

Opinion

Interview with **Eric VAN HEESVELDE**
**General Administrator of the Belgian Institute
for Postal Services & Telecommunications**

Regulation and Market Efficiency

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Following the interviews with Jean-Michel Hubert and Matthias Kurth, respectively Chairman of the French Telecommunications Regulation Authority and the German Regulatory Authority for Telecommunications and Posts, we continue our look at Europe's regulators with Eric Van Heesvelde who manages the Belgian Institute for Postal Services and Telecommunications.

Alain VALLEE & Yves GASSOT: The telecommunications market is now a competitive market, since full liberalisation. Although competition is more intense in some segments than others, regulation still seems necessary. In particular, the incumbent's rivals are calling for more regulation. Is this a paradox of the market, or just a transitional phase that we are experiencing?

In fact this is a very complex question. The answer can only be given if we take into account the sector's actual economic situation. After more than 5 years of full liberalisation, we only see results of competition in some market segments. Many big companies have a very high debt ratio (due to the 3G auction, overinvestment, ...). There is also a very small margin, as a result of competition. Thirdly, investors have little confidence in ICT (stock situation, demand for return on investment). Another very important factor is the complexity of this sector: it is more difficult than it was thought in the beginning to win customers and to develop customer care, service level agreements are very difficult to optimise and telecom companies need very extensive technological know-how: this is not easy to find and is costly.

Maybe a good example of this situation is the disappointing evolution of unbundling of the local loop in many markets.

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Thus, if we are living a transitional phase now, it will certainly take a long time before it ends. Anyway, the natural monopoly characteristic of this market is a fact. Where there's less natural monopoly, like in the mobile market, or, like in some countries with a high cable penetration, we see more competition in market segments related to these technologies. A certain degree of asymmetric regulation in other circumstances seems inevitable.

As a conclusion, and this is also an answer to the second question, one can say : without regulation no competition. So, it may be possible to scale back regulation in some market segments, and if the approach of the directives proves to be successful less regulation in general, but with caution. It will always have to be possible for the regulator to reintroduce regulation if competition fails.

AV & YG: Competition still seems to be sidelined in the local access market. Alternative providers have only a very limited share of the Belgium market. Does this mean that the potential of local competition is already exhausted; if not, how is it expected to develop?

Resale, pre-selection, interconnection and unbundling have opened the market to service providers. Are you still interested in facility-based competition at local level?

In cable TV networks you have in Belgium a second local network infrastructure, virtually across the country. They could be used to deliver internet access and telecoms services as well. What role has and will have cable networks in local competition?

These 3 questions are closely linked to one another. Looking at the Belgian market, we see that in some segments, like corporate and business there's a lot of competition. The same goes of course for the mobile market.

The unbundling of the local loop is offered by the incumbent, and slowly, but surely, alternative operators start to be active using unbundling, to give XDSL access to their customers. The fact that there is a bitstream access obligation in Belgium, means that alternative service providers, if they are efficient, can offer a very competitive product to the market. The price setting was introduced by the cable operator offering broadband Internet access and voice telephony in Flanders, the north of the country (there is cable penetration of 95 % in Belgium). This means that there is pressure both on tariff and on the need to acquire market shares. The consequence is that, out of 10 million inhabitants, Belgium has more or less 700,000 broadband internet users. Also in the south of the country and in Brussels cable operators, although not offering voice telephony, do offer broadband internet access.

This leads to the conclusion that:

- competition will be developing for corporate and business segments and international traffic;
- unbundling of the local loop and bitstream access will create possibilities for alternative service providers and operators, to offer high data volume traffic, both to corporate, business and residential customers;
- there is a duopoly, for voice (in Flanders), broadband internet access and data traffic, and under the new regulatory framework, it will eventually be possible to impose access for alternative service providers and operators on those duopolistic companies (the incumbent and the cable operators).

