

Can the enforcement of the EC competition rules and the regulatory framework for electronic communications ensure effective and fair competition and a level playing field?

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Objective: Legitimate profit, effective competition and a level playing field

- Profit through anti-competitive practices is condemned – includes the risk of heavy fines
- The battle between the former monopolies and the new entrants – the use of the fixed network infrastructure as the bone of contention
- What can be done to resolve the conflict?

The rules of the game

- Competition rules
- New Regulatory Framework (“NRF”)
- How can we move forward?
- Commission’s proposal – the 2006 Review
 - Proposal for structural separation
 - Efficient management of the frequency spectrum

Structural separation I

- Separation of network infrastructure provision and retail services provision – not a novel idea
- In the EU...
 - BT's separation of its retail and wholesale businesses
 - Directive 2002/77/EC on competition in the market for electronic communications and services
- In other sectors...
 - Natural gas
 - Electricity
 - Aviation
 - Rail

Structural separation II

- Structural separation should not be feared ... if it can be justified as a remedy to competition concerns
- Same end, different means:
 - Commission decision British Interactive Broadcasting (BiB)/ Open

Beyond structural separation

- Structural separation in relation to fixed network infrastructure does not mean the end to all problems
- In addition to the competition and regulatory rules, competition based on wireless technologies will further ensure development and profit
- Hence, the efficient management of the frequency spectrum is key

Frequency spectrum and how to manage it best

- High demand, scarce supply
- What we can do about it:
 - an EU agency in charge of spectrum management?
 - improving what we have?
- Letting the market decide how the frequency spectrum can be used more efficiently ...
- ... and finding solutions through the competition and regulatory rules – the EC case law has already laid down the principles which need to be applied

EC law to the rescue - What to do if a problem arises

- EC competition and regulatory law can be used for protection against competitors and public authorities
- What resort can be available:
 - National Regulatory Authority (NRA)
 - National Competition Authority (NCA)
 - National Courts
 - European Commission
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- Review of acts of the national authorities and the of the European Commission – the European Court of Justice the ultimate arbiter on EC law issues