

ITU/EBU Meeting of High-Level Experts on Competitive Platforms for the Delivery of Digital Content

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**Intervention by Michael Bartholomew, ETNO Director
Day 2, Friday 22 June**

I am delighted to be here today and welcome this initiative taken by the ITU and EBU to address issues linked to the convergence between the two sectors they represent.

Convergence allows consumers to access any content, anywhere, through any platform, at any time. Services previously offered to consumers through different networks and platforms are now included in bundled packages of services.

Convergence is blurring market boundaries between previously totally separated industries, such as the telecoms and the content industries. Telecoms operators are increasingly including content in their broadband offerings, creating new opportunities for content distribution. Content providers are adding voice or broadband services to their traditional offers.

E-communications operators and content providers need each other. Content is essential for customers to take up new technologies and services. New media platforms are offering tremendous opportunities for the distribution of content. ETNO has already held two workshops to establish a dialogue at EU level between representatives from both industries.

European media report every day about the launch of new online content-based offerings: IP TV is widely available. TV over mobile is emerging as the next big trend in mobile services. Self-made content is becoming more and more important. Sales of online content are increasing.

We also witness a multiplication of business models: pay per view/download, subscription-based model, advertising-supported free download, ... Although new online content markets are growing fast, we should bear in mind that they are still in an embryo phase and characterised by a high level of unpredictability.

Convergence brings more choice for consumers and creates more competition. Is there a real level playing field? When putting legitimate content-based services on the market, ETNO members are faced with rules from two distinct worlds: In the telecoms world, they are still subject to heavy ex-ante regulation despite vivid competition. And, in the media world they often have to comply with rules defined for traditional content services.

How should EU policies help encouraging the roll out of online content services and creating a level playing field for all actors?

First: Content availability. The current system of release windows and exclusivity rights – defined in another reality - does not fully reflect the specificities of today's online world. Premium content should be made available under fair and proportionate conditions and should not be unreasonably limited.

ETNO does not see the need for a specific legislative initiative to address online content distribution, given the wide diversity of business models and the rapidly changing realities. As markets are still in a early stage of development, the industry needs flexibility to innovate and develop successful business models. A regulatory intervention in this context would on the contrary prove counter-productive.

However the EU could facilitate the availability of content, for instance by introducing greater competition and transparency in collecting societies policies and practices. ETNO supports the current European Commission efforts in this context.

The inability of some rightsholders to bypass collective management and deal directly with digital distributors is a significant obstacle to the launch of new services. The Commission could play a role as a facilitator for the exchange of best practice and experience in order to simplify rights clearance procedures that are often too complex.

The potential for anti-competitive practices by owners of premium content remains a concern for ETNO members even though the issue is less acute than previously. Cases of abuse should be dealt with by competition law rather than new sector-specific policy initiatives.

Second: The eCommerce Directive. Broadband audio-visual services are also submitted to rules contained in the eCommerce Directive. It is essential that provisions covering online services in horizontal rules and legislative

proposals do not contradict the key principles, in particular pertaining to the Country of Origin principle, enshrined in the eCommerce Directive.

Third: Content regulation. The revision of the Television without Frontiers, which entered its final phase of adoption, proposes the extension of traditional content rules to new on demand services. The latest version of the proposal, likely to be adopted in the autumn, has clarified some definitions and limited the scope. A distinction is made between “TV” and “TV-like” services. However, on-demand and interactive services, which are still at an embryo stage, will be covered by the revised directive.

ETNO – together with the other trade associations representing all segments of the telecoms industry - questioned the need for extending the traditional broadcasting rules to new online on-demand services. These services are already largely covered by the provisions of the e-Commerce Directive and by many self-regulatory instruments, as far as public policy issues such as protection of minors are concerned. Advanced technological solutions are continuously being developed and included in online audio-visual offerings, such as parental control tools.

On-demand services and interactive TV services have enabled the wide diffusion of niche content. The main question is whether these services would have developed at the same pace if the AVMS Directive would have already been in place?

Four: the sector specific regulation. As I mentioned earlier, despite increasing competition in today’s telecoms markets from new players who

are not regulated, telecoms operators still witness significant regulatory intervention. EU policy makers should use the opportunity of the on-going review of the EU regulatory framework for e-Communications services to adapt the rules to these changing realities.

First, telecom operators should not be prevented from providing consumers with bundled packages of services. This can be achieved by a removal of regulation of the retail markets which is currently on the agenda.

Second, EU policy makers should stimulate the deployment of more performing high-speed networks. Innovative content-based services - in particular applications to create and share self-made content – require increasing download and also upload capacity. It is estimated that in 1998 users needed on average a bandwidth capacity of 128 kilobytes. By 2008, this average bandwidth requirement is expected to have increased up to 10 megabytes. The deployment of new high speed access networks entails highly risky investments. Systematically extending the access obligations to new networks risks discouraging the new network's deployment and hence, undermine the telecoms operators' capacity to compete in today's convergent environment.

Conclusion

Convergence creates new opportunities for both telecoms operators and content providers, for the full benefit of consumers. EU policy makers should continue to monitor the new markets for online legitimate content and ensure a true level playing field for all players. Competition rules should be respected with regard to negotiation of content and audio-visual rights.

Finally, I would like to underline the importance of promoting access to legitimate content and fight against piracy. The wide availability of legitimate offerings is the best way to achieve this.