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**The Review 2006 of EU Telecom rules:  
Strengthening Competition and  
Completing the Internal Market**

Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort

Annual Meeting of BITKOM

**Brussels, Bibliothèque Solvay, 27 June 2006**

Ladies and Gentlemen,

I would like to thank BITKOM, Germany's leading trade associations in the field of ICT, for the invitation to introduce this evening in the Bibliothèque Solvay with a speech on the Review 2006 of the EU telecom rules and the policy challenges to be discussed in the months to come.

In times of convergence where we can access music, emails and media content using different terminals and networks and where also the borders between fixed-line and wireless are disappearing, I welcome the fact that you at BITKOM are open to members from all the converging sectors: IT, Telecommunications and New Media. This is because, only if we understand convergence and if all the stakeholders in "triple play" and "quadruple play" will we take the right business and policy decisions for the tomorrow's electronic communications markets.

BITKOM's emphasis on small and medium-sized enterprises in the ICT field is, from my perspective, one of your special added-values as trade association.

I am therefore glad to be able to share with you tonight some insights into my views on the future of the EU telecom rules, which are on the agenda of the weekly meeting of College of Commissioners' tomorrow morning.

### **The EU telecom rules: a true European success story**

The EU regulatory framework for electronic communications is a true European success story. Back in the 1980s, traditional telecoms monopolies still controlled all forms of telecommunications – voice and data. They also controlled almost all equipment attached to the networks, and themselves issued licences and conditions for others to use their networks.

Starting with handsets in 1988 and progressively adding services until 1998, the EU liberalised all telecoms goods and services. The effect was dramatic. The number of fixed-line telecoms operators doubled between 1998 and 2003. New entrants invested in new services and infrastructure, and consumers got a better deal all round.

#### **Between 1996 and 2002, EU telecommunications services grew much cheaper.**

On average, for the same telecoms services, consumers spent about 30% less of their income in 2002 than they did 1996. Competition among telecoms operators has in particular drastically cut the cost of making phone calls over the past 20 years. Since 2000 the EU weighted average charge of a 3 minute call has fallen by 65% and the cost of a 10 minute call by 74%.

**At the same time, the EU telecom rules have lead to impressive investments in the electronic communications services both by the telecom incumbents and increasingly by new market entrants.** Europe's market for electronic communication services amounted to some 273 Billion Euro in 2005. Aggregate investment, measured in terms of capital expenditure, rose to more than 45 billion Euro in 2005, 6% more than in 2004. 2005 was thus the third consecutive of increased year-over-year investment levels. On average, around half of the turnover generated in the electronic communications markets in Europe comes today from new market entrants.

Three developments are particularly noteworthy for the European Commission:

- First, **at 45 billion Euro in 2005, European investment in the sector has overtaken investment in the US and the Asia Pacific Region.**
- Second, **a pan-European telecom industry is emerging.** The search for economies of scale and the implementation of pan-European strategies, cross-border investment has driven merger and acquisition activity to above 70 billion Euros in 2005, the highest level since 2000. Incumbents today are receiving between 5 and 27% of their income from European business outside their home country. Some are becoming challengers in other EU markets even while remaining incumbents at home. This development is changing the market position, business orientation and also policy view of many operators.
- Third, **good implementation of the EU regulatory framework is paying off.** EU countries that have applied the EU rules in a timely and efficient manner, following the principle of competition, have clearly achieved the best results in terms of investment in new networks and take-up of new innovative services. The regulatory reform index of the OECD shows that those countries with a poor record of regulatory reform have less investment. While investment in the electronic communications sector is rather high in the UK (0.42% of GDP), Denmark (0.72 % of GDP) and the Netherlands (0.79% of GDP) – in all these countries we observe, in principle, a very effective application of EU rules –, investment made in the German market reaches only 0.27%. The correlation between investment and competition in infrastructure in the EU is particularly visible in the broadband markets. Countries with strong competition between incumbents and cable operators tend to have the highest broadband penetration. Thus, broadband penetration levels in Denmark, Finland, Sweden and the Netherlands are all above 20% and have already left behind the broadband penetration level in the US.

Europe's lesson from the liberalisation of the telecom markets is therefore: **Competition has been a key driver for investment and innovation.** This is a very important lesson also for other network-based markets, in particular for the energy markets.

