Telecoms markets in Europe
The co-ordination challenge
One common framework

- National regulators must promote, competition and consumer interests and contribute to the development of the single market (article 8 Framework Directive)
- All regulators must carry out reviews of the market and apply regulation wherever SMP (significant market power/dominance) found on technologically neutral basis (article 14-16 Framework Directive)
- All member states must ensure number portability
ECTA’s annual scorecard based on survey responses from NRAs and operators shows legislation, regulatory policy and delivery varies…
27 national approaches...

- Institutional environment
  - Power of NRA to impose fines: Ranges from no power to 10%
  - Average time required to complete appeals ranges from less than six months to two years
  - Government shareholdings in incumbents are above 50% in Belgium, Slovenia, but 0% in UK, Italy, Spain, NL

- Consumer rights
  - Time required to port fixed and mobile number ranges from 1 to 45 days

- Regulatory Questions
  - Different approaches for regulating ‘termination’ and fibre access (see following slides)
  - Advanced inputs for business communications and service-level requirements are available in some countries but not in others
Different approaches: termination rates

- Different cost methodologies led to wide variation in the cost of calling mobile phones – data from 2008
Different approaches: fibre regulation

- Regulatory holiday
  - Germany: National law prohibits regulation of ‘new services’ – Commission infringement proceeding ongoing
  - Spain: No remedies applied for broadband lines >30Mbit/s – Commission issued ‘serious doubts’, but has no power over remedies

- Regulation of dominant firms under market analysis rules
  - Netherlands: Comprehensive rules requiring fibre unbundling and wholesale services for consumers and businesses
  - Sweden, Belgium, Ireland similar proposals

- Undertakings with dominant firm through competition law
  - UK: BT’s fibre roll-out is covered by rules agreeing a strict ‘functional separation’ of the access unit from downstream services. BT must offer fibre access to competitors on non-discriminatory terms

- Symmetric regulation on all firms
  - France: Different legal basis used to require all fibre investors to offer access to the ‘terminating segment’ at a point determined by the regulator
Diverging outcomes: take-up

- Markets with more competition tend to achieve low prices, high take-up and coverage of broadband and high-speed services.
- Cost of triple play in duopoly Belgium (TV + Broadband + telephony) more than double cost in France!
Diverging outcomes: investment

- Countries with less effective economic regulation (measured by ECTA regulatory scorecard) have lower investment in communications sector (OECD data)
European institutional solutions: today

- European Commission (DG Comp and DG Infso) can:
  - review the market analyses of national regulators (article 7 process) and can veto decisions about ‘market definition’ and ‘market power’, but not remedies
  - issue non-binding Recommendations and guidelines on application of regulation (mobile termination rates, next generation access regulation) after opinion of member states (Communications Committee)
  - Take infringement proceedings against countries which have failed to implement EU Telecoms legislation
  - Firm decisions but little or slow enforcement power

- European Regulators Group:
  - Issues common positions eg on Next generation access, IP Interconnection
  - Comments informally on Commission proposed Recommendations and legislative proposals
  - Comments informally on article 7 cases where Commission expresses ‘serious doubts’ (precursor to veto)
  - Tends towards lowest common denominator and ‘flexibility’ – no regulator wishes to be accountable to another regulator or body
European institutional solutions: changes

- Under proposed revised Telecoms Framework (due to be approved end 2010)

- **European Commission**
  - Strengthened wording for article 7 review of national regulators’ market analysis but still no veto on remedies
  - New power to issue a Decision if a previous Recommendation has not been followed (article 19 Framework Directive)

- **European Regulators Group**
  - Becomes body established under EU law – BEREC (Body of European Regulators in Electronic Communications), but composition similar to ERG of today
  - Must be formally consulted by Commission for Recommendations, Decisions and article 7 (serious doubts) cases
Conclusions

- European Telecoms Framework provides solid basis for promoting effective competition in the telecoms sector, but leaves significant room for national interpretation.
- Result is markets that have been opened to different degrees with diverging outcomes for consumers and businesses.
- Current institutional co-ordination mechanisms ineffectual.
- New mechanisms positive, although may not go far enough. Effectiveness of BEREC and Commission ‘Decision’ power remains to be seen.