



EXECUTIVE SUMMARY
on
THE POSSIBLE ADDED VALUE
OF
EUROPEAN REGULATORY AUTHORITY FOR
TELECOMMUNICATIONS

Prepared by
Eurostrategies/Cullen International

for
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1 REPORT OVERVIEW

1.1 Introduction

According to the ONP Framework Amendment Directive (97/51/EC) the EU Commission must, as part of its 1999 Telecommunications review, “investigate the added value of the setting up of a European Regulatory Authority to carry those tasks which would prove to be better undertaken at the Community level.”

Eurostrategies and Cullen International have been instructed by the Commission to carry out that project on the Value Added of an EU Regulator.

We hereby submit our Report.

1.2 Terms of Reference

The Terms of Reference calls for:

- A broad survey of players in the Telecommunications sector as to:
 - areas where further regulatory action was felt necessary at a European level;
 - within which framework such action was needed;
 - the need if any for streamlining current regulatory structures within the European Union.

- Overview of the current division of regulatory responsibilities between Member States, NRAs, Competition Authorities, the European Commission, the CEPT, the ITU and WRC.



In order to carry out the survey, Eurostrategies was asked to target plus/minus 300 organisations and to undertake face-to-face interviews and provide a written questionnaire.

- Formulation of Recommendations

Eurostrategies was to provide:

- Inventory of key areas requiring further action within the European framework and or at a national level: and the level at which action was felt most appropriate;
- Provide an assessment of the level of support of the creation of a European Regulatory Authority and its role;
- Make an assessment of the value added of such an authority compared with streamlining current structures;
- Indication of where current structures may be streamlined;
- Presentation of scenarios for future action.

It was also envisaged that, prior to submission of the Final Report, a public workshop in Brussels would be held so that the findings and Recommendations of the Report could be put to public test.

2 REGULATORY OVERVIEW

2.1 The Need for Regulation

Telecommunications is a sector which has been deemed to warrant regulatory control. Across the world, it has generally been viewed as a commercial activity which should not be left entirely to the forces of the market and the workings of the general competition law. It is held to require sector specific regulation. Below are set out some of the key reasons for such regulatory control.



- Telecommunications - A Public Utility Service
- Public Safety
- Fair Competition
- Allocation of Scarce Resources
- Protection of Consumer Interests

2.2 Regulatory Principles

The role of the regulatory authority needs to be set in the context of a clear set of principles, thus:

Regulation should:

- promote and ensure the long term interests of consumers in terms of price, quality and range of services;
- be an enabler of change;
- encourage investment;
- encourage efficient outcomes;
- tend towards technology neutrality;
- be flexible, to allow for convergence;
- be consistent with competition law;
- provide for an efficient means of managing scarce resources;
- build into itself the potential for its own obsolescence: market-based competition should be the goal.

2.3 Policy/Regulation

Broadly it may be stated that policy is made by the Ministry (the Government): implementing and monitoring the achievement of that policy is the responsibility of the regulatory body.



The Ministry makes policy on such matters as: separation of Posts and Telecommunications; corporatisation of the incumbent operator; on privatisation; on licensing regimes; on the establishment of an approvals regime.

It will be the role of the regulatory authority to monitor licences, to amend licences, to enforce licences, to operate a numbering plan, to operate tariff policy, to determine interconnection issues, etc. The regulatory authority is concerned with day-to-day control of the sector - so far as that is necessary.

In general it may be argued that the more that Governments wish the sector to be opened or liberalised, the more responsibilities will be passed to the regulatory function as opposed to the policy function of the Ministry.

2.4 EU and NRAs

The effect of telecommunications legislation results in regulatory authority within the Member States devolving upon a National Regulatory Authority. The EU first called for a separate regulatory authority in the Services Directive. Article 7 states:

Member States shall ensure that from July 1991 the grant of operating licences, the control of type approval and mandatory specifications, the allocation of frequencies and surveillance of usage conditions are carried out by a body independent of telecommunications organisations.

The status and role of this National Regulatory Authority has later been more clearly set out in Section 5a of the Amended Framework Directive, which states that:

1. Where the tasks assigned to the National Regulatory Authority in Community legislation are undertaken by more than one body, Member States shall ensure that the tasks to be undertaken by each body are made public.



2. In order to guarantee the independence of national regulatory authorities: national regulatory authorities shall be legally distinct from and functionally independent of all organisations providing telecommunications networks, equipment or services, Member States that retain ownership or a significant degree of control of organisations providing telecommunications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

3. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of Appeal to a body independent of the parties involved.

4. Member States may take steps to ensure that national regulatory authorities are able to obtain from organisations providing telecommunications networks and/or services all the information necessary for them to apply Community legislation.

EU Directives establish that the National Regulatory Authority may be a single body or more than one body. Indeed, in most Member States there is a division of responsibility at a regulatory level between the Ministry, the telecommunications regulatory authority and, in some countries, a radiocommunications authority.

3 THE SURVEY

3.1 Extent of Survey

One of the key purposes of the study is to establish the views of the telecommunications players. In order to provide a broad and balanced survey, Eurostrategies/Cullen International set out a breakdown of the organisations and persons to be questioned. The breakdown was categorised thus:



- Ministries and NRAs;
- Incumbent operators and their subsidiaries;
- Mobile operators;
- New entrants;
- Resellers;
- Independent service providers;
- Users and user associations
- Consumers associations

3.2 The Questionnaire

A questionnaire was prepared and submitted to the European Commission. The questionnaire after analysis and discussion was agreed.

The content of the questionnaire covered the following 15 topics thus:

1. Development of a pan European market;
2. Licensing public telecommunication networks and services;
3. General authorisations or class licences;
4. Operators with Significant market power;
5. Interconnection;
6. Competition;
7. Universal service;
8. Frequency allocation and assignment;
9. Consumer protection;
10. Tariff control;
11. Number management and allocation;
12. Internet;
13. Enforcement;
14. Appeal;
15. Other functions which would need a sector regulator.



Across the questionnaire there were 5 or 6 main questions for each topic:

- How important is the task?
- How does NRA and/or other national bodies manage this objective?
- Reasons for assessment (as above);
- Is the national regulatory structure efficient to manage this task?
- At what level should this objective be addressed?
- If the objective should be addressed at other than national level, what type of organisation?
- What level of regulatory control?

In some of the topics, questions were asked in particular to the topics under consideration.

The questionnaire was sent to 462 respondents. 194 replied, broken down thus:

- | | |
|---|-----|
| • Ministries and NRAs | 23 |
| • Incumbents and incumbents' subsidiaries | 20 |
| • New entrants | 122 |
| • Users, consumers, manufacturers | 29 |

4 ANALYSIS OF RESPONSES TO QUESTIONNAIRE AND INTERVIEWS

4.1 Overall Analysis

4.1.1 Importance of Regulatory Area

The following chart provides an overview of where the respondents believe that the regulatory area is highly important. As can be seen 70% (or more) of the respondents considered four regulatory areas to be highly important.

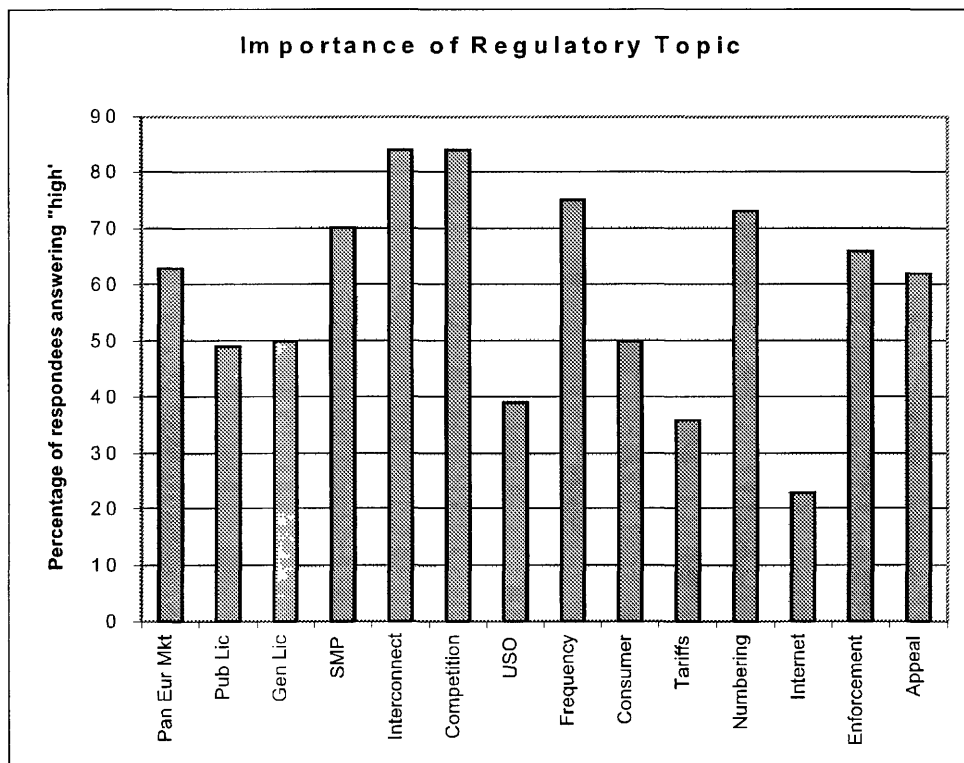


Figure 4-1. The Importance of the Regulatory Topic

The four highest ranked regulatory areas were:

- Competition



- Interconnection
- Frequency allocation and assignment
- Number management and allocation

The market sees issues surrounding Competition as the most important.

