



Cable Europe statement for the BEREC workshop on Relevant Markets

26 February 2014

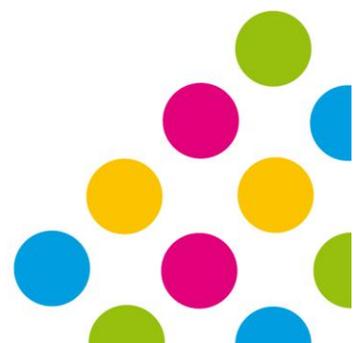
Cable Europe supports the Commission's efforts to reshape the recommendation with a forward looking perspective in mind. The recommendation is a very powerful tool of the regulatory approach of the electronic communications sector. It gives a very important signal to investors who support the companies that are rolling out high speed networks, the cornerstone for a flourishing European digital economy.

Inter-modal competition between various technologies has delivered a very positive outcome to the market in terms of investments and end-user satisfaction, and needs to be supported in the future. If service based (intra-modal) competition is still seen as a necessity by policy makers and regulators it should not be promoted at the expense of effective inter-modal competition.

We support views that further deregulation of the market has to be gradually achieved and that steps have to be taken in order for the electronic communications sector to be ultimately governed by competition law. We therefore strongly believe the new recommendation should continue to use competition law principles to define the product/geographic markets of the sector.

Our main comments on the Commission draft of the recommendation are as follows:

Towards deregulation: Cable Europe notes that in general the markets in which its members operate have become more and more competitive, with genuinely positive outcomes for consumers. To a large extent this high level perspective seems to be evident in the Commission's approach. Although the Commission is more suggestive of the inclusion of cable networks in the relevant wholesale product markets this appears to be based on a belief that regulation will be withdrawn. Whilst agreeing with the overall objective of this approach, it runs risks of complicating the market analysis procedure while a more orthodox approach of leaving cable networks outside the product market and considering the impact of cable in the market analysis procedure would lead to the same outcome.



Three criteria test – consistency and predictability: Cable Europe believes that the three criteria test has given stability in the relevant market selection process. We therefore believe it should be kept unchanged.

Product Market Definition (Broadband Market): While technology changes are undeniable, the impact of these technology changes on the relevant elements of the market cannot be predicted or presumed. Current demand and supply conditions continue to see distinct demand for physical and non-physical access.

A broadly defined broadband market - as opposed to further segmentation of the product market - can be identified at the retail level which is consistent with previous practice. Both telecom networks (whether copper or fibre based) and cable networks supply this market together with a range of other platforms.

Whereas different platforms compete in the same retail market, this is not the case in the upstream wholesale markets. It is also unlikely that access seekers would consider a wholesale access service from cable as a substitute of a nationwide wholesale access service provided by the incumbent. It is also uncertain that cable operators are able or willing to offer these wholesale services. The exclusion of cable networks from the wholesale local access (WLA) and wholesale central access (WCA) markets should be made explicit.

Geographic Market Definition: National markets remain the appropriate scope of market analysis. The new Recommendation should therefore maintain the principles set out in the 2007 Recommendation. The primary focus of the market analysis must be the potentially dominant entity and its behaviour over the territory. The analysis cannot start with consideration of how strong or weak a regional operator is, as such an approach distorts the analysis.

A regulatory regime that segments markets geographically is complex and runs a far greater risk of regulatory failure than one which chooses to adjust remedies within a broadly defined geographic market.