

European Union 2006 telecoms review

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- The Lisbon goals
- The 2006 review process
- How competitive are the markets?
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The Lisbon goals

- Targets set in 2000 for 2010:
 - economic growth to pay for social goals
 - “the most dynamic knowledge-based economy”
- Mid-term review by a group chaired by Wim Kok (former prime minister of the Netherlands)
- Re-launched by the EC with the focus on:
 - growth
 - jobs
- However, still falling short of targets
- And, there is little time left



http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00100 - r1.en0.htm
http://www.europa.eu.int/growthandjobs/pdf/kok_report_en.pdf



Lisbon and ICTs

- Erkki Liikanen's "most dynamic knowledge-based economy" was part of the dot com boom
- Today there is only a weak linkage at the political level between ICTs and the Lisbon goals of jobs and growth
- There is little evidence of interest in:
 - completion of the internal market for telecommunications
 - pushing for stronger competition to drive economic growth
- Incremental improvements are considered sufficient
- There is no political consensus for any change



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From eEurope to i2010

- Originally launched in 1999 by
 - Romano Prodi
 - Erkki Liikanen
- Reviewed at mid-term
- Relunched as i2010 by Viviane Reding
- A re-packaging of existing materials
- What next?
 - o2015 for optical
 - u2020 for ubiquitous?



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http://europa.eu.int/information_society/eeurope/i2010/index_en.htm



The internal market

- An EU objective since 1986
- Articles 2-4 and 14-16 of the EC Treaty
- The economic benefits to be obtained from a market of 450 million people
- Today, telecommunications markets:
 - remain firmly national
 - with some cross-border market entry
 - there are very few pan-European markets
- Consequently, there is a loss of the potential benefits for other sectors of the EU economy



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Diversity not harmonisation

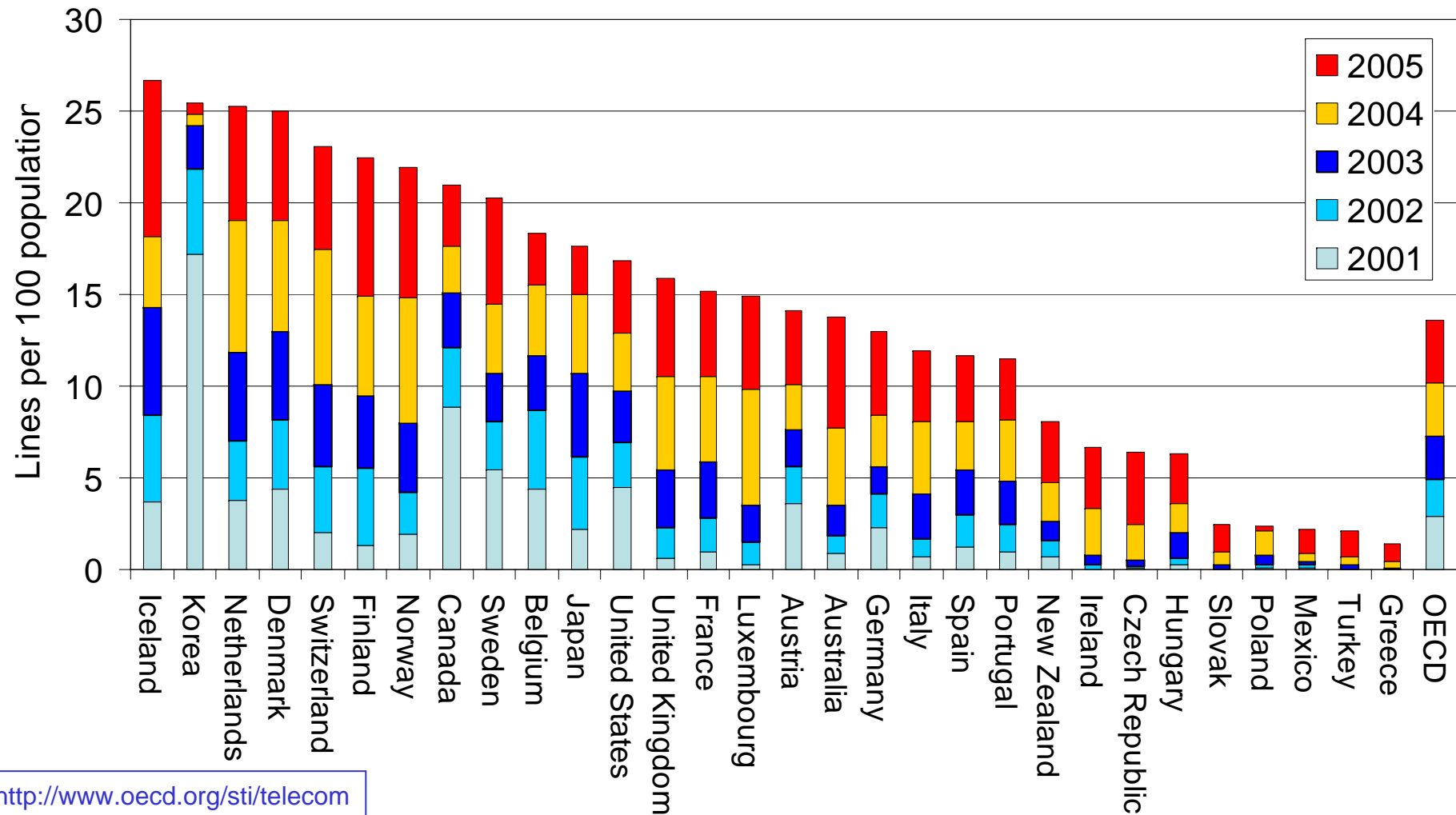
- Each member state has transposed the legislation in its own way
- Each has created its own set of regulations
- Each has its own bundles of remedies
- Each has achieved quite different levels of performance in:
 - telecommunications
 - downstream uses in the economy



