

**Contribution Mr Chris Fonteijn at MCA
conference 28 January 2011 Malta**

The future of regulation

Ladies and Gentlemen,

It is a great pleasure to speak to you as chairman of BEREC at this event.

Of course I would like to start by congratulating the people from the Maltese Communications Authority with the ten year anniversary of the authority!

Not all of you here present will be familiar with BEREC. Therefore, I will introduce BEREC briefly.

[sheet BEREC]

The Body of European Regulators for Electronic Communications (BEREC) is the official European communications body.

It advises the European Commission, the European Parliament and the Council to ensure the further development of the EU-wide communications market for the benefit of all consumers and businesses.

BEREC is comprised of a Board of Regulators consisting of Heads of 27 national regulatory authorities (NRAs) from the EU Member States.

The EU Commission, EFTA States (Switzerland, Norway, Iceland and Liechtenstein) and three EU candidate States (Turkey, Croatia and the Former Yugoslav Republic of Macedonia) participate as observers to the Board of Regulators.

BEREC's objective is to:

develop and disseminate among national regulators regulatory best practice on the implementation of the EU regulatory framework;

deliver opinions on draft decisions,
recommendations and guidelines;

issue reports and provide advice on the electronic
communications sector.

BEREC will receive professional and administrative
assistance from BEREC Office, which is based in
Riga (Latvia). The Office is a Community Body and
is currently in the set-up phase to be fully functional
from this year on.

In its Work Programme for 2011 BEREC identified
the following emerging challenges as priorities:

1. Promotion of Broadband
2. Network Neutrality
3. Spectrum management in the light of market
developments

BEREC strives to be thought leader on these topics. We think that these topics need a broader focus, since all the different tools and mechanisms are interlinked. This means that in some cases BEREC will analyse frameworks and mechanisms that do not fall entirely into the remit of neither BEREC nor the NRA's. By choosing this broader focus BEREC will be capable to analyse the interdependence and based on that define its own role.

But enough about the organization. The subject of my contribution today is the future of regulation. Therefore, I will not only talk about the BEREC plans for the coming year but will try to look some years further ahead. I will share with you my thoughts as chairman of BEREC on the future of regulation within Europe.

I will do so by taking the current market situation as a starting point. From there I will look at the relevant market developments for the foreseeable future and try to identify the regulatory challenges that lie ahead of us in the next years.

The market situation in Europe

Well, let us first look at the current market situation in Europe.

When we look at the development of electronic communications markets in the Europe it is fair to say that European countries are doing quite well.

[sheet broadband penetration]

The OECD statistics show that the top 3 countries with the highest fixed broadband penetration within the OECD are European countries.

A significant number of European countries (including Malta, 26,8%)¹ have penetration rates that lie above the OECD average.

When looking at the level of competition one can see that competition is increasing in the whole of Europe.

The graph also shows that in a significant number of member states competition between different infrastructures such as DSL, Cable and Fiber is emerging.

Of course there are differences between member states. I will come back to those later.

Relevant market developments

I see a number of important developments that will drive the developments of electronic communications markets in Europe. These are:

¹ Broadband penetration Malta January 2010: 26,8% (Malta not member of OECD).

1. technological convergence,
2. bundling of services , and
3. the growth of mobile broadband.

1. Technological convergence:

Traditional services such as telephony and television are increasingly delivered through IP based broadband networks.

This enables the entry of traditional providers of television services into the markets for telephony through the use of IP telephony.

Vice versa traditional telephony incumbents have entered the television market through IP TV services.

This trend has its effects in particular in the countries where cable networks have a large footprint such as Belgium and The Netherlands.

2. Bundling of services:

The number of European consumers that consumes these services through bundled offers has increased significantly.

[sheet uptake of bundled services]

On this map of Europe you see that on average 38% of household consume bundles.

In some European countries (Denmark, Estonia, France and the Netherlands) already more than half of the households purchase two or more communication services form the same provider in a bundled offer. Malta is also high in this ranking with 47% (5th place).