Conversely the regulatory areas ranked as being of less importance were:

- Tariff control
- Internet

4.1.2 How does NRA and/or other national bodies manage regulatory responsibilities?

As demonstrated in the following chart, the majority of respondents consider regulation of the four most important regulatory areas at a national level to be average/good. However, a significant minority considered the regulation to be poor.

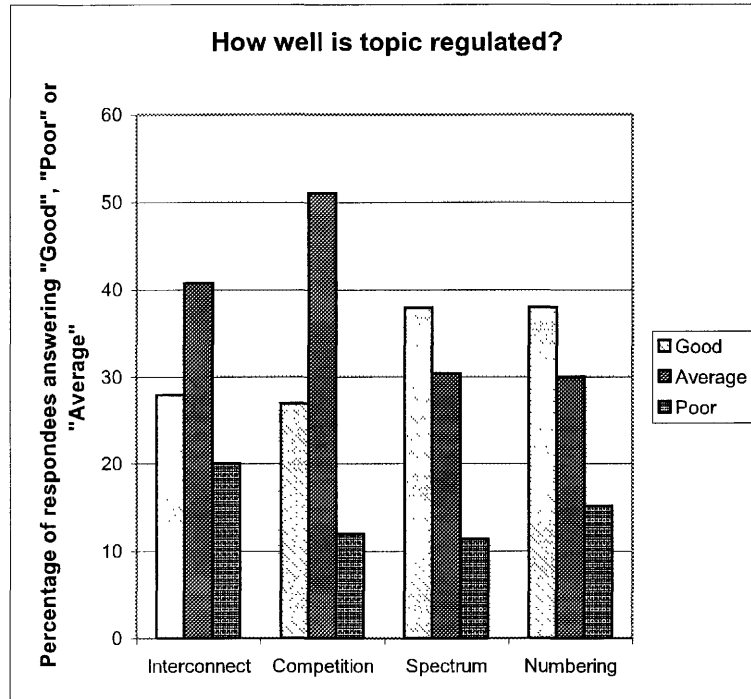


Figure 4-2. How well is the topic regulated?

In only Public licensing, General licensing, USO, Frequency management, Consumer protection and Numbering did a third (or more) of the respondents consider that management by the NRA was good.

The respondents were less favourable about the abilities of the National Regulatory Authorities to manage Interconnection. Only 28% considered the management of this topic to be 'good' by the NRA.

The overall response was that NRAs were managing to an average level of satisfaction.



How does NRA and/or other national bodies manage this objective?	TOPIC													
	Pan Euro Mkt	Pub. Lic	Gen Lic	SMP	Interconnect	Competition	USO	Spectrum	Consumer	Tariffs	Numbering	Internet	Enforcement	Appeal
Percentages based on responses to individual questions plus 'blank' responses														
Good	18	36	35	22	28	27	32	38	32	23	38	16	39	21
Average	51	40	44	47	41	51	41	30	37	41	30	40	39	31
Poor	22	12	8	22	20	12	11	11	11	20	15	26	18	22
Blank	10	13	14	10	12	11	16	21	19	16	18	18	14	27

Figure 4-3. How well is the topic regulated? (data)

4.1.3 Is the national regulatory structure efficient to manage regulatory requirements?

Throughout the responses, despite certain reservations expressed as to how well areas were regulated at a national level, the efficiency of the regulatory structure to achieve most of the various objectives attracted in or about 50% level of confidence as was the case with the four most important topics identified.

The overall response is summarised below thus:



Is the national regulatory structure efficient to manage this objective?	TOPIC													
	Pan Euro Mkt	Pub. Lic	Gen Lic	SMP	Interconnect	Competition	USO	Spectrum	Consumer	Tariffs	Numbering	Internet	Enforcement	Appeal
Yes	44	57	61	45	55	44	58	51	54	54	57	38	48	
No	45	31	25	44	29	43	25	26	29	30	25	41	36	
No - too many regulators	21	10	7	10	7	17	5	7	10	3	6	8	7	
No - structure leads to high administrative costs	10	6	6	7	7	5	5	6	6	6	5	4	4	
No other reasons	18	16	13	29	20	25	18	13	15	21	16	31	25	
Blank	11	12	14	11	16	13	17	23	17	16	18	21	16	

Figure 4-4. Efficiency of National Regulatory Scheme (data)

4.1.4 At what level should regulatory requirements be addressed?

For each topic, the respondent was asked at what level regulation should be applied. The categories of permitted answer were:

- National
- EU (15 States)
- Wider than the EU
- Self-regulation
- Don't know
- No answer (blank)

We have taken the responses to each topic and have produced conclusions set out in the following chart which illustrates the support, on average, for the various options.

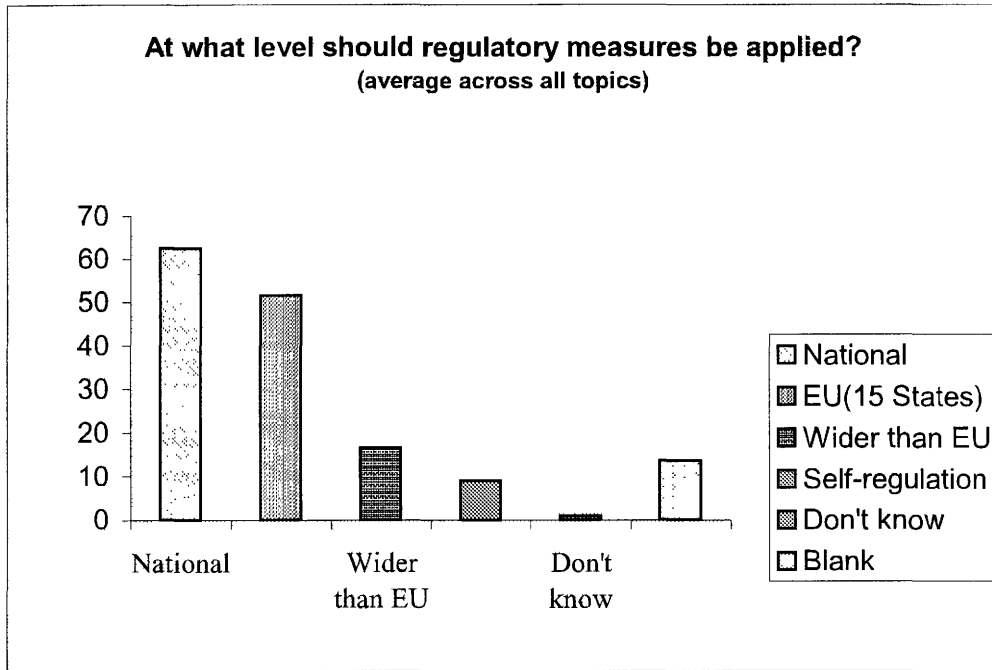


Figure 4-5. At what level should regulatory measures be applied?

National

There was broad support for the national level as the appropriate platform for addressing the various issues.

The major departures from this consensus were the topics of the Internet and Development of a Pan-European telecommunications market.

EU Role

There was strong support for an EU role in the areas of Development of a Pan-European telecommunications market, for SMP, for Interconnection and Competition.



Wider than EU

There was little support for a platform wider than the EU, with the exception of management of the Internet for which 46% of respondents thought that a wider than EU level response was appropriate.

Self Regulation

Self-regulation attracted very low support with only the Internet, Development of a Pan-European market and Consumer protection getting more than modest backing.

4.1.5 If regulatory requirements should be addressed at other than national level – what type of regulatory organisation(s)?

We have taken the responses to each topic and have produced conclusions set out in the following chart, which illustrates the average support for the various options.