### **Three challenges for the Review 2006**

The i2010 agenda – a European Information Society for growth and jobs –, adopted by the European Commission in June 2005, intends to continue and further intensify the positive effects of the EU framework for competition and investment. **It is our aim to create a Single European Information Space in the field of electronic communications and media services by 2010. The main objective of the Commission's strategy is to strengthen the forces of competition in the internal market, notably by modernising EU rules where needed.** Thereby, we want to accelerate the economic pay-off from digital convergence.

Tomorrow, the Commission will adopt a Communication and a number of Working Documents assessing the functioning of the EU regulatory framework and laying out the policy options for possible legislative changes. This will trigger the final phase of public debate on the 2006 Review of the EU telecom rules, which will be open until the end of October. I intend to conclude the Review by the end of this year with concrete legislative proposals that will then be submitted to the European Parliament and the Council of Ministers.

My general assessment is this: We will reaffirm the key objectives of the existing EU framework, i.e., to promote competition, the internal market and citizens' interests. The fundamental principles of EU telecom regulation will remain, that is; a market-based approach to ex-ante regulation and technological neutrality.

In a sense, we will thus follow the good example of the team chief of Germany's national team in the Football World Cup, Jürgen Klinsmann, who also is doing very well by **not changing a winning team!**

My focus in the Review 2006 will be bringing the EU's framework up to date to make it fit for the coming decade. In particular, I want to "back up our defence" and even strengthen competition where progress has been slow in the past years.

In the Review 2006, I want to tackle three issues:

- First, **spectrum** – historically a raw public good - has become economically strategic in the wireless society. We urgently need to look at how we can use it more efficiently in the EU.
- Second, what concrete steps can we take towards **better regulation**? Liberalisation of markets has led to many remarkable successes in this sector. Now we have the chance to regulate less in some markets where competition is already effective, and regulate in a more focussed and more consistent way in markets where competition still has not yet developed.
- Third, how can we best achieve **competition and investment** in Europe's internal market? This will lead me to say a few words on the present debate on "regulatory holidays" and on structural separation in some EU Member States.

### **1) The need for an internal market for spectrum**

The first area where I see a clear need for change, including legislative change, is spectrum management. **If we really believe in growth and jobs for Europe and in the strategic importance of the communications sector, then we must move with determination towards a more market-based approach to spectrum management, and this across the EU.**

The economic potential is enormous. Radio spectrum is crucial for any application that relies on wireless communication, from mobile telephony and broadcasting to guidance systems for planes, ships, satellites and defence. It is estimated that the total value of services that depend already today on use of the radio spectrum in the EU exceeds €200 billion. This equates to more than 2% of the European GDP!

Think how much more it will be with all the new wireless applications that are emerging.

This is particularly important in Europe as wireless has been one of the strong drivers of our economic growth. Just one sector, mobile communications, now represents 1% to 2% of Europe's total GDP. If we want to continue to be world leaders in this market we need to be decisive in seizing these emerging opportunities.

But continued economic growth in this field is dependent on **access to radio spectrum**. The current explosion in demand is putting great pressure on this resource, such that the scarcity of economically available spectrum resources is now at risk of holding back the development of our economy.

The way radio spectrum is managed is also a critical issue for the single market more generally. The efficiency of European business in all sectors of the economy and the growth potential of the mobile content industry vitally depend on a clearing the obstacles to the efficient use of spectrum.

The considerable cost of developing new wireless technologies and applications means that companies increasingly need the prospect of large markets to justify their investment.

And Europe is not operating in a vacuum. It competes with its main trading partners to innovate more quickly and effectively. If we take our eyes off this ball or we are slow in acting we will lose possession.

We must urgently tackle this issue. I will therefore ask the Commission College tomorrow to endorse my plan to table proposals for better management of spectrum in the EU by the end of the year in order to allow more efficient use in the future.

By taking action together on spectrum reform, we will:

- generate the critical mass needed to sustain growth and innovation;
- strengthen the internal market in electronic communications; and
- support the development of globally competitive European companies.

