

TELECOMS WATCHDOGS LACK POWERS TO FIGHT MONOPOLIES, STUDY FINDS

Benchmark of 19 European countries shows lowest prices, highest investment where regulators have strong tools to enforce EU pro-competition rules

Brussels, 28th November 2007 – The powers and independence of National Regulatory Authorities (NRAs) have in many cases been restricted and their ability to enforce rules under the EU Telecoms Framework have been compromised, according to a report issued today by ECTA at its Regulatory Conference. The independence of the telecoms regulatory system from Government appears to affect the overall ‘regulatory effectiveness’ of countries as measured under the 2007 ECTA Regulatory Scorecard. In particular, state ownership in telecoms companies seems to be particularly influential in determining overall effectiveness of telecoms regulation.

This report, commissioned by the European Competitive Telecommunications Association (ECTA), compares the telecoms regulatory environment and the application of the current legislative Framework in 19 European countries. This year’s results show that countries where regulators have taken action to enable competition to flourish, including the UK, Netherlands and Scandinavian countries, have seen strong performance in their telecoms markets. However, others including Poland, the Czech Republic and Greece have fallen behind, while institutional weaknesses may be preventing Germany, Belgium and Finland from reaching their full potential.

The 2007 Scorecard also clearly illustrates that the ability of the regulator to tackle competitive problems can have immediate and tangible consequences for consumers – affecting the price of telecom services, as well as affecting longer term investment in the sector. In particular, in countries where regulators have enforced access to the incumbents’ local loop to open broadband markets to competition, broadband prices are typically the lowest and the broadband speeds the fastest.

Innocenzo Genna, Chairman of ECTA said, “If you are paying high prices for broadband, it may be because your regulator has not been able to open the market to competition. It is time for policy-makers to ensure all regulators are fully equipped to tackle the challenges that long-held monopolies can create for consumers and the sector as a whole. Functional Separation – which involves clearly identifying and targeting regulatory action on competitive bottlenecks – is a tool that could be used to

support this.”

Another key finding is that regulators are not moving quickly enough to understand and address new issues that are raised as the sector evolves and networks are gradually upgraded with newer technologies – such as replacing copper with fibre, or traditional voice networks with networks carrying IP. Such delays create serious risks that each time technologies and networks are updated, there will be periodic set-backs or even reversals of the competitive process.

Yvan Desmedt of Jones Day, co-authors of the research, said, “There is a real danger that all the hard work done by regulators to open telecoms markets over several years can be undone in a matter of months if regulation fails to keep pace with technological change. We saw this happen when dial-up Internet access was replaced with broadband. And the results of the study show that we are potentially heading in the same direction today as broadband lines are upgraded to even faster speeds.”

The reports’ findings suggest that an active approach to promoting competition by Governments and regulators is typically the most rewarding in delivering consumer benefits and competition both the short and longer term. Richard Cadman, Director SPC Network, co-author, said, “Evidence shows that more competitive markets, where unbundling of the incumbent networks accounts for a larger share of the market, tend to have a greater take-up of broadband and higher investment levels overall. This combination may create the demand and conditions for further investment in higher speed fibre access lines. On the other hand there is no evidence that the success of unbundling negatively affects take up of cable networks and other infrastructures”.

Genna concluded: “The Regulatory Scorecard shows that consumers in many countries are paying more for lower quality services because they do not enjoy the same level of choice and competition as their neighbours elsewhere in Europe. We need in the ongoing Review of the EU Telecoms Framework to place priority on empowering and strengthening all national regulators. We also support the idea of a formal role for the European Regulators Group, if necessary through creating an Authority, providing its duty is to harness and not to replace regulators’ expertise.”

Access the full copy of the report at: <http://www.ectaportal.com/en/basic651.html>

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About ECTA

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 which 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 who all contribute towards regulatory policy development and participate in our comprehensive range of networking events, conferences, seminars, briefings and executive meetings.

About SPC Network

Strategy and Policy Consultants Network (SPC Network) specialises in the economics and regulation of electronic communications markets. Founded in 2002, it has worked for many leading international communications providers in Europe, the Middle East and the former Soviet Union. It has also worked for industry bodies such as the UK Competitive Telecoms Association (UKCTA) and NGNuk.

SPC Network has been working with ECTA since 2003 on the Regulatory Scorecard and on establishing the relationship between effective regulation and investment in electronic communications.