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OECD broadband growth



<http://www.oecd.org/sti/telecom>

Evolutionary reform

- A series of initiatives through the 1990s
- Coordination of the introduction of GSM services
- Green paper on mobile and personal telecoms
- EC Directive (1996) on competition in telecoms
- 1998 Legislation
- 1999 Review
 - legislative proposal July 2000
 - legislation April 2002
 - transposition July 2003
 - implementation from 2003 onwards
- 2006 Review
 - legislative proposal - June 2006
 - legislation - 2007
 - transposition in 2008
 - implementation in 2010
- 2013 Review



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Implementation reports

- Annual reports by the European Commission
- Comparing the performance of the 25 member states:
 - markets
 - regulations
- Draws attention to discrepancies and differences
- Some supplementary reports on accession countries



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http://europa.eu.int/information_society/policy/ecom/implementation_enforcement/index_en.htm



The results of the 1999 Review

- Framework Directive
- Access Directive
- Authorisation Directive
- Universal Service & Users' Rights Directive
- Electronic Communications Data Protection Directive
- Regulation on local loop unbundling
- Competition Directive
- Recommendation on relevant markets



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Directives

- A legal instrument based on the EU treaties
- Proposed by the European Commission
- Debated and adopted by both:
 - European Parliament
 - Council of Ministers
- Once adopted, they must be transposed into national law by member states
- The EC is bound by the Treaty to ensure correct implementation of the directives



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Overall objectives

- The national regulatory authorities shall promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by inter alia:
 - a) ensuring that users, including disabled users, derive maximum benefit in terms of choice, price, and quality;
 - b) ensuring that there is no distortion or restriction of competition in the electronic communications sector;
 - c) encouraging efficient investment in infrastructure, and promoting innovation; and
 - d) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.
- The national regulatory authorities shall contribute to the development of the internal market by inter alia:
 - a) removing remaining obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level;
 - b) encouraging the establishment and development of trans-European networks and the interoperability of pan-European services, and end-to-end connectivity;
 - c) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;
 - d) cooperating with each other and with the Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.



More objectives

- The national regulatory authorities shall promote the interests of the citizens of the European Union by inter alia:
 - a) ensuring all citizens have access to a universal service specified in Directive 2002/22/EC (Universal Service Directive);
 - b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;
 - c) contributing to ensuring a high level of protection of personal data and privacy;
 - d) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;
 - e) addressing the needs of specific social groups, in particular disabled users; and
 - f) ensuring that the integrity and security of public communications networks are maintained.



