

# Key Convergence Issues: an ISP perspective.

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## Convergence: telecommunications & broadcasting

### Introduction :

- Digital technologies and the diffusion of new transmission technologies have increased the number of platforms (like cable, fibre, wireless, satellite, powerlines, dtl etc.) capable of providing communication services, including video transmission;
- traditional characteristics of broadcasting, such as lack of interactivity and the concept of broadcasting as a 'one-to-many' service, may change in the future;
- thus, electronic communication markets are rapidly developing towards a world where the traditional distinctions between broadcasting and telecommunications are becoming increasingly blurred.
- while this trend is going to have a direct impact upon broadcasting regulation - see for instance criteria and methods of licensing market entry - a crucial issue will be whether to maintain existing separate regulatory frameworks for telecommunications and broadcasting
- I will approach this subject from an altnet/OLO perspective, while debate on how the above changes will also affect the EU regulation for the broadcasting sector (Television without Frontiers Directive) is still quite open, so I won't deal with it here.



## Overview of the presentation.

### My intervention will focus on the following subjects:

- **Persisting access bottlenecks;**
  - regulatory and competition issues involved;
  - Evidence from UK;
  - Price competition vs. quality competition;
  - Possible solutions:
    - (i) appropriate and adequate regulation for access issues;
    - (ii) timely and correct implementation of the NRF;
    - (iii) ladder of investments;
- **New competitive issues arising out of the convergence**
  - premium content as an issues
  - Intra-platform competition and access to content
  - Solution to content bottleneck
- **Impact upon Universal Service**
- **Conclusions**



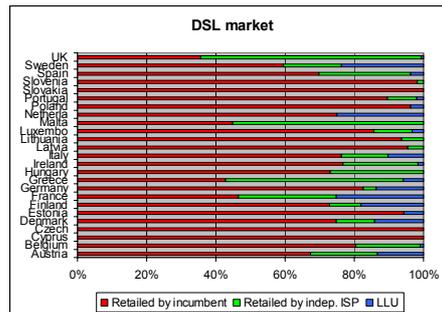
## Key problem: bottleneck access.

- While there are genuine expectations that convergence will lead to a multiplatform environment, one should however consider that access bottlenecks will remain a crucial issue for the next years;
- In particular, incumbent's PSTN network (and, accordingly, DSL technology) is deemed to remain the sole access infrastructure allowing a BB operator to serve innovative triple play services nationally both at residential and corporate level;
  - DSL technologies continue to account for an increasing share of the overall broadband market, and now stand at 77.7% of total broadband lines (EU25), up from 73% in 2003 (EU15) (EC 10<sup>th</sup> Implementation Report)
- other access technology and networks (like cable, fibre, wireless, satellite, powerlines, dti) while rapidly developing will not however provide for a comparable access network in a reasonable time;
  - Cable modem access lines making up 19.6%, a drop of 4.6 percentage points on last year; Other technologies such as satellite, fibre and wireless local loop account for the balance of 2.7%, an increase on last year's figure (EC 10<sup>th</sup> implementation report)
- Thus, we maintain that, though platform-competiton is a desirable long-term policy goal, present market situation calls for continued attention to foster competition on the copper networks, as these are, and will remain for some years, by far the main means to access BB converging markets.
- The concrete and actual risk is that PSTN incumbent operators may leverage their dominant position on the access network to gain the entire value chain of integrated services (access + transportation + services/content) in order to re-monopolise the whole market.



