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Aus für die Regulierung?

The end of regulation?

Good morning ladies and gentlemen!

It is a pleasure for me to be here and talk about the end of regulation. But don't get too excited about it. Or don't get scared that you might lose your job. I have never seen the telecommarket without regulation or without regulatory authorities as a very pleasant place to be. Without regulation for some businesses it would be very difficult either to access the market or stay in the market. And for consumers it would mean a very bumpy road to come at least to a minimum of consumer rights. Having seen both sides now, the operators and the regulators side, I am more than ever convinced that regulation – if it is done the right way – can add a lot of value to both operators and endusers.

Today I don't want to bother you with a sophisticated and abstract model of future regulation but give you some concrete ideas, what the thinking about the future within RTR is. So let me lead you through some topics that we see as important areas for regulation shaping the markets in the years to come.

Netneutrality

One of the most exciting discussions in Europe as well as in the US is about netneutrality. On the one hand side there is a strong believe in a system of innovation, freedom of speech and economic growth, fostered by a network architecture that makes everybody connected to the Internet a potential innovator. This innovative power can be easily shown with numbers. The *Frankfurter Allgemeine Zeitung* reported beginning of August, that in Europe in 2013 one million jobs directly and indirectly depended on the development of Apps. And the number of jobs created by this new industry grew by 26% compared to the year before. And that is only a very small section of this dynamic that the open internet created.

On the other hand there is amongst others the argument, different applications require different qualities and network management measures are a necessary mean for network optimization and securing quality.

It is a fact, that exploding data traffic requires tremendous investment. And investment needs adequate return. It is also a fact, that network operators

have a gatekeeper function. And they have the economic incentive and the technical means to use and abuse this gatekeeper function.

RTR stands for an open internet and an internet that creates opportunities for everybody. We have been working on this topic for a long time now on national and international level. The 7 principles of netneutrality formulated by the telecom section of RTR in May 2013 is only one first milestone. In this year we have implemented a convergent dialogue about netneutrality with the media section within RTR. In October RTR will host a high-level conference with international experts from the media and the telecom side in order to take even more leadership on this topic in Austria.

In terms of the legal framework for netneutrality we would clearly prefer a European approach for obvious reasons. But in case of a failure of the TSM on the netneutrality topic – and this is not an unlikely scenario - RTR will

Firstly -evaluate its competences based upon existing rules in the Telecom Act,

Secondly - RTR will in any case strictly enforce the rule of transparency in this context in order to empower users to make informed choices,

And thirdly - RTR will lobby for national Austrian rules if necessary. And because of the complexity of the topic RTR will massively engage in a process for national legislation in order to avoid rules based upon short-term political thinking doing harm to the markets.

And we are only at the beginning. New edge providers are ante portas with the potential to turn the Austrian market for electronic communication upside down. Therefore I am totally convinced that netneutrality is one of the major topics for the years to come in terms of legislation and execution and RTR will play a central role.

The Austrian Mobile Market

The year 2013 marks a turning point in the Austrian as well as the European mobile market. And ever since Austria is in the focus with the Orange/Hutchison merger and its consequences.

The dynamic of competition in the Austrian mobile market has dramatically and profoundly changed. With the clearance of the transaction in Austria and on European level we have left the well-known track and we don't know where the new one will lead us now. But one thing is clear, that the rules we have applied on the market and the regulatory measures we have used in the past have to be adjusted to master the challenges ahead and the focus has to be shifted to other tools in our portfolio.

Based upon this new situation I have launched a project within RTR, that will focus on this new situation and how to deal with it. In the last four months we have gathered a huge number of ideas and to a large extent we have already evaluated them, answering the question, how we can support endusers –

businesses and consumers - in this new situation of increasing prices and less choice. These ideas comprise a variety of areas from the provision of open data to encourage the offering of tariff comparisons, a better service for consumers by RTR itself, the support of broadband roll-out, new rules for number portability, legality of retention programmes and many more. In the coming months of this year we are going into detailed feasibility studies and implementation. And I see this project not as a single and short-term measure but as a structured process, that will be in place in the coming years.

In this context I would like to emphasize, that it is an absolute USP of a sector-specific regulator to react fast and flexible on a changing market. Our legal and factual portfolio goes far beyond that of a general competition authority. But a close co-operation between the sector-specific regulator and the competition authorities is absolutely vital. And I am happy to say, that this close co-operation is renewed and well in place.

And – as a side step - it is also vital that the economic tool box for merger proceedings is improved and fine-tuned in order to better deal with such merger scenarios. Because it was crystal-clear to everybody in the industry what will happen after the merger. However – and this is not only my personal opinion but also that of economists involved in the Orange/Hutchison merger- the economic tools applied were insufficient to capture the complexity and diversity of reality and draw the right conclusions.

Now it is up to us to deal with this situation, and we surely will in the best interest of the Austrian endusers.

