

## **ATUG Opinion – 21 November 2007**

Last week the EU proposed a very significant change to their approach to telecommunications regulation in a comprehensive package of reform which may provide a benchmark for Australia's own deliberations during 2008 and 2009. Press pack, with all the documents of the new EU Telecoms Package: [http://ec.europa.eu/information\\_society/newsroom/cf/itemlongdetail.cfm?item\\_id=3701](http://ec.europa.eu/information_society/newsroom/cf/itemlongdetail.cfm?item_id=3701)

“With the reform, the Commission wants to enable citizens, wherever they live and wherever they travel in the EU, to benefit from better and cheaper communication services, whether they use mobile phones, fast broadband internet connections or cable TV. To achieve this, the Commission proposes strengthening consumer rights; giving consumers more choice by reinforcing competition between telecoms operators; promoting investment into new communication infrastructures, in particular by freeing radio spectrum for wireless broadband services; and making communication networks more reliable and more secure, especially in case of viruses and other cyber-attacks. A new European Telecom Market Authority will support the Commission and national telecoms regulators in ensuring that market rules and consumer regulation are applied consistently, independently and without protectionism in all 27 EU Member States. To become law, the Commission proposals will now need to be approved by the European Parliament and the EU Council of Ministers.”

Viviane Reding, the EU Telecoms Commissioner summarized the developments:

"Where telecoms markets tend towards effective competition, we no longer need sector-specific regulation. We should instead concentrate regulation on those markets where structural competition problems persist, such as access to high speed broadband services. This is where almost all of the national telecoms regulators have identified serious and sometimes even growing competition problems."

The following is an extract from the Frequently Asked Questions release at <http://www.europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/458&format=HTML&aged=0&language=EN&guiLanguage=en>

### **How will citizens benefit from the proposed EU Telecoms Reform?**

The EU Telecoms Reform will ensure that 500 million EU citizens get easier and cheaper access to a variety of innovative telecoms services and will have, as a result of more effective competition, more freedom of choice between different operators. Citizens will also get, throughout Europe, wherever they are, better access to emergency services, freephone numbers and benefit from increased price transparency and greater security when using communications networks.

### **How will the reform concretely ensure citizens get better services at lower prices?**

The EU Telecoms Reform package includes several specific measures that will strengthen consumer rights and their freedom to choose.

- **Broadband internet access:** The reform will tackle more efficiently the dominant telecoms operators' control of the broadband market. This will strengthen the right of consumers to choose and change their broadband provider, lead to better and faster broadband services, and to lower consumer prices. By making radio spectrum use more efficient, the reform will also ensure that those regions of Europe where it is uneconomic to build, say, a fibre optic network, can be connected via wireless broadband services.
- **Number portability:** The reform will make it easier for citizens to keep their telephone number when switching providers, and set a maximum of 24 hours for operators to 'move' their number to the new provider....In future, the Commission will also be able to extend this consumer right to the possibility of porting subscriber's personal directories and to the portability of numbers between fixed and mobile networks.
- **More transparency:** Confronted with a wide range of telecoms services and products, consumers often have difficulties in deciding which one is best for them; 34% of EU consumers admit facing problems in comparing the offers of different providers, making it harder to take advantage of the best possible deals. The reform will force telecoms providers to provide all

relevant information on prices and other conditions so that consumers can make informed choices before making a purchase.

- **Access to freephone numbers from abroad:** At present, it is not possible to access certain freephone or business service numbers when calling from one Member State to another.... The EU Telecoms Reform will guarantee that access to these numbers is granted from everywhere in the EU. If you have to pay for this access, you should be told clearly in advance.
- **Connecting all citizens:** About 15% of Europeans have a disability and by 2020 25% of the EU's population will be over 65. The reform will therefore ensure that people with disabilities, special needs and elderly people all get easier access to telecommunications services. For instance, access to emergency services via the European emergency number, 112, will be improved; and more TV channels will have subtitles, audio descriptions or sign language.
- **Independent watchdogs:** The EU Telecoms Reform will ensure that competition and consumer rights in national markets are ensured by watchdogs which are fully independent from operators and government alike. ...The EU Telecoms Reform therefore wants to strengthen the independence of national telecoms watchdogs to guarantee fair regulation in the interest of consumers.