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Procrastination & tergiversation

- Member states undertook to transpose the legislation by 25 July 2003
- Many member states showed little enthusiasm or even willingness to do so
- The EC initiated several infringement proceedings in the European Court of Justice to force member states
- NRAs could not begin and certainly not complete implementation until the legislation had been transposed
- Even today implementation is far from complete



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Principles

- No more licences, but operators are still subject to general authorisations, consumer protection law, competition law, etc.
- Analysis of specified markets where:
 - there are high and non-transitory entry barriers whether of structural, legal or regulatory nature
 - the structure does not tend towards effective competition within the relevant time horizon (typically two years)
 - competition law alone would not adequately address the market failure(s)
- Only dominant operators on a given market would be subject to remedies
- Any remedies would be related to the market failings



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Market analyses

- A list of markets, defined by the EC in accordance with competition law principles
- NRAs could, on request, add further markets
- Analyses of the markets by the NRAs
- Identification of operators with single or collective dominance
- Public consultation by the NRAs
- An opinion from the National Competition Authority (NCA)
- Imposition of one or more of a set of remedies
- Notification to the EC and other NRAs



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<http://forum.europa.eu.int/Public/irc/infso/ecctf/homeA/>



Market analyses at October 2005

- Painfully slow progress
- Many “red lights” for uncompetitive markets
- Very few “green lights”

	AT	BE	CY	CZ	DK	EE	ES	FI	FR	DE	EL	HU	IRL	IT	LT	LU	LV	MT	NL	PL	PT	SE	SI	SK	UK	
1	Red				Red			Red	Red			Red	Red								Red	Red	Red	Red	Red	
2	Red				Red			Red	Red			Red	Red									Red	Red	Red	Red	Red
3	Red							Yellow	Red			Red	Red									Red	Green			
4	Green							Green	Red			Red	Red									Red	Green			Yellow
5	Red				Green			Yellow	Red			Red	Red									Red	Green			Red
6	Red				Green			Green	Red			Red	Red									Red	Green			Yellow
7	Red				Red			Red	Red			Red	Red									Red	Red	Red	Red	Red
8	Red				Red			Red	Red			Red	Red									Red	Red	Cyan	Red	Red
9	Red				Red		Cyan	Red	Red	Yellow		Red	Red									Red	Red	Cyan	Red	Red
10	Green	Yellow						Red	Red	Yellow		Green	Red									Green	Red			Red
11	Red				Red			Red	Red			Red	Red	Red								Red	Red	Red	Red	Red
12					White			Red	Red			Red	Red		Cyan							Red	Red			Red
13	Red				Red			Red	Red			Red	Red									Red	Red			Yellow
14	Green							Green	Red			Green	Red									Red	Red			Red
15	Green				Green		Cyan	Yellow	White			Green	Red						Green			Red	Green	Red	Cyan	Green
16	Red				Red		Cyan	Red	Red	Cyan	Red	Red	Red		Red			Red	Red			Red	Red	Red	Red	Red
17								Red	Red			Red	Red									Red	Red	Red	Red	Red
18							Cyan	Yellow					Yellow							Cyan			Yellow			Yellow
1													Green													

