AAI III Convegno Nazionale

I PRINCIPALI SVILUPPI NEL DIRITTO DELLA CONCORRENZA DELL’UNIONE EUROPEA E NAZIONALE

Sessione su processi di consolidamento del mercato e i nuovi modelli di business - La prospettiva dell’AGCM e del regolatore - Convergenza – Casi

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UK- embracing digital society

the evolving context

• Increasingly digital connected society and converged market environment

• Quad-play led convergence and consolidation, high take up of alternative forms of media

• Ofcom latest market report of 2015 (http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr15/UK_0.pdf) notes that

  • ... “Today, 83% of UK premises are able to receive a superfast broadband service. Almost one in three fixed broadband lines are now ‘superfast’ (providing speeds of 30Mbit/s or higher), compared to 0.2% in 2009. ... Almost eight in ten households (78%) now have a fixed broadband connection.

  • During the past year we have also seen an increase in the availability and take-up of 4G services. As at May 2015, 89.5% of premises had outdoor coverage from at least one 4G mobile network ... During 2014, total UK 4G mobile subscriber numbers increased from 2.7 million to 23.6 million ...

  • ... take-up of smartphones has continued to increase - they are now the most widely-owned internet-enabled device, alongside laptops. In Q1 2015 smartphones were present in two-thirds of households (66%), on a par with laptops (65%). For the first time, the smartphone has overtaken the laptop as the device internet users say is the most important for connecting to the internet. Thirty-three per cent of internet users say their smartphone is the most important device for getting online, compared to 30% who cite their laptop ...

  • Overall, smartphone users now spend nearly two hours (114 minutes) using the internet on their mobile phone, nearly twice as much time as the average adult spends going online via a PC or laptop ... Our research shows that smartphones are used for a range of non-communication based activities, including watching short video clips (42%), streaming television programmes or films (21%), making purchases online (45%), and online banking (44%) ...
Convergence and consolidation
some general observations across Europe (but not only) and remarks – stating the obvious?

• IP converged world – demarcation lines between players (the OTT debate)
• Content is king (premium as well as other content)
• Whole ecosystem increasingly reliant on faster broadband
• blurred lines between fixed and mobile and so between networks and service platforms
• Consolidation, convergence and new business models are here to stay

The answers to date?

• Traditional primary focus on networks, network access and remedies – yet not always consistent
• Absent, inconsistent and/or not aligned responses to access to (premium) content
• Largely widespread emphasis on remedies “suited for” residential markets – response not fit for purpose for other markets, e.g. B2B
• Trial and error approach? backward looking lenses? Time lag issue?
The search for the common ground
pay TV in the UK

Telecoms
- Subject to ex-ante regulation with an analytical framework for identification of market failure
- European framework sets out a set of general remedies and SMP conditions

Pay TV
- Similar economic characteristics evident in Pay TV value chain
- Reliance on general competition law plus various legacy provisions

Impact of the approach on competition and innovation
- UK consumers benefit from amongst lowest fixed/BB prices but highest Pay TV prices amongst major countries
- Pay TV switching rates 3x lower than other comms markets
- Consumer protection rules for BB do not apply to Pay TV subscribers
Orange, Vodafone attack Telefonica “pay-TV monopoly”

Orange and Vodafone have accused Telefonica of a monopoly in the pay-TV business with the acquisition of Canal Plus bringing it to 80 per cent of the market.

The CEO of Orange, Jean Marc Vig粝nes, has claimed that the competitive situation in the TV rights market is “critical” with high risks for all the players. He pointed out that the pay-TV market in Spain is unique in Europe as there is no satellite pay TV operator, and the only way to acquire the services is through telco companies. “The incumbent (Telefonia) company has a monopoly with over 80 per cent of the market and controlling almost the whole of exclusive rights to premium content”. He said that the limits imposed by the CNMC regulator are “insufficient” running the risk of “damaging competition in the mobile and broadband markets”.

The CEO of Vodafone, Antonio Coimbra, has urged Brussels by letter to revoke the conditions imposed by the Spanish competition authorities on the approval of the merger between Movistar and Canal Plus. Vodafone is demanding that the percentage of 50 per cent of premium content that Telefonica is obliged to give access to other operators be increased to 75 per cent.