### **Will citizens' rights to access websites of their choice be guaranteed?**

Especially in the United States there has been recently a great amount of discussion regarding the risk that telecoms providers would block access to certain websites for purely commercial reasons. In the EU, the reform will guarantee that your internet service provider must clearly inform you in advance if they impose limitations on accessing certain sites. This information will make it easier for you to decide whether you want to switch to another provider or not. National regulators will also have powers to intervene when the quality of service for transmission (which grants access to online services such as TV, telephony, internet, etc.) could be at risk.

### **Are there still competition problems on Europe's telecoms markets?**

Yes. In the **fixed voice telephony** market, infrastructure competition is still in its infancy with on average 87.8% of subscribers still using the incumbents' network for direct access. In the **broadband market** EU broadband penetration is currently on average only 18.2%. Although this includes market leaders Denmark (37.2%) and The Netherlands (33.1%), with Bulgaria and Romania at 5.7% and 6.6% there is obviously much room for growth through intensified competition.

### **What is functional separation?**

Functional separation is an instrument to ensure fair competition leading to freedom of choice for consumers in a telecoms market dominated by one operator. It requires an incumbent operator to separate its network infrastructure from the units offering services using this infrastructure. Although operationally separate business entities are created, overall ownership remains unchanged; functional separation is therefore an instrument that needs to be distinguished from structural separation which is currently being introduced in the energy sector (see [IP/07/26](#), [IP/07/29](#)). As telecoms markets are more dynamic, functional separation allows network access to new entrants and the incumbent's own retail division on the same terms. It gives new entrants a fair chance to build services using the incumbent's existing infrastructure.

### **Will the Commission impose functional separation on every operator in the European Union?**

No. The Commission proposes to give all national regulators the *possibility* of imposing functional separation, if they, on the basis of a sound market analysis, deem it necessary to tackle important competition problems, taking due account of the principle of proportionality and of the effect on investments by incumbents and new market entrants. Functional separation should only be used when all other regulatory tools have proved to be inadequate. To be imposed, functional separation requires the approval of the Commission and needs to take into account the effect on investment by the incumbent as well as by new market entrants.

### **Will functional separation not hold back investment in competitive infrastructures?**

No. First of all, the experience from countries that have already introduced functional separation shows that this remedy enhances overall investment in services and in network infrastructures. In the UK, functional separation has spurred a new wave of investment and infrastructure-based market entry as evidenced by the explosion of local loop unbundled lines in UK which has jumped from less than 100,000 in June 2005 to 3.3 million by the end of October 2007. In addition, the EU Telecoms Reform requires a thorough cost-benefit analysis by national regulators before introducing functional separation. They thereby ensure that the incentives to invest for both the largest and smallest operators are preserved. By allowing common ownership of the network and service arms, functional separation will facilitate coordination of investment decisions between the services and network elements. Efficient investment by new market entrants will be supported by the fact that with functional separation, they can rely on non-discriminatory access to all bottlenecks.

#### **When will the EU Telecoms Reform come into force in Member States?**

From, today onwards, the Commission proposals for new consumer rights, for functional separation and for the European Telecoms Market Authority will be extensively examined and debated by the European Parliament and the Council of Telecoms Ministers. Parliament and Council will decide about the EU Telecoms Reform on an equal footing (the so-called co-decision procedure). Once accepted by both institutions, the 27 Member States will have to translate the results into their national legislation. This is expected to happen by 2010.

The new Commission Recommendation on Relevant Markets will be applicable immediately after the adoption by the Commission on 13 November 2007.