

BENCHMARK TELECOMS STUDY SHOWS EUROPE STILL A PATCHWORK PICTURE OF LIBERALISATION

2006 Regulatory Scorecard highlights major issues with implementation of the EU Framework for communications – ECTA calls for enhanced role for the European Regulators Group

Brussels, 11.12.06 - ECTA's 2006 Regulatory Scorecard, published today, clearly demonstrates that, more than three years after the existing European Framework for Telecoms Regulatory came into force it has not yet been fully implemented in many countries. As a consequence, customers are continuing to pay excess charges and receive limited services in many countries. This is particularly acute when it comes to the availability of critical broadband and business communications services.

The result of this patchwork implementation of the Framework is a stark split in performance: countries at the top of the Scorecard, including the UK (1st), Denmark (2nd) and France (3rd), which have been more pro-active in driving pro-competitive reforms, have seen a wealth of telecoms offers, growth and investment in the sector, and some of the lowest retail prices in Europe. Meanwhile countries at the bottom of the Scorecard, such as Poland (17th and lowest), Greece (16th) and Germany (15th), have struggled in some areas to provide an environment in which competition can flourish, which has a negative impact on both consumers and businesses in those countries.

The ECTA Scorecard is a detailed measure of how effectively EU Member States and their regulators have liberalised national telecoms markets to open them to competition. A clear message from this year's results is that the actions of Governments and regulators to create a pro-competitive environment for telecoms have real and tangible results. In broadband penetration for example, a critical factor in ensuring European competitiveness on a global basis, there is a strong and significant link between measures taken by regulators to create a sustainable ladder of investment for competition and the take-up of broadband. France, the UK, Netherlands, and Denmark, which have acted to ensure that competition can develop, have all exhibited strong growth with penetration rates already well above the EU average of 15%¹. Conversely, Poland, Greece, the Czech Republic and Ireland, where effective and appropriate regulation is less evident, have all lagged behind in broadband take-up.

¹ Commission Communications Committee working document July 2006

In the run-up to the publication of proposals by the Commission to revise the European Framework for Telecoms Regulation, the European Telecommunications Communications Association (ECTA) urged telecoms ministers to push through reforms to complete liberalisation. An enhanced role for the European Regulators Group (ERG) and powers for regulators to mandate functional separation were highlighted by the pro-competition group as key measures.

Steen Clausen, Managing Director, ECTA, said, “What we need is a smarter approach to regulation. It is very clear from the Scorecard that even where rules have been applied on paper, they don’t always work in practice. So looking at deregulation when markets are not yet fully open is premature. An enhanced role for the ERG could help to spread best practice more effectively between regulators across Europe. The ERG and Member States should look closely at how this can be achieved. Powers for regulators to functionally separate access from services could also help to better enforce the existing regime.”

Yvan Desmedt of Jones Day, co-authors of the research, said, “The Scorecard clearly shows that in some countries, regulators have applied the Framework relatively rigorously and are reaping the benefits in the marketplace. However in many others, crucial market opening measures are not yet in place. This means that there remains a clear opportunity for Europe to progress by enforcing the Framework effectively and levelling the playing field across the EU. “

Clausen continued, “The European Commission publishes reports year after year that, like the ECTA Scorecard, show that open markets mean lower prices and higher take-up of services. For example, the price for international calls and high speed ‘leased lines’ - critical services for businesses - has fallen by more than one third since markets were liberalised in 1998². Further, there has been a five-fold increase in broadband lines in the past three years³ to 56 million, spurred primarily by competition.”

The conclusions of the Report are threefold: the powers granted to regulators, and implementation of regulation, vary significantly across the seventeen Member States covered by this report; while some countries have made significant strides forward in improving their regulatory environment, the extent of these improvements has been patchy; and new services

² Teligen for the European Commission December 2005

³ Commission Communications Committee working document July 2006

such as broadband have surged where governments and regulators have taken the necessary action to open markets.

About the 2006 ECTA Regulatory Scorecard

This detailed picture of the regulatory environment in 17 countries across Europe is compiled by assessing 97 criteria selected after consultation with stakeholders, and in line with WTO and EC rules and guidelines. The three main elements of the analysis cover: the institutional Framework including the independence of the regulator, effectiveness of appeals and enforcement; market access principles including fair pricing principles and rules against discrimination; and the application of the Framework in practice, assessed primarily through market data on pricing and the market shares of competitors.

