

Mobile termination rates, data roaming and the rise of the single European telecommunications markets

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Prepared remarks – check against delivery

Mr Chairman,

The politics of telecommunications

Sinn Féin may, indirectly, have ensured the continuing politicization of telecommunications. Not that I imagine that was their intention, I am not aware that they have any special interest in the information society.

By helping to persuade the citizens of the Republic of Ireland to reject the Treaty of Lisbon, the European Commission may not now have to be slimmed down. Consequently, when the Barroso Commission is replaced (or at least reconstructed) in 2009, we are very likely to see a new Commissioner for the Information Society. Someone will have to take over the role currently being performed by Viviane Reding and before that by Erkki Liikanen.

In what I can only imagine was a moment of extreme frustration, the principal lobbyist for the incumbent telecommunications operators likened Commissioner Reding to Stalin. "Uncle Joe" as he was known during the Second World War, before his crimes were revealed by Comrade Krushchev in his secret speech to the Party Congress in 1956.

I do not think the ETNO opinion about Commissioner Reding was a political judgement – Commissioner Reding has not suggested the collectivization of farms or the use of political prisoners to dig trenches for optical fibres, nor even sending annoying lobbyists to the Gulag.

Indeed, I cannot think of any policy that Reding and Stalin could have shared.

What the lobbyist was really complaining about was that the Commissioner did not simply accept the views of the operators – did not roll over and play politically dead. He seemed to think that she was practising democratic centralism, rather than just democratic politics. He had failed to realize that a political view could and should be taken, over and above the weight of views expressed in consultations which are inevitably dominated by market players with their vested interests.

The information society is an area where the main battles are between the rival armies of lobbyists. There are no great political or ideological divisions between left and right. There are not red and blue optical fibres to the home; the fibre will carry all political

colours and shades. There are no intellectual chasms between opposing sides, this is about money and profits.

The thousands of amendments to the telecommunications directives tabled in the European Parliament in recent months came from commercial undertakings, not from political perspectives. One lobbyist or another persuaded the MEPs to drink the Koolaid® from the incumbent operators, the GSM operators or the intellectual property rights holders. A few MEPs saw a chance for a few minutes or seconds of fame and grasped it firmly. Perhaps, some were able to dress this up as being of benefit to market players in their home countries.

It is very difficult to determine what might be the political issues in telecommunications over the coming years.

You do not knock on doors when canvassing this week in the Glasgow East by-election and tell people about your position on functional separation or about your preference for BERT rather than EECMA. I suppose you might talk about fibre to the home, though you would be wise to explain you were not giving out free samples of breakfast cereal.

In Brussels, Nick Clegg is recalled as the *rapporteur* on the Local Loop Unbundling Regulation in the European Parliament. I he has been touting that experience in the House of Commons, let alone in Glasgow East, he may succeed to surpassing the Prime Minister in dour seriousness. Certainly, he will win no votes.

I should declare an interest, in that I worked in Glasgow East back in the early 1980s.

The lack of political challenges in the information society makes it hard to imagine what an incoming European Commission President might use to entice someone to take on such a technical and fractious portfolio. One in which the *only* certainty is an endless stream of lobbyists from manufacturers, from operators and from regulators.

The portfolio may simply be left over after the leading players have taken trade, competition and agriculture.

If you were to be invited to take on the role of Information Society Commissioner or to advise someone taking on that role, what would you set out as the likely political achievements over the term of the next Commission?

The same question arises with the rotation of senior officials. When Director-General Colasanti moves on to another post, what can his successor look forward to doing? Is it merely to oversee the implementation of the directives presently before the Parliament and Council, enlivened by a few nasty infringement proceedings or is there something more exciting?

DG Information Society rather cleverly says that provides triple play:

- regulation
- research
- promoting wider use

These are not great political challenges.

Like Mrs Reding, a new Commissioner and a new DG would have to add some spice.

An end to regulation

In her search for reasons to oppose the creation of a pan-European regulatory agency, Madam Trautmann disinterred the idea that we were approaching the end of sector specific regulation. On this tenuous basis she claimed that EECMA was not needed.

Clearly, there is no need to choreograph the dying.

This is a sort of dewy-eyed utopian image that has hung around telecommunications for years. Nobody has ever explained how we might enter these particular Elysian Fields.

