Frequently asked questions: Recommendation on relevant markets

How did the Commission identify which markets should be on the list?
The Recommendation identifies markets which are susceptible to ex ante regulation on the grounds of the following three criteria:

1. Presence of high and non-transitory structural, legal or regulatory barriers to entry, for example high costs required to roll out a network.
2. Market structure does not tend towards effective competition within the relevant time horizon of the market review.
3. Competition law alone is insufficient adequately to address the market failure(s) concerned.

Why have markets 1 and 2 been deleted from the list?
The Commission reached the conclusion that the fixed access (1) and voice call origination (2) markets are prospectively competitive on the basis of a public consultation (IP/12/1105), an expert report, and Article 7 case practice experience in reviewing national draft regulatory measures. The reasons to eliminate these two markets are:

- People are increasingly using IP technologies for voice calls, such as VoIP;
- Alternative operators are able to provide access to fixed telephony by relying on other regulated wholesale products in markets 3a and 3b;
- Increased use of mobile communications at the expense of fixed;
- Increased competition in bundles which include calls, internet, TV offers and mobile services. Fixed telephony access becomes the least important element of the bundle, as competition shifts towards TV, broadband and mobile. Demand for stand-alone access will continue to decrease.

However the Recommendation acknowledges that specific national circumstances may justify further regulation of these markets at wholesale level, provided that the above three criteria test is met.

How will this change affect users who rely only on fixed lines?
The number of users who are either unwilling or not able to migrate to broadband is low.
These consumers will be protected from price rises once the regulation is lifted by the competitive pressure coming from other fixed or mobile platforms, as well as broadband services including VoIP.

In the future it will not be profitable for an operator to keep both the telephone and IP network working, and new technological solutions, especially those offered by VoIP and mobile operators, will further reduce the number of people in this situation.

Users relying only on fixed lines should not be affected by the removal of markets 1 and 2. In circumstances where this is not the case, NRAs may carry out a three criteria test and maintain regulation in these markets if all criteria are fulfilled.

**What are fixed and mobile termination markets and why are they still on the list?**

Termination rates are the rates which telecoms networks charge each other to deliver calls between networks. The fees are ultimately included in the call prices paid by consumers. As each operator fully controls the termination of calls on its network, competition problems are unlikely to be resolved by market forces over the foreseeable future. The termination markets remain bottlenecks, and the Commission considers therefore that a solution other than via regulation is currently not possible. Relying on Article 5 of the Access Directive regarding the obligation of interconnection would not be sufficient to overcome market failures. The regulation of these markets may become unnecessary in the future, if the implementation of the Recommendation on termination rates leads to such a fall in termination costs that operators no longer charge each other for termination service (the so-called "bill and keep" model).

**What is virtual unbundling and will it replace physical unbundling?**

The local loop is the last part of the network which connects an end user with a telephone exchange. An access-seeker (an operator which does not own or operate a network in a particular area) can unbundle the local loop (LLU) of a dominant network operator, enabling the access seeker to operate its own line in order to provide services to the customers. Since the last revision of the Recommendation, the replacement of traditional copper network access infrastructures by new fibre infrastructures has accelerated considerably and is expected to continue in the coming years, although at varying pace across the Union. The transition from copper to fibre has already led to significant changes in the design of the network access products.

In such a setting, it may no longer be technically possible or economically viable for an access-seeker to obtain physical access, and therefore non-physical or virtual wholesale access products have been introduced. The physical access is in this case replaced by a virtual access link to the end-user premises, and the access seeker uses that virtual link to provide its services.

The Recommendation does not consider all virtual access products as substitutes to physical unbundling, but only those which fulfil certain characteristics:

- Access occurs locally. This means that traffic is handed over at a level which is much closer to the customer premises than access at the national or regional level as generally granted with traditional bitstream access.
- Access is generic and provides access seekers with transmission capacity which is independent of the service delivered and ensures guaranteed bandwidth.
- Access seekers need to have sufficient control over the network to consider such a product to be a functional substitute to LLU and to allow for product differentiation and innovation similar to LLU.
The Recommendation recognizes that in situations where physical unbundling is not technically or economically feasible, virtual access products might constitute a more proportionate remedy. The virtual unbundling is not considered to replace existing copper local loop unbundling.

Why has the leased lines market been replaced with a wholesale high-quality access market?

The Recommendation looked into the demand of both residential and non-residential customers. The residential customers use standardised services, such as fixed/mobile telephony, internet access and, increasingly, IPTV. The non-residential customers, which are typically businesses of varying sizes, need more advanced and reliable services to link their business units and locations and allow for internal communication.

While some business needs may be served by variants of residential products with somewhat higher accompanying service guarantees (market 3b), the high-quality access market (market 4) groups together products which allow for the provision of high-quality retail products, regardless of the underlying technologies. Typically, these products are leased lines, which provide a reliable connection that is rented for exclusive 24/7 use from one location to another. However, leased lines are costly and not all businesses at retail level need them. Therefore, other broadband access products might be used for the same purpose as traditional leased lines if they fulfil characteristics such as:

- High quality level of service, ensured for example by 24/7 customer support and short repair times;
- Appropriate speed guarantees;
- Possibility to access the network at points which take into account the distribution of business users.

The Recommendation leaves NRAs flexibility in defining these markets, as national circumstances may vary considerably between Member States. Each NRA should perform a market analysis, on the basis of which it might conclude that it would be more appropriate to define sub-markets. Moreover, in certain Member States a high-quality bitstream product is not offered at wholesale level, and therefore the Recommendation allows that for those NRAs it might make more sense to define market 4 very similarly to the 2007 leased lines market.

Contacts
Email: comm-kroes@ec.europa.eu Tel: +32.229.57361 Twitter: @NeelieKroesEU