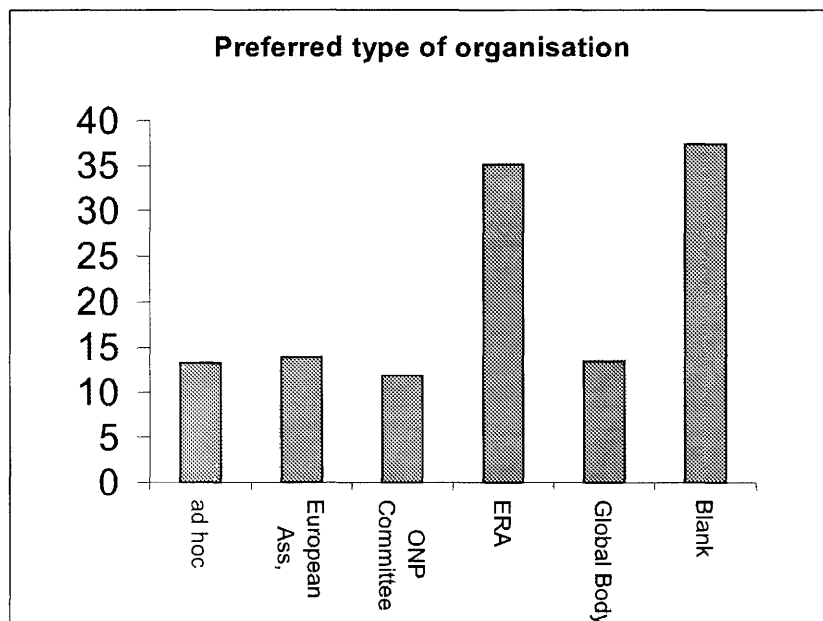


Figure 4-6. Preferred type of organisation



The highest support for a European Regulatory Authority was in the area of Competition and there was medium and above support for an ERA to control Interconnection and SMP (which are also both Competition-related areas).

There was further support for a European Regulatory Authority in the areas of development of a Pan-European market (45%), Control of operators having SMP (45%) and Interconnection (49%).

There was limited support for *ad hoc* initiatives and small support (save in the area of Frequency management) for a CEPT-type body.

4.1.6 If regulatory objectives should be addressed at other than national level – what level of regulatory control?

When asked concerning the preferred type of regulatory control, the opinions of the respondents were more equally divided although there was a slight majority in favour of 'Binding decisions'.

Except in the areas of Developing of a European telecommunications market, USO, Consumer protection and Internet, most respondents chose by a narrow margin Binding decisions as opposed to Guidance and recommendation. (There was a high level of no response to this question).

Eurostrategies/Cullen International consider that most respondents, drawing on their national experience associate Regulation with Binding decisions. If therefore regulatory decisions are made at an EU level they would expect them therefore to be binding (or become binding through national adaptation).

In an emerging market certainty in regulation is deemed by many to be of high value.

C2. If the objective should be addressed at other than national level - What level of regulatory control?	TOPIC													
	Pan Euro Mkt	Pub. Lic	Gen Lic	SMP	Interconnect	Competition	USO	Spectrum	Consumer	Tariffs	Numbering	Internet	Enforcement	Appeal
Guidance / recommendation	49	28	31	26	29	27	35	22	35	34	20	45	19	
Binding decisions	44	39	35	51	51	54	27	44	29	38	44	30	49	
Blank	14	36	35	25	24	27	41	38	41	36	40	32	36	

Figure 4-7. Preferred type of regulatory control (data)

4.2 Regional Groups

For this element of the report we have divided EU Member States into three country groupings. These groupings have been determined partly from geography and partly on the responses received.

The Groupings are:

Northern European, consisting of Denmark, Finland, The Netherlands, Sweden and the UK (DK, FI, NL, SE, UK);

Central comprising Austria, Belgium, France, Germany, Ireland and Luxembourg (AT, BE, FR, DE, IE, LU); and

Southern European comprising, Greece, Italy, Portugal and Spain (GR, IT, PT, ES)

4.2.1 Importance of Regulatory Area

There is a high level of importance attached to the topics across all groupings except that Consumer protection, Tariff control, USO and the Internet issues are considered to be of modest importance in The Northern Group. This may indicate a more developed market-orientated view amongst the members of The Northern group.

In all groups the Development of a Pan-European market, Control of operators having SMP, Interconnection, Competition, Frequency management, Numbering and Enforcement were adjudged to be of high importance (50% or greater answering 'high').

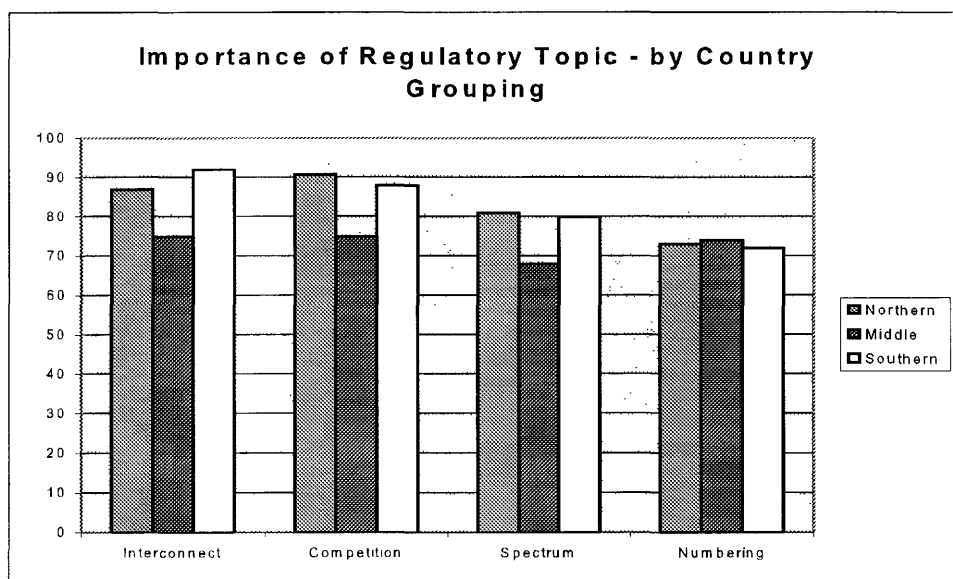


Figure 4-8. Importance of Regulatory Topic – by Country Grouping

Consumer protection was regarded of significantly higher importance in The Southern Group than in the Central and Northern groups.

In the Nordic countries all respondents expressed satisfaction with the liberal general authorisation scheme that these countries enjoy. Where these respondents attach low importance to the topic General authorisations, this was a reflection that this was seen as a non-issue.

4.2.2 How does NRA and/or other national bodies manage this objective?

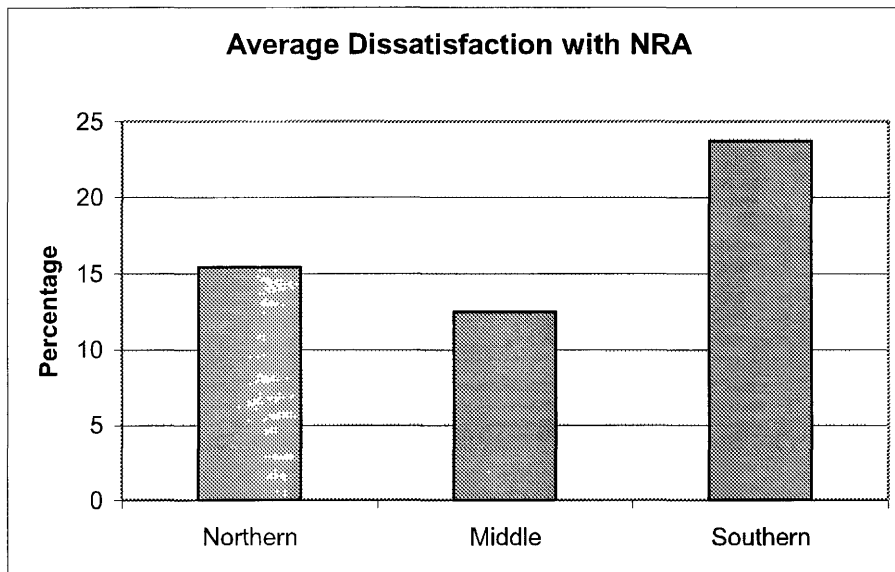


Figure 4-9. Average dissatisfaction with NRA – by Country Grouping

The Northern and Central groups are reasonably comparable in their responses. Taking "good" and "average" responses together there is significantly high support for NRAs.

In The Northern Group and The Central Group, there are no overall responses such that more than a third are dissatisfied in any area except the Internet.

However, it is particularly noted that The Southern Group, (Greece, Italy, Portugal and Spain) does not find that the management of the specified regulatory functions is "good" to the same degree as the other two groups. Indeed there is considerable dissatisfaction in The Southern Group.

Detailed Analysis

The responses to our questionnaire allowed us to undertake more particular



analysis of certain key areas, i.e. Licensing, Interconnection, Frequency, Tariffs, Numbering and Enforcement.

We found as follows:

- **Licensing**

Under this heading, 78% of The Northern Group found the regime open and 72% found that it was fair. In The Central Group these figures are 40% and 52% respectively, whereas in The Southern Group the figures were 26% and 20% respectively.

