

Workshop on Sub-national Markets

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European guidance: The Commission's view



EUROPEAN COMMISSION
Competition DG

Reinald Krüger

Overview

- What's the regulatory challenge?
- Key principles
- Ofcom's review of the WBA market
- The Austrian WBA market
- The Belgian WBA market
- Conclusion



What's the regulatory challenge?

- Development of infrastructure-based competition
 - Alternative operators increasingly invest in their own networks
 - Main competitive check from “un-bundlers”, and no longer from wholesale broadband access seekers and resellers?
 - Roll-out takes place at different rates across the territory of the Member States
- Regulatory response
 - Clear criteria for defining and assessing sub-national markets
 - Criteria must be based on competition law principles



Key principles (1)

- Where do competitive constraints come from?
 - Actual competition
 - Potential competition
 - Competition from substitutes
- For market definition, need to analyse actual competition
 - Reflected by conduct of actual market players
 - Effect of such conduct on market structure
- Potential competition and competition from substitutes determine SMP
- Forward-looking evidence can inform analysis of actual competition
 - However, evidence of market developments should be objective
 - Questionnaires to undertakings, business plans, network roll-out plans



Key principles (2)

- Best place to assess regional differences in the actual conditions of competition and the conduct of market players is market definition!
 - Regulatory framework
 - Underlying competition law principles
 - Risk of departing from actual conditions of competition and thereby overstating structural differences and potential competition
- As a matter of principle, sub-national markets and geographic differentiation of remedies should not be used as two alternative, equally applicable options
- Geographically differentiated remedies may be applied, when:
 - Boundary between regions with different competitive conditions are unstable
 - Evidence at hand does not justify the definition of sub-national markets



Ofcom's review of the WBA market (1)

- Identifies and proposes to deregulate sub-national markets
 - Deregulation of areas covering around 65% of all UK homes and businesses
- According to Ofcom the WBA market is no longer national
 - Indirect competitive constraints by vertically integrated competitors (cable and LLU)
- Ofcom groups exchange areas into 3 different categories
 - The level of competitive entry at each local exchange as a proxy for conditions of competition
 - Ofcom proposes to withdraw regulation in exchanges where four or more "scale" competitors are present, or forecast to be present when the exchange serves more than 10,000 premises



Ofcom's review of the WBA market (2)

- Commission comments letter of 14 February 2008
 - Commission does not raise fundamental objections to Ofcom's proposal
 - Based on detailed economic evidence
 - Represents a move towards better targeted regulation
- However, Ofcom's approach deviates to a certain extent from the Commission guidelines
 - Risk of over-regulation as well as under-regulation
 - Market share as indication of dominance?
 - Is LLU competition sustainable?



Ofcom's review of the WBA market (3)

■ Commission insists:

- The methods applied shall not lead to other outcomes than an assessment strictly based on Commission guidelines
- Number of operators or the size of the exchange are not sufficient to identify real differences in competitive conditions for the purpose of market definition
- Additional structural and behavioural evidence is necessary (market share distribution, pricing patterns etc.)

■ Commission acknowledges:

- Developments of competition in parts of the UK sufficiently established to support sub-national markets and removal of regulation
- Commitment to monitoring and further reviews if necessary



The Austrian WBA market

- Commission comments letter of 26 March 2008
- TTK defines a national market but differentiates remedies geographically (on the basis of individual MDFs)
 - Area 1 vs Area 2 remedies
 - Despite greater competitive pressure from alternative infrastructure-based operators, retains regulation in Area 1 (accounting separation)
- Commission acknowledges:
 - Telekom Austria's (TA) national pricing
 - TA's stable market position nationally
 - Absence of evidence on stable differences in competitive conditions
- Commission insists:
 - TTK to monitor the competitive trend in different MDF areas in Austria



The Belgian WBA market

- Commission comments letter of 3 January 2008
- Commission acknowledges:
 - Any wholesale price increase is likely to be absorbed by Belgacom and ISPs and not passed through to the retail level
 - rather stagnant retail competition
 - low presence of operators relying on local loop unbundling
- Commission comments:
 - NRA to monitor and assess in its subsequent analysis the competitive conditions in the retail market
 - to check whether the future market development may justify the delineation of sub-national markets



Conclusion

- Regulatory approach to sub-national markets must be consistent!
 - Approach must be robust and evidence-based
 - Importance of intensity of infrastructure-based competition
- Defining sub-national markets and imposing geographically different remedies are not substitutes!
- Assessing actual competition in sub-national markets is more than simply counting the number of operators or comparing the size of exchanges
 - Market share distribution and its evolution
 - Pricing patterns and their evolution
 - Functionalities of products and marketing strategies
 - Entry conditions
 - Stability of any proposed geographical differentiation, etc.





Thank you for your attention !



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