Major regulatory trends for telecom and internet in the European Union with potential impact on peering markets

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NAMEX
ROMA INTERNET EXCHANGE POINT

ABOUT ME

- Innocenzo Genna, public affairs advisor on EU telecoms and Internet policy

- EU advisor for Namex, the Rome Internet Exchange

- VP of EuroISPA and MVNO Europe; former board member of the European Internet Forum. Previously: chairman of ECTA, general counsel of the Tiscali group, partner of Ughi & Nunziante law firm

- 30 years expertise in policy, regulation and market entry cases in the telecoms and Internet sector

MAIN REGULATORY TRENDS IN THE EU

- EU regulatory system going into a Copernican revolution:
  - Current deregulation of telecoms (against previous heavy regulation)
  - Current regulation of Internet and of specific large OTT (against Internet deregulation under the 2000 Electronic Commerce Directive)
  - Level playing field between telcos and OTT

- «Fair sharing» debate

- Expansion of data regulation (not only GDPR)

TELECOMS DEREGULATION

- Current telecom framework is lifting traditional regulation on incumbents:
  - regulated markets down from 18 to 2
  - fiber networks expand and replace copper with much lesser intrusive regulation
  - regulated fixed access often replaced by commercial agreements or regulatory holidays
  - Mobile networks remain substantially unregulated

- Telco consolidation and network separation:
  - financials push for domestic mergers, EU politics for cross-border mergers
  - antitrust may restrict some mobile mergers
  - financial funds push for network separation in the fixed sector

REGULATION OF OTT

- Emergence of the «gatekeeper» concept (= the Internet version of the incumbent telco)

- EU adopting new ad hoc, ex ante regulation, for online platforms:

  - Digital Market Act (DMA) targeting dominant platforms to prevent abusive behaviour (like in the telecoms sector)

  - Digital Service Act (DSA), modernising the 2000 Internet framework and establising a regulatory ladder to protect consumers and businesses
    - The DSA regulatory ladder increases responsibility of platforms depending on their size and impact on the market

LEVEL PLAYING FIELD FOR TELCOS AND OTT

- New EU Internet rules are balancing telcos and OTT regulation in many areas:
  - authorizations
  - e-privacy and GDPR
  - consumer protection
  - data ect...

- Net neutrality is now accompanied by platform neutrality

"Fair sharing" debate

- «Fair sharing» doctrine: all digital operators should fairly contribute to the digital ecosystem
  - This is a déjà vu: 2012 ITU debate on the Sending Party Paying Principle
  - Similarity with the «gap value» claim under the Copyright Directive

- «Fair sharing» debate to be a priority in the EU regulatory agenda:
  - European Commission politically committed to find a solution and make a proposal
  - BEREC to be start to work on the IP interconnection system

- «Fair sharing» outcome is so far unpredictable:
  - The proposal is technically weak and controversial, like in 2012, however:
  - Big Tech are no longer the champions of democracy and innovation
  - huge discrepancies of profitability between the Big tech and the others

DATA REGULATION

- Not only protected personal data (GDPR), but also data as an economic asset

- This regulatory stream is a consequence of various debates:
    - Digital sovereignity
    - Level playing field
    - Free flow of data

- Data Act, Data Governance Act, cloud initiatives providing inter alia:
    - data portability
    - data sharing
    - data filantropy

CONCLUSIONS

- The digital ecosystem is subject to significant regulatory trends (both iper- and de-regulation)

- Regulation tends to favour telecom consolidation, within national borders, while targetting Internet dominance at global level

- IP interconnection and traffic may be subject to regulatory interventions with unpredictable or unwished consequences

- «Fair sharing debate» is the most controversial item in the EU agenda, however concrete proposals are still far to materialize

THANK YOU

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