I expect this trend to continue and consider it likely that mobile services will also become part of this bundling trend.

3. Mobile broadband

A third development which will become of major importance is the growth of mobile broadband.

[sheet growth of mobile traffic]

This graph shows the projections made by Cisco on the growth of traffic on mobile networks.

As you can see it shows a very steep increase with a growth rates of over 100% year on year

Currently about 3 percent of all traffic on the internet is traffic that is caused by mobile devices such as lap tops and smart phones. It is a very clear that this percentage will increase significantly in the next years.

It is also fair to expect that some of this increase of mobile traffic will substitute for traffic from fixed devices. Especially in countries with a high percentage of mobile only consumers this is likely.

[sheet mobile only]

On this graph you can see that in particular the newer Member States of the EU this percentage is high. Here fixed mobile substitution can cause a significant increase in the level of infrastructure competition. In Austria for instance, this is already happening.

Intermediate conclusion

So as an intermediate conclusion I can say that market developments in Europe are clearly moving in the right direction. The ongoing technological development, competition between infrastructures, competition on bundles and the growth of mobile broadband will create a situation where the European consumers have much more choice at more affordable prices.

However, the picture I presented also shows a differentiated picture of Europe. European countries differ with regard to the levels of infrastructure competition, penetration of fixed and mobile broadband and investments in NGA and so on.

So some countries are “almost there” in terms of the state of competition, in other countries there is still a lot of work to do.

As a consequence there is no “one size fits all” answer to the question about the future of regulation in Europe. There are however a number of issues that pose a challenge to all of us and thus for BEREC.

These are the following:

1. Fostering infrastructure competition
2. Facilitating investment in NGA
3. Keeping the internet open
4. Increasing harmonization and cooperation

1. Fostering infrastructure competition

One of the goals of the current regulatory framework is fostering effective competition. The regulatory framework states that regulation should be withdrawn on markets where sustainable competition exists.

[sheet competing infrastructures]

This slide gives an indication of the intensity competition between infrastructures in different European countries. Looking at this picture, it is fair to expect that in a number of member states sustainable competition will emerge at the horizon in the coming years. In particular in countries with intensive infrastructure competition between cable, DSL and fiber networks, the prospect of deregulation will become a real option in the next decade. Here, regulatory questions like “how many networks are needed for effective infrastructure competition?” and

the economic assessment of oligopoly will come at the forefront of the discussion. I know that these issues already play an important role in regulatory discussions here in Malta. Furthermore, where deregulation becomes reality the need for smooth transition regimes towards general competition law will emerge.

There will also be countries where the state of competition will still be dependent on the existence of regulation. In these countries the threat of re-monopolization, in particular through NGA developments, will stay real. Here, access regulation specifically tuned to NGA will continue to play an important role in the transition towards sustainable competition in these countries. The Commissions Recommendation provides a clear framework for this and BEREC will continue to work on this issue in the coming years.

The impact of mobile broadband on the prospects for infrastructure competition will be significant in the coming years. In my view this impact is largely dependent on whether mobile will develop into a substitute for fixed or will stay complementary, as is currently the case in most countries. Although this is still uncertain, it is very clear to me that frequency allocation will become a much more important instrument for fostering competition and achieving broadband for all. Therefore we have to work on integrating the competition approach into frequency policies.

2. Facilitating investment in next generation networks

The digital agenda has clear and ambitious objectives. There are several targets mentioned, referring to different stages in time. The first step is that there should be basic broadband coverage for 100% of the EU citizens by 2013. By 2020 there should be a fast broadband coverage of at least 30 Mbps for 100% of the EU citizen and 50% of all citizens should have subscriptions above 100 Mbps.

One of my first slides shows very clearly that the need for measures to reach these objectives will differ between countries.

[sheet fiber roll out in the EU]

For instance the roll out of fiber networks is most advanced in the northern parts of Europe. It is clear to me that market forces alone will not be sufficient

to reach these objectives in many member states. Additional measures stimulating investment will stay necessary.