Broadband roll-out

A few weeks ago the political decision was taken to subsidize the roll-out of broadband with a billion Euro. This is a major cornerstone to make Austria fit for the future and to minimize the digital divide between urban and rural areas. In this context we have to ask, what is the role of the regulator in this game? Several times we have said that broadband roll-out plays a major role in all decisions of the Telecom-Control Kommission. Let me mention the recent Refarming decision, the coverage obligations in the course of the multiband auction and the inclusion of dark fibre into the market for terminating segments of leased lines.

But there is one development I want to emphasize and this is in the area of unbundling and virtual unbundling (or VULA) in particular. We are currently in a transition process, that started in the market analysis 2009 and which has to be continued with increased speed. It is important to realize for all market participants that RTR is working to develop VULA as a universal wholesale remedy and to free the way for the deployment of new technologies like Vectoring from the main distribution frame. The usual caveat has to be placed at this point, that RTR of course cannot predetermine the decisions of Telekom-Control Kommission. But if we get VULA done the right way I see

new potential for unbundling in Austria with new market players and a major contribution to the broadband roll-out in Austria.

Europe

Let me now make the step to the European level. The European Union has done a fantastic job in the liberalization of the telecommarkets. By breaking up the fixedline monopolies and the licencing of GSM networks, the EU has created a whole variety of new markets. I am convinced, that without the EU much less would have happened in this area or with much more delay. We therefore have to absolutely appreciate the achievements of the European Regulatory Policy.

But in the meantime the picture has become more complex. In particular the last year and the discussion about the Commission's proposal on the TSM have shown the gap between national and European views about the best way forward. And it has shown that what from a Brussels perspective seems logic and the right thing to do, may lead to distortions of competition on national markets.

Some examples:

The upcoming recommendation on relevant markets susceptible to ex ante regulation will remove markets 1 and 2. In the interest of a progressive reduction of regulation and if you look from a European Helicopter view this is logic and the right move. But this move has also the potential to create massive competition problems in several member states and some business models will be in danger or even erased. A re-monopolization in the fixed-line market could be the consequence in some member states. Let us please be careful with a European view. Consumer markets for electronic communications services remain domestic i.e. an Austrian user will normally not want to access the French fixed network and effective competition in a majority of member states may not help endusers if competition fails in his home country.

International Roaming (the next example): There is no room for roaming fees in an internal market. I think this is hard to contest. But the way there can and should be discussed.

Firstly: When you look at the tools we use in regulating termination rates with a lot of sophisticated and partly intransparent cost models over the years and compare it to the hardcore retail price regulation applied on International roaming, that does not match.

Secondly: Before eliminating roaming fees we have to harmonize termination rates across Europe.

Thirdly: It is also not in the interest of certainty for investment to create something like a roaming market with the Roaming III regulation and destroy it

before launch. That creates cost and frustrated investment for a perceived political gain.

But the elections are past and it was a very wise move from the EU Commission to request expertise from BEREC on that subject matter. RTR as one of the leading NRA in the BEREC Roaming Expert Working Group will be the advocate of the concerns associated with the current proposals on the table.

Unbundling prices: It is a crucial point for the European Commission that unbundling prices are set at the right level in order to encourage investment. What from the European level seems the right strategy for the roll-out of Next Generation Networks will create heavy issues on the national market because in the Austrian Case the European Commission requests the squeeze out of margins of alternative operators when using the network of the incumbent. And it must be questioned if higher prices for unbundled lines really encourage investment in Next Generation Networks.

Though whoever advocates a Single European Regulator, should be well aware of the consequences. This will create local competition issues for sure. Not because of bad intention but because the world looks different from Rue de la loi than from Mariahilfer Straße. In particular small member states should be very careful because negative impact on their markets will may be seen solely as collateral damage and will be accepted.

However I see it as a central role of RTR to work for European Harmonisation in this sector, always considering the best interest of the Austrian endusers and operators. And we are happy to closely co-operate with the commission be it directly or via BEREC to reach the goal of a real internal market for electronic communication services. But that's still a long and winding road.

The Review

Let me close now with a few thoughts on the upcoming Review of the European Regulatory Framework. This will be an opportunity for a comprehensive consideration of the challenges facing the sector. I personally hope that the next review will be based on the foundations laid down in the 2002 review and changes will be on an evolutionary basis, as well as providing NRAs with new tools to tackle emerging issues like

- how best to address the role of OTT players,
- how to respond to the challenges posed by market consolidation,
- the question of infrastructure competition vs. service competition and the future of the ladder of investment concept

RTR will request answers on this questions in the legislative process and will be happy to support in answering the questions. We will do that in an ever more transparent way. Coming back to the title of my speech: For the

foreseeable future I can see no end but a new stage for regulation. Not necessarily more or less regulation but definitely better regulation.

Thank you!