

SOURCE: Federal Office of Communications (OFCOM), Switzerland

TITLE: **A new ladder of regulation: best practices for enabling open networks**

SWISS CONTRIBUTION

The points listed for discussion in the consultation towards the Global Symposium for Regulators 2010 are extremely wide ranging. This contribution to the consultation limits itself to concise answers from a Swiss perspective. If further information is required at a later stage we would be happy to provide it.

DEFINING OPEN ACCESS: MAKING SENSE OF THE VARIOUS CONCEPTS

When we talk about access, whether this be regulated access (such as unbundling) or commercial open access, the key point is that we mean the possibility for third parties to use an existing infrastructure. In transport networks, competing infrastructures and services are often reality. Wholesale access products can however include transport network services according to the needs of customers. Eventually, regulation is called for where enduring bottlenecks exist.

Access products can be split into two broad categories:

- Regulated access. These are at present the Telecommunications Act or 'FMG' products of the incumbent Swisscom, notably interconnection, unbundling of the local loop, subscriber access line, fast bitstream, leased lines, duct access. Unbundling and fast bitstream are limited by law to a specific technology, i.e. twisted pair copper lines.
- Commercial wholesale products have been offered for many years by the incumbent, e.g. in the form of the Broadband Connectivity Service based on DSL technology. With the start of FTTH activities in Switzerland new players are entering the telecom market. These are typically electricity companies building municipal networks. In most cases they focus on offering wholesale products to telecom service providers. It is in connection with these new fibre networks that the label 'open access' is more specifically used in Switzerland.

OPEN ACCESS TO NETWORKS: WHAT POLICY AND REGULATORY TOOLS TO ENABLE OPENING UP ACCESS TO NETWORK FACILITIES (I.E. INTERNATIONAL FIBER NETWORKS, "ESSENTIAL" OR "BOTTLENECK" FACILITIES, OTHER NETWORKS) WITHOUT HARMING INVESTMENT AND INNOVATION?

The new municipal networks have the open access philosophy at heart. Wholesale products, either active line access or dark fibre, are to be offered on a non-discriminatory basis to all interested service providers. This is in principle conducive to more competition between service providers in the retail market, but cannot guarantee competition. In the absence of competition at the infrastructure level, market power at the wholesale level by the open access provider could potentially lead to a series of competition problems (excessive pricing, price and non-price discrimination, denial of access, etc.), thus calling for fibre regulation.

The Swiss incumbent is very active in FTTH and is rolling-out networks in many cities. As well as offering its own triple play services on the new networks it is extending its previously DSL based active wholesale product to include FTTH based services. Different forms of cooperation between municipal network operators and the incumbent are under negotiation.

In an effort to promote infrastructure competition, a multi-fibre model, e. g. four fibres per household, has been embraced in most Swiss FTTH projects. The multi-fibre approach provides better conditions for infrastructure competition, but again cannot guarantee competition. Competition requires that multiple operators actually make independent use of the fibres and actively compete with each other.

The regulator (the Federal Communications Commission) has been working together with OFCOM to facilitate common technical specifications and to enable cooperation between network builders and so reduce the total investment required at the national level. In many cases Swisscom and the municipal network operators are

reaching agreements on sharing the work and costs. Some of these agreements are currently under examination by the competition authority, in order to judge their compliance with competition law.

All the above is taking place in the absence of access regulation of fibre networks. As mentioned above, there is currently no basis for regulation of optical fibre access networks in the Swiss legislation.

OPEN NETWORKS: HOW TO ENSURE THAT EVERY CITIZEN HAS ACCESS TO THE BENEFITS OF UBIQUITOUS BROADBAND NETWORKS (I.E., THROUGH POLICIES FOR UNIVERSAL ACCESS TO BROADBAND, TRANSITION TO NEW GENERATION NETWORKS (NGN), LEVERAGING ON THE DIGITAL DIVIDEND)?

The access of citizens to broadband is first and foremost provided by the market. Infrastructure competition between the CATV companies and telcos using DSL has led to an excellent broadband coverage in Switzerland. High demand and low capital costs may have contributed to this evolution as well. Since 2008 broadband internet access has been included in the universal service, which serves to close any gaps in coverage. The universal service is the chosen mechanism to ensure blanket access to essential broadband services. The characteristics of the universal service may be updated by the government as needs evolve. It should be noted that the universal service is defined technologically neutrally, i.e. services (bandwidth) are defined rather than networks or technologies..

OPEN INTERNET: HOW TO HANDLE TRAFFIC MANAGEMENT OVER INCREASINGLY CONGESTED NETWORKS WHILE APPLYING FAIR RULES?

The decision of whether to invest only in network capacity or also in traffic management should remain with the network operators. However, the question arises to what extent benefits resulting from traffic management of congested networks discourage the provision of sufficient capacity. This may eventually put at risk innovation on the internet.

Possible remedies to deal with this challenge include the following:

- Information obligations for network operators,
- The possibility for clients to quickly end their contract without high switching costs,
- An interdiction of blocking, and an interdiction of downgrading,
- The possibility to prescribe minimum quality of service for internet access,
- A policy directive stating the rights of consumers to access any legal content, applications, and services over their internet access, and to connect to the network any devices that do not harm it.

OPEN ACCESS TO CONTENT: WHAT ROLE FOR REGULATORS IN BRINGING PUBLIC SERVICES ONLINE (I.E., E-GOVERNMENT, E-EDUCATION, E-HEALTH) AND CREATING DEMAND FOR SUCH SERVICES?

In Switzerland this topic is dealt with as part of the E-government strategy, which is coordinated by the federal government and implemented on all three federal layers. This coordination is especially important concerning the creation of the preconditions so that public authorities can offer their services electronically. These preconditions are of organisational, legal and technical nature; they also touch on questions of standardisation and interoperability.

As far as the creation of demand for electronic services goes, they should be designed such that they present a real added value, e.g. by simplifying regular contacts or saving time. It is also important that public web-sites be created and maintained to be user friendly and accessible to all, according to relevant guidelines and standards.

CHALLENGES TO OPEN NETWORKS (I.E., CYBERTHREATS, UNFORESEEN ASPECTS OF THE INFORMATION SOCIETY, DISPUTES, REGULATORY EFFICIENCY AND CONSISTENCY ACROSS SERVICES AND NETWORKS): WHAT STRATEGIES?

As in other countries, open networks pose challenges in Switzerland in terms of network stability, business continuity, resilience, critical infrastructure protection, data privacy and crime prevention. The complexity of the tasks at hand require cross-cutting approaches in the form of multi-stakeholder processes on the one hand and enhanced inter-service co-operation between the various authorities concerned on the other. As far as convergence in electronic communications is concerned, the Swiss experience with an integrated agency (since 1992) dealing with all salient issues, including frequency management, hardware conformity, media content and telecommunication services is very positive, especially when it comes to regulatory consistency.