The speed of licensing procedures were considered to be slower in The Southern Group (44%) than in the Central and Northern groups at 14% and 16% answering 'slow' respectively.

- **Interconnection**

Support for the operation of the Interconnection regime was higher in The Northern Group, in which 70% stated that they had an efficient regulatory structure.

Less than a third (28%) of respondents in The Southern Group considered that cost accounting processes were in place and only 38% thought that the NRA was effective to deal with disputes.

- **Frequency**

Just under a half of The Northern Group (48%) considered the system to be fair whilst in The Southern Group it was substantially less (16%) and in The Central Group (38%).

In all groups speed of procedure was considered to be modest.



- **Enforcement**

More respondents in The Northern Group (48%) considered the Enforcement regime in their countries to be effective as opposed to the respondents in the Central and Southern groups (32% and 30% respectively).

- **Tariffs**

With respect to how closely tariffs match costs, The Northern Group was the most positive at 25%. In contrast to this, only 4% of The Southern Group considered tariffs to be close to costs. From The Southern Group, 52% of respondents made a definitive statement that tariffs were not closely matched to costs.

- **Number Management and Allocation**

There was some disparity between the groups on this point. In general terms, however, The Northern Group was more positive.

The Northern Group considered the number assignment procedures and fees to be good (52% answering 'good'), whereas only 18% of The Southern Group thought the procedures to be good.

In terms of the speed of procedures, 45% of The Northern Group thought them to be 'quick'. This contrasts with only 4% of The Southern Group who thought the procedures to be 'quick'.

4.2.3 If the objective should be addressed at other than national level – what type of organisation(s)?

Support for an EU Regulator in The Northern Group varied at an overall average figure of 31%. Support for individual topics varied with strongest support being: 61% for Competition, 43% for Interconnection, 40% for Development of a Pan-European market, and 39% for Enforcement.

Support from The Central Group was broadly similar to The Northern Group



with the average figure being 32%. Only in the area of Competition did it exceed 50% support.

The strongest support for a European Regulatory Authority came from The Southern Group (average of 48% support across all topics). Support for an ERA ranged from 30% the area of the Internet, to 62% for Interconnection and SMP. Support was also strong (above 50%) in the area of Development of a Pan-European regulatory market (60%) and Competition (54%).

In The Southern Group, support for an EU Regulatory Authority is matched by the level of support for a national authority.

4.3 Conclusion

The overall results from the survey indicate that there are many problem areas across regulatory topics and Member States. Where problems exist, there is a strong tendency to look for a better solution at the European level. This conclusion is supported by a strong negative correlation between the level of satisfaction with the performance of the NRAs and the level of support for EU involvement in general and a European Regulatory Authority in particular.

Three observations may be noted in this regard:

- The Southern Group of countries have a significantly lower level of satisfaction than The Northern Group and The Central Group. At the same time, The Southern Group has significantly higher support for an ERA than the other groups;
- the New operators, across all geographic regions, are less satisfied with the performance of the NRA than the other organisational categories. As a consequence, they are more in favour of an ERA;



- the analysis of (dis)-satisfaction with NRA performance by regulatory topic indicates that there are great variations from topic to topic with regard to which countries are involved. Yet, also this analysis shows a very consistent pattern of higher support for an ERA where there is dissatisfaction.

However, the level of (dis)-satisfaction is not sufficient to generate solid support for an ERA. In the survey, the number of New operators outweigh Incumbents by six to one and constitutes about two thirds of the total population. However, only for Competition does the level of support for an ERA reach above 50%.

Independently of the influence of the level of satisfaction, there are significant differences in the level of support for an ERA across the regulatory topics. Two observations stand out:

- the regulatory topics associated with fair competition have significantly higher level of support than all other topics (with the exception of the development of a Pan-European market);
- the development of a Pan-European market does not only draw relatively high support for an ERA and European level involvement, but is also seen as one of the most important objectives. Because it is a horizontal objective, reaching across all other regulatory topics, it provides general support for initiatives at the European level to improve harmonisation.

While the quantitative surveys results indicate support for a European Regulatory Authority among a significant minority, it is a general impression from face-to-face interviews that even among this minority there is no significant enthusiasm for creating a new level of bureaucracy at the European level. What most people indicate is for the European Commission to be more determined to use tools that are already available to them.



5 GLOBAL AND EUROPEAN REGULATORY BODIES

5.1 Introduction

In the telecommunications sector historically there has developed across Europe and the wider world a network of regulatory bodies whose authority impinges upon Member States, network operators, service providers, equipment manufacturers, customers and consumers. The manner in which these regulatory authorities have emerged has not been based upon any strategic planning at national, regional or world-wide levels. They tended to be established to meet needs as those needs have arisen.

It is possible to discern at a global or European regional level the role of the following agencies:

- ITU
- WTO
- CEPT

5.2 Comments

It is to be noted that, whilst all Member States are represented at WTO and ITU, normally there will be an agreed position taken by the Member States. At WTO the EU Member States will be led by the Commission of the European Union, whilst at ITU there will normally, so far as frequency and numbering is concerned, be a CEPT position.

It is immediately obvious that some form of global and regional co-ordination is needed for numbering and frequency spectrum. This view is also reflected to some extent in the survey results reported in Chapter 4. For other types of regulations that may be set out in order to achieve a fair competitive environment, in particular for international interconnection arrangements, the case for global regulation or Recommendations is less clear.



ITU has argued that it has a role to play in the development of such Recommendations and in its strategic plan for 1999-2003¹ there is an action point to decide on the need to revise the International Telecommunications Regulations to take account of the WTO agreements.

In the survey reported in Chapter 4, there was one topic that received significant support (44%) for regulatory attention above the level of the EU, namely Internet. However, at the same time, the respondents clearly indicated that they did not regard Internet as a matter for significant regulatory intervention. The question of how and by whom Internet should be regulated at the global level, while important, is marginal to the Terms of Reference for this study, and it would be beyond the scope of this report to offer Recommendations on such a complex and far reaching issue. What we wish to do at this point is to flag this question as an important issue and note that the subject of "Electronic Commerce" is on the agenda for the Ministerial Conference of WTO in the fall of 1999. It is likely thus to form an important part of the next round of international trade negotiations.

In conclusion, the EU should continue to monitor and liaise and provide constructive input into ITU, WTO and CEPT. However, our survey and interviews do not suggest a requirement for new initiatives on regulatory structures at this time.

¹ Annexes to Resolution COM5/8 - Strategic Plan for the Union 1999-2003 from the ITU Plenipotentiary Conference in Minneapolis, October 12 – November 6, 1998.



6 NATIONAL ARRANGEMENTS IN EU MEMBER STATES

6.1 Introduction

The manner in which legal and regulatory regimes in telecommunications were developed within the countries which came to be the 15 members of the EU depended historically upon the individual initiatives of those countries. The resultant regimes had traditionally been based on monopolistic control of telecommunications.

However, with membership of the EU linked to the sweeping technological changes in telecommunications, new liberalised regimes have been established. Under these regimes there have developed a number of regulatory institutions, such as:

- Ministries;
- Independent National Regulatory Authorities;
- in some countries: Radio Communications Authorities;
- Competition Authorities.

In addition, there are often other specialised institutions, bodies or committees that have roles to play within the national regulatory structure that deals with telecommunications services. In parallel, there may also be separate organisations that deal with the approvals of terminal equipment, but this is a subject that falls outside the focus of this report.

6.2 Commentary

There are three or four key organisations at a national level in the Telecommunications sector:

- Ministry



- Independent National Regulatory Authority
- Radiocommunications Authority
- Competition Authority

- **Ministry and National Regulatory Authority**

Only in Ireland and Sweden have more or less all regulatory tasks (as opposed to the formulation of regulatory policy) been transferred from the Ministry to the NRA. However, also in Austria, Denmark, Germany and Portugal, the NRA has a fairly complete range of responsibilities.

In the other Member States, the regulatory responsibilities are split between the Ministries and the NRAs.

Three main areas where many Member States have chosen to retain regulatory powers in the Ministry are:

- Licensing of public networks;
- Frequency allocations
- Number management

In the table below, the countries are distributed according to how many of these particular functions are handled by the NRA as opposed to the Ministry or another regulatory body.



	Licences granted by the Ministry	Licences granted by the NRA
Frequency allocation or Number management performed by or shared with the Ministry (or other Government body)	Belgium France Greece Italy Luxembourg The Netherlands UK	Austria Denmark Germany Portugal Spain
Frequency allocation and Number management performed by NRA	Finland	Ireland Sweden

Table 2 – Regulatory Functions retained in Ministries

Table 3 below provides a summary and a comparison of how key regulatory tasks are arranged within each Member State.