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Competition conditionally approves SFR-Numerable merger

The French Competition Authority has given its conditional approval to the purchase of mobile and broadband operator SFR by cable operator Numericable and its parent company Altice. The authority identified risks to competition in the following areas: A strong banking of SFR Numerable’s position in the residential broadband market, a reduction of telecom operators in the business market, a very strong market power in the mobile phone market in Reunion (95% share) and near monopoly in Mayotte (50%), and a risk to competition in the pay TV market as Canal Plus owner Vivendi will keep a 30 percent share of the merged company.

The Competition Authority has therefore obtained commitments from Numericable and SFR to remedy the risks to competition. Numericable will open its cable network to Orange, Bouygues Telecom, Free and M6 with the aim to offer fixed broadband services. SFR will be able to distribute their services and mobile for cable internet access. Numericable will also have to offer a telesurveillance access to SFR. SFR-Numerable’s access offer will be submitted to competition authority for approval to avoid any abuse effect on prices. Numericable will have to respect SFR’s fibre sharing agreement with Bouygues Telecom and cannot block Orange from deploying its fibre network reserved for SFR under an early deal.

Numericable has agreed to sell the copper network of its network company Société Comptarial and will have to give business operators wholesale access to SFR and Complete’s local fibre loop.

Numericable will have to sell the Orange Telecom’s mobile businesses in Reunion and Mayotte to allow a new competitor to emerge in these markets.

Finally, Numericable has made a commitment to not communicate any strategic commercial information to Vivendi’s markets in which they compete, namely pay TV in France and telecommunications in overseas French territories. A trusted third party will take part in SFR-Numerable’s board meetings and audit committees meetings to ensure that no sensitive information is communicated.

All four commitments are in effect for a five year renewable term and their application will be monitored by an independent party approved by the Competition Authority.
Buying Jazztel would give Orange, Spain’s third-largest wireless carrier, about 1.5 million broadband subscribers to help bolster offers of combined broadband, TV and wireless packages. It’s another example of European landline assets being snapped up. Vodafone Group Plc completed the takeover of Spanish cable provider Grupo Corporativo ONO in July.

“A very important thing before agreeing to Orange’s takeover of Jazztel was to make sure that consumers in Spain would not suffer from higher prices for fixed Internet access services,” EU Competition Commissioner Margrethe Vestager said in the statement. “With the remedies in this merger a new player may enter the market and compete as strongly as Orange and Jazztel do today.”

To win approval for the deal, Orange said it pledged to to divest an independent fiber network covering 730,000 building units.

‘Redundant Connections’

These are “largely composed of redundant connections between the existing networks of Orange and Jazztel” and “the conditions of this sale ensure that no redeployment of fiber will be necessary in the areas diverted,” Orange said in an e-mailed statement.

Orange committed to grant the purchaser wholesale access to Jazztel’s national ADSL network for up to eight years, the commission said.

The buyer would also get wholesale access to Orange’s mobile network including 4G services, unless the purchaser already has access to a mobile network, according to the commission.

Hutchinson Whampoa Ltd on Friday sought EU approval for its 10.25-billion-pound ($15.82 billion) bid for Telefonica’s British mobile unit O2, the same day regulators unveiled a tougher approach towards mergers in the sector.

The European Commission said it would decide by Oct. 16 whether to clear the deal, which would make Hutchinson’s Three UK business the second-biggest of the UK’s three remaining network operators.

The EU competition authority could either clear the deal with or without conditions or open an extensive investigation if it has serious concerns.

Hutchinson could face a strong regulatory headwind after European Competition Commissioner Margrethe Vestager earlier on Friday said she was ready to veto a plan by TeliaSonera and Telenor to combine forces in Denmark because they had not offered sufficient concessions.

Hutchinson, owned by Asia’s richest man, Li Ka-shing, however, is no stranger to tough regulatory demands. It was forced to offer significant concessions to secure the EU go-ahead for recent deals in Austria and Ireland.

(Reporting by Foo Yun Chee, editing by Andrew Roche)
what next?