AV & YG: How do you see the convergence between the telecom rules and the cable regulatory frameworks? And what about the local authorities role in the broadband deployment in Belgium? Is there for your authority a real concern with the specific institutional architecture of your country?

From a pragmatical as well as from a theoretical viewpoint, the approach of the European Commission in the directives, the philosophy of one electronic network approach is essential in the framework of convergence. Due to technological and commercial evolutions, the distinctions made in the past are no longer useful for regulation and regulators.

In some member states broadcasting was historically a complete separate issue. Those member states will have to review some principles of regulation in the short term. This is also the case in Belgium, where the situation is even more complex than in other member states, because of the country's constitutional organisation. Telecommunication is a federal competence, while broadcasting is within the competence of the 3 communities in Belgium: the French, the Flemish (Dutch-speaking) and the German-speaking community. Those communities correspond more or less to the different regions: the Flemish region, the Walloon region, and in the eastern part of the Walloon region, the German-speaking community. Brussels on the contrary is more complicated : for Dutch-speaking people, the Flemish community is competent, for French-speaking people, the French community is competent. Cable networks, because of their classical and close link with broadcasting, are within the competence of the communities, and not within that of the federal regulation. So, both the federal state and the communities will have to implement the new directives and regulate, within the limits of their competence. The point-to-point communication on all the networks can be considered as a federal competence, the point-to-multipoint as a competence of the communities. Nevertheless, there will be aspects that will

need to be regulated jointly. One can think of interference problems, designations of SMP in some cases, complex offers, and so on.

Like for other matters with mixed competence, the only way to solve this complexity, is to establish common agreements between the federal and the community level.

Cable companies in Belgium are either municipal companies (property of the municipalities), mixed companies (co-operation between the private sector and municipalities) or purely private companies. They cover several municipalities. In the north, Telenet was created 5 years ago, as a combination of all the Flemish cable companies, as a separate company, offering telecommunications services (telephony, data, internet, ...). In Brussels and the Walloon region cable companies also offer internet access, in most cases. So you can say that there is an alternative network present in Belgium, with a very high penetration, and there is no need for direct involvement of local authorities in the broadband deployment in Belgium.

On the other hand, local authorities (communes) and the 3 communities, are aware of the importance of ICT for economic, social, cultural and political development. So they take some initiatives, but it is not on the supply side of networks, because they have the opportunity to use the networks of PSTN Belgacom or the cable operators. Their initiatives rather involve access for schools, libraries, hospitals, the elderly, etc.

AV & YG: When do you expect the UMTS'launch to be? Are you concerned about the delays in UMTS, or do you think they are simply the result of typical coordination problems between equipment manufacturers and operators, such as we (almost) always experience when new network technology is introduced?

The rules and procedures for the 3rd generation (UMTS) mobile communications, is a political choice. In Belgium the government has recently decided to postpone the rollout of the 3rd generation with one year. There was a good reason for it : being a small country, Belgium could not be market leader in this technology. The risk for a premature commercial exploitation, in uncertain circumstances as to technology and commercial approach, is understandable. Another important fact was the problems with the deployment of antenna sites, linked with building permits and health issues.

AV & YG: Now that the UMTS licenses have been awarded via very different award procedures across Europe, it is often said that the market has been substantially distorted. How do you respond to this argument? Would you propose to decide differently today if you had the chance to award 3G licenses again?

There is of course a lot of discussion in Europe and in the several member states about the situation of companies holding a 3G licence. One of the starting points of every reflection must be that everybody (government and regulator) must pay attention to this problem, but must also be very prudent: there is a risk of retro-activity problems when changing the rules after having granted licences.

In Belgium the situation was particular : there were only 3 candidates for the 4 licences (i.e. the existing 2G operators) and one licence is still free. Therefore extreme care is necessary when modifying the existing legal framework.

When looking at the recent past, it is clear that more European harmonisation and a bit more patience could have led to a better situation.