Division of regulatory responsibilities		Licensing publ telecom netw & services	General Authorisations or Class	Operators with significant Market power	Interconnection	Universal Service	Frequency Allocation and Assignment	Consumer protection	Tariff control	Number management and allocation
Countries										
Austria	Primary	Nra	Nra	Nra	Nra	Nra	Min	Nra	Nra	Nra
	Secondary						Nra			
Belgium	Primary	Min	Nra	Nra	Nra	Nra	Min	Nra	Nra	Nra
	Secondary	Nra					Nra			
Denmark	Primary	Nra	n/a	Nra	Nra	Nra	Nra	4)	Nra	Nra
	Secondary				5)		Min	Nra	6)	Min
Finland	Primary	Min	Min	Min	Nra	Min	Nra	Min	n/a	Nra



Division of regulatory responsibilities		Licensing publ telecom netw & services	General Authorisations or Class	Operators with significant Market power	Interconnection	Universal Service	Frequency Allocation and Assignment	Consumer protection	Tariff control	Number management and allocation
Countries										
	Secondary				Min					
France	Primary	Min	Nra	Nra	Nra	Nra	8)		1)	Nra
	Secondary						Nra			
Germany	Primary	Nra	Nra	Nra	Nra	Nra	Min	Nra	Nra	Nra
	Secondary				9)		Nra		2)	
Greece	Primary	Min	Nra	Min	Nra	13)	Min	Nra	Nra	Nra
	Secondary	Nra	Nra	Nra			Nra			Min
Ireland	Primary	Nra	Nra	Nra	Nra	Nra	Nra	Nra	n/a	Nra
	Secondary									
Italy	Primary	Min	Nra	Nra	Nra	Nra	Min	Nra	Nra	Nra
	Secondary						Nra			
Luxembourg	Primary	Min	Nra	Nra	Nra	Min	Min			Nra
	Secondary						Nra			
the Netherlands	Primary	Min	Nra		Nra	Min	11)	Nra	Nra	Min
	Secondary	Nra			Nra	Nra				Nra
Portugal	Primary	Nra	Nra	Nra	Nra	Nra	Nra	Nra	Nra	Nra
	Secondary	Min								
Spain	Primary	Min	Nra	Nra	Nra	Nra	12)	Nra	Min	Min
	Secondary	Nra								Nra
Sweden	Primary	Nra	Nra	Nra	Nra	Nra	Nra	7)	Nra	Nra
	Secondary							Nra		
UK	Primary	Min	Min	Nra	Nra	Nra	10)	Nra	Nra	Nra
	Secondary		Nra							



Division of regulatory responsibilities	Licensing publ telecom netw & services	General Authorisations or Class	Operators with significant Market power	Interconnection	Universal Service	Frequency Allocation and Assignment	Consumer protection	Tarif control	Number management and allocation
Countries									
1) General Directorate for Competition, Consumption (DGCCRF)			7) Consumer Agency						
2) Federal Cartel Office			8) National Frequency Agency (ANF)						
3) Directorate General of Competition and Pricing			9) Cartel Office						
4) Telecommunications Consumer Board			10) Radio communications Agency						
5) Telecommunications Complaint Board			11) Radio Agency						
6) Competition Council			12) Ministry of Development (Subdirectorate for Scarce Resources)						
			13) Not yet decided						

Table 3 – National Regulatory Bodies in Telecommunications

• **Competition Authority**

In some Member States, the competition authority has played a fairly significant role in shaping the national telecommunications market. This is particularly the case in Italy. Also in Germany and Sweden there has been significant involvement by the competition authority.

In other Member States, the competition authority has had little or no involvement. These are Austria, Belgium, France, Greece, Ireland and Luxembourg,

In the rest of the Member States, there is some involvement by the competition authority and/or some consultation or co-ordination arrangements between it and the NRA.



- **Radiocommunications Authority**

A few Member States have entrusted radio frequency matter to a special organisation rather than to the NRA for telecommunications. This is the case in France, the Netherlands and the UK.

7 EUROPEAN UNION STRUCTURES

7.1 European Commission

The Commission acts as guardian of the European Community Treaties and is responsible for their correct and full implementation. To this end, it proposes legislation and provides for the administration of the Community. Its work falls under four headings:

1. proposing measures for the further development of Community policy;
2. monitoring observance and proper application of Community law;
3. administering and implementing Community legislation;
4. representing the Community in international organisations.

While formal activities under these headings are carried out by the Commission as a unified body, the actual regulatory activities that relate to telecommunications are carried out by the Competition Directorate General and the Information Society Directorate General respectively.

7.2 The Need to Streamline Regulatory Institutions at an EU Level

7.2.1 The Competition Directorate General

The position of the Competition Directorate General, so far as competition issues is concerned, is clear-cut and well established and no changes on that



front are envisaged, save that there is still a need for a programme of information/education. We know of no move to separate off any sector specific areas into the ambit and responsibility of any other Directorate. It is not, therefore, our recommendation that there be changes at the EU level.

We do, however, recommend that there should be a vigorous programme of information/education to inform the sector players of the roles and responsibilities of the Competition Directorate General and the Information Society Directorate General as they interact with the national markets.

7.2.2 The Information Society Directorate General

The future role of the Information Society Directorate General is less clear. Presently it is understood that the Information Society Directorate General will be subsumed into a new Directorate to deal with the Information Society in its broadest aspects. This may well lessen the particular focus on telecommunications and place the sector within a wider context. The new Directorate should reflect the way that technology and communications are central to business and society. At the time of writing, no definite decisions have been taken.

7.2.3 ONP/Licensing Committees

We have set out in our analysis the roles and responsibilities of the ONP and Licensing Committees. These Committees are the product of legislation (ONP Directives and the Licensing Directive). So far as the sector is concerned their roles are limited to that of advice, conciliation and dispute resolution (except where it concerns technical issues in which circumstances the Committee may adopt changes). So far as these Committees are concerned their status and functions have been circumscribed because of the limitations on their powers. These institutions were not intended as key players in the development of the sector, but as mechanisms to ensure the smoother working of the system. The minutes of these Committees are not published.



These Committees do not have a high visibility in the sector. They are permitted to liaise with Parliament. Parliamentary links have not been developed. It is timely to review their performance to date and to re-visit the argument, which we support, that their roles be combined.

It may furthermore be noted that while these Committees have been established to support the implementation of the ONP Directives and the Licensing Directive, no parallel structure has been established in order to assist the implementation of the Services Directive. A question may be raised if this creates a bias in the sense that there is more communication between the European Commission and the Member States regarding the sector specific requirements than for implementation issues related to competition law.

It is the opinion of Eurostrategies/Cullen International that just as an NRA must take an integrated view on sector specific and competition law requirements, so must any Committee established with a wider telecommunications mandate.

7.2.4 The High Level Group of National Administrations and Regulatory Authorities and the Independent Regulatory Group

These two groups are comparatively recent institutions. Their activities are little known outside a small group of committed telecommunications players. The key difference between these two groups is that the Commission is in attendance at the High level group, but not at the Independent regulatory group.

The High level group is primarily a policy forum. Nevertheless, the presence of the Commission should result in a systematic delivery of informed criticism of NRA performance and should also mean that Ministries can be informed of the extent to which NRAs are or are not performing in line with EU policy.



The Independent regulatory group on the other hand is a regulatory club: it is not accountable to any person or authority. It is of recent provenance. It is flexing its muscles and publishing papers: it is establishing a separate identity. But the extent to which it is prepared to be something more than a regulatory club is open to debate. Such a grouping should be consulted and its advice sought, but in terms of accountability it may be of limited value.

However, it could be an important forum for the development of a more common view among EU NRAs on how to deal with current regulatory issues. In this context the Group could be an important meeting place in which benchmarking and information exchange on “best practices” could take place. It could also be an important forum for the identification of areas for which further Recommendations or Guidelines would be welcomed. It could also establish working groups that could provide drafts for such Recommendations and Guidelines.

7.3 THE VALUE ADDED OF A EUROPEAN REGULATOR

7.3.1 Introduction

We have reviewed and analysed the responses to our questionnaire and the roles of NRA. In the light of these discussions it is now appropriate to consider whether there is value added in establishing a stronger EU influence in the national regulatory arenas. In undertaking this task we will bring together arguments already raised previously in this report and arguments which have arisen out of the examination of issues which we have undertaken.

We approach this task by considering:

- Regulatory options Arguments supportive of an EU Regulator
- Arguments against
- Regulatory model



7.3.2 Institutional Options

To the question, do you want an EU Regulator? It is reasonable to answer "it depends on what is meant by an EU Regulator". We point out that such a Regulator could be based on a model Oftel, ART or OPTA which are independent organisations which can impose their will through Decisions/Determinations with the force of law. Such regulators should be consulted and advise on telecommunications law-making, but their role should primarily be to secure implementation and enforcement of a regime. Alternatively EU regulatory involvement could involve a lesser role as a monitor, a co-ordinator, an institution capable of holding others to account.

