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## **Communications Daily**

The Authoritative News Service of Electronic Communications

### **EC Urges Regulatory Revisions for Telecom Market**

European Commission (EC) telecom networks and service providers would be regulated separately and a single European Union regulator would oversee the telecommunications sector under a Thurs. proposal by EC telecom commissioner Viviane Reding. Separating a telecom company's network from its services would inject competition into the sector and "the moment the market is open we can scrap the rules or phase them out," Reding said.

Reding suggested offering incumbent telecom companies' infrastructure to startup rivals on the same terms as the incumbents give to service divisions. She cited the U.K., where the national regulator successfully instituted a similar system with BT Group. That resulted in a "good experience," she said, "so why not look at this good experience and maybe apply it Europe-wide?"

Reding isn't thinking of adapting the U.S. divestiture model, in which AT&T was broken up into 7 "Baby Bells" in 1984, she said. Her idea is to require companies to establish separate divisions of their networks and their services, she said. For wireless services, she said, she'd like a more market-based approach, obtained by opening more parts of the spectrum to rading.

The EC recommended lifting controls on almost all retail calls but keeping them in many wholesale markets, regulating 12 markets instead of the 18 it envisioned before. Other areas for change include consolidating the market, strengthening consumer and user interests and improving security. The EC will push to improve national regulators' oversight of security and integrity issues and to keep the networks safe against terror attacks, Reding's plan said. Operators would have to report breaches of security or loss of personal data and regulators would have to inform people when a breach happens and personal data are stolen.

The EC believes telecom companies continue to benefit from a dominant market share and government aid given to them to build an infrastructure, the plan said. The EC said slow progress toward liberalization by broadband has prompted it to include a proposal for a European kind of a "super regulator" to ensure efficient markets by ironing out differences and disputes in member states' application of remedies. Issues would go to the super regulator only when "irreparable harm" to the appellant can be shown. The "super regulator" would be seen as a decentralized function, with one European Union regulator that ensures fast remedies.

The EC urged tougher enforcement with more powers to national regulators to address breaches of licenses or authorizations, for example, via fines and penalties and letting regulators pursue spammers. The plan would strengthen disabled users' right to access emergency services via "112," and improve availability of caller location information to emergency authorities for "112" calls so that the caller could be located more easily.

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In regard to net neutrality, the EC wants to ensure that regulators can impose, in a pan-European way, minimum quality-of-service requirements, in addition to their existing powers to ensure interoperability. The Commission wants to insure that operators in the European Union will not be able to discriminate against customers by offering 2-speed Internet service, officials said. The EU's concern isn't as strong as in the U.S., Reding said, voicing hope that competition will address this problem.

Competition is sufficient in most retail networks, and competition for international calls has become especially fierce, Reding said. The only change the EC plans applies to the remaining market -- accessing the public telephone network from fixed location. The EC also intends to keep control of many wholesale markets, it said.

For the first time, mobile services such as SMS messages would be regulated. Wholesale SMS termination would be included explicitly in the wholesale market for mobile call termination. This would subject the whole market for SMS termination to periodic checks by national regulators for any dominance by an operator. This is expected to lead to lower wholesale rates and ultimately lower retail costs for sending SMS messages. Each mobile network operator has a monopoly in terms of how it charges other operators to reach its customers, the EC said, and this is as true for SMS termination as for termination of voice calls. Since the market power is the same for both voice and SMS termination and as both services are sold in the same mobile cluster at retail and wholesale, they will be dealt with as part of a single termination market per operator, the plan said.

Reding announced creation of a European spectrum agency to function as a spectrum trading agency and enable anyone who owns spectrum to use it or sell it. The goal is a new policy approach to spectrum management and a lesser procedural burden associated with regulation, the plan said. The new approach foresees more freedom for spectrum users to use the technology and services they choose, and to establish that identical blocks of spectrum can be used under common conditions in all European Union member states.

Trading in spectrum will be introduced in selected bands across Europe, where operators can trade in member states, as permitted, while guarding the public interest and existing rights holders' legitimate interests, the plan said. The European spectrum management approach will be market-based, allowing transfer of spectrum usage rights between users with no need for administrative permission. Common conditions and rules will be used in all EU member states, for example, for interference protection.