About Jones Day

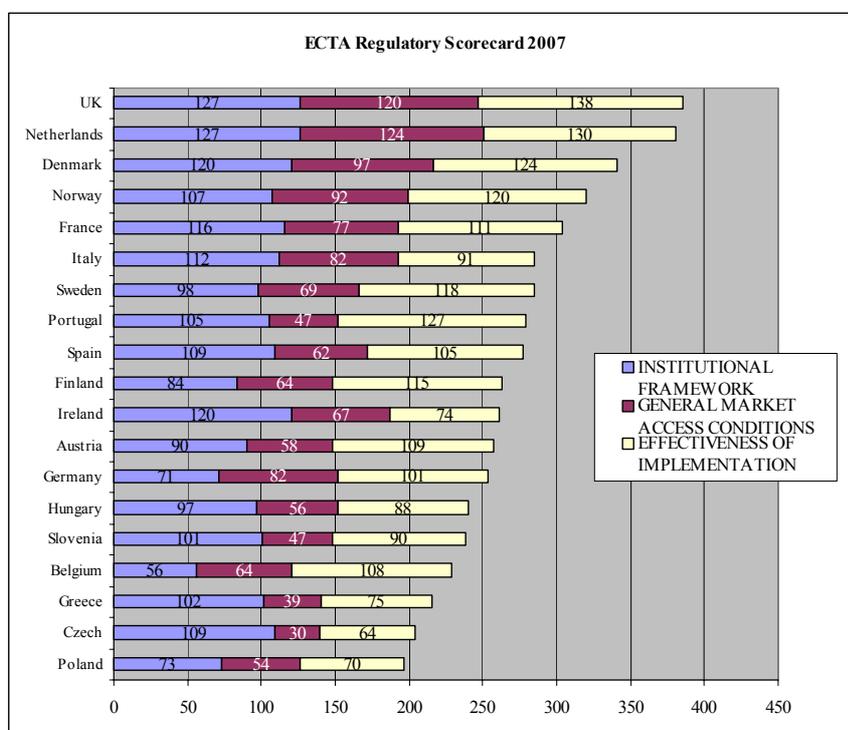
Jones Day is a law firm that has an extensive experience in the telecommunications sector. It has offices in most major EU Member States (Brussels, Frankfurt, London, Madrid, Milan and Paris) that contributed to the compilation of the report. For more information on their telecommunications practice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

About the 2007 ECTA Regulatory Scorecard

The Scorecard is a comparative quantitative analysis of 19 EEA Member States resulting in an overall score for the effectiveness of the regulatory environment in each country.

A questionnaire was compiled following consultation with NRAs and ECTA members, and taking account of the requirements and recommendations contained in the EU Communications Framework, the World Trade Organisation (WTO) reference paper on telecommunications and European Commission and European Regulators Group (ERG) Guidelines. It covers (a) the institutional framework; (b) general market access conditions; and (c) the specific competitive and regulatory conditions relating to the markets for fixed and mobile telephony, high speed business connections and broadband.

Overall Results of 2007 ECTA Regulatory Scorecard



Country rankings:

- The United Kingdom remains the highest scoring country overall for effective regulation of the telecoms sector. The Netherlands has improved its position from 4th place in 2006 to 2nd place this year, just four points behind the UK. Norway, a new country in this Scorecard, performs well coming in 4th
- Germany has improved its position from 15th in 2006 to 13th this year, but remains weak on institutional arrangements. Institutional weaknesses also holding back Finland and Belgium

- Amongst the EU15, Greece continues to exhibit the weakest performance, although with an improvement since last year
- Amongst the new Member States, which liberalised and implemented the EU Framework later than other countries in the assessment, Hungary continues to be the best performer, followed by Slovenia (assessed for the first time this year), the Czech Republic and Poland. Whilst some new member states have a strong institutional foundation, implementation is often not yet effective in these countries.
- Country by country assessment of strengths and weaknesses is shown overleaf

Report on the effectiveness of national regulatory frameworks 2007

	(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				
Norway				
Poland				
Portugal				
Slovenia				
Spain				
Sweden				
UK				



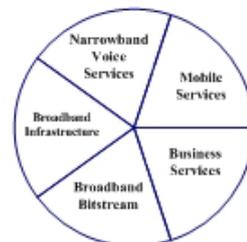
(1)
Institutional
Framework



(2)
Institutional
Framework
(Cont.)