There is much talk today of "hard law" and "soft law" and the same distinction could be made concerning regulators. If the legislative regime at an EU level moves towards greater reliance on "soft law", such as Recommendations/Guidelines, so it may be appropriate in the context of the existing EU regime for there to be considered a role for EU regulatory involvement with a lesser role and powers than that of a "hard" regulator.

7.3.3 Arguments Supportive of an EU Regulator

7.3.3.1 Building Pan-European Telecommunications

The underlying purpose of the EU regime is to build a Pan-European telecommunications environment in which the sector is fully liberalised under a harmonised regime.

In our study we have identified that the achievement of this goal is given a high priority by market players. On many occasions, in interviews, we heard the view expressed that there was still too wide a discrepancy between the implementation of the EU regime by Member States. We quote a respondent: *"National diverging implementation leads to a competitive distortion. Pan-European markets depend on consistent implementation of Directives:*



conditions, procedures and fees need to be harmonised." Again we were told that regulators were "too nationalistic". They lack co-ordination: "There is a lack of consistency between NRA policy in different countries".

The conclusion is that positive intervention at an EU level to secure consistent implementation would be welcomed. Our view is that the appropriate approach at this time is through "soft" regulatory control.

7.3.3.2 Involvement at an EU Level in Existing Regulatory Areas

Our study has demonstrated that respondents saw the need for EU involvement at a regulatory level, particularly in the following areas:

- Pan-European telecommunications
- Operators with significant power
- Interconnection
- Competition

We have dealt with the issue of Pan-European telecommunications above. Competition law issues at an EU level are already covered by the Competition Directorate General. As has been pointed out above, there is a need for the roles of the Competition Directorate General and the Information Society Directorate General to be more clearly perceived in the telecommunications sector. There is but a dim awareness except amongst professionals as to where the lines of demarcation are drawn. Indeed it is fair to state that the confusion at national level as between the competition authority and the sector specific regulator is mirrored in the perception which market players have of EU institutions.

The issues of "Significant market power" and "Interconnection" are in their essence competition issues. Both, it might be argued, could be dealt with under competition law, in particular under the doctrines surrounding "dominance" and access to "essential facilities". Nevertheless, ex ante sector specific intervention in both areas has resulted in the development of competitive telecommunications in a way in which the more legalistic ex post



processes of competition law could not have delivered. The New Zealand experience in Interconnection provides a timely reminder of the benefits of sector specific regulation.

It was quite clear from our survey that there was considerable criticism of NRAs in the delivery of Interconnection regimes. Typical comments included: "system is not effective or fair", "slow decisions and too many delays", "NRA takes too long to resolve disputes", "sloppy and naïve", "no power", "lack of experienced staff". There were many other such comments.

Despite such criticism it is doubtful if the establishment of a "hard" EU regulator would solve these problems. Certain regulatory matters have to be dealt with at a national level. Determination of Interconnection charges is one of them. The EU has set out its regime in the Interconnection Directive and consequential Recommendations: it is a difficult regime. The reconciliation of the discrepancies between the top-down and the bottom-up models of long run incremental costs is far from being an easy matter. And no centralised EU regulator could easily undertake such a task for individual EU Member States.

Further, the possibility of an EU regulator having the resources or knowledge base to resolve Interconnection disputes in and across 15 EU Member States is remote.

Interconnection is a matter under consideration in another EU Study. Our view is that Interconnection requires and will continue to require sector specific intervention. Competition law cannot, at this stage, deal efficiently with all the issues. That being said, the EU should set the framework as it has done in law. It should further build on the Recommendations it has issued in the domain of Interconnection. Detailed implementation has to be at a national level.



7.3.3.3 New Areas for Regulation

In our questionnaire we asked respondents to identify any new areas which required regulatory intervention. It would indeed be surprising if sector players unearthed a raft of fresh regulatory topics, which had escaped the attention of the Information Society Directorate General; and, indeed, they did not.

Overall, the regulatory issues for further consideration include:

- Convergence
- Internet
- Access

- **Convergence**

All of the above subjects may be seen as separate issues or as part of the Convergence debate. We were specifically asked not to investigate the Convergence issue. However, we are aware of the debate in the EU and the paper issued by the Commission following the consultation on the Green Paper on Convergence.

At a regulatory level the issue, in part, involves the question of "how many regulatory regimes and how many regulators?" Presently in most countries in the EU there are two or three regulators in the domains under review. These are: the Telecommunications Regulator, the Broadcasting Regulator and the Radiocommunications Regulator. Should these regulators be merged?

Within the Member States there has been no movement yet to the merging of regulators. Indeed in several Member Countries, new radio laws have but recently established new radiocommunications regulators. Also telecommunications regulators, as has previously been pointed out, have in many States been just recently established. There are then institutional reasons in Member States



working against regulatory convergence.

So far as broadcasting and telecommunications are concerned there was "a very clear consensus that the regulation of infrastructure and content required separate and differing approaches" (results of the Public Consultation of the Green Paper (COM(97)623).

In relation to radiocommunications, there is a Memorandum of Understanding between CEPT and the Commission, which preserves a key role for CEPT in the regulation of radiocommunications. This relationship would have to be renegotiated if there were any consensus at an EU level for the further convergence of radio and telecommunications. Our study does not reveal to us that there is such a consensus.

- **Internet**

Internet is, so far as services are concerned, a development of revolutionary significance. However, our survey shows that players in the market as of now do not regard this as a matter for significant regulatory intervention. And in so far as it is, it should be dealt with at a higher level than the EU.

It may well be that the market and regulators share a similar "hands off" view, outside certain "content" issues. It is not necessary to explore the inherent difficulties in regulating a global phenomenon such as Internet to conclude that Internet issues should not be a cause for the establishment of an EU Regulator. It is, however, an area in which "soft" regulation, such as Recommendations/Guidelines could be appropriate.

- **Access**

Access issues have been addressed in the Commission Communication on Access and explored in the Green Paper on



Convergence. Access issues go to "dominance" and "bottlenecks". Both these matters are proper areas for regulatory intervention. Indeed most of the EU regulators are at this time wrestling with issues surrounding "unbundling of the local loop".

Access problems legitimately give rise to the need to sustain an EU regime. The establishment of that regime should be by way of Directives: Recommendations/Guidelines would also be appropriate. It should be the responsibility of NRAs to secure the implementation of the EU initiative. The EU should monitor implementation and seek to ensure a Pan-European market. But this, of itself, is not a conclusive argument for the establishment of an EU regulator.

7.3.3.4 Non-Independence of National Regulatory Authorities

The EU Regime calls for NRAs to be separate from "operations" and separate from "ownership". In this way independence was to be established. However, it has also been suggested that an EU regulator should be established because of the non-independence of NRAs in practice. How real are these arguments?

- **Regulatory Capture**

It has been suggested that NRAs are susceptible to regulatory capture by the Incumbent operator. Such capture may come about in two ways.

Firstly, the weight of resources, the skill and knowledge of regulatory personnel, which the Incumbent operator can put into regulatory matters, may be such that it can "swamp" the limited resources of the regulator. Ultimately effective regulation depends on flows of information from, in particular, the Incumbent operator. The manner in which these information flows are presented will be in no small measure a matter for the operator. Arguments and positions can be persuasively presented in a manner in which it may well be easy for a regulator to accept.



A different form of regulatory capture arises through the need to employ experienced staff. The most obvious location for experienced staff is the Incumbent operator. In at least one regulator, the presence of former staff of the Incumbent operator has caused disquiet. NRAs have to exercise considerable care in their employment policies.

Our enquiries and interviews, however, do not lead us to the view that "Regulatory Capture" is a major issue. It is, however, a matter to be kept under review.

- **Government Intervention**

There have been several comments made to us in our survey and in interviews, which suggest that Governments may be less than scrupulous in "leaning" directly or indirectly on regulators. In some European countries this may result from the manner in which the regulator is established. In France, it is clearly stated that regulatory responsibilities are shared between the Ministry and ART. In the UK policy is made by the DTI in consultation with Oftel. In Belgium regulatory impartiality may be questioned because of Government ownership of Belgacom.

How significant are these complaints? Lack of resources does constitute a problem. But perhaps the best barometer of independence of NRA is in the relationship between the NRA and the Incumbent operators. If it is somewhat "strained" that may be an indicator of independence. Whatever, NRAs and operators/service providers should not have close/friendly relationships. That is not the purpose of a regulatory regime.

But even if a dossier of complaints on these fronts could be developed, would it justify a European Regulatory Authority? Probably not. NRAs are answerable, usually, to national institutions in the first instance. Only if such accountability fails should an EU regulator become involved, possibly.