The NGA recommendation highlights clearly what regulators can do to facilitate investment in NGA networks. BEREC and its members are working hard to implement measures in this area.

The role of national governments in this area is mainly guided by the state aid policy of the European Union. Because open access is one of the key aims of both regulatory policy AND state aid policy, the regimes will increasingly interact in the future. I see a clear role for BEREC in keeping these policies aligned at both European and national level now and in the future.

3. Keeping the internet open

It will come as no surprise that the openness of the internet will stay on the regulatory agenda. Although the discussion on this subject have been going on for some time already, the real issues are still on the table and will stay there:

The move towards IP based NGA networks has only just begun. The internet itself will continue to become more and more interwoven with all parts of society. Consumers are demanding more and more advanced services which require higher quality of service on the internet. Video content will become the dominant traffic type on IP networks which requires major investments in capacity.

One can also observe that issues around the free flow of information on the internet are prominent in the public debate. See for instance the recent discussions on Wikileaks, Google in China, Hadopi

in France. I expect that privacy and security of networks as well as the information on these networks will become important issues in the regulatory domain.

The main question for the next decade within the domain of BEREC and its members will be how we can achieve a modern and up to date internet infrastructure that is both open to innovative applications and can deliver the quality of service required by the commercial and non commercial users. In my view the real debate on this issue has only just begun!

In BEREC's current view competition and transparency are important drivers for openness of the internet. New EU regulation focuses on both these aspects. Given the state of competition and regulation in the EU and the relatively low level of actual problems with openness, BEREC sees at this

moment no need for additional regulatory measures. BEREC will however closely monitor market developments that would threaten the openness of the internet. BEREC will naturally stay in the forefront of the debate on the openness of the internet.

4. Increasing harmonization and international cooperation

One of the main goals of BEREC is to increase harmonization by achieving more consistency in the application of legislation and regulation. Several times in this speech I have pointed at differences between countries. These differences drive the pace at which the goals of the framework are reached. However, there are also issues where differences in market developments are not so manifest. These areas t require continued attention across the whole of the Europe in the coming years . I focus on two of them: International roaming and voice termination.

On roaming the digital agenda sets an ambitious target on the difference between national and roaming tariffs. This difference should approach to zero in 2015.

[sheet development roaming tariffs]

[explanation: red line: regulated price cap, yellow: average price calls at regulated eurotariff, green: average price calls at non regulated tariffs]

The development of tariffs under the current regulatory regime shows clearly that such a goal will not be achieved by competitive forces. The price reductions shown on the slide are mainly attributable to regulation. There is hardly any competition under the price caps.

The achievement of the ambitious target of the digital agenda will therefore require continued intensive regulatory oversight of the roaming markets. BEREC will be working together with the European Commission to assess option for future regulation of mobile roaming.

Another issue that will stay on the agenda for some time is voice termination. The Commission and BEREC have set important steps by working closely

on the recommendation on terminating rates. These steps are aimed at reducing termination rates towards the incremental cost of termination.

In BEREC's opinion it is worthwhile to look for sustainable solutions for termination regulation for the future. Such solutions should take account of technological developments to IP based NGA networks and increase consumer welfare. BEREC has already indicated bill and keep as a promising option here. The challenge for the next decade will be to manage the transition process towards a sustainable solution for the termination bottlenecks.

Summing up

[sheet challenges]

In the last couple of minutes I have tried to sketch you a broad picture of the future challenges in communications regulation. To a certain extent this is like looking in a crystal ball. There is no such thing as a clearly defined future and a lot of things are uncertain. So I am sure that we will encounter plenty of surprises in the future.

It is however pretty clear to me and to BEREC that the issues I discussed today will play a major role in shaping the future of communications regulation. I hope that the issues I have presented here provide enough food for thought and discussion and wish you all a very fruitful conference.

Thank you for your attention!

