



## European Regulatory Framework TAL Regional Seminar

**18 February 2008**

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### Agenda

- 1. Overview of Regulatory Framework
- 2. Market Analysis & Competition problems
- 3. Available remedies
- 4. New framework proposals
- 5. Functional separation

## Overview of European Regulatory Framework

### Aim

- To create a liberalised, competitive single market for electronic communications

### Who involved?

- European Commission (EC) – oversees application of the Framework
- Independent Regulators Group/ European Regulators Group
- Individual National Regulatory Authorities – 27 EU and 4 EFTA

## EU Framework – key features

### Common European Framework

- All European regulators apply the same framework
- Promotes harmonisation and the internal market

### Liberalised

- No need to obtain licence

### Regulation

- Not automatic
- Only when regulator finds market power and detriment to consumers

### Principles

- align with competition law
- make regulation technology neutral
- minimise regulation
- allow regulations to change as market conditions change

## National Regulatory Authority Objectives

- Promote competition
- Promote the interests of EU citizens
- Development of the internal European market

## Access Requirements

### All Network operators

- have right / obligation to negotiate interconnection
- must offer access and interconnection in accordance where NRA requires

### Dominant (SMP) operator's conditions

- meet reasonable requests for access
- Transparency - eg Reference offer
- Non discrimination
- price control and cost accounting
- accounting separation

## Universal Service & Authorisation Requirements

### Universal service

- provision of special measure for users with disabilities
- pay phones
- access to directories
- directory enquiry facilities

### Authorisation

- Automatic but subject to notification
- all operators have rights and obligations
- Obligations can be :
  - Applicable to all
  - Specific relating to dominant operators only

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## Market analysis

- Purpose of analysis is to identify competitiveness of market and who has dominant position (SMP)
- Steps in a market analysis
  - Define markets
  - Assessment of market power
  - Impose regulation (“remedies”)

## Defining Relevant Markets

	Fixed	Mobile
Wholesale	Access (Wholesale Line Rental) & origination (Carrier Pre-Selection); Conveyance; Termination;  Unbundled loop; Broadband;  Leased lines;  (Broadcast transmission)	Access & origination; Termination;  International roaming
Retail	Line and calls;  Leased lines	

## Assessment of market power

- **Assessment is forward looking**
- **Dominance (SMP) = European Competition law concept of dominance**
- **effective competition = no dominant operator/ no ex-ante controls**
- **Commission can veto certain market analysis findings**

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## Standard Remedies

### Wholesale

- Transparency
- Non-discrimination
- Accounting Separation
- Access
- Price Controls and cost accounting

### Retail

- Controls of prices
- Non- discrimination

## Principles to guide NRAs in selecting remedies

- **Remedies should**
  - be based on the underlying competition problem identified and proportionate
  - be consistent with NRA objectives
  - Protect consumers where infrastructure competition is not feasible
  - support feasible infrastructure investment
  - be incentive compatible

## Description of competition problems

### Vertical leveraging

- Horizontal leveraging
- Single market dominance
- Termination

## General remarks

- Each case has to be dealt with on its own merits depending on the severity of the problem and the conditions in the specific market
- some cases will require several remedies to be effective
- anti-competitive behaviour is anticipated and may not have actually occurred
- 'emerging markets' will need special consideration
- New/ small operators may need grace period in markets in which they are dominant (eg call termination markets)



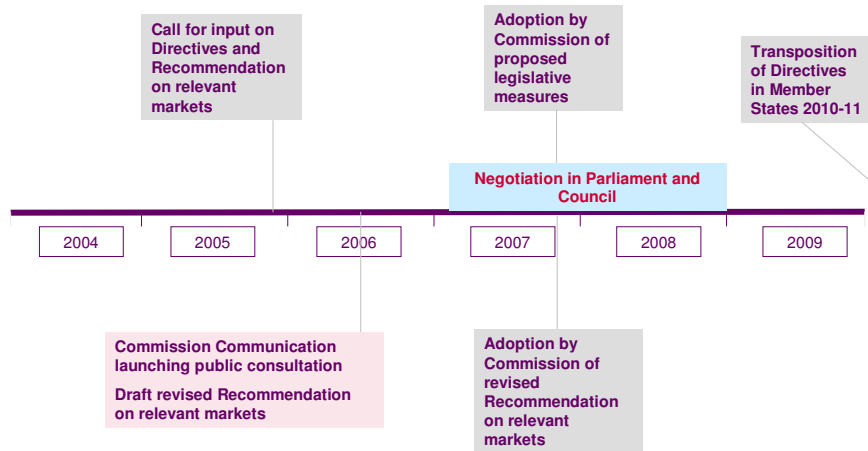
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## Why Review European regulatory framework ?

