

A New Digital Agenda for Europe
Multi-stakeholder workshop in view of the Italian Presidency of the European Union
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Panel 1: Policy and Regulatory Agenda
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The most fundamental objectives of the EU Digital Agenda – robust competition, removal of impediments to cross-border commerce throughout the Single Market, stimulation of new infrastructure investment and high tech innovation – are not controversial. Yet seemingly intractable controversy persists around any current consensus for how best to realize these overarching objectives. A specific vision of the intended result remains clouded by widespread confusion.

How did we get here? One must begin by recognizing the basic technological and commercial assumptions that were operative twenty-five years ago, when Europe's current approach to ensuring robust competition in electronic communication markets was first conceived. At the time, provision of public telecommunications services of all sorts was generally the exclusive province of incumbent national public utilities. GSM was just coming on line. The Internet was a project in its early stages of gestation.

European telecoms market liberalization was born in a famously political compromise, with primary responsibility for administering and enforcing telecoms policy parked at national level. The challenge at the time was indeed to open up distinct, national fixed and mobile telecommunications markets to meaningful competition. But in parallel with a fairly stunning record of success in achieving that goal in progressive stages over the following two decades, the larger world has moved on.

We are now living through an unprecedented era of technological, commercial and market transformation. In the new digital universe, economic value has shifted away from vertically integrated “telcos” boasting diversified service portfolios. The lion's share of this value is instead now being captured by Internet-based service providers, smart-phone operating systems and all sorts of new-fangled apps. A fast-paced, global arena of digital tech innovation and commercial disruption is now wide open, and it pays no heed whatsoever to national borders.

Against this current backdrop, the recent EU legislative initiative known as “Digital Single Market” (a.k.a “Connected Continent”) has reflected yet another moment of political compromise among important European stakeholders, each bringing to bear what seem to be quite legitimate but often conflicting interests. This time however, we have reached the point where incessant debate around highly detailed, multi-layered regulatory policies and practices undermines real progress. It is an effort to “tweak” a received model which remains grounded in anachronistic conceptions of operative market and tech realities. To put it bluntly, this is a 20th Century argument about a 21st Century problem. The established, sector-specific EU regulatory framework has become obsolete.

In the new digital marketplace, clever ways of disrupting conventional telecoms services abound. And lest there be any doubt whether the most relevant geographic market for mass communications services is increasingly global, consider the combined market position of Facebook and its pending affiliate WhatsApp in consumer messaging and adjacent Internet-based social media: on the order of 1.5 billion users as from Day One, growing by leaps and bounds daily, with worldwide voice services (similarly offered gratis to users) also expected to come online very soon.

At the same time, it must not be overlooked that provision of Internet access – which is *sine qua non* to the new digital communications ecosystem – remains, and will likely continue to remain for the foreseeable future, more local in nature. Indeed one might argue that the only “basic telecoms”

service left to be served by providers of core telecoms network infrastructure is fast becoming provision of Internet access as such. In this context it is vital to note that local telecommunications infrastructure investment, supporting mass consumer access to ever more data-intensive broadband applications, is by its very nature extremely capital intensive; and that, in stark contrast, a transformative global communications innovation like WhatsApp requires relatively little capital investment at all.

The good news for core, infrastructure-based network operators is ever-expanding consumer demand for mind-boggling quantities of data delivered ubiquitously, at faster and faster speeds. Thus the looming issue for today's "telcos" may be whether to embrace a more contemporary business case, essentially ceding all but the Internet access segment to so-called OTT players. In terms of EU regulatory policy going forward, the point is to distinguish Internet access provision from other electronic communications segments – since Internet access may be subject both to local competitive bottlenecks and to troubling investment shortfalls.

Taking into account the most central technological and market trends of the new digital era, the exceedingly elaborate framework of sector-specific regulation which currently prevails throughout the EU is, in all events, plainly outdated and overbroad. Mass consumer communications services other than basic Internet access should no longer warrant much in the way of national market analysis, or for that matter *ex ante* regulation at any level. That said, and depending upon the extent of infrastructure-based competition manifested at national or local level, markets for provision of Internet access may warrant an appropriate measure of continuing vigilance.

Fixed "telco" and "cable" platforms are increasingly interchangeable substitutes for provision of fixed broadband access, and both are present in most EU markets. Wireless broadband access is generally available over at least three or four competing mobile networks in all EU countries. And some see an emergent 4G-5G wireless world in which fixed and mobile broadband access become functional substitutes for most intents and purposes. Looking forward to the developing competitive landscape which all this implies, rather than backward to the *ancien regime* of monopoly European national PTTs, the question becomes what if any sector-specific regulatory regime may be required. A corollary question is what if any compelling public interest is actually served at this point by the utter complexity, massive expense and sheer weight of the existing regulatory framework.

The new priority should be elimination of all but the most clearly indispensable regulatory intervention. Sector-specific, *ex ante* regulation should generally become subject to rapid sunset, consistent with contemporary market realities and in line with long-declared intentions articulated in the cornerstone EU Directives. With a view to cultivating deployment of new-age infrastructure both within and across internal EU borders, the guiding aim should be an essentially unregulated marketplace geared to emboldening investment and innovation, as well as pan-European industrial consolidation affording world-class scope and scale.

For the most part, sector-specific national regulatory authorities should become a thing of the past. Specific competitive bottlenecks at the level of core transmission over "essential facilities" should be subject to case-by-case review and policing (*ex post*) by competent competition authorities. So long as spectrum allocation and assignment remain vested at sovereign national level, in whole or in part, it is impossible to imagine telecoms NRAs becoming eliminated altogether. Apart from spectrum issues, however, it is by no means obvious that any sector-specific telecoms regulator would be required at either national or EU level.

In parallel with scaling back and eventually eliminating the vast majority of sector-specific regulation, the EU needs to modernize its competition policy to take adequate stock of the new technological and commercial realities of the digital era. Insofar as spectrum management remains

substantially a national function, national markets can be expected to remain subject to thorny competition issues including the minimum number of spectrum licenses (and hence mobile network operators) deemed acceptable. But devoting untold time and resource to highly repetitive competition analysis of every national mobile merger, while little or none to scrutinizing world-changing digital communications combinations in the OTT space (à la Facebook-WhatsApp) makes no sense.

A generation ago, the genius of the EU's project for sweeping telecoms market liberalization was the coalescence it achieved between a well-targeted competition policy and a winning industrial strategy, each suited to that era. By unleashing the intrinsic efficiencies of unfettered market dynamics, the original paradigm of EU telecoms sector liberalization stimulated unprecedented investment in new fixed and wireless infrastructure, side-by-side with world-beating technological innovation across the mobile space in particular.

Today's policy makers face a similar challenge. Europe presently confronts an entirely different set of new, but equally daunting, realities – once again arising amidst the cross-currents of rapid technological change and obsolescent market structure. What is not new is the need for an unabashedly fresh approach to tackling the central issues. Europe must once again re-boot its competition and broader regulatory policies, to take proper stock of emergent digital communications markets that routinely transcend national borders and which are thus far dominated by non-European players, while at the same time advancing Europe's industrial position throughout the new global ecosystem.