The idea that 27 NRAs, more if you include European Economic Area and the Balkans, will quietly retire seems far fetched and fanciful.

Old regulators may fade away, but they are replaced by strident young professionals who plan a long career and have few alternatives, except as consultants advising other regulators.

The idea that hundreds of lobbyists will give up their opportunities of adding a regulatory tilt to the playing field that favours their employers seems equally whimsical and irrational.

A lobbyist's idea of a level playing field is one under which his principal competitors lie buried, but not yet dead.

An exit strategy from regulation of the telecommunications sector would be a considerable achievement for a new commissioner. It would require the dismantling of the current structures, including DG Information Society.

It would be much more challenging and a lot more fun than deciding on the details of ERG 3.0 or BERT 1.0.

International mobile roaming

Roaming is a topic with which I have been associated for almost a decade.¹ It is not one from which I have yet been able to escape.

The roaming dossier has been worked very hard by and very successfully for Commissioner Reding. There will be little left to do by the end of this year.

We should shortly see a formal proposal for the regulation of SMS roaming prices with an extension of voice price regulation for another couple of years. The target seems a fairly wide band for SMS – perhaps €0.04 in the longer term, but €0.10 or €0.12 in the short term.

¹ Ewan Sutherland (2008) The regulation of international mobile roaming. *info* 10 (1) 13-24.
Ewan Sutherland (2001) International roaming charges - overcharging and competition law. *Telecommunications Policy* 25 (1-2) pp 5-10.

The most surprising feature of the press conferences last week was the unanimity offered by the European Regulators Group in agreeing with Commissioner Reding.

The heresies of the rejectionist Spanish which, in the past, had caused them to be accused of regulatory capture by the operators, had evidently been abandoned. The several countries that had maintained there was retail competition and thus no need for retail price controls had evidently too been converted. Like little lambs, they have been gathered into the Reding fold.

The operators seem likely to escape regulation of data services. It may appear in the legislative proposal, if only in order to be abandoned at a later stage of negotiations.

We do not have a market definition for mobile data.

We do not have convincing costs for mobile data.

I have not seen a plausible impact assessment.

The market is a mess, but that is due to mobile voice operators who have, to date, shown little grasp of what to do with mobile data. All they have done is apply a pricing model that might have been developed by one of London's bespoke tailors or a Parisian *couturier*.

The GSM Association won their appeal to the Ombudsman, concerning the "short" four week consultation period on the Roaming Regulation.

This was a bizarre use of an instrument intended to support weak individuals against the might of the EU institutions. It was not intended for an association of operators each with turnovers of billions of Euros.

It was entirely outrageous, since the operators had been lobbying for dawn to dusk for months before the deadline. Everyone knew their position was implacable and adamant opposition to any price controls, based on a belief in market forces of which there is, to this day, not a shred of evidence. It was a purely faith-based policy.

The GSM operators in the UK launched a further appeal in the High Court, claiming Article 95 of the EC Treaty is not a valid basis for the Roaming Regulation. However, they are unlikely to be saved by the European Court of Justice, which does not have the same sort of track record as the United States Supreme Court in striking down legislation.

If Article 95 proves an inappropriate basis for the Roaming Regulation then we shall indeed be living in interesting times. The EC has no fallback position.

I would make one significant criticism of the Connect2roam report prepared for the European Commission.² There is an equally complex analysis by the Telestyrelsen, which has the same basic mistake.³

It is important to understand that prices for mobile data charged "per Megabyte" are not merely very high or, in some cases, outrageous, they are seriously and systematically misleading, though it is far from clear that this is intentional.

² http://ec.europa.eu/information_society/activities/roaming/docs/study_data_roaming.pdf

³ <http://en.itst.dk/interconnection-and-consumer-protection/filarkiv-international-roaming/English%20abstract.pdf>

There was a delightful story in the *Manchester Evening News* about the man who followed *Prison Break* using a mobile phone while on holiday.⁴ The resulting bill amounted to £31,000, the price of the deposit on a repossessed home sold at auction.

The Megabytes are not of data that you and I can see and use, they include large and unpredictable measures of “padding” or “stuffing”. As customers we pay for the TCP/IP overhead, so that one Megabyte of data as measured by an operator could be anywhere from 200 to 700 kilobytes of useable data. The rest of the “data” we will never and can never use.

