What is the right balance for European Telecoms ?

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WHAT IS THE RIGHT BALANCE FOR EUROPEAN TELECOMS ?

CHAIRMAN :

Augusto de Flammineis,	Director of International Relations, STET, Italy

ROUNDTABLE MEMBERS :

Nick White,	Vice Chairman, INTUG, UK replacing Phil Barton, excused
Jost P. Bescht,	Manager European Affairs, Alcatel, France
Bernard Izerable,	Strategic Affairs, International Directorate, France Telecom, France
Olof Nordling,	EC Affairs Director, Telia, Belgium
Jonathan Rickford,	Director of Corporate Strategy, BT, UK

5.1. Introduction

Acting as Chairman, Augusto de Flammineis (Director of International Relations, STET, Italy) introduced the session on STRATEGIC ALLIANCES IN THE TELECOMMUNICATIONS SECTOR. An alliance may be defined as "a wide arrangement between companies which does not reach the level of a full merger of all their activities but that goes beyond a limited agreement (i.e.: a distribution agreement) to do some activities in common" (Miguel Peña Castellot in his presentation). The session had to address issues covering the main alliances which have been formed or announced, relevant EU rules and how they are being applied as well as the benefits and risks of such alliances to partners, competitors, users, European economic development and competitiveness;

The Chairman pointed out that, due to technological advances, internationalisation, globalisation of the market, as well as regulatory changes (mainly liberalisation), an evolution from cooperation between monopolistic national telecommunications operators to alliances between various actors (traditional telecommunications operators, cable TV operators, other service providers, manufacturers,...) is taking place in the telecommunications services sector. Augusto de Flammineis further remarked that all these changes (or better, this revolution) are happening under the flag of liberalisation, liberalisation for liberalisation, according to the slogan "liberalisation is beautiful". In this context he pointed out, that while liberalisation and a new regulation or, better, a re-regulation, have some merits in the short period, in terms of tariff reductions and quality of services, many doubts appear for employment and for the long term. It was the Chairman's opinion, that the sector needs a mixture of cooperation and competition (this can be called "coopetition") which both must be balanced very carefully. This balance requires re-regulation and an efficient and practicable system of standardisation.

5.2. Presentations and roundtable discussion

5.2.1. Against this background drawn up by the Chairman , Denis Gilhooly (Publishing Director, CommunicationsWeek International, France) spoke of "Strategic Alliances - What is happening and why" and provided an overview of the kind of alliances now being formed or announced, the main reasons for these alliances, the main markets/services concerned, as well as the risks and benefits of these alliances.

The second speaker, Miguel Peña Castellot described competition rules of the EC Treaty and their application to the Telecommunications Sector in the Union, in particular the difference between Article 85 of the EC Treaty (applied to "co-operative joint ventures") and the merger control regulation (applied to "concentrative joint ventures").

5.2.2. The Chairman then introduced the members of the roundtable. They were Jost P. Bescht representing the manufacturing industry; Bernard Izerable, Olof Nordling, Jonathan Rickford representing telecommunications operators. A user representative, Nick White was also present. Each member of the roundtable presented his views which are summarised hereafter.

5.2.2.1. Context of alliances

Alliances are imbedded in the general context of the telecommunications sector which is of vital and growing importance for the future of the economy and especially the employment. On the other hand the telecommunications sector is actually also subject to essential changes (internationalisation/globalisation, convergence of telecommunications, audio-visual and computer science technologies, liberalisation). These dramatic changes create a situation of confusion and uncertainty which all the actors have to cope with.

5.2.2.2. Reasons for the creation of alliances

In the context of this evolving telecommunications sector, alliances are justified by the fact that:

- users need alliances for the provision of true seamless pan-European (and even global) genuine single services of high quality, beyond the sticking together of separated national infrastructures and services. At present, no single company can manage this all by itself. Alliances are also a tool for answering user demand for choice in the field of the provision of international telecommunications services;

- incumbent (European) telecommunications operators need to unite, if they want to compete and to survive, in order to reach the dimensions (in terms of international presence, financial, commercial, technical and human resources) necessary to satisfy new user demands. These alliances would also enhance the acquisition of "a commercial credibility as truly global operator" (Bernard Izerable) in order to compete on a global scale against competitors from large home markets and reach comparable critical mass;

- new entrants need to develop policies enabling them to take advantage of opportunities offered from liberalisation;

- the European communications and telecommunications industries need alliances to safeguard and promote European industrial competitiveness. The bringing about of the information society in particular, will stimulate the need for alliances in order to allow large European players to join the financial capabilities required by investments into large infrastructure projects.