	A T	B E	C Y	C Z	DK	EE	E S	FI	FR	DE	EL	HU	IRL	IT	LT	L U	LV	MT	N L	PL	PT	SE	SI	S K	UK	
1	Blue				Blue			Blue	Blue			Blue	Blue									Blue	Blue	Blue	Blue	Blue
2	Blue				Blue			Blue	Blue			Blue	Blue									Blue	Blue	Blue	Blue	Blue
3	Blue							Orange	Blue			Blue	Blue									Blue	Green			Blue
4	Green							Green	Blue			Blue	Blue									Blue	Green			Orange
5	Blue				Green			Orange	Blue			Blue	Blue									Blue	Green			Blue
6	Blue				Green			Green	Blue			Blue	Blue									Blue	Green			Orange
7	Blue				Blue			Blue				Blue	Blue									Blue	Blue			Blue
8	Blue				Blue			Blue	Blue	Blue		Blue	Blue									Blue	Blue		Blue	Blue
9	Blue				Blue			Blue	Blue	Blue		Blue	Blue									Blue	Blue		Blue	Blue
10								Blue	Blue	Orange		Green	Blue									Green	Blue			Blue
11	Blue				Blue			Blue	Blue	Blue		Blue	Blue									Blue	Blue	Blue	Blue	Blue
12					Blue			Blue	Blue			Blue	Blue									Blue	Blue			Blue
13	Blue							Blue				Blue	Blue									Blue	Blue			Orange
14	Green							Green				Green	Blue									Blue				Blue
15	Green							Green				Green	Blue										Green	Blue		Green
16	Blue				Blue			Blue	Blue		Blue	Blue	Blue		Blue			Blue	Blue			Blue	Blue		Blue	Blue
17																										
18								Orange					Orange										Orange			Orange



Effective competition - no *ex ante* regulation



Partial competition - partial *ex ante* regulation



No effective competition - *ex ante* regulation

Harmonisation measures

- European Regulators Group (ERG)
- Independent Regulators Group (IRG)
- Communications Committee (COCOM)
- Radio Spectrum Policy Group (RSPG)
- Radio Spectrum Committee (RSC)
- The “Article 7” procedure



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Veto of NRA decisions

- Article 7 procedure (Framework Directive)
- Notification of specified NRA decisions to the EC
- Also to other NRAs, but they remain entirely silent about each other's decisions in public
- Many informal meetings of the EC with NRAs
- Some draft measures withdrawn
- The EC can veto certain decisions of NRAs:
 - market analyses and designation of SMP (Articles 15 or 16 of the Framework Directive)
 - imposition of remedies (Articles 5 or 8 of the Access Directive and Article 16 of the Universal Service Directive)
- The veto is subject to consultation with the member states through the Communications Committee (COCOM)
- An appeal against a veto can be made to the European Court of Justice



Harmonisation

- The Article 7 procedure requires NRAs to submit draft decisions to the EC
- The process has worked well
- Other NRAs have the right to comment, but never do in public:
 - they also meet in European Regulators Group (ERG)
 - and as the Independent Regulators Group, without the presence of the Commission



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The German VDSL case

- Deutsche Telekom AG is still largely owned by the German Government
- In 2005 it persuaded the incoming government to include a provision in their formal coalition agreement to provide for a regulatory holiday on access to new investment in infrastructure
- The Bundesnetzagentur tried to implement this in a broadband market analysis
- The EC warned the BNetzA this was illegal, then issued a formal “serious doubts” letter
- The BNetzA withdrew the measure
- Deutsche Telekom AG is now trying to get the measure written into German law
- This will still be in violation of European Union law
- The EC will have to get the ECJ to strike down the new German law



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How clear is our foresight?

- Nobody expected implementation would take so very long
- In 1999 a lot of operators said that the market analyses would reveal plenty of competition,
- However, the competition never materialised
- Can we foresee the end of telecommunications regulation?
- Should we try to improve telecommunications regulation or just reduce it?
- Asking NRAs to look ahead for two years seems to work



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How much competition?

- Are regulators too enthusiastic in seeking out problems?
- Is regulation “artificially” creating or sustaining competitors (rather than competition)?
- Are there policies to increase competition?
- Would less regulation help or hinder competition?
- Could Europe be more pro-competitive?



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What sort of competition?

- Infrastructure or services?
- Ladder of investment:
 - varies over time
(originally voice telephony, now broadband)
 - varies by country
- No clear overall policy position on this issue
- It seems unlikely that there will be agreement on one or other



Is competition law sufficient?

- Are the instruments of competition law sufficient?
- Do national competition authorities have the necessary resources?
- Are those processes fast enough?
- Are the markets sufficiently competitive?