What are the issues? Radio spectrum itself knows no borders, but it is managed at national level, normally in an administrative, bureaucratic way that creates scarcity by prescribing in detail what every part of the spectrum may be used for in that Member State. **I believe that decisions about spectrum use should, where possible, be taken by those directly affected. My proposals for the Review 2006 will be focused on empowering market players and giving them the necessary legal certainty to exercise this role.**

In relation to spectrum used for electronic communications, I will suggest three concrete measures that will lead to more flexible use of spectrum:

- to strengthen the application of the principles of **technological neutrality** and **service neutrality** to spectrum allocation, where possible;
- to introduce **spectrum trading** across the EU in selected bands agreed at EU level; and
- to **improve the coherence and consistency of authorisations for applications with a pan-European or a significant internal market dimension**. Those who develop wireless services with a wider reach than a single country should be able to obtain a market entry authorisation as easily as those who offer services only in one Member State.

I also believe that we need to put the idea of a **European spectrum agency** on the table. I know well that this idea is not yet very popular in some quarters. **But we have to recognise the competitive disadvantage the EU faces because, instead of having one single regime for spectrum management and spectrum licensing, as they do in the US, we have 25 different ones.**

**I call on Member States to prove that they really mean what they say in their Sunday speeches about growth and jobs.** We can cut a lot of “red tape” in spectrum management by trusting more market forces and by replacing 25 administrative models with a light agency with EU wide responsibility. I, as Europe’s ICT Commissioner, will certainly address again and again the need for more courage in this important sector.

**2) Better regulation: a more consistent application of the EU telecom rules**

You probably know that the Commission checks the regulatory measures proposed by national regulators through the so-called ‘Article 7’ procedure. So far we have processed, since July 2003, more than 450 notifications from national regulators.

To reduce **the administrative burden at present still involved in this procedure, I would like to simplify the notification requirements for certain draft national measures.** Our idea is that regulators should continue to conduct market reviews and undertake national and European consultations, but that for certain market analyses and notifications the level of detail would be less and in some cases, a simplified notification procedure could be introduced. **My objective is to allow regulators both at European and national level to focus resources on issues of substance rather than procedures.**

Also, during the Review 2006, I want to make a decisive step towards the completion of the internal market. **In the telecom sector, where neither technology nor economic interest nor consumer behaviour know national borders any more, I see a clear, long overdue need to make the internal market a reality also in regulatory terms.**

Above all, we need greater consistency and effectiveness in the application of remedies to avoid distortions of competition in the internal market. We need this consistency, not for the Commission but for the market and the consumer, and I hear this all the time from telecom companies that are trying to break into markets beyond their home country.

**Variations of regulatory approach are today an obstacle to the internal market and to effective competition: If a national regulator in country A applies the EU rules vigorously to the operators on its market, while the national regulator in country B adopts a more lenient policy towards the dominant operator by adopting remedies later or in a less efficient way, this gives companies in country B an unfair competitive advantage over companies in country A. In Europe’s internal market, this is unacceptable.**

I therefore believe that the Commission should be able to ensure consistency in remedies proposed by national regulators to enhance competition in market dominated by one or more operators. This is a logical adjunct to our current role as regards market definitions and market power assessments.

I also plan to tighten up the timescales in which regulators must act, in order to avoid the long delays that we have seen in some countries.

**The most effective way to achieve a real level playing field for telecom operators across the EU would of course be create an independent European telecom regulator that would work together with national regulators in a system, similar to the European System of Central Banks.** In such a system, national regulators would continue to act as direct contact points with operators and could directly analyse the market. At the same time, a light European agency, independent from the Commission and from national governments, could ensure by guidelines and, if necessary, instructions that EU rules are applied consistently in all Member States. I have personally insisted that the idea of creating a European telecom regulator is also included as a policy option in the impact assessment of the Commission Communication that I will present this week to allow a broad debate on all these issues.

In parallel to the review of the five Directives of the regulatory framework for electronic communications, I also propose, in close cooperation with Commissioner Kroes, to revise, by the end of the year, the markets listed in the **Commission Recommendation on Relevant Markets of 2003**. This Recommendation at present identifies those 18 markets where, in the analysis made in 2003, ex-ante regulation is justified and which therefore need to be analysed by national regulators under the guidance of the Commission.