5.2.2.3. Types of alliances

Existing and emerging alliances may be classified according to different criteria:

- according to the scope of their activities, i.e. alliances which aim at an international dimension but limit themselves to a specific market niche, and alliances which aim at an international dimension covering the full market spectrum. The scope chosen will determine the structure of the alliance;

- according to the partners chosen, i.e. TOs joining amongst each other and/or with partners coming from neighbouring sectors like informatics, and/or with manufacturers etc...in order to develop vertical integration;

- according to the legal form of the strategic partnership. TOs must reach beyond traditional forms of cooperation (like interconnection agreements). In order to " unite to conquer" (Bernard Izerable), operators must undertake deeper and stronger integration and use various forms of structural partnerships including the taking over of capital shares.

5.2.2.4. Requested characteristics of alliances

In order to produce the desired positive effects, alliances must dispose of certain characteristics. Among those were mentioned:

- "multidisciplinarity", i.e. alliances involving telecommunications organisations, media operators and PC suppliers. This characteristic will be all the more relevant as users request end-to-end voice, data, video and other services;

- identified powers and clear decision making processes. Alliances must have operational independence in order to avoid being "children subject to multiple parental disciplines which are sometimes in conflict" (Nick White). They must act in a transparent manner and conduct fair trading policies. All these conditions are required in order to give the users the real possibility to negotiate with the alliances.

5.2.2.5 Requirements to be met by the regulatory environment

Considerations on the regulatory environment, and on the regulatory safeguards to apply in favour of or against strategic alliances, took an important place in the discussion. The following ideas were put forward:

- alliances must be compatible with European Competition Law in order to prevent a de facto survival of monopolies which were previously abolished. "There is no compromise possible with regard to effective application of competition law and the need for competition in the provision of services. This does not prevent that in special cases, in cases of special benefits to the consumers, a clear exemption can be given under competition law" (Jonathan Rickford). Therefore, using the term "balance" may, in his understanding, be misleading. Notwithstanding this, Jost P. Bescht pointed out that "compromises are required on EU internal competition in favour of world-wide competitiveness of European industry". In the same context, Bernard Izerable's opinion was that competition rules are necessary in order to prevent the creation of cartels and market dominance by monopolies and oligopolies but according to him the question remains whether the future of the sector can be imagined without oligopolies. Furthermore, Bernard Izerable added that competition law should be applied smoothly in order to allow alliances to contribute to the international industrial competitiveness of the EU, market development and the satisfaction of user demand;

- to avoid harm to a still very fragile state of competition, alliances of de iure and de facto monopolies retaining enormous bottleneck power should obtain prior competition clearance and be evaluated against strict criteria. The following criteria were mentioned by the members of the panel:

  1. privatisation of the operators concerned (they must at least derive a substantial portion of their capital from private markets and not principally from public treasuries);
  2. complete liberalisation of markets (services and infrastructure) and disappearance of de iure monopolies;
  3. a comprehensive and enforceable cost accounting and interconnection regime should exist;
  4. a real separation of operational and regulatory functions, including from and/or within the relevant ministry;
  5. firm assurances that there will be no discrimination in favour of the participants in such alliances in areas where their "parents" have monopoly powers. On the other hand, when alliances which have no monopoly rights need to interconnect with existing infrastructure and service providers in order to reach all potential customers, they also need non discriminatory treatment and equal access to domestic markets.

- the assessment of strategic alliances under EU competition rules should also take into account overall industrial policy objectives (competition, harmonisation, emergence of the Information Society, competitiveness of EU industry and of Europe as a region on a global scale);

- fragmentation of markets should be avoided to give European players the opportunity to reach the critical mass needed for the advent of the Information Society, to provide international "any-to-any" telecommunications (Olof Nordling), and to establish an effective counter-weight to international alliances;

- to deal with the fast changing environment, regulation must be kept at a general level and find a dynamic balance between flexibility in application (required by the rapidly changing environment) and predictability (needed to plan huge investments). Specific regulation, beyond the application of competition law, is actually not needed with regard to interconnection with services provided by an alliance and with regard to universal service. Nevertheless the latter could change in the context of the provision of voice telephony to the public. Finally, the European standardisation process should be strengthened, with emphasis on voluntary standards, and limiting as far as possible compulsory standards.

