

The definition of geographic markets in electronic communications

CLEC, Brussels, 21 February 2008



Views from regulators: Ofcom's review of the WBA market in the UK



EUROPEAN COMMISSION
Competition DG

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Overview

- The Commission's role
- A key regulatory challenge
- Ofcom's review
- The Commission's comments letter
- The Belgian WBA market
- Outlook



The Commission's role

- To prevent the adoption of measures creating a barrier to the single market or in breach of Community law (serious doubts/veto)
- To ensure consistency of national approaches, taking account of Community law and Art.8 FWD (comments)
- NOT: to approve decisions by NRAs (cf. CFI Order of 12 December 2007 - Vodafone)



A key regulatory challenge

- Development of infrastructure-based competition
 - Alternative operators increasingly invest in their own networks
 - Main competitive check from “unbundlers” and no longer from wholesale broadband access seekers and resellers?
 - Roll-out takes place at different rates across the territory of the Member States
- How to be addressed by ex ante regulation?
 - Criteria for defining and assessing sub-national markets?
 - Competition law principles!



Ofcom's Review

- 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



The Commission's comments letter (1)

- Comments letter of 14 February 2008
- The 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?



The Commission's comments letter (2)

- Insist: the methods applied shall not lead to other outcomes than an assessment based on strict application of Commission guidelines, based on competition law principles
 - The 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 etc.)
- Acknowledge: 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 Belgian WBA market

- Comments letter of 3 January 2008
- 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
- 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



Outlook

- Consistency concerning criteria applied by NRAs for regional segmentation
- Regulatory approach must be robust and evidence-based
- Importance of intensity of infrastructure-based competition
- Different market conditions in MS might lead to different market definitions





Thank you for your attention !



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