I think the analogy is with paying for the froth that is included in a non-metric pint of beer. Though in this case there may be more froth than beer! Alternatively, it might be meat content of British sausage, but that is somewhere we may prefer not to go. Those with long memories will recall it was the subject of an episode of “Yes, Minister.”

Perhaps we need a weights and measures inspector to look at mobile data charges.

At least if you pay for your mobile data by the day you are more likely to know what you are getting. It is also easier to budget for individuals and for firms.

There *are* market solutions to voice roaming charges though only beyond the shores of Europe.

In Hong Kong, you can get “one SIM card, two numbers”, one each for the SAR and China.

In Indonesia you can get a pre-paid local number assigned to your existing SIM card. Thus armed you can buy local top-up cards and make calls at local rates.

Zain has been offering its “One Network” service for over a year. At first in East Africa, then extended across Africa to the Atlantic Ocean – it is a scheme on a scale of which Cecil Rhodes would have been proud. It has recently been offered in Sudan, Jordan and states on the Persian Gulf.

There are no roaming charges for *pre-paid* customers – you just pay the local rates with a top-up card bought at a local store. It is what we had wanted in Europe and what a single market would mean.

The roaming saga has been one of successive errors, mostly by DG Competition.

It seems that even now people have misunderstood the success of Commissioner Reding. It was to gather sufficient political might to overcome the operators – and not a few regulators – in order to succeed with the Roaming Regulation. It was not to revitalise retail price controls. That was a highly regrettable, but essential, reversion to antique practices.

Mobile numbers⁵

The numbers of customers being claimed by the GSM operators are exaggerated. Once again there is a significant amount of “froth”.

⁴ http://www.manchestereveningnews.co.uk/news/s/1056870_the_31500_download

⁵ <http://lirne.net/test/wp-content/uploads/2008/05/sutherland-mobile-numbers.pdf>

Thanks to Commissioner Reding we have a survey from October 2006 to compare with the data provided by the operators for the same month. The differences are between 81 and 103 per 100 population, respectively for the survey and the operator data.

That works out at around 100 million customers missing from the survey.

People who believe in 138 per cent mobile teledensities, as was claimed for Bulgaria at the end of last year, need to think again.

Many of those "Bulgarians" are living and working in the UK and France, returning only intermittently, but keeping a SIM card. Some 1.5 million Bulgarians have emigrated. Others are British or German citizens with skiing apartments near Mount Vitosha or holiday homes on the Black Sea coast near Varna.

It seems that here in the heart of Westminster we are in the mobile markets for France, Spain and other holiday destinations and also in the markets for countries from which migrants come, such as India, Jamaica and Poland.

You do not have to be all that observant to realize that in the United Kingdom toddlers do not have mobile phones. Infants and the elderly share an inability to make easy use of mobile phones. Those in hospitals and, at least according to HM Prison Rules,⁶ those in gaol, should not have mobile phones.

Hard as it may be to believe, but some people do not want a mobile phone!

Consequently, a plausible ceiling is around 92 per cent of the resident population.

At least some of the poor cannot afford to use a mobile phone. Thus we need more surveys to determine affordability, but *prima facie* we need social policies to widen access.

Harmonisation

At the Westminster e-Forum last December, we heard some of the regulators arguing they were much more harmonized than in the past – that they were cooperating and collaborating.⁷ There is really very limited evidence of this and a lot of anarchy.

The Development Directorate-General of the European Commission has decided that it would be a good idea to assist developing countries to harmonise their ICT policies. The African, Caribbean and Pacific countries are already being supported to do this.

To the best of my knowledge, there has been no impact assessment of this project, so that we have no idea of the relative costs and benefits. Moreover, we have no idea whether it is even possible. We have certainly not achieved it in the European Union!

I recently listened to a senior official from one Persian Gulf country explain that the benefits of harmonization would come in trans-national services.

Since Zain has already abolished roaming charges in that region and since multinational corporations already have their virtual private networks, there seems to

⁶ http://www.hmprisonservice.gov.uk/assets/documents/10003817male&YO_pib_2008.pdf

⁷ See also my contribution http://www.3wan.net/talks/2007/ES_2007_12_westminster.pdf

be little, if any, scope for new services. Consequently, I cannot see any benefits and thus no reason for the policy!