- **Legal requirement to review operation of Framework and Relevant markets recommendation**
- **Evolving market conditions**
- **New focus on spectrum harmonisation**
- **Belief that further scope for harmonisation of approach across Europe**

### Timeline of the EU Review



### Key proposals

1. Commission veto on NRA's proposed remedies
2. New European agency
3. Strengthening political independence of NRAs
4. Add 'functional separation' to potential remedies
5. Greater consumer protection
6. Spectrum liberalisation
7. Reduce markets

## Relevant Markets

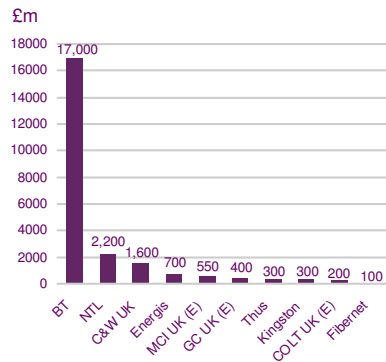
	Fixed	Mobile
<b>Wholesale</b>	access (WLR) call origination (CPS) call conveyance termination  Shared and unbundled network infrastructure access  terminating segment of leased lines	termination
<b>Retail</b>	line rental	

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## In 2004, the UK fixed market was highly polarised

### UK fixed telecoms revenues in 2004



### Market characteristics

- **Highly fragmented market:**
  - Only two players making profits
- **Limited infrastructure competition:**
  - Cable only covered 45% of country
  - Very little unbundling
- **Barriers to those relying on BT infrastructure included:**
  - Lack of transparency
  - Inferior wholesale products
  - Poor transactional processes
  - Slow product development

## Equivalence of access

- **To address problems in market need to provide alternative operators with equivalence of access that is :**
  - Access to same or similar set of regulated wholesale products as BT
  - Same product, price, systems, product development processes
  - Incentive compatible
  - Functional/operational separation of unit which provide bottleneck products

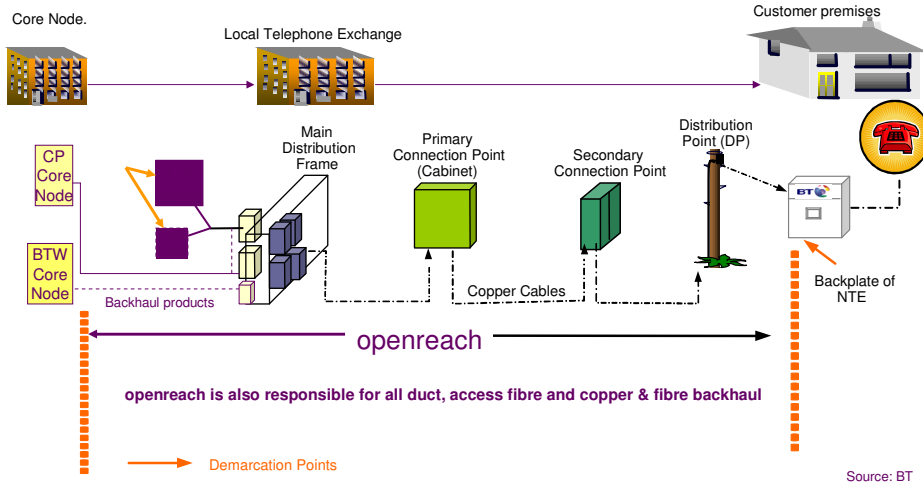
## Functional Separation

- A new company separate from incumbent for access activities which
  - owns local access assets – copper and fibre
  - operationally separate
  - different branding
  - has own bonus system
  - separate IT systems and accounts
  - restrictions on information sharing
- ... but is legally owned by incumbent

## Structural separation

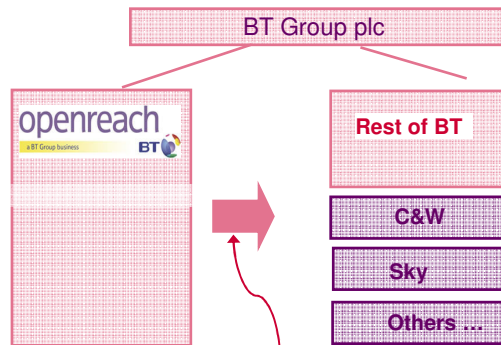
- **Access business owned by independent company**
- **Drawbacks**
  - inflexible
  - One off solution
  - Highly interventionist
  - inefficiencies caused by loss of vertical integration

## UK Example Openreach



Source: BT

## Delivering real equality of access: the consequences of functional separation



### EQUIVALENCE

Openreach provides exactly the same wholesale products (e.g. Local Loop Unbundling (LLU) to all operators on the same basis

### LLU – SIGNIFICANT PROGRESS & CONSUMER BENEFITS

- ❑ 2m lines unbundled (total broadband ~12m)
- ❑ Increasing price competition e.g. 'free' broadband:
  - ❑ Carphone Warehouse - bundled with line/calls
  - ❑ Sky - bundled with PayTV
  - ❑ Orange bundled with mobile
- ❑ More innovation: average speeds above 8Mbps
- ❑ LLU competition to reach ~70% homes



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