7.3.4 Arguments Against the Establishment of an EU Regulator

7.3.4.1 Bureaucracy/Delay

We asked our interviewees what the downside of the establishment of a European regulator would be, and they invariably replied "an extra layer of bureaucracy and delay". Most operators/service providers are working for short-term solutions to immediate problems. They envisage a long period of political debate and haggling prior to the establishment of any EU regulator with indefinite results to follow some time in the future. Some of the comments we received included "an ERA would result in extra cost and time"; "an ERA will slow the whole process and cost time and money"; "a European regulator will mean more bureaucracy and more costs and unneeded institution".

7.3.4.2 Definition of Role, Responsibilities and Powers

The constitutional, legal and political problems associated with clarifying the role, responsibilities and power of an EU regulator goes in particular to the establishment of a "hard" regulator. Major issues relating to the principle of subsidiarity will be raised. Should regulatory areas be taken from NRAs and if so, which ones? Should regulatory powers be removed and transferred to an EU regulator? How should these powers be exercised? What would be the consequence for national regulatory authorities and the recently enacted Telecommunications Laws? Our survey provided no support that this level of surgery to the existing regime should be undertaken.

Further, as one interviewee put it: "if an EU regulator is established, no direct relationship will exist between the regulator and those regulated".

These difficulties have been more specifically addressed in the NERA Study. Technical solutions have been proposed. However, the establishment of a "hard" EU regulator would demand a consensus of approach at a political and operator level which is not present on the evidence of our study.



7.3.4.3 The Wrong Issue is being Addressed

The view that the wrong issue is being addressed is given expression in some of the interviews and comments which we received.

Thus "the best way to promote the development of a Pan-European market is not the refinement of the present sector specific regulation but its removal so far as is possible. Not a European regulator but competition and convergence will bring about the desired Pan-European market. The future is with general (competition) law and not sector specific regulation."

The issue of whether there should be sector specific regulation alongside competition rules has been vigorously debated in the Commission Document "Results of the Public Consultation on the Green Paper - COM(1999)108 Final".

Whilst it is persuasive that the goal should be a sector regulated only by the operation of Competition law, and whilst it is the case that the market is becoming more competitive both at a fixed, mobile and fixed mobile level it would, however, in our opinion be premature to recommend the withdrawal of sector specific regulation. It is, however, appropriate to quote from another comment to underline the objective of a sector regulated by competition. "A former monopolist requires regulation. However regulatory measures are meant to further competition. Therefore, as soon as a market or sectors are competitive and a dominant position of the provider no longer exists the original objective of regulation is achieved. In this moment general competition law must replace sector specific regulation."

7.4 Recommendations

7.4.1 The EU should more fully develop and encourage the institutions and regime already to hand

The EU has established clearly that it has the will and the means to transform



telecommunications in the EU through its legislative programme, which has materially and dramatically shifted the EU towards a multi-operator multi-service/multi-equipment supplier environment. Liberalisation and harmonisation are now an integral part of the telecommunications agenda in all the Member States. The requirement at this point is more fully to secure implementation of EU Directives.

We quote from our interviewees: "there is need for greater harmonisation in the EU"; "it is not the first priority to create an ERA. The first need is to remedy inconsistencies in the national interpretation of EU rules."

The Commission has at its disposal the following instruments:

- The Competition Directorate General - if issues of cross-border EU trade are involved;
- Article 226 letters through which a demand for an explanation of non-conformance may be required;
- ONP Committee
- Licensing Committee
- The Enforcement section of the Information Society Directorate General

So far as many of those who answered our survey are concerned these instruments would be sufficient to promote a harmonised regime in the EU, if they were more effectively and diligently utilised. In addition, many of the respondents would welcome a means whereby a complaint could be made quickly and effectively to the EU against an NRA which would not act pursuant to the requirements of the EU regime. Existing remedies of the Information Society Directorate General are not providing a satisfactory mechanism to the market.



7.4.2 Promotion of New Institutions

- **High Level Group**

The EU itself has promoted a role for a High level group: the Commission is present on this group. It should be more specifically encouraged and further it should promote itself more professionally. It should publish the minutes of its meetings. Very few market players know of its existence, what it does, or what are the outcomes of its deliberations.

- **Independent Group of Regulators**

This is an *ad hoc* organisation of regulators. It is a closed group. It is accountable to no one. However, it does enable regulators to review and analyse problems common to them all. It has begun to develop common positions and to promote itself on the Internet. Care should be taken to ensure that such common positions are compatible with the EU regime. It should perhaps make itself more accessible to operators/providers/users. The organisation should not and could not become a complaints forum, but it should at least be informed regularly of the extent to which various regulatory regimes are failing to meet EU requirements. It should be encouraged in its publication of papers on key regulatory issues and it should be consulted on new legislation and Guidelines/Recommendations.

7.4.3 EU Implementation Reports – EU Parliament Involvement

EU Implementation Reports provide a mechanism by which regulatory regimes can be reviewed and measured against EU requirements. This instrument should be more fully developed to set out non-compliance in regulatory regimes. However, presently the Implementation Reports do not receive sufficient publicity. A way in which such publicity could be achieved and in a manner to cause an errant NRA to enforce its regime would be to secure the examination of these reports before a Committee of the Parliament. The Committee should have power to call witnesses and cross-examine. In this way added impetus could be given to the causes of implementation and harmonisation.



7.4.4 A Regulatory Model for the Future

What then, should be the approach for the EU? We set out our views thus:

- There is an existing body of EU law the implementation of which needs to be thoroughly monitored.
- The EU has adopted the principle of legislating through Framework Directives ("hard" law). This principle should be maintained.
- Directives should be supplemented by Recommendations/Guidelines ("soft" law).
- Recommendations/Guidelines should be drawn up only after full consultation with such entities as the High level group, the Independent group of regulators and the European Telecommunications Platform. Indeed, such bodies should be encouraged to draw up and submit draft Recommendations/Guidelines.
- Member States should agree to sign up to such Recommendations/Guidelines as a consequence of implementing Directives. By signing up, Member States should be held accountable for adhering to them. If not signing up, Member States may be required to justify why.
- The Enforcement sections of the Information Society Directorate General and the Competition Directorate General should be strengthened and their co-ordination should be further developed. They should publish a common Implementation Report which should have the character of a regulatory audit.



- Monitoring the implementation of Directives, Recommendations and Guidelines should be the responsibility of a new Committee of the EU. This Committee would take on the responsibilities of the ONP and Licensing Committees and in addition have responsibility for the implementation of the Services Directive. It should advise the Enforcement section of the Information Society Directorate General as well as the Regulatory Development section. It should liaise with the Competition Directorate General. This Committee should be given the necessary resources to undertake these responsibilities.
- The Committee should be responsible for publishing the Implementation Reports and for delivering them to the EU Parliament for examination by an appropriate Parliamentary committee.
- The EU should continually and consistently monitor the telecommunications regime to gauge the extent to which the market has become competitive and regulation step-by-step may be handed over to control through the Competition law regime.

7.5 Conclusion

We have critically reviewed the various options. The case for a radical departure in setting up a "hard" independent EU regulator has not been made out. That there remains a requirement for EU involvement is, however, firmly established. That involvement should be carried out through the mechanisms we have set out above. Our overall conclusions and Recommendations are set out hereinafter.



8 CONCLUSIONS AND RECOMMENDATIONS

We review our conclusions thus:

8.1 Results of Survey

8.1.1 Overall

1. The following regulatory areas were identified as of high importance by more than 70% of respondents:
 - Competition
 - Interconnection
 - Frequency allocation and assignment
 - Number management and allocation
2. NRAs were managing their responsibilities to an average level of satisfaction, but there were significant elements of dissatisfaction when considering specific regulatory topics and/or geographic regions.
3. Only in or about 50% thought the national structures were efficient to manage the regulatory requirements, but there was little support for the contention that there are too many Regulators.
4. Respondents saw a role for both national and EU involvement in regulation with, in most cases, a bias toward national regulatory solution.
5. There was limited support for a wider than EU role, except in the areas of frequency spectrum and Internet.
6. Self-regulation attracted very low support.



7. Ad hoc initiatives received little support.
 8. The highest level for support for an ERA was in the areas of Competition, Interconnection, SMP and Development of a Pan-European market. However, only for Competition, where the Competition Directorate General is already a European Authority, does the level of support climb above 50%.
 9. The level of support for an ERA is clearly negatively related to the level of satisfaction with the NRA. Where there is dissatisfaction with the performance of an NRA, there is generally more support for EU involvement and ERA.
 10. If the regulatory function is at an EU level, then there is no clear cut view as to whether Guidance/Recommendation or binding decisions should be operational: SMP, Interconnection, Competition, Numbering, Enforcement are areas where binding decisions are preferred.
- **Regional Groupings**
11. The Northern group (Denmark, Finland, The Netherlands, Sweden and the UK) are tending to a more market-orientated approach than other EU countries.
 12. In the Southern group (Italy, France, Portugal and Spain) groups management by the NRA was considered “poor” in all areas other than General licences, Competition, USO, Frequency and Consumer protection.
 13. The Southern group registered the highest support for intervention at an EU level and also the strongest support for an ERA with support falling below 40% only in Licensing and Internet.