5.3. Discussion, Questions and Answers

Following the expression of views of each of the participants in the roundtable, the chairman turned to the floor and asked for questions and comments. Besides precise factual questions and comments on Denis Gilhooly's presentation, two general questions were discussed and two comments were made.

A representative from Latvia attracted the audience's attention on the situation in Central and Eastern Europe and wondered whether new operators, presently undertaking major investments, would be affected by this new environment of competition and strategic alliances, and how they should react. According to Olof Nordling, the ultimate objective for many customers, operators and alliances alike are global solutions. This does not exclude Central and Eastern Europe. Then Olof Nordling pointed out that many operators in Eastern Europe have the opportunity, precisely due to investment efforts they are making today, of achieving a "quantum leap" from a rather desperate situation to high performance infrastructures and services, and to very progressive, liberal and new solutions. Doing so they will skip one generation of technology, solutions and regulation. Jonathan Rickford added that in this context a stable and open regulatory environment, and open markets are most important to enable capital to flow in and allow returns on investments. Augusto de Flammineis agreed with the importance of a stable and predictable regulatory environment.

A question from a lawyer had to do with the issue of transfer of responsibilities from DG IV to an independent competition agency, a move which would be particularly controversial in the telecommunications sector given the national interests at play. This question was left unanswered.

Picking up the idea raised in Denis Gilhooly's presentation of a "Euro-FCC", a representative from the International Institute of Air and Space Law enquired about the European Commission's views on this topic. Answering, Denis Gilhooly returned to the question of the opportunity of an independent competition commission, supposing that this could be an agenda item of the 1996 Intergovernmental Conference. He furthermore expressed himself in favour of this kind of agency and pointed out that competition law is the only way to regulate telecommunications down the line. Jonathan Rickford understood the interest in the idea given that we were beginning to see a combination of competition law enforcement and regulation (similar the role played by Judge Greene in the US), i.e. this independent competition authority would have a quasi-judicial role. Jonathan Rickford nevertheless expressed some doubts on whether the present Commission environment (strongly politicised in his view) would be an appropriate and adequate context for the performance of this function. He thus advocated an independent authority as a potentially better solution. Jonathan Rickford also wondered whether the 1996 Intergovernmental Conference would not already be overloaded with other discussion points.

Several comments were also made. A representative from Telecom Finland specified that the main strategic alliances were already in place but he nevertheless recognised that with increasing globalisation and with the emergence of new multimedia applications, the diversity of actors in the field of telecommunications and multimedia would increase. Therefore, this diversity of new telecommunications operating actors might effectively be the keyword of the future.

Finally, the need for competition, a global regulatory framework and a European regulatory body was re-emphasised by a representative from Motorola who also made clear that in his point of view, Iridium Inc. is not a strategic alliance between Motorola and Veba but an investment made by Veba, the major shareholder.

5.4. Conclusions

According to the Chairman and Rapporteur, the following general conclusions on the role of alliances in the telecommunications sector may be drawn from session 5:

- There is indeed a need for alliances as a tool for the provision of seamless global and high quality services, to reach a critical mass of users and to safeguard competitiveness of European communications and telecommunications industry.

- There is, on the other hand, a need for competition in order to obtain a "greater variety of telecommunications services, of a better quality and at a lower cost" (Miguel Peña Castellot). Competition may be endangered by purely defensive alliances between incumbent telecommunications operators which are "dictated by the desire to stem loss of market share at home and maintain control of the customer" (Denis Gilhooly), and which "unite to conquer" (Bernard Izerable).

- Consequently, "both, competition and cooperation (needed for provision of international telecommunications services) are important and must co-exist" (Olof Nordling) on a sound basis. How this relationship will best work in practice, what the right balance is and which compromises (if any) should be made, is still controversial. Taken on a global and not only a European level, the proper fitting of strategic alliances into an effective competitive environment will provide the greatest benefit to all parties concerned, incumbent operators, new entrants and users.

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Rapporteur session 5