**It is a remarkable success of the regulatory framework that already today, after just three years of market analysis and regulation, the Commission is optimistic that we will be able to say at the end of the year: competition has increased in a number of these markets, and therefore, we can already expect to reduce the number of these markets by at least one third.** For these markets – which are mostly retail markets – I intend thus to propose at the end of the year to phase out sector-specific ex-ante regulation and to leave control of this sector to competition law and authorities.

**You should see this as a clear indication of my political will to ensure that telecom regulation will remain limited in time.** The Commission will continue this work, phasing out regulation progressively as effective competition is established on the remaining markets. We are not there yet: two thirds of the way remains to be covered. **But if telecom regulation could become even more efficient than it is as present, I believe that the next Review of the framework could prepare the end of sector-specific regulation also on the remaining markets where our intensive work continues to be required for the years to come.**

### ***3) The debate about “regulatory holidays” and structural separation***

An important subject for political discussion in the Review 2006 is certainly the debate about the best way to enhance competition and investment on those markets where specific ex-ante regulation is still needed. In the public debate so far, two proposed solutions have been particularly prominent: the so-called “regulatory holidays” – a debate which has a particular German background – and structural separation as a possible remedy under the EU telecom rules.

Let me start with the idea of “**regulatory holidays**”. I understand of course that some incumbent operators are under a lot of pressure because of economic challenges and technological developments such as Voice over IP. However, **I firmly believe that the response to these challenges must be new and more successful business models, and certainly not protection, by regulators, from competition.** I simply do not buy the argument that investment will only happen if we stop regulating monopolies. In particular in network-based economies, effective competition does not prevent, but drives investment. The EU rules do not permit “regulatory holidays” precisely to prevent the re-monopolisation of markets. **Any move in that direction would be a step backwards.** It would open the door to higher prices and less choice for consumers.

**It is my firm belief that “regulatory holidays” are not a policy option for the Review 2006, where we want to pave the way for completing the successful process of market liberalisation. We cannot go into the future in reverse gear.**

In this context, a few words are necessary on the German proposal for a new legislative provision in Germany on “new markets”, **the so-called “Paragraph 9a TKG”**. The proposal says, in simple terms: New markets should only be regulated if there is a problem for sustainable competition “in the long term”. The objective of this is apparently, as several German politicians have confirmed to me, to allow for a regulatory exemption of the new VDSL network currently built by Deutsche Telekom.

It is important to understand what EU law says on this issue: The EU rules of 2002 say clearly that so-called **emerging markets** are not exempt from regulation, but that they should not be subject to “inappropriate regulation”. The reason for this open approach is to allow time to decide whether markets that are new and fast-moving satisfy the criteria for *ex-ante* regulation. Under EU law, a market is only considered new where there is supply and demand for products or services which are not substitutable for already existing products or services. In other words: **a faster service, the label “triple play” or the use of fibre technology instead of copper will not by themselves suffice for the recognition of a new market.**

Against this background, **I have serious concerns as regards the compatibility of the German approach reflected in the wording of Paragraph 9a TKG with EU rules:**

- First of all, I see no evidence yet that the VDSL network in Germany would really lead to services or products which are, from the consumer’s perspective, not substitutable with already existing services or products.
- Second, I am worried about the word “in the long term” used in the German draft law. The underlying assumption appears to be that effective competition is the enemy of investment. **Let me very clear about this: On the telecom markets, the Commission is concerned about *all* obstacles to competition, whether today, tomorrow or in the long-term. We therefore do not accept monopolistic situations even if we are promised that they would “only” last 4 or 5 years.**

- Third, the new German law is creating a lot of regulatory uncertainty. I have not yet heard of one operator or consumer on the German market seeing an added value in the new draft law. **I instead note that the new German law could have the effect of making investment on the German telecom market more difficult than in the past, in particular for new market entrants. This is why I have already stated publicly my intention – which I reaffirm today – to start infringement proceedings against Germany if the draft should become law without substantial changes.** I also see that legal disputes in national courts about the compatibility of the new law with EU rules could substantially weaken the attractiveness of the German telecom market – which is of crucial importance for growth and jobs in the entire EU – for investors.
- Finally, I am worried about the **unilateralist attitude behind the German approach**. Under the EU telecom rules, agreed by the European Parliament and the Council of Ministers, the decision of whether or not to regulate a market is based on the market analysis of an independent national regulator, approved by the Commission. It is therefore not a unilateral political decision of a single national government whether competition problems need to be addressed by regulation or not. **The German approach therefore sets a very dangerous precedent: If other governments choose to follow the German “Sonderweg” for telecoms on the energy markets, then I am pessimistic about the chances of more liberalisation in these important markets.**

I hope that the German Parliament will still adapt the draft law to the requirements of EU law in the ongoing legislative process.