Making an evaluation of the optimum selection procedure is not easy. A lot of opinions exist about it, but it is not proven that a pure auction is not the most suitable procedure. It is transparent and normally it is the result of what companies are prepared to pay for a market opportunity. Beauty contests can create complexity. The Belgian example for 2G licences, on the other hand, proved to be both transparent and stable: the criteria were rollout speed (quality), tariffs and auction fees: 3 stable and transparent criteria. In the case of UMTS, when governments had to decide the selection procedures, elements like rollout and tariffs were much more uncertain, because UMTS was at that moment a product with many uncertainties.

AV & YG: Do you think the resale of frequencies would add flexibility and efficiency to the spectrum management in Europe?

There are different criteria to define efficiency in spectrum management. For the market, resale means that operators are free to choose technology, rollout speed, etc. Speculation is a threat of course, and the past proved a few times that this is not a purely theoretical danger.

One may never forget the complexity of frequency co-ordination. So, resale opportunities are dependent on the technology and the products offered in certain frequency bands. Because of complexity, the tradition of using different frequencies for different services (e.g. military, satellite, broadcasting, but also private mobile radio systems) and the difficulty of

co-ordination (especially in a small country like Belgium with the necessity to co-ordinate with limitrophe countries), management of co-ordination in a situation of complete free resale could be difficult and could lead to confusion.

As for public mobile communication the problems of retroactivity (see question 9) and the actual market situation must be taken into account: who will be prepared to pay a reasonable price for those 3G bands?

AV & YG: Are you particularly concerned by the debate on the pricing policies of the mobile operators for roaming and call termination?

There is certainly a reason to be concerned about the mobile terminating rates: in Belgium we have one mobile operator (Proximus) with SMP on the interconnection market and the mobile market, and one operator (Mobistar) with SMP on the mobile market. The 3rd operator (Base) does not have SMP. Our law includes the ONP principle: 25% of market shares means SMP on the concerned market. It is clear that the obligation for the Belgian regulator to impose cost-orientation on the interconnection SMP operator (one) and non-discrimination on the mobile SMP-operators (two) could lead to very delicate consequences on the mobile market, and on the fixed to mobile market. Therefore, the new directives, which will create the possibility to consider an operator as having SMP on the market of his own customers, could solve a lot of problems.

So, international roaming is also a proof of an imperfect market. It is absolutely necessary to tackle this problem, but without an intervention on the European level, it is almost impossible for a national regulator to intervene, and such intervention could even be counterproductive to the market. Co-operation between IRG members and the Commission seems absolutely necessary.

AV & YG: The new EU regulatory framework for telecoms lays down closer harmonisation between and among the European national regulatory authorities (NRAs) and with the European Commission on major regulatory issues. How important do you consider the new consultation procedure to be? Is it the expression of the need to harmonise in Europe? Or do you think that the efficiency of regulation is being threatened?

It is clear that the new directives can only be successful if there is more harmonisation in the European market and very close co-operation between the independent regulatory bodies of the different member states and the Commission. But every national regulator has specific missions, obligations,

and sometimes restrictions on its competence. These elements must in any case be respected, so their independent status must be privileged. Some problems could arise : there is the necessity to have a very rapid decision procedure, because in telecommunication everything is developing very quickly; there is also the need of respect for some specific national market situations (for instance more need of universal service, or the duopoly between PSTN and cable networks, status of the market development, etc.).

Although the directives are a necessary step coupled with the technological, economic and social evolution in the sector, there is always a need for transparency and stability for companies who have to take decisions in circumstances marked by a lot of uncertainty (financial, commercial, technological, ...). National regulators, national lawmakers and the Commission, need to consider this very well. Fortunately a provision in the directives stipulates that existing legal rules will continue to be applied until the new framework is in force. Indeed, the new obligation to define relevant markets, to analyse the status of competition, to impose exact rules on dominant players, risks creating a certain lack of transparency, legal disputes and thus uncertainty in the short term. Avoiding this is a difficult task and an extremely important one for regulators.

