



European Commission
Information Society and Media

CLEC BOTTLENECK IN DIGITAL BROADCASTING:

**The use of sector regulation and competition law to
enforce access to decoders and content**

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For a Few Dollars More

**“When life was cheap,
death sometimes had its price”**

**“Welcome to Agua Caliente – they hate
strangers”**

Sergio Leone 1965

Media Pluralism

- **Opaque debate, politically volatile**
- **Justification for regulation**
 - Concentration
 - MHP
- **New 3 step process**
 - SWP
 - Indicators study
 - Communication 2008



In the beginning...

ANALOGUE TV PARADIGM

- General interests (ECHR)
- regulating pure content issues
 - protection of minors
 - ... but also infrastructure



ANALOGUE TV PARADIGM

■ Access

- single standard interoperability
- economies of scale

■ No competitive market in infrastructure

- cable TV nets
- need monopoly...;-]

Source: Sec [2004] 346



DIGITAL TV

TV STANDARDS DIRECTIVE 95/47

■ Backdrop

- Overcome earlier failure
- Drive transition

■ Vast resources needed: €600 STB

- Incentive-driven approach
- Driver-role for pay tv
- FTA/horizontal market ... later

■ Single platform likely

- FRND access obligation



Interoperability of CA

White hot debate in 1994

- **first mover / second mover**
- **business model: exclusive rights, control over facilities**
 - unlike telecom, interconnection is not an objective
- **security precludes a single CA system**



White hot debate in 1994

- **Interoperability regime**
 - Mandated CSA in decoders
 - Simulcrypt, common interface
 - Transcontrol
 - TV/STB distinction ... either can work
- **Free rider / security issues**
 - Single decoder in Italy



USA

DID THEY DO BETTER?

- **MOTOROLA / SA role**
- **1996 separation of cable navigation devices/network**
- **... FCC fails to predict CA**
- **Improved version of CI**
 - Cable card
- **Open cable initiative**
 - MHP for US cable to escape MOTOROLA / SA
- **Industry wants downloadable CA**
 - FCC insist on cable card



Interoperability

- **Standards v. innovation**
 - Co-ordination costs
 - Dynamic v. static industries
- **Case-by-case**
- **Transmission + higher levels**
- **Lock in ... in the era of cheap STBS?**
- **Varian, multi-sided markets, ladder of investment**
- **...better to open up rights**



Interoperability

- ... and if the standard is late?
 - MHP
- **Expensive?**
 - Footprint/ dot.com boom
 - IPR / strategic value
- **Universal receiver fallacy**
 - Modulator issue
 - Head end interoperability option
 - Terminals: cheap/option theory?



CONVERGENCE

■ Separation of content and infrastructure

- Political ... point in time

■ Operational:

- Need a telco-type incentive regime
- Well defined GIs
 - Universal service –type model

■ NRF

- US&UR directive
- Access directive
- Carryover from 95/47



Ex ante / Ex post

Competition law has played a major role

- **Insistence on competing platforms**
 - Contrast single platform idea 95/47
 - KIRCH: FTA is competitor
- **Pragmatic approach emerges**
 - Stream / Telepiu
- **Remedies look like ex ante regulation**
 - Enforced by NRA
 - Copyright focus



Ex ante / Ex post

Empirical observation:

“Where pay TV is well established in analogue, DTV can bring a sustainable competitor”

Establishing pay TV burns much fuel



Where are we now?

- **Content regulation for GIs**
 - TVWF/AVMS
 - National rules
- **E-COMMS rules**
 - Access rules / SMP
- **No ex ante control over market power in respect of content**
 - must offer at national level
- **Competition Law addresses this:**
 - Stream / Telepiu remedies
 - Premiere league



NRF ART 6 ACCESS

- **Article 6 Access directive**
 - FRND v. must carry
- **Major concern: extension of MC if no FRND**
- **Eminence grise of culture ministries**
 - competence
- **Over-regulate to stop greater over-regulation**
- **... at least there's remuneration**
- **Now: maybe move to SMP regime in e-COMMS (??? AWB personal)**



SEPARATION of FTA and Pay TV

- All decoders to pass FTA
- Free-to-view debate
 - UK
 - Germany
 - France
- EPG issue
- Are UK FTA services part of Sky content offer? Or is it just access?



EPGS

Who's afraid of Virginia Woolf?

- Access / ranking distinction is clear
- Strong tendency to overemphasise strategic role of EPG
 - **Role of favourites**
- Paying for access, user additions



CONCLUSIONS

- **Disagree:** more content rules or infrastructure
 - **Content market power**
- **Disagree:** content / COMMS borderline “too difficult”: best practice
- **Agree:** FRND art. 6 could go or be reserved for MC services



CONCLUSIONS

- **Agree in principle:** universal service & users rights
 - **Telco specific?**
 - **Elective service**
 - **General consumer Protection?**
- Access to a facility does not mean a service is part of content offer.



Los Endos

Thank you for your attention.