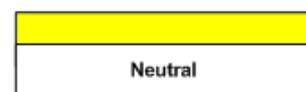


(3)
General Market
Access
Conditions



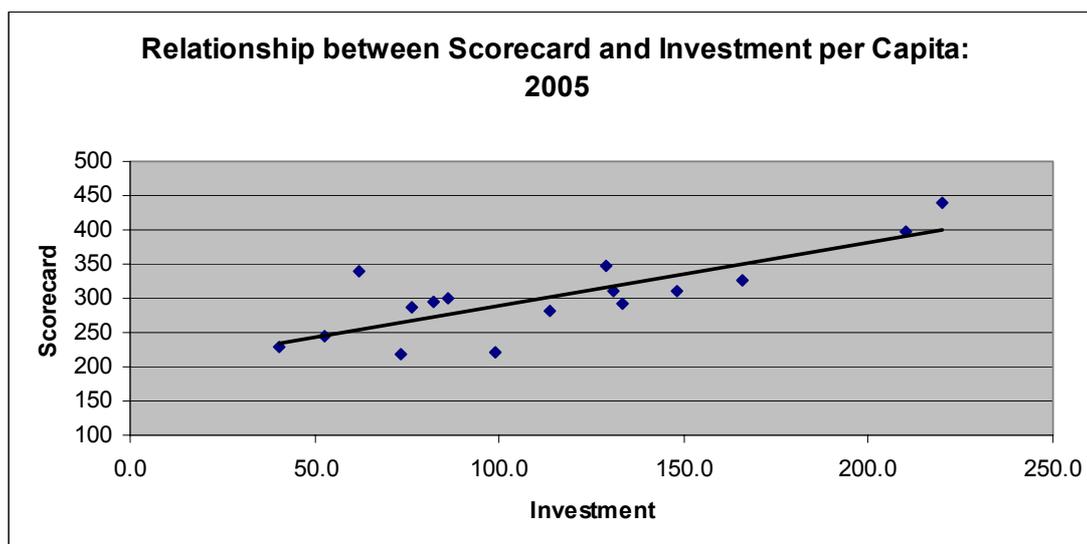
(4)
Effectiveness of
Implementation

Colours:

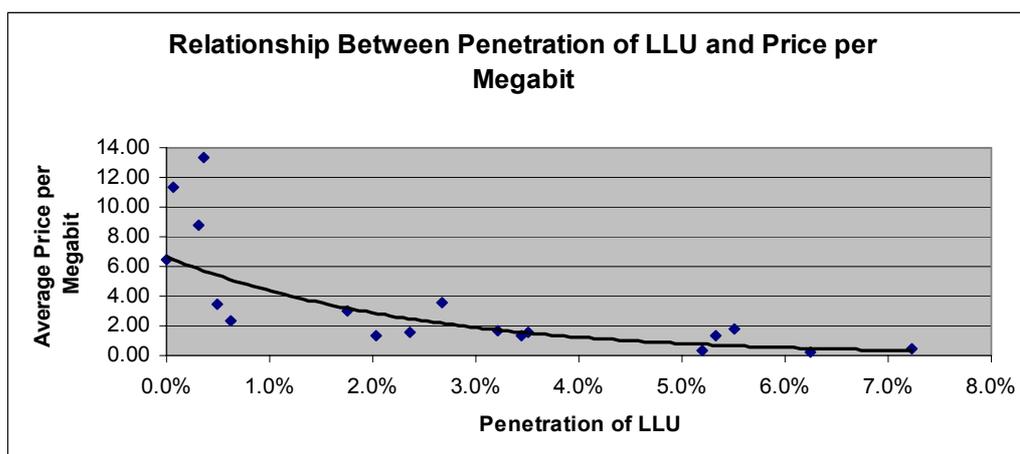


Key Findings – impact on markets and consumers

- Evidence comparing regulatory performance as measured by ECTA's Regulatory Scorecard against investment records from the OECD (<http://www.spcnetwork.co.uk/>) shows investment in telecoms is substantially lower where the regulatory approach is weaker



- Independence of the NRA appears to affect the overall market openness. Countries where the NRA's powers are not restricted by national law, where senior management cannot be removed on political grounds and where there is no state shareholding in the incumbent perform substantially better on average than those where independence may be compromised.
- Broadband prices and the speeds of services offered are significantly affected by the degree of competition stimulated by the regulatory regime. In particular, there is a strong link (correlation co-efficient -0.69) between the levels of 'local loop unbundling' (access to the last mile in the network) and lower prices, and an even stronger link between the share of unbundling and higher download speeds for consumers. A significant share for cable networks on the other hand does not seem to significantly affect prices or speeds of broadband services.



Key findings – main weaknesses in Europe’s regulatory system

- Many regulators lack the powers needed for proper enforcement of the Framework. Frequently, penalty powers often represent a small fraction of the turnover of dominant companies. Restrictions are particularly limiting in the new member states assessed and in Germany, Belgium, Austria and Greece
- Lengthy appeals processes and in some cases suspension of regulators’ decisions, continue to delay the effective application of essential rules by national regulators
- Independence of regulators from political guidance is lacking in many countries and this is a particular issue in Poland and Finland. Governments of 11 of the 19 countries surveyed maintain shareholdings in incumbents
- Timeframes taken by regulators to assess competitive problems have in several countries exceeded 19 months
- In very few cases have clear cross-market measures been established to ensure a fair and level playing field for all operators
- Accounting separation, a vital measure to ensure consistent pricing to promote competition and investment, has been mandated in all countries but has yet to be fully implemented except in the UK, Netherlands and Ireland
- There is a widespread lack of transparency over ‘next generation’ upgrade plans by incumbents

- The approach to regulating Voice over IP, including requirements relating to numbering and number portability, diverges significantly from one country to the next
- Effective implementation of measures to open broadband markets, such as local loop unbundling, are lacking in many countries. The Nordic countries, UK, Netherlands and France perform best on this measure whilst Ireland, Greece, Czech Republic and Poland have faced particular problems
- Little focus has been given to ensuring competition in business services, despite the role of communications in driving business productivity. In particular, very few regulators have taken measures to ensure high and consistent standards in quality and service delivery
- There is evidence that in some countries mobile markets may not be effectively competitive evidenced by relatively high prices and high concentration levels. Nordic countries generally perform well on mobile measures, whilst markets in Ireland, Italy, the Czech Republic and Greece appear to present more problems