Given the difficulties that the European Commission has in achieving a measure of harmony, even with the EC Treaty and the associated enforcement powers, it is tempting to wonder what can be achieved in least developed countries.

It should be appreciated that many of the countries that are to be harmonized are not fully functioning democracies, some do not even have the good grace to pretend to be democratic. They do not have the familiar checks and balances. There are serious questions over the independence of their regulators and there is unlikely to be judicial review – the judiciary may not be independent. They may not have a parliament, let alone a parliamentary select committee and a national audit office that can hold institutions to account. They will certainly not have an ombudsman.

Often one or more of the operators will be owned by the sons, or the cousins or the golf partners of the head of state. Sadly, some of these people own their shares through holding companies in the last vestiges of the British Empire, in places such as Guernsey and the British Virgin Islands.

In extreme cases you can get a regulator conducting a “consultation” with two operators, both owned by cronies of the monarch or president-for-life who also appointed the regulator and the judges. I am quietly confident that is already thoroughly harmonised!

Consequently, all the nice procedures and systems of governance that we have developed in Europe and that we are trying to harmonise are missing or, at best, severely flawed in the majority of ACP countries.

It is not harmonization that is required, but the development of best practice regulation – appropriate to the national circumstances.

The internal market

It is now twenty years since Prof Dr Müller produced his reports for the EC on the internal market for services and for equipment.⁸ He identified significant costs for failing to achieve a single market by 1992.

For the equipment manufacturers there has been considerable progress towards a single market. The same cannot be said of services.

Broadband varies wildly between member states, in terms of:

- availability
- speed
- price
- market concentration

⁸ Jürgen Müller (1988) The cost of non-Europe: volume 10: The benefits of completing the internal market for telecommunication equipment services in the Community (Brussels, European Commission).

- competitiveness

Fibre to the home promises to be even more varied than ADSL.

Not that we can expect much FTTH here in the UK. We are told that British customers do not want to pay for FTTH. BT has recently relented and made some investment in fibre.

Mobile telephony is equally variable. We have a set of national markets, differentiated by regulations on mobile termination rates, mobile number portability arrangements and the like.

Offers that would have eliminated roaming charges were effectively forbidden by DG Competition in merger cases in order to protect smaller operators.⁹

Yet, in a single market, there is no hope for smaller national players, only for operators that serve a niche market. Economies of scale in the purchase of network equipment and of handsets, plus in the operation of networks inevitably win out. Big may not be pretty or ideal, but consolidation is inevitable.

The ability of certain governments to block the entry of a fourth operator into their national mobile market has proved disastrous.

Collusion has been shown in the French market, following action by the *Conseil de la concurrence*. It was not sophisticated price signaling, rather it was old fashioned meetings and the fixing of market shares.

Now we have a case from Spain where, once again, we are told there was collusion.

The message is clear, open up markets to more competition, allow cross-border entry and encourage trans-national pricing plans.

The single market has been reduced to mere harmonization by a bunch of recalcitrant, individualistic and chauvinistic regulators.

The UK view of harmonization is best summarized as “you harmonise, we’ll press on ahead.”

Conclusion

The beginning of this year marked a decade since the “full liberalization” of telecommunications, at least in the core of older member states.

I am not sure it was an entirely happy birthday.

In 1998, the European Commission had to deal with fifteen incumbent operators. Today it has to deal with twenty-seven creatively divisive regulators in addition to a bunch of large and increasingly consolidated operators.

We have seen considerable progress in markets, but we have also created great diversity in regulation that we do not know how to bring into a coherent pattern.

⁹ See, for example, the conditions attached to the proposed merger of Telenor and Telia.

Perhaps the only hope is to eliminate that regulation in favour of competition law and consumer protection law.

Since 1998 the geographic scope has widened enormously, to include Eastern Europe. This is a major cause of the diversity, though it has also seen some quite remarkable advances both in those member states and those in the queue to join.

Bits of EU policy also have washed up on the shores of exotic countries where they are passed off as "global best practice", usually with only superficial modification and neither an impact assessment nor a consultation. We are now supporting harmonization in developing countries, which we have demonstrably failed to achieve in Europe.