line and mobile interconnection rates is reached more quickly. This is the only way that the years of subsidy flows from fixed to mobile will be halted in the interest of fair competition and to the benefit of the end user.

Fixed-mobile convergence

Convergence issues around mobile are increasingly having commercial and potentially regulatory consequences. Many operators are seeking to sell to their customers bundles of services including fixed and mobile telephony, broadband access and video. We do not see that there is, as yet, any market in bundled services (eg a "triple-play" or "quad-play" market) since we feel that each individual product competes in its own market. However, we do believe that the position of mobile operators, who have dominance in respect of termination on their own network, gives them the ability to distort competition in this area. Their ability to internalise mobile termination rates and other mobile costs for on-networks customers, costs which are, for many competitors, externalities, can put them in a position to leverage their dominance into this nascent competitive arena.

In general due to the lower levels of the externalities involved for broadband and fixed telephony other players in this area do not have such opportunities even if they are in a position to internalise some non-mobile costs. Thus we believe there is an

³ The University of Warwick, Wik Consult and Cerna, how mobile termination charges shape the dynamics of the telecom sector, Final report, July 9th 2003, p. 64

ongoing need for a clear regulatory focus in the area of mobile termination rates and, generally, on the possible consequences of market power in the mobile sector.

Cable Europe is anxious to ensure that the competitive development of fixed mobile converged services is not hindered in markets, and notably in the newer Member States of the EU, by the transfer of competitive inequalities from the mobile to the fixed environment as the competition around bundled services intensifies.

3. Response to emerging challenges on the market

Cable Europe would like to remain closely involved in the ERG work on telecom and media convergence. Cable Europe believes that the new business dynamics, innovative technologies and the benefits for the consumers will have to be carefully addressed by regulators. We therefore would like to understand the status of the ERG discussions on this topic and urge the ERG to open a real consultation process before any Common Position is reached.

Convergence has many different aspects. For instance, bundling offers are widespread in any economy and in most cases are beneficial as they respond to consumers needs, improve quality, bring about cost efficiencies and allow, in general terms, for a better performance of the market mechanism.

Settled Competition case-law teaches us that only when bundling and tying involve a company enjoying a dominant position in at least one of the relevant markets of the products being bundled, then these practices have the potential for being anticompetitive. In particular anticompetitive bundling and tying may lead to foreclosure, price discrimination and higher prices.

There might nevertheless be a case for regulators to oversee bundling practices by incumbents when they represent a risk to competition and to the development of converging markets. In particular, incumbents in the telecom markets can try to extend their dominant position in voice and broadband to the pay-TV market, where they typically show a more modest (if increasing) presence by bundling the three triple lay products in an anticompetitive manner.

Cable Europe would call for regulators to issue guidelines or best practices on this issue as this can provide legal certainty and transparency to the market.