Key findings

- There is a strong and statistically significant link between broadband take-up and the effectiveness of appropriate market-opening broadband regulation as measured by the scorecard.
- Finland, Sweden and Denmark top the league for the most attractive mobile competitive environments with relatively low retail prices. By comparison, mobile customers in Germany, the Netherlands and Ireland face relatively high prices with little choice.
- The UK, Netherlands, Portugal and France offer the communications environment most conducive for business communications services, a key engine for economic growth. Of the big 5 European economies, Germany and Spain currently lag behind.
- Many regulators lack the power or confidence to fine companies for breach of telecoms competition rules or to block the incumbent from launching services that undermine competition in the market. By contrast, Spain, Portugal and Greece have relatively effective enforcement powers and have used them.
- Slow and complex appeals procedures continue to dog application of the Framework in many countries, delaying the process by up to 3 years in some cases. Sweden faces particular problems with this issue.
- Most regulators have yet to tackle the issue of 'discrimination', one of the key barriers to competitors being able to compete on equal terms with former state-owned incumbents. The UK, Italy and France are considered to have made most progress, with functional separation in place in the UK and under consideration in Italy.

-Ends-

To download a copy of the whole study please follow the following link:

<http://www.ectaportal.com/en/basic651.html>

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About ECTA (www.ectaportal.com)

The European Competitive Telecommunications Association (ECTA) looks after the regulatory and commercial interests of new entrant telecoms operators, ISPs and suppliers of products and services to the communications industry.

ECTA works for a fair regulatory environment that allows all electronic communications providers to compete on level terms in order to multiply investment and innovation throughout an effective European internal market. The association represents the telecommunications industry to key government and regulatory bodies and maintains a forum for networking and business development.

ECTA [member companies](#) include operators, service providers and suppliers as well as National Associations of such which all contribute towards regulatory policy development and participate in our comprehensive range of networking events, conferences, seminars, briefings and executive meetings.

About Jones Day

Jones Day is a law firm that has an extensive experience in the telecommunications sector. It has offices in most major EU Member States (Brussels, Frankfurt, London, Madrid, Milan and Paris) that contributed to the compilation of the report. For more information on their telecommunications practice visit the website www.jonesday.com.

Notes to Editors

1. This is the fourth Regulatory Scorecard and the first to be produced since NRAs completed the majority of telecoms market analyses as required under the EC Communications Directives of 2002. The Framework Directive places various obligations on National Regulatory Authorities ("NRAs"). In particular Article 8 requires NRAs to promote competition amongst electronic communications networks, services and associated facilities by, inter alia, ensuring there is no distortion or restriction of competition and by encouraging efficient investment in infrastructure and promoting innovation

2. By measuring the powers and performance of NRAs as well as the regulatory regimes under which they operate, the Scorecard Report seeks to determine how effectively each of 17 countries promotes investment and competition as at 31st August 2006.

3. This year's scorecard covers:

- Austria
- Belgium
- Czech Rep.
- Denmark
- France
- Finland
- Germany
- Greece
- Hungary
- Ireland
- Italy
- NL
- Poland
- Portugal
- Spain
- Sweden
- UK

Finland has been covered in the scorecard for the first time, extending the analysis to cover the 14 largest countries in the EU15, all of which committed to fully liberalising telecoms markets under EC Directives in force since 1998. Three of the ten 'new member states', Poland, Hungary and the Czech Republic have been covered in the report.

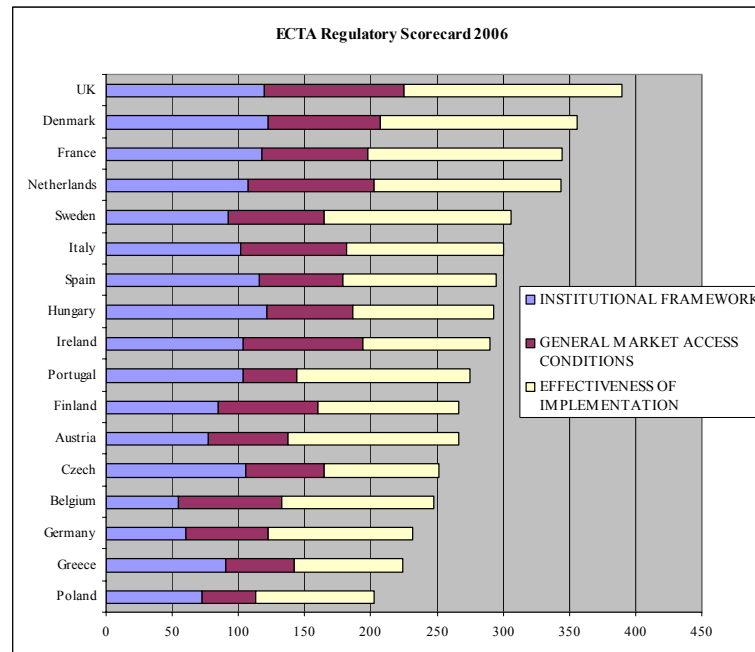
4. The scorecard is developed through review of a detailed questionnaire (97 questions) covering:

- (i) effectiveness of the national regulatory system (including transparency, independence of the regulator, speed of process in analysing markets and settling disputes, powers and sanctions, and the effectiveness of the appeal process),
- (ii) general market access conditions (e.g. general rules relating to access, non-discrimination, price control, accounting separation, numbering and rights of way); and
- (iii) application of remedies in markets for narrowband voice, mobile, broadband and business services.

