

Re-thinking “*Relevant Markets*”

Peter Alexiadis

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Outline

- **Introduction**
- **Relevant technological / commercial developments**
- **Adjustment of the existing markets' limits**
- **Re-running of the “three-criteria” test**
- **Trans-national markets**
- **New markets**
- **Revise or revamp?**



Introduction

- The relevant technological and economic developments might imply that:
 - The boundaries of the existing markets have to be adjusted (extension / contraction of the product market definition)
 - The existing markets no more merit *ex ante* regulation (the “three-criteria test” is not met)
 - New markets within the field of electronic communications networks and services have to be defined (a new product market not falling within any existing product markets has to be defined)
 - The geographic scope of markets might change (sub-national vs. trans-national trends)
- Revision and update of the Relevant Markets Recommendation has to take due account of:
 - Technology neutrality principle
 - Forward-looking perspective approach
 - Importance of supply-side dynamic in *ex ante* market definitions



Technological and Commercial Developments

- The trends / developments might be new or might have developed greater momentum
- A number of the existing relevant markets might be in transition due to certain changes:
 - NGA Networks
 - Migration to LTE / HSPA
 - “All-IP” Dynamic
 - Increased Bundling Practices

Adjustment of Existing Markets (1)

- ➡ **Market 1 (retail):** Access to the public telephone network at a fixed location for residential and non-residential customers
- ➡ **Market 2 (wholesale):** Call origination on the public telephone network provided at a fixed location
- ➡ **Market 3 (wholesale):** Call termination on each individual public telephone network provided at a fixed location
- ➡ **Market 4:** Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location (1)



Adjustment of Existing Markets (2)

- ➡ **Market 4:** Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location (2)
- ➡ **Market 5:** Market for wholesale broadband access
- ➡ **Market 6:** Market for wholesale terminating segments of leased lines
- ➡ **Market 7:** Voice call termination on each individual mobile network



Distinguish between two clusters of related markets

I. Telephony services on the one hand; and

II. Broadband Internet access and leased lines services, on the other.

- Other than broadband Internet access, non-telephony services currently do not form part of the *Relevant Markets Recommendation*.

Telephony (1)

Access & call origination (wholesale)

- Possible changes of the retail market: if fixed and mobile access & calls provided to residential customers is merged into a single end-to-end market the related wholesale markets might also need to be merged into a single product market for wholesale access & call origination
- Accordingly, in the event that a broader wholesale market is to be defined, it is possible that it will no longer satisfy the three-criteria test, given the presence of several vertically integrated fixed and mobile operators in the market

Call termination (wholesale)

- No amendments to market definition
- Accordingly, the application of the three-criteria test to termination markets is likely to confirm the susceptibility of these markets to *ex ante* regulation
- However, the usual market failure concerns associated with call termination markets may have been overcome after the respective call termination rates have fallen under the auspices of the *Call Termination Recommendation*



Broadband Internet Access and Leased Lines (1)

Possible changes to relevant markets

- The retail market for broadband Internet access might need to be split between a low quality market for residential customers and a high quality market for non-residential customers
- This may have to be mirrored in a corresponding split at the WBA level, namely, a WBA market for residential connections and a WBA for non-residential connection
- Market 4 may have to be split into several markets, namely into: (i) access to civil engineering; (ii) access to sub-loops at the first concentration point (in-building wiring and longer terminating segments); and (iii) access to full loops at MPoPs.

Implications on the three-criteria test

- The WBA market for non-residential connections will in all likelihood satisfy the three-criteria test, while the WBA market for residential connections will require further assessment given the degree of competition being exerted by unbundlers of the local loop, cable operators, and mobile operators.



Trans-national Markets (1)

- Business communications services as the most relevant candidate for trans-national markets
- Mobile international roaming services are another candidate. However:
 - Already subject to symmetric regulation under the Roaming Regulation and not dealt with under the Regulatory Framework
 - Still, the possible creation of a European MVNO status under foreseen amendments to the Roaming Regulation might change the scope of the existing series of national markets into one for pan-European roaming services

Business Communications Services (1)

Characteristics:

- Comprise business-graded broadband Internet access, leased lines, VPNs, telephony access, mobile services and others
- Usually purchased as bundles and through tenders
- By their very nature have a pan-European dimension as they are demanded by non-residential customers, which often have multiple sites in several Member States.

Approach:

- The initial market definition exercise would have to address whether the relevant retail market shall be defined: (i) for individual business communications services or for bundles; and (ii) whether it shall be defined for multi-site offerings within a country or for multi-site offerings in multiple countries.
- SSNIP test to ascertain whether consumers would revert:
 - To buying individual services on a stand-alone basis
 - To reverting to purchasing services on a country-by-country basis



Business Communications Services (2)

- The market for business communications services, if defined, is likely to be characterised by severe market failure if analysed on an end-to-end basis: clearly, it is a fragmented market characterised by national monopolies.
- The most important wholesale markets related to business communications services are: (i) access to unbundled loops; and (ii) business-graded WBA at local and regional PoPs for non-residential customers, possibly merged with the terminating segments of leased lines.
- All of those services are currently provided at a national level, and no genuine pan-European wholesale offers exist to date. While it may be that access to unbundled loops will continue to remain considered as a series of national markets, WBA provided to non-residential customers could potentially become a trans-national market.



New Markets

A market for data termination?

- Even if nothing has changed from an analytical point of view, the manner in which the market is moving suggests that a careful reconsideration of the issue is required.
- Separate data termination markets with respect to fixed and mobile networks?



Revise or Revamp ?

- Does the current regime has the robustness to carry on into the future?
- How does the growth of symmetric regulation affect the future?
- How can the common market goal be reconciled with subsidiarity?
- How vulnerable is traditional market analysis in a truly converged environment?
- What is the inevitable outcome of NGA deployment for an asymmetric regulatory model?