## The bottleneck issue in figures:

- On average incumbents retail directly or through their own ISPs 75% of available DSL lines



Data from ECTA BB scorecard Q4 2004, March 2005



## Evidence of this from UK: the Ofcom strategic review.

- Key problems identified:**
  - Firstly, an unstable market structure in fixed telecoms, dominated by BT and with alternative providers that are, in the main, fragmented and of limited scale. It is worth noting that BT's market share in the UK is the lowest among Europe's incumbents.
  - For twenty years, regulation has failed fully to address the problem of BT's control of the infrastructure connecting customers to the network. Much of this infrastructure is very expensive to replicate; as such, collectively it amounts to a series of *economic bottlenecks upon which BT's competitors are largely or wholly reliant*. Without real equality of access to those bottlenecks, sustainable competition cannot flourish.
  - To date, the manner in which BT has controlled access to the economic bottlenecks in its network has had an impact on the roll-out of important wholesale products with the potential to offer greater choices to the consumer than would be provided by the incumbent alone. In broadband, the products affected include Local Loop Unbundling and DataStream; in voice they include Carrier Pre-Select and Wholesale Line Rental.
- Most effective solution: non-discrimination (functional separation):**
  - This would mean that BT must offer competitors the same or similar:
    - wholesale products and prices, as are made available by BT to its own retail businesses, and;
    - transactional processes, as are made available by BT for the use of its own retail businesses



## Price competition vs. quality competition.

- Price competition may become less important as long as services are becoming more and more sophisticated and can support various applications.
- Thus, BB world requires more reliability and quality rather than dial-up and traditional voice. This is why, when wholesale inputs by incumbents are concerned, not only price squeeze and predatory conducts are issues, but also **quality squeeze**.
- On a more general level, in a converged market, entry barriers such as:
  - discriminatory SLAs;
  - interoperability restrictions;
  - Wholesale parameters in case of VOIP;
  - migration/transfer issues,

may prevent effective competition even independently of price and access matters



## Possible solutions to access bottleneck (1/3) Appropriate and adequate regulation

- Appropriate and reasonable regulation shall be kept in order to guarantee fair access to bottleneck inputs**, while infrastructure investments shall be supported and encouraged, especially with regard to altnets
- The NRF provides the right tools to foster competition:
  - Everything can be regulated: potential for effective solutions to the price squeezes and other problems new entrants are experiencing in competing with incumbents
  - More detailed and tailored regulation: 18 relevant markets (instead of 4 in the 1998 Framework) or even more
  - Technological neutrality: regulation to apply to any kind of market, irrespective of technology used. An appropriate and certain access regulation is the best solution to foster investments (see next slide)
- Wholesale regulation may not be enough**: in some countries the persistent dominant position of incumbents require some kind of retail regulation in order to avoid price squeeze
- CAVEAT**: good regulation is not sufficient (or even *de facto* non-existent!) when there is lack of enforcement for organizational, procedural and administrative review issues; sanctions shall be appropriate.



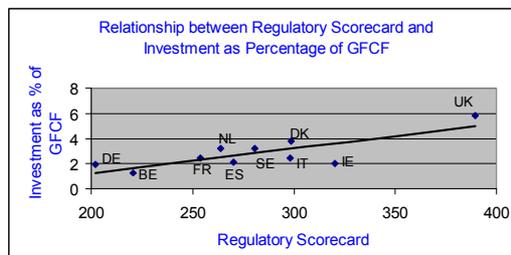
## Possible solutions to access bottleneck (2/3) Timely and correct Implementation of NRF

- The Commission has launched on 14 April legal proceedings against ten EU Member States to remedy infringements of EU rules on electronic communications. It points to defects in national laws, and incorrect practical application of EU rules, in Germany, Italy, Latvia, Malta, the Netherlands, Austria, Poland, Portugal, Slovakia and Finland. One non-conformity proceeding against Germany is already at the second stage of a reasoned opinion.
- In addition to problems of conformity of transposition in some Member States, market analysis process is lagging behind almost everywhere:
  - In the first 16 months (as of December 2004) the Art. 7 Task Force received 119 notifications from 12 MS. However, 93 are from 4 MS (39 from United Kingdom; 21 from Austria; 20 from Finland; 13 from Portugal).*
  - 15 notifications on BB markets (mkt 11, 12): only half way, just considering EU15.*
- Article 7 mechanism is a strong enforcement regime to ensure that existing regulation is reassessed market by market, but **risk of effective and homogeneous implementation across Europe arriving too late remains high**
- Implementation delay (and regulatory uncertainty resulting thereof) is a crucial issue jeopardising altnets' efforts to climb the ladder of investment and to ensure innovation and consumer welfare.**