5. The criteria were selected following a review of a range of inputs including the various Directives making up the NRF, World Trade Organisation (WTO) reference paper on telecommunications, the OECD and inputs from carriers, economic experts and third parties. The scorecard uses objective measures wherever possible to score regulatory and competitive effectiveness such as the actual length of appeals

procedures, speed of NRA decision-making processes, availability of key products, price levels and market shares.

6. The overall results of the scorecard are:



7. The overall results of the report show that, three years after the adoption of the regulatory framework and eight years since the complete liberalization of the sector in 1998, the application of regulation across Europe is fragmented and there is still considerable scope for progress. Whilst some Governments and regulators have implemented the framework relatively rigorously, many remain behind on introducing critical market opening measures.

8. In addition, due to the high degree of granularity in the report, it is possible to identify key issues and specific strengths and weaknesses for the countries examined.

- Transposition of the framework. Many Member States were late in transposing the regulatory framework with only six Member States out of the 17 countries

- surveyed adopting the framework on the due date. Moreover, there have also been a number of issues in relation to the correct transposition of the framework.
- Speed of process. The timeframe taken to complete market analyses has further delayed the effective application of the framework in a significant number of Member States, with some NRAs taking more than 18 months to reach a conclusion. Timescales for decision-making seem to have been a particular issue in Italy and Poland, and this is an area where the UK, otherwise a strong performer, has been relatively weak.
 - Transparency. In most Member States, market players appear to be generally satisfied with the transparency of the NRA's processes. The implementation of the new framework appears to have significantly improved such transparency. However, there still appear to be particular concerns in Germany, where questions have been raised about whether the balance between protecting business secrets and disclosure has been effectively addressed.
 - Enforcement and sanctioning powers. Regulators with the most effective enforcement powers are Spain, Portugal and Greece. By contrast, penalties have been much more seldom applied in the new Member States and Finland, Austria and Belgium. The power to suspend offers which harm competition is also lacking in many member states.
 - Appeal procedure. Lengthy and restrictive appeal practices (with some appeals taking up to 3 years) continue to delay the effective application of the regulatory framework in many countries. Sweden's problems are well-documented, with most of the regulator's important decisions still under review by the courts. Swifter and more effective systems are found in the UK, France, Denmark and the Czech Republic.
 - Independence. Independence, not just from industry, but also from political influence, remains a critical issue in ensuring predictability and stability in the regulatory environment. Progress has been made in several countries, but a number of large Member States still maintain substantial shareholdings in their incumbents including France, Germany, Sweden, Poland, Belgium and Greece, whilst others retain the right to issue Ministerial directions to the NRA.
 - Dispute settlement. In most Member States dispute resolution procedures have taken longer than the four months' timeframe mandated in the EC Framework.
 - Non-discrimination. Most regulators have yet to adequately define and enforce the concept of non discrimination, one of the key barriers to enabling competitors to compete on equal terms with SMP operators. The UK, which has introduced functional separation as a means of strengthening measures to combat discrimination is considered one of best practice examples, as are Italy and France, which have worked on addressing discrimination and margin squeeze in the context of developing the broadband ladder of investment. For most countries, however, there is a lack of clarity on how discrimination is handled.
 - Narrowband voice services. Narrowband voice services were amongst the first elements on the market to be liberalized and appear to be relatively competitive in a number of countries, particularly the UK, Denmark, Netherlands, Sweden and Germany. However, the new Member States as well as Finland remain behind, although it is notable that mobile regimes in this latter group of countries perform rather better, and may, as result, be used to some extent as a substitute.
 - Mobile services. Finland, Denmark and Sweden offer the most attractive mobile competitive environments with relatively low retail prices, but a number of