- **Sector Groupings**



14. Not surprisingly, Incumbents regard Tariff control and SMP as significantly less important than Regulators, Users, Consumers and New operators.

15. There was a higher level of dissatisfaction with NRAs amongst New operators than amongst Incumbents.

8.1.2 Institutions

16. Key regulatory institutions are established in all EU Member States in telecommunications, radiocommunications and competition and are operating at varying degrees of competence and efficiency.

17. NRAs are generally separate from operations and ownership. The fact that some operators are still partially under the ownership of the Government can reflect on the independence of the regulator: further, there are still countries in the EU where that independence may be undermined by Ministries and operators.

18. There is some confusion at a national level as to the demarcation line between the competition authorities and the NRA.

19. The ONP/Licensing Committees have an unclear role in the market place. The status of these Committees is low.

20. New quasi-regulatory bodies are emerging, i.e. the High level group of administrations and regulatory authorities, the Independent group of regulators and the European Telecommunications Platform. These new institutions can play a key role.

21. The Information Society Directorate General Implementation Reports of the EU are valuable contributions to EU regulatory analysis but they could be more efficiently used as an instrument of change.

8.1.3 Regulatory Functional Inadequacies

22. In some countries, Licensing is the province of NRAs and is of diminishing significance. Other EU States remain heavily locked into individual



licences and licensing regimes. Schemes for General Authorisations need to be used more widely.

23. There is a large measure of dissatisfaction with Interconnection management by NRAs.

8.1.4 Institutional Streamlining

24. NRAs can properly undertake more regulatory responsibility from Ministries.

25. Member States should make the decision as to whether or not radiocommunication regulation should be merged with telecommunication regulation.

26. Member States need to monitor that the institutional duopoly of radiocommunications and telecommunications Regulators does not cause any undue delays.

27. There is scope for clarifying the functions of NRAs and Competition authorities.

8.1.5 New Areas

28. The present situation broadly encompasses the regulatory needs of the telecommunications sector. However, new areas which need addressing are:

- Access
- Internet
- Convergence

8.1.6 EU Regulator

29. There is not an immediate requirement to set up an EU Regulator.



30. EU level involvement, particularly in the area of implementation, is a key requirement in telecommunications in the EU.

31. Existing regulatory tools should be more focused.

8.2 Recommendations

8.2.1 Background

The overall results indicate a significant level of support for EU involvement for issues that are closely related to competition and to the establishment of a Pan-European telecommunications market. For other regulatory topics, the support for EU involvement is less convincing and even where the support for EU involvement is high, there is not support for the having a “European Regulatory Authority”. Only in the case of competition matters (where the Competition Directorate General already exists as a European Regulatory Authority) is there a majority in favour of such a solution.

This view from the analysis of the numbers coming back from questionnaires is further strengthened when taking into account comments made during interviews and otherwise. A general impression is that most organisations do not want a EU regulatory authority that of the NRAs set up in Member States.

At the same time as the results of the study come short of giving support for a new European Regulatory Authority, there is a strong view in favour of doing more within the current regulatory structure. The great importance attached to the achievement of a Pan-European market (with corresponding support for EU involvement) suggests that more emphasis should be given to this area.

During interviews, many organisations expressed support for the notion of “soft” Regulations, with emphasis on Guidelines and Recommendations rather than Directives and Decisions from the EU. In addition, there was also



support for the principle of regulatory forbearance, whereby certain sector specific regulations would cease to apply when certain objective criteria would be met.

8.2.2 Development of Telecommunications Regulatory Regime

The EU, following the 1999 Review should establish a clear set of objectives/principles on which the development of the sector in the next decade. (We have set out a series of such principles in section 2.2 of the report). Sector specific regulations a key element in a context in which there should be a move to greater reliance on competition law. The EU should continue to utilise and develop a combination of hard law (Framework Directives) and soft law (Recommendations/Guidelines).

8.2.3 Harmonisation Programme

We recommend that the following elements be considered to secure a more harmonised regime:

8.2.3.1 Improve Co-operation between NRAs

Improved co-operation between NRAs in order to improve common understanding of EU Directives and implementation approaches should be promoted: The High Level Group and The Independent Regulators Group have key roles to play in this regard.

8.2.3.2 Regulatory Areas suitable for Recommendations/Guidelines

Organisations such as CEPT/ECTRA, Independent Regulators Group and the European Telecommunications Platform, in addition to the European Commission, should identify and nominate regulatory areas for which guidance is needed.

8.2.3.3 Drafting of Recommendations/Guidelines

The same organisations which can nominate regulatory areas should also provide drafts.



8.2.3.4 Procedure for Public Comments for Recommendations/Guidelines

A procedure for public comment should be established, similar to that following the publication of a Green Paper.

8.2.3.5 Acceptance of Recommendations/Guidelines

A procedure should be established whereby Member States should publicly state that they will subscribe to Recommendations/Guidelines. Recommendations/Guidelines should be incorporated into national regimes. The Implementation Reports should monitor adherence to the Recommendations/Guidelines. If they are ignored, then it may be necessary for the EU to introduce legal requirements through the enactment of Directives.

8.2.3.6 Control

The Implementation Reports which the European Commission produces today should be expanded also to include the status of acceptance of Guidelines and control against Guidelines for those Member States that have subscribed to them. The Implementation Reports should be expanded into having the status of "Audit Reports".

8.2.3.7 Public Scrutiny of "Implementation Reports"

The "Implementation Reports" should be given high public focus, for example by having the European Parliament arrange audit hearings whereby the Commission and Member States could have the opportunity to report on measures to improve those areas that have drawn audit remarks and justify where Guidelines have not been subscribed to.

8.2.4 Programme for Co-ordination of Competition Issues

The various regulatory topics within the telecommunications sector overlap



with competition law to a varying degree. In many practical cases, both the Competition authority and the NRA for telecommunications have roles to play. The responses to the questionnaire uncovered some confusion about the division of responsibility between the two authorities and it is an area of concern as many elements of telecommunications sector specific legislation are expected gradually to give way to general competition law in the years ahead.

In particular, if sector specific regulations include sunset clauses that will require interpretation, it will be necessary for both authorities to achieve a consensus on whether the sunset clause should be activated.

Where two authorities are engaged in the same issue, there is always the possibility that there will be two different positions. Engaging two different authorities for the same issue may require additional time and resource for the organisations involved.

It is a fact that it is the competition issues that draws highest support for EU involvement. It is also fact that the Competition Directorate General is already a well-established and respected European authority. It is therefore tempting to make a suggestion to look for ways whereby the Competition Directorate General could have a clearer and more active role to play in issues where sector specific legislation and competition law overlap.

We recommend a programme of co-ordination of competition issues whereby:

1. Member States should ensure that the roles of the competition authority and the NRA are fully coordinated and clarified so that that is clear at a national level to which authority anti-competitive issues should be directed - and we recommend that that authority should be the NRA.
2. an organisation that requires regulatory intervention or support would be assured that a decision takes account of both sector specific regulations and competition law;



3. national appeal processes should reflect the fact that decisions may be appealed on the basis of competition law as well as sector specific law;
4. the Competition Directorate General should clarify procedures and/or regulatory issues whereby common approaches to be adopted by Member States based on competition law could be determined at the European level. This is particularly important in the context of the policy of the Competition Directorate General to refer more cases to national tribunals for decision.
5. more information concerning the role and availability of DGIV should be encouraged.

8.2.5 Streamlining of Institutions

- Member States should devolve more responsibility and power to NRAs, in particular in the areas of licensing and tariffs.
- Member States should determine the extent to which there should be convergence between telecommunications, radio communications and broadcasting regulators. The case is not made for any “forced” convergence.
- The EU should review the extent to which the ONP and Licensing Committees are performing a useful role. Presently, deliberately or otherwise, they are viewed as low profile entities. Their roles should be clarified. Rather than having several Committees, a case may be made for having one Telecommunications Committee that would be responsible for a co-ordinated approach to the implementation of all the telecommunications Directives including the Services Directive. In any event the minutes of these Committees should be published.



- The High level group and the Independent group of regulators should be promoted and encouraged. The development of "soft" law properly should involve consultation with these bodies and other such institutions as the European Telecommunications Platform.

8.2.6 Commission Powers

The Commission should fully utilise its powers to carry out investigations of anti-competitive behaviour as in the recent investigations into fixed/mobile charges.

The Commission should continue when appropriate to issue "Article 226 letters". In this context more publicity should be used.

8.2.7 Conclusion

The possibility for role of an EU Regulator is not a closed issue. It is a matter which should be kept under review. But at this stage, the argument for its establishment is not made out.

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