

Bill and keep

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Thank you, Mr Chairman.

“Bill and Keep” sounds very much like “Moat and Bailey” or “Tar and feather”, some sort of *faux* Norman or Plantaganet public house in the English home counties.

We sit here underneath a castle built to be a bottleneck on the River Rhine.

Listening to so many economists I am reminded that an economist is defined as someone who has never met a real person, but had one described to them.

It should be recalled that even if you laid all the economists in the world end to end you would still not reach a conclusion. The only way to economists to lie down is if they are dead or drunk, which is not a condition in which they are capable of offering even one opinion!

There have been a number of recent meetings addressing topics such as the Future of the Internet at the OECD¹, “What rules for IP-enabled NGN?” at the ITU² and the first of a series of meetings on next generation networks at the European Commission, covering RFID and sensor networks.³

Much of the ground has already been covered at a technical and regulatory level.

The lessons from the international mobile roaming story⁴ are relevant to the discussion of Next Generation Networks (NGN). If we get disputes over access on NGNs and it takes a decade to resolve them, then Europe will be even deeper in trouble. The Lisbon goals are already very, very far behind schedule and ICTs are not making the strong contribution they might.

More effort and considerably greater understanding of the problems is required, combined with considerably less understanding for the participants. The complexities of the issues in access and interconnection grow greater with each cycle of technology.

People in Paris can watch cable television from Utah using SlingBox over the Internet. One Parisian, known to some people here, aspires to watch Australian Rules football by a similar mechanism. For the present, it is only available in NTSC and not in PAL.

Innovation and personalization of content are the future of the Internet.

¹ http://www.oecd.org/document/5/0,2340,en_2649_34223_36169989_1_1_1_1,00.html

² <http://www.itu.int/osg/spu/>

³ <http://cordis.eu.int/>

⁴ http://www.3wan.net/talks/2006/ES_2006_04_roaming.pdf

People communicate with people, but also with domestic appliances, which communicate with other domestic appliances and with objects. People communicate with objects using sensors.⁵

It is all too evident that the simple world of circuit-switched voice telephony is far in past.

The antipodes

Let me turn to an old story, one from the antipodes.

New Zealand is a very small market, it is roughly the same area as the British Isles, but with the population of the Republic of Ireland. It is very, very remote from other markets and from competitive points of interconnection. It has been given by its government a vertically integrated incumbent, stretching from the undersea cables on the shores of Australia and of California to the isolated homes of the individual sheep farmer.

I think many of you will be familiar with the story of Telecom and Clear. It was a dispute that began on the market for interconnection in New Zealand at a time when the incumbent operator had been privatized, when competition had been introduced, but no regulatory function created. Bill and keep was rejected by Telecom New Zealand.

In the absence of a regulator the dispute was taken first to the high court and then to the court of appeal. From there it was sent in a slow boat to the former colonial power, making its way through the Judicial Committee of Her Britannic Majesty's Privy Council. Their lordships concluded that the Baumol-Willig Rule was not an abuse of dominance and could be applied by Telecom New Zealand, they did not favour bill and keep.

The process took years to resolve and incurred costs that were out of all proportion. It also discouraged operators from entering that market to the lasting benefit of the incumbent operator.

The eventual response of the government was to create a regulator with a somewhat theoretical focus on economics. It has been against a political background that can best be described as Ultrathatcherite.

Time has passed and there has been a regulator in place now for some years. He has endeavoured to improve telecommunications markets, but with only modest success. Sadly, things are no better and arguably worse. New Zealand ranks 22nd in the OECD for broadband.

There has been a dispute over whether or not to unbundle the local loop that has been running for years, without yet having reached a conclusion. Meanwhile Telecom New Zealand has been establishing a position on the market that discourages the few present competitors and any potential competitors from engaging in a battle that they know is lost from the outset.

⁵ <http://www.itu.int/internetofthings>

As you doubtless know, the *Lord of the Rings* was filmed in New Zealand. Telecom New Zealand like Sauron has spread its darkness across the land and there seems little sign that anyone knows what to do.

You need regulation when there is an imbalance in market power. What New Zealand needed was a competitive market structure with incentives to interconnect!

Logically, the government should not have allowed the incumbent into mobile telephony or, perhaps, split it between the North and South Islands. The fault lies in the design of the market, not in the regulation.

International Internet Charging

Let me turn now to a rather different former British colony, one lost to insurgency, the United States of America (USA).

Back in October 2004, the government of the USA elected to take a derogation from a Recommendation of the International Telecommunication Union (ITU). At the insistence of AT&T, Verizon and others, it announced that Recommendation D.50 was not to apply to its operators.