I also expect the German regulator not to be influenced by the current approach of the German government when looking, in these days, on the issue of **bit-stream access on the German broadband market**. Bit-stream access is, as you know, a key tool for opening competition in the broadband market. It enables competitors to offer their own state-of-the-art products to consumers. However, unlike in nearly all other Member States, in Germany competitors still do not have a real chance to get bit-stream access. This is due to the fact that up to now the German regulator has not imposed a bit-stream access obligation on Deutsche Telekom even though the incumbent is considered, in the analysis made by the German regulator last December, to be dominant on the broadband market. This is particularly disadvantageous for Germany, as unlike in other Member States, hardly any alternative broadband infrastructures exist. Cable television networks, for example, are only slowly being upgraded. **The effect of the present status of non-regulation of bit-stream access is therefore that of a “de facto” regulatory holiday which lasts, under the present system, as long as the German regulator does not opt for an efficient remedy.** I am therefore expecting a credible notification of this important issue from the German regulator in the weeks to come.

Broadband penetration in Germany is 12.5%, which is just the average of the 25 EU Member States; hardly the level of performance one would expect from this leading economic and technological nation. It is only half the rate of Europe’s leading nations in this field and has been overtaken by Estonia, a new Member State which has chosen a pro-competitive approach for regulation of the broadband market. **Germany therefore has no time to lose in the broadband market.**

Germany, as the largest economy in the EU with a very important telecom sector, certainly has a particularly responsibility for the European economy as a whole. **And until recently, my understanding had been that not the word “Regulierungsferien”, but the word “Ordnungspolitik” was a German invention.**

While my opposition to the idea of “regulatory holidays” is well-known, the Communication to be discussed by the Commission tomorrow for the first time considers **the policy option of “structural separation”**. Structural separation means that telecom regulators could require a dominant operator to provide non-discriminatory access to all operators by separating infrastructure provision from service provision to a greater or lesser extent. Today, the EU rules in force do not foresee structural separation as a regulatory remedy on the telecom markets. But I see that the United Kingdom, which has opted for a form of structural separation at national level, has made good experiences with this remedy.

Incumbent telecom operators are often asking me to look to the regulatory model of the United States. I note that in the US, the opening up of the telecom monopoly of AT&T started, in 1984, with the most radical intervention a regulator has ever chosen: with the break-up, by means of competition law, of AT&T into the so-called “Baby Bells”. One can certainly discuss the advantages and disadvantages as well as the sustainability of this decision. However, facts speak for themselves. Today, we have in the US a situation of infrastructure competition on the broadband market with two competing infrastructures: While 38% of subscribers have broadband access via DSL technology offered by telecom companies, 55% have broadband access via cable. Consumers therefore have a true choice in the US. In Europe, DSL is still the technology used by more than 80% of subscribers, which shows that we still have some way to go until the process of market opening is completed.

**I believe that the policy option of structural separation could answer many competition problems that Europe’s telecom markets are still facing today. Perhaps we have to be as radical as regulators were in the US in the 1980s to make real progress? Of course, we will have to find our own European solutions, adapted to the needs of our continent. But “a European way of structural separation” is certainly a policy option that needs to be discussed intensively in the forthcoming months. This option is therefore also raised in the economic Impact Assessment attached to the Communication the Commission will adopt this week.**

### **The Review process ahead**

With the Communication to be adopted by the Commission this week, I will launch a public consultation lasting up to the end of October. On this basis, and by listening carefully to all stakeholders, the Commission will present legislative proposals at the end of the year.

I would invite you at BITKOM – both the trade association itself and its diverse members – to participate actively in the review process. The competitiveness of the European Union depends on the development of effective competition and a true internal market in the ICT sector which is crucial for growth and jobs in Europe. Your input and the input of your competitors and clients on the policy options presented in the documents to be published this week will be a decisive basis for the Commission’s final assessment.

I wish you a pleasant evening.