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Blackman, Colin; Nihoul, Paul; Queck, Robert

Published in:
Info

Publication date:
2000

Document Version
Publisher's PDF, also known as Version of record

[Link to publication](#)

Citation for pulished version (HARVARD):

Blackman, C, Nihoul, P & Queck, R 2000, 'Telecommunications in Europe. Quo vadis ?', *Info*, vol. 2, no. 3, pp. 219-221.

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info

ISSN 1463-6697

The following article was published in **info** Vol 2, No 3, June 2000

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editorial:

telecommunications in europe

quo vadis?

*Colin Blackman, Paul Nihoul
and Robert Queck*

Telecommunications were supposed to be liberalized in Europe by 1 January 1998. We were told that European telecom markets would then be open to all undertakings, whatever their nationality or links with local authorities. Moreover, this opening of markets was not to be limited just to telecommunications: liberalization would affect all network industries – including the internet and even audio-visual broadcasting. In short, markets would be freed from 'excessive' public intervention to foster business creativity.

Colin Blackman is the editor of *info* (email: crblackman@camford.demon.co.uk).

Paul Nihoul is Director of The Telecom Unit, Jean Monnet Professor of Law in the European Information Society at the Rijksuniversiteit Groningen (the Netherlands) and visiting Professor at the Université Catholique de Louvain. He may be contacted at Rue Lannoy 15/4, 1050 Brussels, Belgium (email: nihoul@dpri.ucl.ac.be).

Robert Queck is Adjunct Professor of Law and Deputy Director, Centre de Recherches Informatique et Droit (CRID), Rempart de la Vierge 5, B-5000 Namur, Belgium (email : robert.queck@fundp.ac.be).

More than two years have now passed – and here we are again with the European Commission contemplating an overhaul of the regulatory framework.¹ True, from the outset it was expected that competition would not develop spontaneously in all niches. In these areas, rules would have to be introduced to support newcomers against incumbents. These rules would have to be reviewed together with harmonization norms, to monitor achievements.

That time has now arrived. The regulatory framework in place is being examined by the Commission, and proposals are being put forward to introduce substantial changes over the next few years. These changes are significant for the development of the telecommunications sector and its regulation. Since the European Union counts among the major players in this area, together with the USA and some Asian countries, any reform in one of these economic blocs is likely to affect others and provoke strong reactions. Furthermore, information related activities are essential in the economy. They determine how goods and services are transported, distributed and even sometimes consumed. The rules which are set in that regard will thus have a profound effect on the way activities are carried out – in the economic sphere and elsewhere.

Contributing to the debate

For these reasons, it is essential to provide *info* readers with insightful analysis of the changes which are underway. In this issue, we have gathered contributions from recognized specialists in this field.² Our intention is to contribute to the debate and enlighten the issues.

In an introductory article, Philippe Defraigne sets the context where the review takes place and scrutinizes the reasons which led the Commission to reconsider its approach. The ideas put forward in the 1999 Communications Review are then examined. Will the new framework be based on competition? Will it imply substantial public intervention? What kind of regulatory body is being envisaged?

These questions are successively addressed in four contributions. Peter Scott, who has been involved in the preparation of the proposals, concentrates on the rules concerning access and interconnection. The same topic is analysed, from a different perspective, by Luigi Prosperetti and Martin Cave. Jean-Marie Cheffert asks whether and how authorities should intervene to fulfil non-economic objectives (universal service). These views are completed by Robert Queck, who discusses the activities and characteristics of regulators which are needed in future.

To *info* readers, some of these topics will appear as traditional telecoms subject matter. They indeed form the core of the framework established by the Commission over the past decade or more. It is important to consider, therefore, whether the incidence of recent developments is shaping the Commission's thinking. To what extent is the Commission taking into account new business and technological trends? Convergence is coming about between fixed and mobile communications. It is also happening for the combined transportation of data, images and voice. These developments are addressed by Eric Van Heesvelde, in connection with the Commission's proposals.

The analysis would not be complete without discussion from a global perspective. As mentioned above, any proposal for reform in the information society within one economic

1. For a description of the Communication adopted by the European Commission with respect to the evolution of the regulations for telecommunications, see Jean-Eric de Cockborne, 'The 1999 communications review: improving Europe's competitive position', *info*, Vol 1, No 6, December 1999, pp 477–83.