There has been a long and somewhat repetitive debate at the ITU about what is sometimes known as International Internet Connectivity (IIC) or International Charging Arrangements for Internet Settlement (ICAIS). A number of countries originally led by Australia and Singapore demanded a change in the arrangements in which they had to pay for the delivery of Internet traffic originating in the USA and going to their retail customers.

The operators in the USA insisted that it was wrong that they should be made to pay other operators for the delivery of that traffic. The Internet was said to be competitive and worked wonderfully on peering and transit.

Now, the very same operators have decided that the traditional settlement model for the Internet, the same peering and transit, should be turned upside down in order to allow them to charge for the delivery of content from other ISPs to their customers.

Of course, commercial expediency erases the memory of such debates. In any case that was abroad and this is at home.

The real problem I have with the “net neutrality” debate whether in the United States of America or here in the Federal Republic of Germany, is that I cannot understand why in a competitive market retail customers will not pay enough to allow operators to recover the cost of the network.

The German question

We come now to the case of the Federal Republic of Germany. In recent months we have seen Deutsche Telekom AG persuade, by methods of which I am unaware, the CDU/CSU and SPD that some sort of protracted regulatory vacation or moratorium would advance the German economy and create jobs.

The shares owned by the German government might be a factor in such decisions. Whether for the immediate dividends or the prospect of a future sale of the shares is hard to tell.

The contention that VDSL is an emerging market is a fallacy. There is a market for broadband that includes slower and fast speeds, basic access and complex bundles. The distinction claimed for German VDSL fails all the tests.

It should be recalled that a German government has in the recent past made ghastly errors in the investment in infrastructure. I refer to the enormous project to build the overlay network in the former DDR. I have never seen figures that show that investment was recovered.

Spam

One of the features of the Internet is unsolicited communications of a variety of sorts, known as spam and spim and spit and splog and phishing and a number of other terms.

I was gratified to see that ITU-Development had come out in support of my own suggestion that the receiving party be allowed to bill the sending party for the various forms of spam it has been sent.⁶

In such cases it would encourage keeping spam, rather than having to bill for it! The duty should be on the originating network to suppress spam at source.

Sadly, suppression of spam has taken so very long, despite a lot of posturing by the public authorities, that it is endemic. The criminalization of the Internet has become a fact.

Disruption and the single market

The proposal to move to bill and keep and to abandon the high mobile termination rates is an interesting one. If it is accepted then it will be highly disruptive, at least on the financial markets.

I find the debate on this odd and even bizarre, since it seems to presume national markets and national interconnection. Once again, people seem to have forgotten the single market. If bill and keep is good enough for the Rhineland-Palatinate, then it is good enough for Europe.

One justification for the disruption would be to move to pan-European bill and keep.

Conclusions

The presumption, based on our experience over the last twenty years, has to be that disputes are inevitable, unavoidable and something operators will do as their natural form of existence.

⁶ <http://www.itu.int/itu-d/rru/>

Operators are natural born recidivists and that is probably good news for regulators who will be kept in business. We need someone who can settle disputes and do so quickly and effectively.

If there is a regulatory advantage to constructing the network in some strange way, then operators will do it.

Where the operators can turn their case into a political matter they will do so, whether in Washington DC or in Berlin. So we need to be ready for that sort of political "debate" and to have on hand arguments that make sense to politicians.

Protracted disputes means delays in the diffusion of innovations, which delays the downstream economic benefits – that is jobs and growth.

It is not only delay, it is also displacement. Entrepreneurs and innovators will simply go to Japan or China or wherever the terms are better and where walled gardens do not exist.

Therefore, our duty is first to avoid disputes and if we fail then to be ready to resolve any disputes quickly and fairly.

The business of the calculation of costs has almost reached the point of the absurd. We are now assigning the cost of each angel that is to be found on a pin head. Cost-orientation becomes ever more arbitrary.

It is not at all clear to me that we yet know how to define next generation access, interconnection and roaming. Nor do I expect that to be resolved any time soon. Starting from a basis of ignorance we can only rely on simple policy tools, notably pro-competitive instruments.

Ideally, what we want are competitive market structures with incentives to negotiate access, interconnection and roaming.

We need to recall that regulation was to be temporary and that the outcome was to be competitive markets. That seems, at least to me, to require strongly pro-competitive policies. We need to take actions that specifically make markets more effective and more competitive.

For me the key consideration is that I do not expect innovation from incumbent operators. I expect it from individuals and from smaller, more dynamic firms, both upstream and downstream from the big operators. With that prejudice, I want to ensure innovation.

If we are to put all our eggs in the bill and keep basket then the only justification I can find at the political level is to achieve a single market for next generation telecommunications.