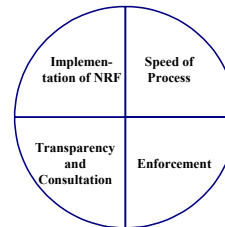
- countries - and particularly Germany, the Netherlands and Ireland continue to offer comparatively poor value with insufficient choice.
- Business services. The UK, Netherlands, Portugal and France are considered to offer the communications environment most conducive for business communications services, a key engine for economic growth. However, this important aspect of regulation had been neglected in many countries - including large Member States such as Germany and Spain, as well as otherwise well-developed economies such as Ireland, Finland and Sweden.
 - Broadband. The regimes considered most effective in implementing the broadband ladder of investment (in accordance with national circumstances) are France, the UK, Italy, Netherlands and Denmark. Conversely, according to the scorecard, Poland, Greece, the Czech Republic and Ireland fall behind in enforcing measures to open broadband markets.
 - Accounting separation. Although accounting separation is generally recognised as an essential component for ensuring a proper enforcement of remedies under the Framework, only a very limited number of Member States have effectively implemented it. The Report finds, however, that progress has been made compared to the previous years.
 - Rights of way. Effective rights of way have long been identified as critical in enabling infrastructure investment to the extent this is viable. Germany is particularly strong on rights of way and Denmark, Sweden, Finland and the Netherlands also perform relatively well, whilst problems have in particular been identified in the UK, Greece, Austria, Poland, Spain and Italy. It is noteworthy that Portugal has introduced duct access since 2005. In view of the interest in this development across Europe, this will be included as a criterion in future reports.

An illustration of these strengths and weaknesses is shown overleaf.

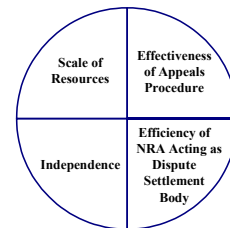
Report on the effectiveness of national regulatory frameworks

2006

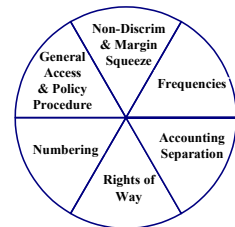
	(1) Institutional Framework	(2) Institutional Framework (Cont.)	(3) Gen. Market Access Conditions	(4) Eff. of Implement.
Austria				
Belgium				
Czech Republic				
Denmark				
Finland				
France				
Germany				
Greece				
Hungary				
Ireland				
Italy				
Netherlands				
Poland				
Portugal				
Spain				
Sweden				
UK				



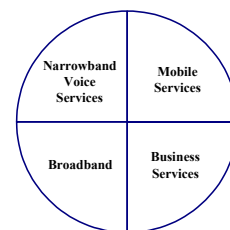
(1)
Institutional
Framework



(2)
Institutional
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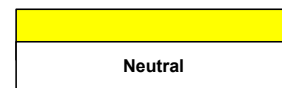


(3)
General Market
Access
Conditions

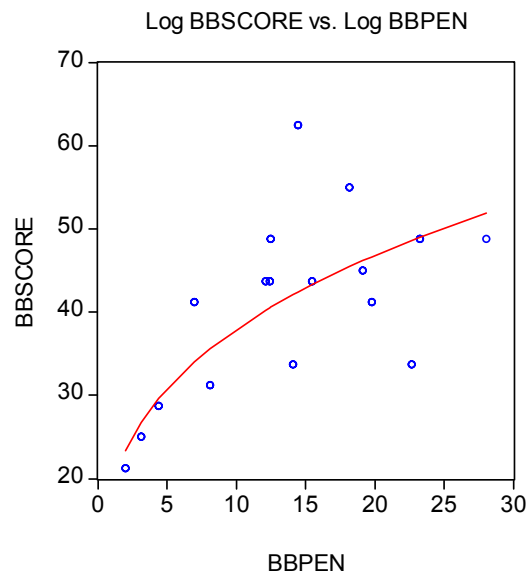


(4)
Effectiveness of
Implementation

Colours:



9. In order to gain some understanding of the impact of regulatory effectiveness on the market, an analysis was carried out on the closely-watched broadband market. Scores for ‘regulatory effectiveness’ in broadband were compared with penetration rates to produce a regression model, taking into account differences in GDP per capita. On the basis of this regression the study found a very strong and positive relationship suggesting that 75% of the variation in broadband penetration can be explained by the equation with a confidence level in excess of 99%. The graph is shown below.



10. For all three previous versions of ECTA’s regulatory scorecards, economic analysis has shown that there is also a strong and positive relationship between effective regulation and the level of investment in the electronic communications sector. As data from the OECD on investment levels is only published every two years (with the next edition of the Communications Outlook expected mid-2007), we were unable to carry out an analysis on the basis of official recent investment data at this time. However, this analysis is planned, once the data becomes available.

11. In conclusion, evidence from the broadband analysis undertaken for this exercise, and previous ECTA analyses concerning the link between effective regulation and investment, which are in line with the findings of a report prepared by London Economics and PWC for the European Commission, highlight the importance of effective regulation in driving competitiveness and growth in the telecoms sector and beyond. The Commission's Implementation Reports also show how prices have fallen and new services such as broadband have surged following action by Governments and regulators to open markets to competition. Taken together, these findings suggest that raising the standard for implementation and enforcement of pro-competitive reforms in telecoms so that all countries match up to the best could substantially improve Europe's telecoms markets to the benefit of consumers and ultimately Europe's economy.