## Possible solutions to access bottleneck (3/3) Supporting and encouraging ladder of investments

- Infrastructure competition is our long-term policy goal
- Regulatory uncertainty (see above): a key threat to investments
- Investments, by incumbents and new entrants alike, follow similar pattern: highest in "best - not most! - regulated" markets



Source: JonesDay & SPC Network (Regulatory Scorecard 2004)



## Convergence development: Premium content as a major bottleneck

- The commercial relationships between content creators and online service providers will be key to ensure continued growth of the BB market.

However, access to premium content by new media platforms may become an (additional) major bottleneck due to:

- Very high cost of acquiring premium content and financial risks involved
  - Commercial practices designed to maximize values of the rights (e.g. window schemes)
  - Long-term exclusive contracts; Holdback clauses and preemption right
  - Various exclusion mechanisms.
- Moreover, barriers can be created also by broadband incumbents by way of:
- interoperability restrictions (such as walled gardens)
  - business models based upon dominant access provider's customer base (high minimum guarantee deals)
  - Predatory prices: access revenues subsidize content distribution (Rosso Alice in Italy)
  - Current vertical integration of ISPs into incumbents, with the implied reduction of transparency



## Intra-platform competition and access to content: a vicious circle?

- Content availability and related access rules will be a key for the development of a competitive BB market.

The lack of effective competition in the BB access market is a real source of concern to altnets because:

- the BB incumbent enjoys greater certainty that it *already* has an adequate customer base to make profitable (in some case: even non-profitable ...) use of content acquired;
- access/content bundle (whether lawful or not: open question...) may allow incumbent to abusively increase their market share on the BB market;
- altnets lack confidence to compete aggressively for content is jeopardised by the uncertain regulatory and competitive scenario above.

Content providers should be concerned that they may not be able to secure the full value for their content when negotiating with a monopolist, and this could reduce the incentives to create content for the new media.



## Solution to content bottleneck

- Content world is various and sophisticated; issues are now emerging (DRM, peer-to-peer, ISP liability, new business models) and need firstly mutual comprehension;
- Some incumbents are "brain-storming" about the application of an "essential facility doctrine" to content issues: however, to the present stage this is quite doubtful;
- Debate on "access to content" should in any case not distract our attention from the the concrete pending issues, which still concern access bottleneck;
- ECTA's working groups are currently discussing about an appropriate set of remedies for the content issues.



## Impact upon Universal Service.

- Convergence and multiplatform competition is unlikely to have an immediate impact on current US rules; multiple access solutions are still in progress and does not make, to time, US rules unnecessary or disproportionate, also because:

- *Geographical coverage of different networks varies widely in EU 25.*

- *Assuring effective US across all member states should remain a priority.*

- In substance, considering that fixed wireline incumbent's networks still have the widest geo coverage, present US obligation should be maintained in the short to medium term.

- Extending US to BB may be a consequence of technological development (upgrading of networks), but, in the short term, achieving homogeneous geographical coverage should remain the public policy priority

- Additional thought must be given as to which rules have to be applied to the financing of new networks used to provide US, making sure that all publicly funded network should ensure equality of access to every operator on fair and non discriminatory conditions



## Conclusions

- Bottleneck access still remain the main priority for the altnets;
- Prompt, appropriate and timely regulation for wholesale inputs remain necessary to solve bottleneck issues; no over-regulation needed;
- Concrete and timely enforcement of regulation and adequate sanctions for abusive and unlawful conducts by incumbents is a key;
- Access to content is becoming more and more important for converging networks, and require more mutual comprehension amongst different operators; however, link with the uncompetitive BB scenario remain the main concern



## A si biri / Goodbye

For more information and brain storming proposals:

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