

Global Forum 2008 Athens

COLLABORATIVE CONVERGENCE Users Empowerment in the Global Digital Economy

Speech for Lorena Boix Alonso

*Ex-ante and ex-post application of competition law to the electronic communications sector
aim to the advent of the digital, knowledge-based economy*

- The purpose of my presentation is to highlight the importance of competition law to the advent of the digital, knowledge-based economy and, in particular, to highlight the interplay between ex-ante and ex-post intervention of authorities in this field.
- But I am not forgetting here that the driver of the whole conference is the word convergence. And we all know that “convergence” is a word with many meanings. But I feel tempted, as my colleague Thom Rosch, to give it the meaning, so important in the electronic communications sector, of the need by the authorities to follow a “common approach” when dealing with competition in this field. Here I will rather concentrate on this need within the European Union. And this need is felt both, when acting ex-ante and when acting ex-post.
- I don’t need to expand too much on the great importance of information and communication technologies for companies and administrations. ICT services are key instruments to increase their productivity and to provide newer and better services to customers and end-users. We can now say that Europe is shifting towards a digital, knowledge-based economy, as foreseen by the Lisbon agenda.
- When we look at the EU citizen advantage of this, we see that there have been strong achievements in recent years. Today more than half of Europeans are regular Internet users and 80% of those use broadband.
- However, much remains to be done to improve EU citizens' access to inexpensive, world-class communications infrastructure and services. And here comes the role of competition law. We need to ensure that there is effective and sustainable competition in electronic communications markets to ensure that end-users derive the utmost benefit from the digital economy.
- Why do I say this? The experience to date shows that competition encourages more investment and innovation to the benefit of the end-user. In order to provide value-added services to their customers and set themselves apart from their competitors, telecom operators all over Europe have initiated a new cycle of investments. They upgrade their fixed and mobile networks towards convergent IP infrastructures; they increase the capacity of their access networks, notably by rolling out fibre in the "last mile"; and they invest in content and innovative digital services.
- This requires that the right conditions of competition are set and maintained in the corresponding markets. And that regulators and authorities adopt a consistent approach within the EU. Convergence is indeed necessary in this field.

- How do we do this in the field of electronic communications? By a combination of ex-ante and ex-post intervention. Regulators put in place ex-ante regulatory mechanisms allowing competition to develop. In so doing, regulators lessen, but cannot entirely eliminate the risk of anticompetitive behaviour. This is why, sometimes Competition authorities need to act ex-post and sanction anti-competitive behaviour. In both cases, authorities pursue the same objective: that the conditions of competition are preserved on the market, to the benefit of consumers.
- Let me start with ex-ante intervention. In some industries ex-ante regulation is indeed a necessary complement to ex-post application of Competition Law, in particular where economic bottlenecks exist due to non-replicable legacy facilities. In this case, access regulation is indispensable to allow market entry. In particular, where legacy infrastructures were rolled out by incumbent operators under monopoly regime.
- In recent years, the Commission, together with national competition and regulatory authorities, has been very active to ensure fair competition in the electronic communications markets across Europe. The Commission is currently reviewing allmarket analyses and regulatory measures proposed by national regulators. It makes sure that the regulators analysis is based on sound Competition Law methodology and that the measures are proportionate to the competition problems found in the market. Such a process helps to converge and consolidate the internal market for electronic communications. More than 800 national measures have been reviewed by the Commission to date.
- In order to provide guidance and ensure a consistent/convergent approach among regulators in key markets, the Commission also issues ad-hoc Recommendations. It is currently working on 2 Recommendations, one concerning the regulation of access to high speed broadband networks or next generation access networks and the other concerning the regulation of voice termination rates.
- Without a vision for harmonisation/convergence/consistency, Europe risks the emergence of a patchwork of regulatory obligations. This has proved to be the case with the regulation of voice termination and there are signs that it might also become true for next generation access networks, with repeated calls to regulatory holidays concerning fibre investments for example.
- Such discrepancies concerning future national regulatory regimes create uncertainty and are detrimental to investment and innovation. They carry the risk of distorting competition in some Member States to the detriment of the end-users. The role of the Commission is to set out a clear common strategy to move to self-sustaining competition.
- As regards **ex-post intervention**, the Commission's enforcement policy has focused on abuses dominant positions, which is not surprising taking into account that, at least as regards pure telecoms, many incumbents still enjoy such positions and might be sometimes tempted to abuse them.
- In telecoms, our activity has focused on price abuses in the broadband market, which is of considerable economic importance and plays a crucial role in the development of the Information Society.

- Last year for example, the European Commission adopted a decision against the Spanish incumbent Telefónica for an abuse of its dominant position in the Spanish broadband market. The Commission found that Telefónica imposed unfair prices in the form of a margin squeeze between the wholesale prices it charged to competitors and the retail prices it charged to its own customers. With high wholesale costs and weakened retail competition on the broadband market, Spanish consumers were paying more than they should be. A fine of 151 million Euros was imposed on Telefónica to sanction its anticompetitive behaviour. This is the third Commission decision on price abuse since the telecommunications sector was fully liberalised in 1998. Previous cases concerned Deutsche Telekom in Germany and Wanadoo in France.
- In the ICT sector, you all know the Microsoft case, on which I do not really need to expand. The Commission has a number of other significant on-going cases like Intel, Rambus and Qualcomm.
- And here as well, it is important to have a consistent approach across the EU. As you know, the European Competition Network, the network of all European competition authorities works precisely to build a common competition culture. As regards abuses of dominant position, our announced Guidance document will certainly also be of help.
- To conclude, the Lisbon agenda highlighted the potential for growth, competitiveness and job creation of a digital, knowledge-based economy. We need to make sure that users can also benefit from this. It is only in a competitive market, that companies will put their customers at the centre of their strategy and will be willing to deliver what the end-users demand. A consistent/convergent intervention both ex-ante and ex-post are key to attain this objective.