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Voice over Internet Protocol

- Largely ignored in the 2002 directives
- Continuing uncertainty about the legal status of:
 - Electronic Communications Service (ECS)
 - Public Access Telephone Service (PATs)
- France distinguished between:
 - VoIP
 - Voice over Broadband
- Uncertainty has not been a major obstacle to the launching of services



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Next Generation Networks

- A very big push by manufacturers
- Supposedly customer driven, but no evidence of end-user demand
- New entrants are concerned it is a regulatory play to exclude them
- In particular, IMS could be seen as a threat
- Too complex to reach any easy judgements
- If the incumbent operator is dominant, then regulation can still be applied



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Regulatory certainty

- Operators constantly demand regulatory certainty
- Yet the industry is beset by uncertainty
 - technological change
 - market change
- The primary reason for getting government out of telecoms provision was that it had very poor judgement about demand for technology-based services
- Broad principles are possible, but detailed regulation will always depend on:
 - technological change
 - market change



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Relevant markets

1. Access to the public telephone network at a fixed location for residential customers.
2. Access to the public telephone network at a fixed location for non-residential customers.
3. Publicly available local and/or national telephone services provided at a fixed location for residential customers.
4. Publicly available international telephone services provided at a fixed location for residential customers.
5. Publicly available local and/or national telephone services provided at a fixed location for non-residential customers.
6. Publicly available international telephone services provided at a fixed location for non-residential customers.
7. The minimum set of leased lines (which comprises the specified types of leased lines up to and including 2Mb/se
8. Call origination on the public telephone network provided at a fixed location
9. Call termination on individual public telephone networks provided at a fixed location.



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More markets

10. Transit services in the fixed public telephone network.
11. Wholesale unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing broadband and voice services.
12. Wholesale broadband access.
13. Wholesale terminating segments of leased lines.
14. Wholesale trunk segments of leased lines.
15. Access and call origination on public mobile telephone networks
16. Voice call termination on individual mobile networks.
17. The wholesale national market for international roaming on public mobile networks.
18. Broadcasting transmission services, to deliver broadcast content to end users.



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Geography

- NRAs are free to determine geographical markets within each market state
- All markets remain national
- No trans-national markets
- No enthusiasm for a lower level of aggregation
- Consequent loss of flexibility



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Appeals

- Systematically used by network operators:
 - to delay outcomes
 - to create uncertainty
 - to reduce competition
- Decisions of national appeals are undoing the work of harmonisation
- There is a genuine concern to harmonise appeals
- However, this will take decades (e.g., training judges)
- It would be possible to create a single European appeals tribunal:
 - limited to the duration of the regulation of the telecoms sector
 - comprised of a pool of former heads of NRAs



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Other reviews

- A constant EC process of review and reflection on experience in many areas, including:
 - Better regulation
 - Merger Regulation
(especially the significant lessening of competition test)
 - Television without Frontiers Directive
 - E-Commerce Directive
(especially definitions)
 - Traffic Data Retention Directive
- It is necessary to consider the interactions



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2006 review timetable

- January 2006
 - first consultation on the review
 - July 2006
 - report and draft legislation
 - August 2006
 - consultation on the drafts
 - December 2006
 - final legislative proposals by the EC
 - 2007
 - adoption of new directives by Parliament and Council
 - 2008/9
 - transposition of the directives into law by member states
- January 2006
 - first consultation on the review
 - July 2006
 - draft revised list of relevant markets
 - August 2006
 - consultation on the draft
 - December 2006
 - adoption of the new list of markets by EC
 - 2007
 - Analysis of “new” markets by NRAs



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The politics of the review

- Little in the review of interest to the Commissioners or ministers
- Not much that is “political”, that you can sell on the doorstep to win votes
- Commissioner Reding has much more interest in:
 - audiovisual regulation
 - roaming regulation



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Conclusions

- No enthusiasm for great change
- No radical ideas or new visions
- Instead, there is incrementalism and streamlining
- There is also a lot of high-power lobbying and strong defence to protect positions
- Few people are pushing for more competition



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Research issues

- How long will the elimination of sector specific regulation take?
- Will NRAs be an obstacle to this?
- What went wrong with roaming regulation?
- What are the lessons from the VoIP saga?
- Are NGNs a problem or an irrelevance?
- What lessons can be drawn from the USA and from Japan-Korea?



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Thank you

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