2. Several articles in this issue are based on papers presented in a colloquium on the 20th anniversary of the Centre de Recherches Informatique et Droit (CRID), Namur, Belgium, 9 November 1999 (<http://www.droit.fundp.ac.be/crid>). CRID, directed by Professor Yves Poulet, is a leading interdisciplinary think tank specializing in legal and regulatory aspects of telecommunications and the information society. The colloquium was organized by Robert Queck and chaired by Paul Nihoul.

bloc will necessarily bring about strong reactions in other regions of the globe. In this issue, these reactions are examined, for Asia, by Peter Lovelock, and for the USA, by Chad Damro. Complementing these views are two other contributions which are relevant to a review of

European regulation. The first, by Simon Forge, links regulation in telecommunications with software and computing by considering break-up of Microsoft. The second, by Doug Galbi, proposes that regulators establish a geographically comprehensive lattice of competing, independently owned network interconnection points from which telephony operators are required to provide zero-price telephony call termination.

To close this edition of *info*, a conclusion is provided by Joachim Scherer who considers the future direction of European telecommunications regulation.

Where do we stand at the moment?

The review process began with the publication of a Communication by the Commission in November 1999.³ The Communication formulates the objectives that should be achieved as well as the principles which should guide the future regulatory framework for electronic communications infrastructure and associated services and suggests specific policy proposals in eight areas. It has been used as a main source by the authors published in this issue.⁴

In this regard, the Lisbon European Council⁵ (23 and 24 March 2000) called on 'the Council and the European Parliament to conclude as early as possible in 2001 work on the legislative proposals announced by the Commission following its 1999 review of the telecommunications regulatory framework'.⁶

The national Ministers and State Secretaries responsible for Telecommunications ('Telecommunications Council') discussed the issue on 30 November 1999 and 2 May 2000.⁷

The European Parliament stressed in a resolution on the Commission's communication of November 1999 'the importance of having the necessary new regulation and rules, which take due account of the convergence in this field, in place during the year 2001'.⁸

And the European Commission? The Commission is making tremendous efforts to respect the tight schedule suggested by the Lisbon Council. The above mentioned Communication was subject to a public consultation in early 2000.⁹ A Communication was adopted on 26 April 2000 on 'the results of the public consultation on the 1999 Communications Review'.¹⁰ The Commission then published on April 27 five working documents indicating elements under consideration as part of the updated regulatory framework.¹¹ These documents again were subject to public consultation. They were the basis of the current proposals for directives, adopted by the Commission, on July 12.¹² Three documents were added in order to complete the reform regulatory package: a proposal on unbundled access to the local loop,¹³ a proposal for a

3. Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *Towards a new framework for Electronic Communications infrastructure and associated services: The 1999 Communications Review*, COM(1999) 539, 10 November 1999, at <http://www.ispo.cec.be/infosoc/telecompolicy/review99/review99en.pdf>

4. These contributions are based on documents available as of February 2000.

5. The European Council is made of the President of the European Commission as well as of the European Heads of States and Governments: its task is to give political impetus to the Union, by suggesting paths to be followed by the European institutions.

6. Presidency Conclusions, point 11, at <http://www.europa.eu.int/council/offconclu/index.htm>

7. 2228th and 2257th Council meeting. Press releases at <http://ue.eu.int/newsroom/main.cfm?LANG=1>.

8. Point 2, European Parliament resolution of 13 June 2000 on the Commission communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions entitled: "Towards a new framework for Electronic Communications infrastructure and associated services: The 1999 Communications review" (COM(1999) 539 – C5-0141/2000 – 2000/2085(COS)), at

<http://www.europarl.eu.int/plenary/en/default.htm>, search under "Texts adopted by Parliament", by A number A5-0145/2000.

9. See comments at

<http://www.ispo.cec.be/infosoc/telecompolicy/review99/comments/comments.html>

10. Communication from the Commission, *The results of the public consultation on the 1999 Communications Review and Orientations for the new Regulatory Framework*, COM(2000)239, 26.04.2000, <http://www.ispo.cec.be/infosoc/telecompolicy/review99/com2000-239en.htm>

11. The working documents concern common regulatory framework, universal service and users' rights, authorizations, access and interconnection as well as the processing of personal data and the protection of privacy. See

<http://www.ispo.cec.be/infosoc/telecompolicy/review99/Welcome.html>

12. See <http://www.ispo.cec.be/infosoc/telecompolicy/review99/Welcome.html>

13. This document will formalize Commission Recommendation C(2000)1059 of 26 April 2000 on *Unbundled Access to the Local Loop: Enabling the competitive provision of a full range of electronic communication services including broadband multimedia and high-speed Internet*, <http://www.ispo.cec.be/infosoc/telecompolicy/review99/Welcome.html>

consolidated Infrastructure and Services Liberalisation Directive,¹⁴ as well as a decision on frequency spectrum. These proposals will now follow the usual legislative process.

14. The draft for a coordinated version of the liberalization directive may be found at <http://www.europa.eu.int/comm/competition/liberalization/others/>