Another approach is the "unlicensed structure," meaning shared usage, no individual rights or protections and easy access. The administrative approach will continue for agreed public purposes such as transfer of spectrum usage rights, subject to administrative control. Sometimes coordination will be needed, such as for identifying where trading or "general authorization" applies across the European Union as well as usage conditions.

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A commission public consultation on the proposed reforms will run until Oct., with the EC floating legislation in the European Parliament and EU member states at year's end. The EU executive intends to adopt the new rules in Q1 of 2007, with transposition into national laws due by 2010.

The controversial proposals will face resistance from EU member states, likely to be unwilling to relinquish control. Eastern European member states have voiced reservations about complete liberalization of spectrum trading, citing a danger that it will end up in the hands of the big telecom companies.

The sector's revenue growth generally outpaces the EU economy's growth. In 2005 the ICT sector's value was 614 billion Euros, with the value of services that rely on spectrum pegged at 200 billion Euros and investment in Europe comparable to that in North America and Asia.

### Separation 'Confusing'

Some observers were left scratching their heads at Reding's apparent interest in enabling national regulators to force incumbents to split infrastructure from service provision. Gauging the impact of proposed changes to the NRF, the EC discussed structural separation as one of 3 options for boosting investment in networks, but decided against it. Nevertheless, Reding played up the idea in a Tues. speech at BITKOM, saying such a policy could "answer many competition problems that Europe's telecom markets are still facing today."

She said yesterday she hasn't made up her mind about it, then added that British Telecom's (BT) Openreach concept might be applied EU-wide. "I'm confused," Strategy Analytics broadband analyst Martin Olausson said. He said he reads Reding's focus on structural separation in the face of the EC's evident lack of support for the concept as a warning to incumbents to "play nice" when they discuss regulation. And Reding's reference to BT is unclear, he said. Pressed by the Office of Communications (Ofcom), BT agreed to an organizational -- not a structural -- separation of its wholesale and retail arms within the same company, he said.

Full structural separation certainly would neutralize the network neutrality argument, Olausson told us. It would put every market player on the same level, though newcomers like Yahoo and BSKyB, which control content and vital services, could find themselves in extremely strong positions. On the other hand, he said, full structural separation could slow investment by removing the incentive to install next generation networks.

Some new entrants have broached the idea of incumbents being separated into differently regulated functions but existing under the same roof, said Innocenzo Genna, a EuroISPA board member who represents the Italian ISP Assn. The EC opposed that, but perhaps Reding has decided to run with it at the Cabinet level, he told us.

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ISPs think functional separation could be a good remedy, but only if the EC clarifies the term's meaning and ties it to retail market deregulation, Genna said. The European Competitive Telecom Assn. (ECTA) welcomed Reding's call for separation, pointing to the functional separation model adopted by BT. The EC should explain "structural separation," incumbents said.

The European Telecom Network Operators' Assn. (ETNO) voiced surprise "that the Commissioner refers to it as a valuable option considering that even the Commission's impact assessment rejects it." Separation would be difficult and economically unfeasible, ETNO said.

BT Chief Exec. Ben Verwaayen said he was pleased the U.K. was cited as a regulatory model. The U.K. Dept. of Trade & Industry appreciates "the direction of EU thinking on these issues, which support the competitive and open markets approach followed by" the govt. and Ofcom, said Nigel Hickson, European e-commerce and telecom regulatory framework head.

The EC proposals call for deregulation of at least 6 of 18 telecom markets now potentially subject to preemptive regulation, while adding a new market for SMS termination. ETNO urged deregulation of more wholesale or access markets when alternative networks exist; wholesale mobile markets, including SMS termination, are already competitive, it said. BT's Verwaayen called the reduction "another encouraging development."

Alternative providers disagreed. Simply deregulating markets while dominant operators remain so strong worries ISPs, Genna said. ECTA complained that deregulating retail markets now could leave incumbents with a competitive edge over new players.

Vodafone said it welcomes the EC deregulatory approach but said it's being applied unevenly to markets, such as international roaming and SMS termination, that are fully competitive. SMS prices are 10% cheaper than they were, a spokesman said.